

REPUBLIC OF SOUTH AFRICA

CO-OPERATIVES AMENDMENT BILL

*(As redrafted by the Portfolio Committee on Trade and Industry (National Assembly) after
consideration of the Co-operatives Amendment Bill [B17-2012] and Co-operatives
Second Amendment Bill [B18-2012])
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 17B—2012]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Co-operatives Act, 2005, so as to provide for the substitution and addition of certain definitions; to provide for associate membership of co-operatives; to provide for categories of primary co-operatives; to provide for the national apex co-operative; to provide for the annual submission of information to the registrar; to amend the accounting practices and requirements for co-operatives by providing for audit and independent review of co-operatives; to provide for the payment of fees by co-operatives for the amalgamation, division, conversion or transfer of co-operatives; to provide for the voluntary winding-up of co-operatives by special resolution; to provide for the registrar to apply for a declaratory order in respect of the liquidation process; to provide for the Co-operatives Tribunal to order the winding-up of a co-operative; to substitute the Advisory Board with the Advisory Council; to provide for the establishment, functions and powers of the Co-operatives Development Agency; to provide for the funding and financial management of the Agency; to provide for oversight and executive authority of the Agency; to provide for the establishment, composition and functions of the Co-operatives Tribunal; to ensure compliance with the principles of intergovernmental relations; to provide for intergovernmental relations within the co-operatives sector; and to provide for the substitution of the long title and the Preamble; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 14 of 2005

1. Section 1 of the Co-operatives Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for the definition of “Advisory Board” of the following definition:

“**‘Advisory [Board] Council’** means the Co-operatives Advisory **[Board] Council** established by section 85 of this Act;”;

(b) by the insertion in subsection (1) after the definition of “Advisory Board” of the following definition:

“**‘Agency’** means the Co-operatives Development Agency established by section 91A;”;

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- (c) by the insertion in subsection (1) after the definition of “agricultural co-operative” of the following definitions:
- “**‘annual report’** means a document prepared by the Board containing financial statements, a social report and the management decision report;”
- “**‘associate member’** means the person contemplated in section 14A;”
- “**‘audit’** means the examination of, in accordance with prescribed and applicable auditing standards—
- (a) financial statements or financial and other information prepared in accordance with suitable criteria;
- (b) social reports; and
- (c) management decision reports,
- with the objective of expressing an opinion as to their fairness and compliance with identified criteria, including the reporting framework as published by the Minister in the *Gazette* in terms of section 47(4) and any applicable statutory requirements;
- “**‘Auditing Profession Act’** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);”;
- (d) by the insertion in subsection (1) before the definition of “auditor” of the following definition:
- “**‘audited report’** means a report by an auditor examining and evaluating the financial statements, social report and management decision report;”;
- (e) by the substitution in subsection (1) for the definition of “auditor” of the following definition and by correcting the alphabetical order of the definitions of “agricultural co-operatives” and “auditor” in the principal Act:
- “**‘auditor’** means a registered auditor as contemplated in the Auditing Profession Act;”;
- (f) by the insertion in subsection (1) after the definition of “auditor” of the following definitions:
- “**‘Board’** means the Board of directors set out in section 32;”
- “**‘Commission’** means the Co-operative Conflict Resolution Commission contemplated in section 91V;”
- “**‘community development’** means a set of values and practices which aim to combat poverty, assist the historically disadvantaged and unite communities, by developing individual and collective skills, knowledge and experience and thus empower communities to undertake initiatives to combat social, economic, political or environmental challenges;”;
- (g) by the deletion in subsection (1) of the definition of “Commission”;
- (h) by the insertion in subsection (1) after the definition of “Companies Act” of the following definition:
- “**‘constitution’** means a governance document adopted by all members or prospective members of a co-operative, which sets out the objectives, policies and management of that particular co-operative;”;
- (i) by the substitution in subsection (1) for the definition of “co-operative” of the following definition:
- “**‘co-operative’** means an autonomous association of persons united voluntarily to meet their common economic, [and] social or cultural needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles;”;
- (j) by the substitution in subsection (1) for the definition of “co-operative principles” of the following definition:
- “**‘co-operative principles’** means—
- (a) *Voluntary and Open Membership* requiring co-operatives to be voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth;

- (b) *Democratic Member Control* requiring co-operatives to be democratic organisations controlled by their members through—
- (i) members actively participating in setting their policies and making decisions by majority vote;
 - (ii) men and women serving as elected representatives and being accountable to the members;
 - (iii) equal voting rights in Category A and B primary co-operatives (one member, one vote); and
 - (iv) a democratic organisation for voting in Category C primary, secondary and tertiary co-operatives and the national apex co-operative;
- (c) *Member Economic Participation* requiring members to contribute equally in amounts proportionate to their membership shares and democratically control the capital of their co-operative usually by—
- (i) retaining part of the capital as common property of the co-operative;
 - (ii) giving members limited compensation, if any, on capital subscribed as a condition of membership;
 - (iii) allocating surpluses to the reserves required in terms of section 46 and any additional reserves required by the co-operative’s constitution or considered necessary or desirable by the members;
 - (iv) benefiting members in proportion to their transactions with the co-operative; and
 - (v) supporting other activities approved by the members;
- (d) *Autonomy and Independence* requiring co-operatives to be autonomous, self-help organisations controlled by their members and if co-operatives enter into agreements with other organisations, including governments, or raise capital from external sources, they should do so on terms that ensure democratic control by their members and maintain their co-operative autonomy;
- (e) *Education, Training and Information* requiring co-operatives to provide appropriate education and practical training for their members, elected representatives and employees so that they can contribute effectively to the development of their co-operatives and are able to inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation;
- (f) *Co-operation among Co-operatives* requiring co-operatives to serve their members as effectively as possible and strengthen the co-operative movement by working together through local, national, regional and international structures where possible; and
- (g) *Concern for Community* requiring co-operatives to work for the sustainable development of their communities through policies approved by their members;”;
- (k) by the substitution in subsection (1) for the definition of “financial services co-operative” of the following definition:
- “**‘financial [services] co-operative’** means a **[primary]** co-operative whose main objective is to provide financial services to its members **[or a secondary co-operative that provides financial services to a primary co-operative];**”;
- (l) by the insertion in subsection (1) after the definition of ‘financial services co-operative’ of the following definition:
- “**‘financial statements’** means statements drafted by the Board for a particular financial period and includes—
- (a) a statement of financial position (balance sheet);
 - (b) an income statement;
 - (c) a statement of changes in membership shares;
 - (d) a statement of cash flows; and
 - (e) notes, comprising a summary of accounting policies and other explanatory notes;”;

- (m) by the substitution in subsection (1) for the definition of “housing co-operatives” of the following definition:
 “**‘housing co-operative’** means a **[primary]** co-operative which provides housing to its members **[, or a secondary co-operative that provided technical sectoral services to primary housing co-operatives];**”;
- (n) by the insertion in subsection (1) after the definition of “housing co-operative” of the following definitions:
 “**‘independent review’** means an assessment by an independent reviewer of the financial statements and the social and management decision reports so as to determine, through performing a preliminary inquiry using analytical procedures and evaluating the sufficiency and appropriateness of evidence obtained, whether there is reason to believe the financial statements, social reports and management decision reports are not prepared in all material respects in accordance with the applicable reporting framework;
‘independent reviewed report’ means a report by an independent reviewer examining and evaluating the financial statements, social report and management decision report;
‘independent reviewer’ means—
 (a) a registered auditor, or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Profession Act; or
 (b) a person who is qualified to be appointed as an accounting officer of a close corporation in terms of section 60(1), (2) and (4) of the Close Corporations Act, 1984 (Act No. 69 of 1984);
‘juristic person’ means—
 (a) a juristic person; and
 (b) a trust, irrespective of whether or not it was established within or outside of the Republic;”;
- “**‘management decision report’** means an assessment report drafted by the Board that accompanies the financial statements and that assesses the co-operative’s compliance with all legal requirements and the requirements contained in its own constitution;”;
- (o) by the insertion in subsection (1) after the definition of “Minister” of the following definition:
 “**‘national apex co-operative’** means the national apex co-operative contemplated in section 6(1)(d);”;
- (p) by the substitution in subsection (1) for the definition of “primary co-operative” of the following definition:
 “**‘primary co-operative’** means a co-operative whose object is to provide employment or services to its members and to facilitate community development, formed by a minimum of—
 (a) five natural persons **[whose object is to provide employment or services to its members and to facilitate community development];** or
 (b) two juristic persons; or
 (c) a combination of any five persons, whether natural or juristic;”;
- (q) by the insertion in subsection (1) after the definition of “primary co-operative” of the following definition:
 “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (r) by the substitution in subsection (1) for the definition of “social co-operative” of the following definition:
 “**‘social co-operative’** is a **[non-profit]** co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick;”;
- (s) by the insertion in subsection (1) after the definition of “social co-operative” of the following definition:
 “**‘social report’** means an assessment report drafted by the Board and that assesses the social impact and ethical performance of the co-operative in relation to its stated vision, mission, goals and the code of social responsibility of the co-operative as set out in its constitution;”;

- (t) by the substitution in subsection (1) for the definition of “supervisory committee” of the following definition:
 “**‘supervisory committee’** means a committee contemplated in section 27(3)(b);”;
- (u) by the substitution in subsection (1) for the definition of “surplus” of the following definition and by correcting the alphabetical order of the definitions of “surplus” and “supervisory committee” in the principal Act:
 “**‘surplus’** means the amount, if any, by which the total financial value received by a co-operative during a particular period, whether as a result of overcharging its own members for goods or services supplied to them, transactions with non-members or otherwise, exceeds its total financial costs and expenditure for that period;”;
- (v) by the substitution in subsection (1) for the definition of “tertiary co-operative” of the following definition:
 “**‘tertiary co-operative’** means a sectoral or multi-sectoral co-operative whose members are secondary co-operatives and whose **[object] objectives [is] are** to advocate and engage organs of state, the private sector and stakeholders on behalf of its members, **[and may also be referred to as a co-operative apex]** in line with its sectoral or geographical mandate;”;
- (w) by the insertion in subsection (1) after the definition of “this Act” of the following definitions:
 “**‘Tribunal’** means the Co-operatives Tribunal established by section 91L;
‘trust’ means the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed—
 (a) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or
 (b) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument,
 but does not include the property of another which is to be administered by any person as executor, tutor or curator in terms of the provisions of the Administration of Estates Act 1965 (Act No. 66 of 1965);” and
- (x) by the substitution in subsection (1) for the definition of “worker co-operative” of the following definition:
 “**‘worker co-operative’** means a primary co-operative in which the members pursue the objective of optimally utilising their labour by building a jointly owned and self-managed enterprise.”.

Amendment of section 2 of Act 14 of 2005

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (d) of the following paragraph:
 “(d) promote equity and greater participation **[by black persons, especially those in rural areas, women, persons with disability and youth]** in the formation of, and management of, co-operatives by persons from previously disadvantaged communities, as determined by the Minister by notice in the *Gazette*;”;
- (b) by the substitution for paragraphs (f) and (g) of the following paragraphs, respectively:
 “(f) facilitate the provision of support programmes that target newly formed and emerging co-operatives, [specifically those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas] particularly those whose members are persons from previously disadvantaged communities,

- as determined by the Minister by notice in the *Gazette*, and that promote equity and greater participation by [its] such members;
- (g) ensure the design and implementation of the co-operative development support programmes by all the relevant agencies of national departments [including but not limited to Khula, NEF, NPI, SEDA, IDC, SAQI, SABS, CSIR, PIC, DBSA, SALGA and SETA's], provinces and other entities established for furthering the purposes of the co-operative sector, and compliance with uniform norms and standards prescribed by this Act;"; and
- (c) by the deletion of the word "and" at the end of paragraph (h), the insertion of the word "and" at the end of paragraph (i) and the addition of the following paragraph:
- “(j) promote the establishment of public private partnerships as contemplated in the Public Finance Management Act, the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the Treasury Regulations.”.

Amendment of section 3 of Act 14 of 2005

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “A co-operative must comply with the co-operative principles referred to in this Act and is deemed to do so if—”;
- (b) by the substitution in subsection (1) for paragraphs (b) and (e) of the following paragraphs, respectively:
- “(b) in the case of [a] category A and B primary [co-operative] co-operatives, each member has only one vote;
- (e) [at least five per cent] a percentage of the surplus is set aside as [a] an indivisible reserve in [a reserve fund and is not divisible amongst its members] accordance with the requirements of section 46(1);”;
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) The constitution of a category C primary, secondary, [or] tertiary or the national apex co-operative may provide that the members have more than one vote: Provided that **[in the case of a secondary co-operative no member shall have more than fifteen per cent of the vote of all the members of the co-operative]** where a co-operative has—
- (a) three members, no member has voting rights in excess of 40 per cent;
- (b) four members, no member has voting rights in excess of 30 per cent; and
- (c) five members, no member has voting rights in excess of 25 per cent.”; and
- (d) by the addition of the following subsections:
- “(4) In instances where there are more than five members, the constitution of a category C primary, secondary, tertiary or the national apex co-operative may provide that the members have more than one vote, provided that no member shall have more than seventeen per cent of the votes of all the members of the co-operative.
- (5) Voting rights in respect of category C primary co-operatives, secondary and tertiary co-operatives registered in terms of applicable legislation prior to the commencement of the Co-operatives Amendment Act, 2012, are regulated by the provision on voting rights contained in its constitution as it was immediately prior to the commencement of the Co-operatives Amendment Act, 2012.
- (6) All co-operatives must comply with the prescribed principles of good governance for co-operatives.
- (7) The Minister must publish the principles of good governance for co-operatives referred to in subsection (6) by notice in the *Gazette* within six months of the commencement of the Co-operatives Amendment Act, 2012.”.

Amendment of section 4 of Act 14 of 2005

4. Section 4 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b), the insertion of the word “and” at the end of paragraph (c) and the addition of the following paragraph:

“(d) the national apex co-operative.”; and

- (b) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

“(f) financial [services] co-operative;”.

Amendment of section 5 of Act 14 of 2005

5. Section 5 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 6 of Act 14 of 2005

6. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) An application to register a co-operative must be made by—

- (a) a minimum of—

(i) five natural persons; or

(ii) two juristic persons; or

(iii) a combination of any five persons,

in the case of a primary co-operative;

- (b) a minimum of two [or more] operational primary co-operatives in the case of a secondary co-operative; or

- (c) a minimum of two [or more] operational secondary co-operatives, in the case of a tertiary co-operative;”;

- (b) by the addition in subsection (1) of the following paragraph:

“(d) a minimum of—

(i) three operational sectoral tertiary co-operatives that operate on a national level; and

(ii) five operational multi-sectoral tertiary co-operatives that operate on a provincial, district or local level,

in the case of the national apex co-operative.”;

- (c) by the insertion after subsection (1) of the following subsections:

“(1A) For purposes of this section and in relation to a co-operative, ‘operational’ means a co-operative that has held its annual general meeting and has submitted its annual report, audited report or independent reviewed report as applicable, to the registrar in its last financial year.

(1B) An operational secondary co-operative may join the national apex co-operative where there is no sectoral or multi-sectoral tertiary co-operative that can represent the secondary co-operative.”;

- (d) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) [the] a constitution [of] for the co-operative, that complies with section 13 and is signed by the founder members;

(b) a list of the founder members and proof of their identity;”;

- (e) by the insertion in subsection (2) of the word “and” at the end of paragraph (d); and

- (f) by the addition in subsection (2) of the following paragraph:

“(e) a proposed name for the co-operative and a request to reserve that name.”.

Amendment of section 8 of Act 14 of 2005

7. Section 8 of the principal Act is hereby amended—

- (a) by the deletion in subsection (2) of the word “and” after paragraph (b) and the insertion of the word “and” at the end of paragraph (a); and

- (b) by the deletion in subsection (2) of paragraph (c).

Amendment of section 9 of Act 14 of 2005

8. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 “(b) a person who originally entered into the contract ceases to be personally bound by it.”; 5
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) If a co-operative does not ratify the contract, or is not deemed to have done so in terms of subsection (8), the person who originally entered into the contract continues to be personally bound by the contract, unless the contract expressly provides otherwise.”; and 10
- (c) by the addition of the following subsections:
 “(5) Where the contract is entered into by more than one person and unless the contract provides otherwise, all of those persons will be personally, jointly and severally liable under the contract in the event that it is not ratified by the subsequently incorporated co-operative. 15
 (6) If the co-operative wishes to ratify the pre-incorporation contract, it must ratify the whole contract and all of its terms.
 (7) If, after its incorporation, a co-operative enters into a contract on the same terms as, or in place of, a contract contemplated in subsection (1), the liability of the person who entered into such contract in the name of or on behalf of the co-operative will be discharged. 20
 (8) Where a co-operative receives written notification of the existence of a pre-incorporation contract and does not expressly ratify or reject the pre-incorporation contract by way of a resolution within three months of the date of receipt of the written notification, the co-operative will be deemed to have ratified that contract.”. 25

Amendment of section 10 of Act 14 of 2005

9. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 30
 “(2) A co-operative must have the [words] word—
 (a) ‘co-operative’ or ‘co-op’ as part of its name in the case of a co-operative registered before the commencement of the Co-operatives Amendment Act, 2012; [and]
 (b) **[the word “limited”]** ‘Limited’ or the abbreviation ‘Ltd’ as the last word of its name, unless the constitution of a co-operative does not limit the liability of its members in respect of co-operatives registered before the commencement of the Co-operatives Amendment Act, 2012; and
 (c) ‘co-op Limited’ or ‘co-op Ltd’ as the last words of its name in the case of a co-operative registered after the commencement of the Co-operatives Amendment Act, 2012.”; 35 40
- (b) by the deletion of subsection (3);
- (c) by the substitution for subsection (6) of the following subsection: 45
 “(6) If the name of a **[secondary or tertiary]** co-operative indicates a restriction on the business that may be carried on by a co-operative, the constitution of that co-operative may not be amended to remove that restriction unless its name is also amended accordingly.”; and
- (d) by the addition of the following subsections: 50
 “(7) A co-operative may use a trademark name registered to it by the registrar followed by the abbreviation ‘co-op’ and ‘Ltd’ if the constitution of the co-operative authorises the use of such trademark name.
 (8) Only the national apex co-operative registered in terms of section 6(1)(d) may use or have as a part of its name the word ‘apex’.
 (9) The registrar must— 55
 (a) automatically correct the name of any co-operative that at the commencement of the Co-operatives Amendment Act, 2012, has the word ‘apex’ in its name, so that the word ‘apex’ is substituted for the word ‘tertiary’; and

- (b) notify each affected co-operative in writing within 60 days of the commencement of the Co-operatives Amendment Act, 2012, of the amendment so effected.

Amendment of section 12 of Act 14 of 2005

10. Section 12 of the principal Act is hereby amended— 5
- (a) by the substitution for the heading of the following heading:
“Unlawful use of [word] words required to be part of the name of a co-operative”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
“It is an offence for any [entity] natural or juristic person other than a co-operative registered in terms of this Act to—”;
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) use or authorise the use of the words ‘co-operative’, ‘co-op’, [‘co-operative limited’, ‘co-operative ltd’, or ‘co-op ltd’], ‘co-operative Limited’, or ‘co-operative Ltd’ as part of its name.”; 15
- (d) by the addition of the following subsection:
“(2) Any natural or juristic person found guilty of an offence in terms of subsection (1) is liable to a fine not exceeding one million rand.”. 20

Amendment of section 13 of Act 14 of 2005

11. Section 13 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 25
- “(1) A co-operative registered in terms of this Act must [adopt] have a constitution that complies with section 14.**
- (2) A co-operative [where the] whose members are required to hold shares must [adopt] have a constitution that complies with sections 14 and 15.**
- (3) Secondary and tertiary co-operatives and the national apex co-operative must [adopt] have a constitution that complies with sections 14 and 16.”**; 30
- (b) by the deletion of subsection (5); and
- (c) by the addition of the following subsection: 35
- “(6) Every group of persons or co-operatives that intends to register as a co-operative must submit a constitution for the proposed co-operative in the prescribed manner and form to the registrar for registration.”**

Amendment of section 14 of Act 14 of 2005

12. Section 14 of the principal Act is hereby amended— 40
- (a) by the substitution for the heading of the following heading:
“[Provisions] Minimum requirements for all [co-operatives] co-operative constitutions”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) whether it is a primary co-operative, a secondary co-operative, [or] a tertiary co-operative or the national apex co-operative;”; 45
- (c) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
“(bA) whether it is a co-operative that concludes transactions with both members and non-members of that co-operative or a co-operative that does not conclude transactions with persons who are not members of the co-operative;”; 50
- (d) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
“(e) a provision stipulating [that each member has one vote in all meetings of the co-operative except in the case of secondary or 55

- tertiary co-operatives] the voting rights of each member, as contemplated in section 3;”;**
- (e) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 - “(i) the term of office of directors, which [**may not be more than four years] must be reasonable**, and whether a director may be re-appointed for a [**second or further] consecutive term of office: Provided that the manner for rotation of directors is stipulated in the constitution of the co-operative;”;**
 - (f) by the insertion in subsection (1) after paragraph (l) of the following paragraph:
 - “(1A) a provision relating to the extension of the period for the repayment of the nominal value of membership shares in the event of the death of a member of the co-operative: Provided that such period must not exceed two years;”;
 - (g) by the substitution in subsection (1) for paragraph (dd) of the following paragraph:
 - “(dd) a provision for the appointment of directors, executive and non-executive directors, on condition that only members may be appointed as directors or executive directors.”;
 - (h) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
 - “(d) a provision for a member to appoint a proxy to attend and vote at a general meeting on that member’s behalf, or for postal votes: Provided that no person may act as a proxy for more than [**20 per cent of the members entitled to vote at a meeting] the percentage provided for in section 28(5)**, or for such lesser percentage of members as may be stipulated in the constitution of the co-operative;”;
 - (i) by the deletion in subsection (2) of paragraph (g);
 - (j) by the deletion in subsection (2) of the word “and” at the end of paragraph (i);
 - (k) by the substitution in subsection (2) for paragraph (j) of the following paragraph:
 - “(j) provision for the settlement of disputes between members of the co-operative, [**or] between a member of the co-operative and the co-operative itself[.], between the co-operative and any other interested persons; and**”;
 - (l) by the addition to subsection (2) of the following paragraph:
 - “(k) a provision determining whether the co-operative allows for the appointment of non-executive independent directors: Provided that non-executive independent directors may only be selected from associate members of the co-operative.”.

Insertion of section 14A in Act 14 of 2005

13. The following section is hereby inserted in the principal Act after section 14:

Associate members

14A. (1) The constitution of a co-operative may provide for persons—

- (a) who want to provide support to the co-operative without becoming members of the co-operative; or
- (b) who may benefit from a co-operative without becoming members of the co-operative,

to be appointed as associate members.

(2) Associate membership is a temporary membership which is valid for a period of 12 months: Provided that nothing in this section prohibits an associate member from applying for full membership at any time.

(3) After the period of 12 months, associate members, subject to the approval by the members of the co-operative—

- (a) have the choice to become full members of a co-operative; or
- (b) may have their associate membership renewed for a further 12 month period.

(4) A co-operative that has associate members must indicate in its financial reporting system the full number of both its members and associate members.

(5) Associate members do not have any voting rights.”.

Insertion of section 15A in Act 14 of 2005

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14. The following section is hereby inserted in the principal Act after section 15:

“Categories of primary co-operatives

15A. (1) The Minister must prescribe the monetary threshold for the annual revenue or projected annual revenue for each of the following categories of primary co-operatives:

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- (a) a category A primary co-operative which is a small primary co-operative;
- (b) a category B primary co-operative which is a small to medium primary co-operative; and
- (c) a category C primary co-operative which is a medium to large co-operative.

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(2) Category A, B and C primary co-operatives are primary co-operatives that are excluded from legislation applicable to deposit-taking financial co-operatives and co-operative banks.

(3) For purposes of this section—

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- (a) **‘projected annual revenue’** means a reasonable estimate of the gross value of the economic benefits that are likely to be received by a newly registered co-operative as a result of its ordinary activities during its first financial year; and
- (b) **‘annual revenue’** means the gross value of the economic benefits actually received by a co-operative as a result of its ordinary activities in a financial year.”.

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Amendment of section 16 of Act 14 of 2005

15. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

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“Provisions for secondary and tertiary co-operatives and the national apex co-operative”;

- (b) by the deletion of subsection (1); and

- (c) by the substitution for subsection (2) of the following subsection:

“(2) The constitution of a secondary, [or] tertiary or the national apex co-operative may provide for—

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- (a) the further objectives of a secondary, [or] tertiary or the national apex co-operative which may include any activity that is not inconsistent with the objectives of any of its members, and which is undertaken for their exclusive benefit; and

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- (b) the further objectives of a tertiary co-operative or the national apex co-operative which may include representing the interests of co-operatives within a sector or region, providing assistance for education and training, establishing a guarantee fund to facilitate external financing of its members, and the establishment of an audit fund to assist members to have their operations audited;”.

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Insertion of section 16A in Act 14 of 2005

16. The following section is hereby inserted in the principal Act after section 16:

“Functions of the national apex co-operative

16A. (1) The functions of the national apex co-operative must include advocacy and engaging organs of state, the private sector and stakeholders on behalf of its members.

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(2) Any other functions of the national apex co-operative must be determined by its members and included in the constitution of the national apex co-operative.

(3) The Minister may publish guidelines for the functions of the national apex co-operative by notice in the *Gazette*.”

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Amendment of section 19 of Act 14 of 2005

17. Section 19 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**[Functions] Restrictions on functions of co-operatives**”;

(b) by the substitution for subsection (2) of the following subsection:

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“(2) A co-operative must not pursue any objective or perform any act that is not authorised by its constitution.”; and

(c) by the addition of the following subsections:

“(3) Subject to subsections (1) and (2), a co-operative must record all business transactions concluded with members and non-members in its annual financial statements.

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(4) Any co-operative or director of a co-operative which contravenes the provisions of subsection (1), (2) or (3) is—

(a) guilty of an offence; and

(b) on conviction liable to a fine not exceeding one million rand.”

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Amendment of section 21 of Act 14 of 2005

18. Section 21 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(cA) if it has a supervisory committee, the minutes of meetings of that committee in a minute book;”;

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(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) a register of directors’ and employees’ interests in contracts or undertakings, envisaged in section [38] 37;”;

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(c) by the substitution for subsection (2) of the following subsection:

“(2) Every co-operative must retain its accounting records and financial statements for a period of—

(a) 5 years after the end of the financial year to which they relate; or

(b) such longer period as may be prescribed by the Minister by notice in the *Gazette*.”

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Amendment of section 22 of Act 14 of 2005

19. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

“(4) (a) An inspector appointed by the registrar or the Tribunal as contemplated in this Act may, in accordance with this Act and national legislation that regulates access to information, examine the records of a co-operative during the normal business hours of that co-operative.

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(b) Any director or employee of a co-operative who fails to disclose information or provide access to the records of the co-operative to the inspector referred to in paragraph (a), is guilty of an offence and on conviction liable to a fine not exceeding one million rand.”

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Amendment of section 23 of Act 14 of 2005

20. Section 23 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

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“(2) In co-operatives where members do not hold shares, members are only liable for such amount as is owed to the co-operative in terms of their membership agreement.”

Amendment of section 24 of Act 14 of 2005

21. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a co-operative determines that the repayment of a member’s membership shares upon the withdrawal of that member’s membership, would adversely affect its financial well-being, the co-operative may, subject to other legislation and its constitution, defer such payment for a period not exceeding two years.”.

Substitution of section 25 of Act 14 of 2005

22. The following section is hereby substituted for section 25 of the principal Act:

“**[Transfer] Repayment of membership, member loan or membership share**

25. Despite any provisions contained in its constitution, if a co-operative determines that the repayment after the death of any member of the co-operative, of the nominal value of [a member’s]—
 (a) that member’s membership shares[,];
 (b) **[all]** any other amounts held to the member’s credit including any member loan; or
 (c) any interest accrued on those amounts up to the date of the payment, would adversely affect its financial well-being, the co-operative may direct that repayment be deferred for a period not exceeding two years after the date of the death of a member of the co-operative.”.

Insertion of section 26A in Act 14 of 2005

23. The following section is hereby inserted in the principal Act after section 26:

“**Annual submission to registrar**

26A. The Minister must, by notice in the *Gazette*, determine the—
 (a) form, manner and time period for the annual submission of information to the registrar regarding the—
 (i) membership of the co-operative;
 (ii) members of the co-operative; and
 (iii) the nature and value of the contribution made by each member to the co-operative; and
 (b) annual fees payable to the registrar by different categories of co-operatives.”.

Amendment of section 27 of Act 14 of 2005

24. Section 27 of the principal Act is hereby amended by the addition of the following subsections:

“(4) The supervisory committee—
 (a) must be elected at the meeting contemplated in section 29(1)(a), when the Board is elected;
 (b) must consist of members who are not directors; and
 (c) may be established for every co-operative if the constitution of the co-operative concerned provides for such committee.
 (5) The supervisory committee—
 (a) is responsible for supervising the Board by representing the interests of its members;
 (b) must, if there is reasonably reliable information that indicates that any act or omission by the Board may impact negatively on the co-operative or any of its members, call a special meeting of all its members to discuss such act or omission; and

(c) must, within seven days after a special meeting contemplated in paragraph (b), in writing inform the—

- (i) Tribunal of the outcome of such meeting; and
- (ii) Board and the member or members affected or concerned of the meeting's decision and reasons for the decision.

(6) If the supervisory committee has not complied with subsection (5)(c), a member of the co-operative may report the matter to the Tribunal for investigation.”.

Amendment of section 28 of Act 14 of 2005

25. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

“(3) If provided for in the constitution of a co-operative, a member of that co-operative may at any time appoint another member of the co-operative as a proxy to participate in and vote at a general or special meeting on behalf of the member concerned: Provided that the member may not appoint more than one proxy to exercise that member's voting rights.

(4) A proxy appointment—

- (a) must be in writing, dated and signed by the member;
- (b) must clearly set out the details of the vote to be cast on behalf of the member in respect of each decision on the agenda; and
- (c) remains valid for the period expressly set out in the appointment, unless it is revoked in writing by the member concerned prior to the meeting.

(5) The number of votes by proxy during any general or special meeting may not exceed 25 per cent of the total membership of the co-operative concerned: Provided that—

- (a) the number of proxies that a member of a co-operative with 20 members or more, may carry on behalf of another member or other members as contemplated in subsection (3), may not exceed five per cent of the total membership of the co-operative concerned; and
- (b) a member of a co-operative with less than 20 members may carry only one proxy on behalf of another member as contemplated in subsection (3).”.

Amendment of section 29 of Act 14 of 2005

26. Section 29 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) subject to section 50, appoint an auditor as determined by the Minister by notice in the Gazette, [subject to section 50] depending on the category and level of the co-operative;”;

- (b) by the insertion in subsection (2) after paragraph (a) of the following paragraph:

“(aA) appoint an independent reviewer as determined by the Minister by notice in the Gazette, depending on the category and level of the co-operative;”;

- (c) by the insertion of the word “and” at the end of paragraph (f) and the addition of the following paragraph:

“(g) consider the activity plan presented by the Board.”; and

- (d) by the addition of the following subsection:

“(3) For purposes of this section ‘activity plan’ means a document that summarises the operational and financial objectives of the co-operative for the next financial year, including—

- (a) clear business goals with reasons why these goals are believed to be attainable; and
- (b) how funds in the co-operative will be utilised.”.

Substitution of heading to Chapter 5 of Act 14 of 2005

27. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

“**[MANAGEMENT] GOVERNANCE OF CO-OPERATIVES**”.

Amendment of section 32 of Act 14 of 2005

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28. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) The **[board of directors] Board** must be elected at the annual general meeting for such period as **[may be]** is set out in the constitution of the co-operative **[, which period may not be more than four years].**”;

(b) by the addition of the following subsections:

“(4) The Board may in the event of a vacancy by way of a resolution appoint a director for the remainder of the period referred to in subsection (3), subject to any requirements in the constitution of the co-operative; Provided that such resolution must be ratified at the next general meeting of the co-operative.

(5) Other issues relating to the Board which are not provided for in this Act, may be provided for in the constitution of the co-operative.

(6) The members of a co-operative may by special resolution passed at a meeting—

(a) convened by the supervisory committee; or

(b) called by at least 25 per cent of members where such co-operative does not have a supervisory committee,

dissolve the Board if such members find justifiably good reason that the board is dysfunctional or has acted contrary to any law.”.

Substitution of section 38 of Act 14 of 2005

29. The following section is hereby substituted for section 38 of the principal Act:

“Acceptance of commission, remuneration or reward prohibited in certain circumstances

38. (1) Subject to subsection (2), a director or employee of a co-operative may not use their position or any information obtained while acting in their capacity as director or employee to gain any commission, remuneration, reward or other advantage for themselves or for any person other than the co-operative, unless they have disclosed full particulars of the nature and extent of such commission, remuneration, reward or other advantage and the material circumstances relating to its acquisition in writing to the co-operative and the co-operative has given its written approval to such acquisition by the director, member or other person, as the case may be.

(2) Notwithstanding the provisions of subsection (1), a director or employee of a co-operative may not in any circumstances use their position or any information obtained while acting in their capacity as director or employee to gain any commission, remuneration, reward or other advantage for themselves or for any person other than the co-operative through or in connection with any transaction to which the co-operative is a party.

(3) A director or employee who contravenes subsection (1) or (2) is guilty of an offence and upon conviction liable to such penalty as is contained in section 92(3).”.

Amendment of section 39 of Act 14 of 2005

30. Section 39 of the principal Act is hereby amended—
- (a) by the addition to subsection (1) of the following paragraphs:
- “(d) of the reason for the resignation or removal of a director from office; and 5
- (e) of such further information as may be prescribed by the Minister.”;
- and
- (b) by the addition of the following subsection:
- “(4) The Minister must by notice in the *Gazette*, prescribe the form, manner and time period for submission of the information required in terms of subsection (1) and (2).” 10

Amendment of section 41 of Act 14 of 2005

31. Section 41 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:
- “(3) The constitution may permit additional membership shares to be issued to members. 15
- (4) All membership shares issued must be of the same class and ranking for all purposes including rights, liabilities and interest payments.
- (5) Interest on membership shares is only payable on membership shares, or that portion of membership shares, that are paid up.”. 20

Amendment of section 44 of Act 14 of 2005

32. Section 44 of the principal Act is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:
- “(3) A co-operative may provide in its constitution that the whole, or a part, of the patronage proportion of a member, determined by the board in respect of a financial year, must be applied to purchase membership shares in [a] the co-operative for the member.”; and 25
- (b) by the addition of the following subsection:
- “(5) The surplus that is—
- | | |
|---|----|
| <u>(a) not set aside in a reserve in terms of section (3)(1)(e);</u> | 30 |
| <u>(b) not set aside in any additional reserve required by any other applicable law or the constitution of the co-operative; or</u> | |
| <u>(c) not used in the purchase of membership shares in terms of section (44)(3),</u> | |
- may be placed in such fund or funds and used for such purposes as are authorised by the constitution.”. 35

Substitution of section 46 of Act 14 of 2005

33. The following section is hereby substituted for section 46 of the principal Act:

“Reserves for co-operatives

- 46.** (1) During each financial year a co-operative must retain indivisible reserves equal to such amount as may be determined by its constitution: Provided that such reserves must not be less than one per cent and not more than five per cent of its net asset value as reflected in its most recent audited report, independent reviewed report or annual report. 40
- (2) The reserve referred to in subsection (1) must be indivisible amongst members of the co-operative. 45
- (3) This section does not prevent a co-operative from making provision in its constitution for additional reserves, whether indivisible or otherwise, in excess of the percentages referred to in subsection (1).
- (4) The Minister must, by notice in the *Gazette*, provide guidelines for— 50
- (a) the manner in which records in respect of the reserves must be kept;
- (b) the purposes for which any of the reserves may be used; and
- (c) the manner in which a co-operative must report on the use of its reserves.”.

Substitution of heading to Chapter 7 of Act 14 of 2005

34. The following heading is hereby substituted for the heading to Chapter 7 of the principal Act:

“[AUDIT] AUDITED REPORTS AND INDEPENDENT REVIEWED REPORTS OF CO-OPERATIVES”

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Substitution of section 47 of Act 14 of 2005

35. The following section is hereby substituted for section 47 of the principal Act:

“Audited report

47. (1) The following co-operatives must produce an audited report to the registrar in respect of each financial year:

- (a) Category C primary co-operatives;
- (b) Secondary co-operatives;
- (c) Tertiary co-operatives; and
- (d) The national apex co-operative.

(2) Category B primary co-operatives must produce an independent reviewed report to the registrar in respect of each financial year.

(3) Category A primary co-operatives must produce an annual report which report does not have to be audited or independently reviewed, to the registrar in respect of each financial year, signed by the directors of the co-operative.

(4) The Minister must, within three months after the commencement of the Co-operatives Amendment Act, 2012, by notice in the *Gazette* publish a co-operative reporting system framework.”.

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Substitution of section 48 of Act 14 of 2005

36. The following section is hereby substituted for section 48 of the principal Act:

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“Consideration of audited or independent reviewed reports

48. (1) Every co-operative must circulate the audited report, the independent reviewed report or the annual report to all its members at least fourteen days prior to an annual general meeting.

(2) The annual general meeting must consider and discuss the audited report, independent reviewed report or annual report in order to take resolutions on the future conduct of the business of the co-operative.

(3) The chairperson of the Board or the person who acted as chairperson at the annual general meeting where the audited report, independent reviewed report or annual report was discussed and considered, must—

- (a) accept the audited report, independent reviewed report or annual report; and
- (b) sign acceptance of and implement the resolution taken at the annual general meeting on the future conduct of the business of the co-operative.

(4) A co-operative may not issue, publish or circulate copies of the audited report, independent reviewed report or annual report for public information unless the report has been discussed and considered by the annual general meeting in accordance with subsections (2) and (3).

(5) The audited report, independent reviewed report or annual report must be made available for inspection to any member of the co-operative at the registered office of the co-operative for at least 21 days after the meeting at which it was considered.

(6) The Board—

- (a) must submit a copy of the audited report, independent reviewed report or annual report and the outcome of the general meeting’s discussion and consideration thereof to the registrar within 15 days of the resolution of the annual general meeting; or

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- (b) if the general meeting resolves to delay submitting the audited report, independent reviewed report or annual report to the registrar, the chairperson of the Board or the person who acted as chairperson at the meeting must notify the registrar in writing within 15 days of the resolution of the reasons for such delay and the action the co-operative intends taking in order to address the situation. 5
- (7) After receipt of the audited report, independent reviewed report or annual report and the views expressed by the annual general meeting on the manner in which the co-operatives' business was conducted the registrar must consider the report and where necessary may— 10
- (a) request further information from the co-operative;
- (b) refer the report and views expressed to the Agency for assistance to the co-operative in terms of section 91C(1)(c)(iii), (d)(i) or (iv); and
- (c) take other appropriate steps as to facilitate compliance by the co-operative with the co-operative principles.”. 15

Substitution of section 49 of Act 14 of 2005

37. The following section is hereby substituted for section 49 of the principal Act:

“Auditor and independent reviewer disqualified from acting

- 49. (1)** A person is disqualified from being an [auditor of a cooperative]— 20
- (a) auditor or independent reviewer of a co-operative if that person—
- (i) has a personal or material interest in a co-operative or in any of its affiliates or where the co-operative is a secondary, tertiary or the national apex co-operative, in any of its [subsidiaries] members or in the business of any of its directors or senior employees; [or] 25
- (ii) is not registered with the South African Institute for Chartered Accountants or does not satisfy the requirements for registration as an auditor as contemplated in Chapter III of the Auditing Profession Act; or 30
- (iii) does not act in accordance with the code of conduct pertaining to their accounting professional body; or
- (b) auditor or independent reviewer of a co-operative in any other circumstances that **[are considered to]** constitute a conflict of interest in terms of the code of professional conduct applicable to the relevant auditor or independent reviewer. 35
- (2) A formal finding by the relevant accounting regulatory body of a contravention of its code of conduct, or a conflict of interest, will be sufficient proof of non-compliance or a conflict of interest for purposes of subsection (1)(a)(iii) or (b).” 40

Amendment of section 50 of Act 14 of 2005

38. Section 50 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 45
- “**Appointment and termination of auditor or independent reviewer**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 50
- “The members must appoint an auditor or independent reviewer—”;
- (c) by the substitution for subsection (2) of the following subsection: 50
- “(2) Despite subsection (1), if an auditor or an independent reviewer is not appointed at any meeting, the **[incumbent]** previously appointed auditor [continues] or independent reviewer will continue in office until a successor is appointed.”;
- (d) by the insertion after subsection (2) of the following subsection: 55
- “(2A) The Board must within thirty days of the appointment of an auditor or independent reviewer, notify the registrar of such appointment in the prescribed manner.”;

- (e) by substitution for subsection (3) of the following subsection: 5
 “(3) If a co-operative fails to appoint either an auditor or an independent reviewer in accordance with subsections (1) and (2), the [registrar may approve the person nominated by the board of the co-operative to audit its books for one financial year] members of the Board will be subject to a fine imposed by the registrar, which fine may not exceed the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).”;
- (f) by the substitution for subsection (4) of the following subsection: 10
 “(4) The fees payable to the auditor or independent reviewer in terms of subsection (3) must be approved by the registrar.”; and
- (g) by the substitution for subsections (5) and (6) of the following subsections: 15
 “(5) An auditor or independent reviewer of a co-operative ceases to hold office when the auditor or independent reviewer dies, resigns or is removed in terms of section 51 or is struck off [from] the roll of auditors in terms of the laws of the Republic or is prohibited by law from registering or re-registering with an accredited professional body.
 (6) A resignation of an auditor or independent reviewer becomes effective on the date on which a written resignation is received by a co-operative, or on the date specified in the resignation, whichever is later.
 (7) A vacancy created in terms of sections (5) or (6) must be filled for the remainder of the period of office of the resigning auditor or independent reviewer, within thirty days of the date of the post becoming vacant by the Board, by way of a resolution according to the requirements set out in the constitution of the co-operative: Provided that such resolution must be ratified at the next general meeting held by the co-operative.
 (8) Nothing in this section prohibits a co-operative which did not appoint an auditor or an independent reviewer, for any reason, from appointing an auditor or an independent reviewer at a general meeting.”. 30

Amendment of section 51 of Act 14 of 2005

39. Section 51 of the principal Act is hereby amended— 35
- (a) by the substitution for the heading of the following heading: 35
 “**Removal of auditor or independent reviewer**”;
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) The members may by ordinary resolution remove an auditor or independent reviewer from office.”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 40
 “A vacancy created by the removal of an auditor or independent reviewer must—”;
- (d) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 45
 “(a) be filled at the meeting at which the auditor or independent reviewer is removed; or”;
- (e) by the substitution for subsection (3) of the following subsection:
 “(3) An auditor or independent reviewer appointed in terms of subsection (2) holds office [for the unexpired term of his or her predecessor] until the close of the next annual general meeting.”. 50

Amendment of section 52 of Act 14 of 2005

40. Section 52 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 55
 “**Attendance of meeting by auditor or independent reviewer**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The auditor or independent reviewer of a co-operative is entitled—”;

- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) to be given notice of any general meeting at which a report of the auditor or independent reviewer is to be discussed;”;
- (d) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
 “(c) to address the meeting on matters relating to the auditor’s or independent reviewer’s duties.”; and
- (e) by the substitution for subsection (2) of the following subsection: 10
 “(2) A director or a member of a co-operative may require the auditor, [or] former auditor, independent reviewer or former independent reviewer to attend a general meeting at the expense of the co-operative and answer questions relating to their duties as [the auditor’s] auditor or independent reviewer: Provided that the auditor, [or] former auditor, independent reviewer or former independent reviewer [of the co-operative] is given at least 10 days prior written notice [of 10 days] of such meeting.”. 15

Amendment of section 53 of Act 14 of 2005

41. Section 53 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, 20
 respectively:
- “(1) At the request of the auditor or independent reviewer the members, directors, employees, agents or [mandataries] mandatories of a co-operative must provide any information, explanations, and access to any documents of the co-operative or where the co-operative is a 25
 secondary, tertiary or the national apex co-operative, any of its [subsidiaries] members that are, in the opinion of the auditor, necessary for the purposes of the audit or in the independent reviewer’s opinion, necessary for the purposes of the independent review.
- (2) At the request of the auditor or independent reviewer, the directors 30
 must obtain from any present or former directors, employees, agents or [mandataries] mandatories of the co-operative the information and explanations that such persons are reasonably able to provide and that are, in the auditor’s opinion, necessary for the purposes of the audit, or in the independent reviewer’s opinion necessary for the purposes of the 35
 independent review.”; and
- (b) by the addition of the following subsections:
- “ (3) The auditor or an independent reviewer has the right of access at all times to all accounting records, books and documents of the co-operative, and is entitled to require from the members, directors, 40
 employees, agents or mandatories of the co-operative any information and explanations necessary for the performance of the auditor’s or independent reviewer’s duties.
- (4) A co-operative, member, director, employee, agent or mandatory who fails to comply with subsections (1) or (2) is guilty of an offence. 45
- (5) A member, director, employee, agent or mandatory of the co-operative who fails to comply with subsection (3) is guilty of an offence.
- (6) The auditor or an independent reviewer may apply to a court for an appropriate order to enforce the rights set out in subsections (1), (2) or 50
 (3), and a court may—
- (a) make any order that is just and reasonable to prevent frustration of the auditor’s or independent reviewer’s duties by the co-operative or any of its members, directors, employees, agent or mandatories; and 55
- (b) make an order of costs personally against any member, director, employee, agent or mandatory whom the court has found to have wilfully and knowingly frustrated, or attempted to frustrate, the performance of the auditor’s or independent reviewer’s functions.”.

Amendment of section 54 of Act 14 of 2005

42. Section 54 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections respectively:

“(1) A director or employee who becomes aware of any error or misstatement in a financial statement, social report or management decision report that the auditor [or], former auditor, independent reviewer or former independent reviewer has reported on, must notify the auditor or independent reviewer without delay. 5

(2) An auditor [or], former auditor, independent reviewer or former independent reviewer of a co-operative who is notified of, or in any other manner becomes aware of, a material error or misstatement in a financial statement, social report or management decision report on which they have reported to the Board, must inform the [of directors] Board and registrar accordingly. 10

(3) When the auditor [or], former auditor, independent reviewer or former independent reviewer informs the Board [of directors] of an error or misstatement in a financial statement, social report or management decision report in terms of subsection (2), the directors must— 15

(a) prepare and issue revised financial statements, a social report or management decision report; and

(b) inform the members and the registrar of the error or misstatement.”.

Repeal of section 55 of Act 14 of 2005 20

43. Section 55 of the principal Act is hereby repealed.

Amendment of section 56 of Act 14 of 2005

44. Section 56 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) if any membership share of an amalgamating co-operative is not to be converted into membership shares or other securities of the amalgamated co-operative, the amount of money that the holders of those membership shares are to receive in addition to or instead of shares of the amalgamated co-operative;”.

Amendment of section 60 of Act 14 of 2005 30

45. Section 60 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) After the members of the co-operative have approved the division, the constitutions of the co-operatives to be constituted by the division must be submitted to the registrar for approval together with a notice of their registered offices [and], a notice of the directors and members of the co-operatives in question and the prescribed fee as contemplated in section 70A.”. 35

Amendment of section 62 of Act 14 of 2005

46. Section 62 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

“(a) convert—

(i) into any other form of co-operative;

(ii) into a company as contemplated in the Companies Act, 2008 (Act No. 71 of 2008); or 45

(iii) into any form of corporate or unincorporated body other than a co-operative or a company, in accordance with the applicable legislation;”;

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 50

“A declaration by the [board of directors of the co-operative] Board must be attached to an application in terms of subsection (1), establishing—”;

- (c) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 “If the registrar is satisfied that there has been compliance with the provisions of this Act and after payment of the prescribed fee contemplated in section 70A, the registrar must—”;
- (d) by the deletion in subsection (6) of the word “and” at the end of paragraph (a), the insertion of the word “and” at the end of paragraph (b) and the addition of the following paragraph:
 “(c) in the case of the conversion of a co-operative into another form of legal entity or different form of co-operative, register the newly converted form of legal entity or co-operative.”; and
- (e) by the substitution in subsection (7) for paragraph (c) of the following paragraph:
 “(c) if the co-operative is converted into a company[,]—
 (i) all members of the co-operative become shareholders of that company; and
 (ii) it cannot continue to use the word “co-operative” in its name or any of its documents, marketing and other materials.”.

Amendment of section 63 of Act 14 of 2005

47. Section 63 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:
 “(6) The registrar must approve the application referred to in subsection (1) if reasonably satisfied that there has been compliance with the relevant provisions of this Act, **[and]** the constitutions of the co-operatives in question and the payment of the prescribed fee as stipulated in section 70A.”.

Amendment of section 64 of Act 14 of 2005

48. Section 64 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of the following paragraph:
 “(a) written notice of at least three months of the proposal has been given to each known creditor who has a claim exceeding one thousand rand or such other amount as the Minister may **[from time to time]** prescribe by notice in the Gazette; and
- (b) by the addition of the following subsection, the existing section becoming subsection (1):
 “(2) It is an offence for any director to make a false declaration in respect of this section.”.

Amendment of section 66 of Act 14 of 2005

49. Section 66 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraphs (d) and (e) of the following paragraphs, respectively:
 “(d) two certified copies of the company’s memorandum **[and articles of association]** of incorporation;
 (e) two copies of **[either]** a **[proposed]** new constitution in terms of this Act **[or a proposed amendment of the memorandum and articles of association of the company bringing the memorandum and articles]** that ensures that the newly converted co-operative fulfils all the [into line with the] provisions of this Act;”; and
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) A company intending to convert into a co-operative must convert within 90 days from the date on which the application was submitted to the registrar.”.

Amendment of section 67 of Act 14 of 2005

50. Section 67 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the constitution of the new co-operative,”;

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- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) the **[memorandum and articles of association or]** new constitution **[, as the case may be, are]** of the co-operative is registered **[conditionally or unconditionally]**, and a certificate is issued in duplicate that the company has been incorporated as a co-operative in terms of this Act **[and that the memorandum and articles of association or new constitution, as the case may be, have been submitted in the manner contemplated in this Act].**”; and

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- (c) by the substitution for subsection (4) of the following subsection:

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“(4) One copy of the certificate and **[of the memorandum and articles of association or]** the new constitution **[, as the case may be,]** must be sent to the applicant and the other copy must be retained within the office of the registrar.”.

Amendment of section 68 of Act 14 of 2005

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51. Section 68 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (c) of the following paragraph:

“(c) the constitution of the new co-operative substitutes the memorandum of incorporation;”;

- (b) by the substitution for paragraph (f) of the following paragraph:

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“(f) the constitution **[or the memorandum and articles of association, as the case may be, bind]** binds the co-operative, its directors and each member to the same extent as if it had been signed by each of them, subject to this Act.”.

Amendment of section 69 of Act 14 of 2005

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52. Section 69 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A co-operative which **[as]**, whilst it was a company, **[has given]** gave the registrar an undertaking under section 66(3) **[to the registrar]** must, within **[one year]** 90 days of the date of its incorporation as a co-operative **[amend its memorandum and articles of association or replace its memorandum and articles of association with a new]** submit a constitution **[so as to bring it into conformity]** that complies with the **[provisions]** requirements of this Act to the registrar.”.

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Insertion of section 70A of Act 14 of 2005

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53. The following section is hereby inserted in the principal Act after section 70:

“Fees for amalgamation, division, conversion or transfer

70A. (1) A co-operative that undertook to amalgamate, divide, convert or transfer, must pay the prescribed fee to the registrar.

(2) The Minister must, after consultation with the registrar, by notice in the *Gazette* prescribe—

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(a) the fees payable in respect of matters contemplated in subsection (1);

(b) the person by whom the fees must be paid;

(c) the manner of payment of such fees; and

(d) where necessary, the interest payable in respect of overdue fees.”.

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Substitution of section 71 of Act 14 of 2005

54. The following section is hereby substituted for section 71 of the principal Act:

“Modes of winding-up

71. (1) A co-operative may be wound up—

- (a) voluntarily in terms of section 71A;
- (b) by an order of the court in terms of section 72; or
- (c) by an order of the Tribunal in terms of section 72B.

(2)

The Minister must, by notice in the *Gazette*, prescribe procedures relating to each of the modes of winding-up within three months of commencement of the Co-operatives Amendment Act, 2012.”

Insertion of section 71A in Act 14 of 2005

55. The following section is hereby inserted in the principal Act after section 71:

“Voluntary winding-up

71A. A co-operative may be wound up voluntarily by special resolution.”

Amendment of section 72 of Act 14 of 2005

56. Section 72 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“A court or the Tribunal may, on application by an interested person, order that a co-operative be wound up, if—”;

Insertion of sections 72A and 72B in Act 14 of 2005

57. The following sections are hereby inserted in the principal Act after section 72:

“Application for declaratory order

72A. The registrar may approach the court or the Tribunal for a declaratory order that the liquidation process is deemed to have been finalised if the liquidator concerned has not complied fully with the provisions of the Act.

Winding-up by order of Tribunal

72B. The Tribunal may order that a co-operative be wound up if—

- (a) the co-operative has more than once been convicted of an offence in terms of section 19(4);
- (b) for a continuous period of two years, the co-operative has not—
 - (i) transacted business;
 - (ii) submitted the annual reports or the equivalent thereof as required in terms of this Act; and
 - (iii) held annual general meetings;
- (c) the co-operative was formed for a particular period or for the occurrence of a particular event and that period has expired or that event has occurred;
- (d) after an investigation, the Tribunal is of the opinion that the incorporation of the co-operative was obtained through fraud or was not fully in compliance with this Act; or
- (e) after receiving written affidavits from members of the co-operative or after an investigation, the Tribunal is of the opinion that the co-operative does not carry out its objectives according to co-operative principles as required by this Act.”

Repeal of sections 73, 74, 75 and 76 of Act 14 of 2005

58. Sections 73, 74, 75 and 76 of the principal Act are hereby repealed.

Substitution of section 77 of Act 14 of 2005

59. The following section is hereby substituted for section 77 of the principal Act:

“Judicial management 5

77. (1) If the Tribunal has reason to believe that any activity of a co-operative is likely to result in an order of provisional judicial management being issued in respect of such co-operative, the Tribunal must provide every form of support that is within its mandate, as set out in Chapter 12C, to the co-operative concerned. 10

(2) In the event of the Tribunal not being able to transform the co-operative concerned into an operational co-operative, the procedures in subsection (3) relating to judicial management will apply.

(3) The Minister must, by notice in the *Gazette*, publish procedures relating to judicial management within three months of commencement of the Co-operatives Amendment Act, 2012. 15

(4) For the purposes of this section and in relation to a co-operative, ‘operational’ means a co-operative that has held its annual general meeting and has submitted its annual report, audited report or independent reviewed report as applicable, to the registrar in its last financial year.” 20

Substitution of section 81 of Act 14 of 2005

60. The following section is hereby substituted for section 81 of the principal Act:

“Submission of documentation to registrar

81. Any documentation or information that a co-operative is required to submit to the Advisory Council, Agency, registrar or Tribunal must be submitted in such form and manner as may [from time to time] be prescribed.” 25

Amendment of section 82 of Act 14 of 2005

61. Section 82 of the principal Act is hereby amended by the addition of the following subsection: 30

“(3) The registrar must—

(a) on receipt of information from a person wishing to examine a document as contemplated in subsection (1) that the document has not been submitted or has not been submitted in accordance with the requirements of this Act, investigate such information to determine why the document has not been submitted or has not been properly submitted; and 35

(b) in the event that a particular document has not been submitted or has not been properly submitted, take the necessary steps to ensure that the co-operative concerned submits or rectifies the document concerned.”

Substitution of section 84 of Act 14 of 2005 40

62. The following section is hereby substituted for section 84 of the principal Act:

“Investigation by registrar

84. (1) The registrar may order an investigation into or inspection of the business of a co-operative if the registrar—

(a) has reason to believe that the co-operative [is not conducting] has conducted its affairs [in accordance with] in contravention of— 45

(i) the co-operative principles [or is contravening];

(ii) its constitution; or

- (iii) a provision of this Act; or
 (b) is satisfied that circumstances exist which justify such an investigation or inspection.
 (2) The registrar—
 (a) must refer the matter for resolution to the Tribunal if the results of the investigation or inspection contemplated in this section warrant further action; or 5
 (b) may make any recommendation he or she considers appropriate following an investigation or inspection in terms of subsection (1), which may include a recommendation to— 10
 [(a)] (i) the co-operative;
 (ii) the Agency, if additional support for the co-operative is required;
 [(b)](iii) the Minister [**in terms of section 73**]; and
 [(c)](iv) the relevant prosecuting authority. 15
 (3) A co-operative, member, director, employee, agent or mandatory who fails to provide any information required by the registrar for the investigation or inspection as contemplated in this section, is guilty of an offence.”.

Amendment of Chapter 12 of Act 14 of 2005 20

63. Chapter 12 of the principal Act is hereby amended by the substitution for the expression “Advisory Board”, wherever it appears, of the expression “Advisory Council”.

Amendment of section 86 of Act 14 of 2005

64. Section 86 of the principal Act is hereby amended— 25
 (a) by the substitution for the words preceding paragraph (a) of the following words:
 “The functions of the Advisory [**Board**] Council are to advise the Minister generally[,] and to make recommendations, with regard to—”;
 (b) by the substitution for paragraph (d) of the following paragraph: 30
 “(d) the provision of support programmes that—
 (i) target co-operatives[, especially those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas] as determined by the Minister by notice in the Gazette; and 35
 (ii) promote equity and greater participation by [its] members of co-operatives;”;
 (c) by the deletion of paragraph (e); and
 (d) by the substitution for paragraph (f) of the following paragraph:
 “(f) any matter referred to the Advisory [**Board**] Council by the Minister, the Agency, a co-operative, proposed co-operative or member of a co-operative that relates to [**promoting**] any matter pertaining to co-operatives, including but not limited to, the promotion of the development of co-operatives; and”. 40

Amendment of section 87 of Act 14 of 2005 45

65. Section 87 of the principal Act is hereby amended—
 (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister must appoint as members of the Advisory [**Board**] Council not less than five but not more than ten persons [**capable of representing**] appropriately qualified to represent the interests of 50
 co-operatives in the Republic.”; and
 (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) to represent different relevant constituencies including trade unions, business, co-operative support organisations, women, youth, the disabled and academics.”. 55

Insertion of Chapters 12A, 12B and 12C in Act 14 of 2005

66. The following Chapters are hereby inserted in the principal Act after Chapter 12:

“CHAPTER 12A

CO-OPERATIVES DEVELOPMENT AGENCY

Part 1

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Establishment, legal status, functions and powers of Agency

Establishment of Co-operatives Development Agency

91A. (1) The Co-operatives Development Agency is hereby established.

(2) The Agency must exercise its powers and perform its functions in accordance with this Act and any other relevant law.

(3) After consultation with the relevant authorities, the Agency may establish satellite branches in every province, metropolitan municipality and district municipality in accordance with this Chapter.

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Objectives of Agency

91B. The objectives of the Agency are to—

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- (a) support, promote and assist with the development of co-operatives;
- (b) provide financial and non-financial assistance to co-operatives to enable the development of co-operatives, provided that deposit-taking financial co-operatives will not be eligible for financial support, but will be eligible for non-financial support;
- (c) provide business support services, including but not limited to pre-registration support, registration, business plan development, mentorship and post-registration support and access to market services to co-operatives;
- (d) provide assistance and support to the registrar for the registration and deregistration of co-operatives;
- (e) provide, facilitate and coordinate training and education support to co-operatives;
- (f) assist co-operatives in fully complying with the requirements of this Act;
- (g) provide access to information regarding all products, programmes and services available to co-operatives;
- (h) raise awareness of and research into any matter affecting the effective, efficient and sustainable functioning of co-operatives and the co-operatives sector;
- (i) provide the necessary support within the Agency’s capacity to enable individual co-operatives to become and remain operational;
- (j) report to the Tribunal and any other relevant role-players on co-operatives that the Agency has supported;
- (k) carry out independent review reports on behalf of the qualifying primary co-operatives and ensure that such co-operatives submit these reports to the registrar; and
- (l) develop and maintain data on co-operatives in partnership with the registrar, relevant national and provincial departments, municipalities and other role players.

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Functions of Agency

91C. (1) The Agency, in order to achieve its objectives, must—

- (a) establish competencies and capabilities in its operations, including the following functional areas:
 - (i) financial support services (excluding co-operative banks registered under the Co-operatives Banks Act, 2007 (Act No. 40 of 2007));

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| (ii) non-financial support; | |
| (iii) education and training; | |
| (iv) support and extension services; | |
| (v) market development; and | |
| (vi) monitoring and evaluation; | 5 |
| (b) through its financial support services— | |
| (i) design financial products to support the needs of co-operatives; | |
| (ii) take responsibility for and implement any financial support programmes transferred to the Agency; | |
| (iii) enter into agreements with other financial institutions and development agencies to establish co-funding and other partnership arrangements for the purposes of making financial support available to co-operatives; and | 10 |
| (iv) enter into agreements with the Co-operative Banks Development Agency and the Reserve Bank to link financing of co-operatives with co-operative banks and other financial co-operatives; | 15 |
| (c) through its education and training— | |
| (i) assist co-operatives; | |
| (ii) enter into agreements with relevant training institutions to provide training to co-operatives; and | |
| (iii) provide technical and management training to co-operatives; | 20 |
| (d) through its support and extension services— | |
| (i) promote and provide business development and other relevant support to co-operatives; | |
| (ii) establish partnerships with community development workers, community development practitioners, community-based organisations, non-governmental organisations and co-operative associations in order to deliver support services to co-operatives; | 25 |
| (iii) assist and establish partnerships with any relevant organ of state to implement information relating to co-operatives and the shared support services centres aimed at providing information services to co-operatives at local level; | |
| (iv) provide mentorship support to co-operatives; and | 30 |
| (v) develop and maintain data on co-operatives in partnership with the registrar, relevant national and provincial departments, municipalities, other interested governmental and non-governmental agencies and other persons; | 35 |
| (e) through its market development— | |
| (i) promote access to export and marketing assistance offered by organs of state, and bilateral and multilateral agreements with other countries that are available to co-operatives; | |
| (ii) link co-operatives to domestic and international markets; | |
| (iii) form collaborative relationships with the South African Bureau of Standards and Proudly South African and other stakeholders to promote quality co-operative products and services; and | 40 |
| (iv) link co-operatives with state and private sector market opportunities; | 45 |
| (f) through its monitoring and evaluation— | |
| (i) conduct research on co-operatives in partnership with higher education institutions; | |
| (ii) monitor and evaluate trends and patterns in the development of co-operatives; | |
| (iii) identify the needs of co-operatives and make recommendations on appropriate support programmes; and | 50 |
| (iv) identify gaps in existing and future support programmes and propose appropriate changes; | 55 |
| (g) report on or investigate its own activities in response to any complaint received by it or where it considers it necessary or desirable for the proper fulfilment of its functions; | 60 |

- (h) consider such recommendations, suggestions and requests concerning co-operatives as it may receive from the Minister; and
 - (i) conduct or commission such research as it deems fit or as requested by the Minister.
- (2) The Agency must—
- (a) participate in the activities of international bodies whose main purpose is to develop, promote and support co-operatives;
 - (b) encourage growth of category A primary co-operatives and category B primary co-operatives by providing the necessary advice and support to enable those co-operatives to comply with the auditing and accounting requirements provided for in this Act;
 - (c) report to the Department, and on any other matter at the request of the Minister; and
 - (d) where applicable, coordinate with other relevant agencies to promote and support co-operatives.

Functions of Agency in respect of satellite offices of Agency

- 91D.** The Agency, in order to achieve its objectives in relation to satellite offices of the Agency—
- (a) must enter into a memorandum of understanding with the member of the Executive Council responsible for economic development in the province or the Municipal Council, as the case may be, on the most effective delivery mechanism for co-operative support;
 - (b) in consultation with the member of the Executive Council responsible for economic development or the Municipal Council, as the case may be, may delegate some of the functions of the satellite offices to a provincial department responsible for economic development, a metropolitan municipality or a district municipality, as the case may be, subject to any conditions the Agency may impose in respect of such delegation; and
 - (c) must implement the memorandum of understanding, which must be monitored through the MINMEC structures.”.

General powers of Agency

- 91E.** The Agency is subject to the Public Finance Management Act, and—
- (a) the system of financial management and administration of the Agency must comply with Schedule 3A to the Public Finance Management Act;
 - (b) the head of the Agency is the Accounting authority of the Agency;
 - (c) must collect fees and invest funds;
 - (d) must finance its publications; and
 - (e) the head of the Agency may—
 - (i) delegate any power or function assigned to the head of the Agency to any employee of the Agency with the appropriate skill and qualification to properly exercise that power or perform that function; or
 - (ii) authorise any employee of the Agency to perform any function, exercise any power or fulfil any duty assigned to the Agency.

Reporting by Agency

- 91F.** (1) The Agency must report to the Minister on the exercise of its powers, the performance of its functions and its financial expenditure, as prescribed.
- (2) The Agency must submit to the Minister—
- (a) any report as may be requested by the Minister; and
 - (b) any other information relating to the development of co-operatives as may be requested by the Minister.

Part 2

Funding and financial management of Agency

Funding of Agency

- 91G.** (1) The Co-operative Development Fund is hereby established and is the repository fund for the Agency. 5
- (2) The administration of the Co-operative Development Fund vests with the Agency.
- (3) The administration and financial management of the Co-operative Development Fund must comply with that of a national public entity listed in Schedule 3, Part A, to the Public Finance Management Act. 10
- (4) The head of the Agency is the accounting authority for the Co-operative Development Fund, as contemplated in Chapter 6 of the Public Finance Management Act.
- (5) The Agency is funded by—
- (a) monies appropriated for that purpose by Parliament; 15
 - (b) interest on investments by the Agency;
 - (c) donations and contributions lawfully received by the Agency; and
 - (d) all other monies which may accrue to the Agency from any other legal source.

Annual budget and strategic plan 20

91H. The annual budget and strategic plan of the Agency must be submitted to the Minister in terms of the Public Finance Management Act.

Financial management, financial statements and annual report

91I. The financial management of the Agency and the preparation and submission of financial statements and annual reports must comply with the provisions of the Public Finance Management Act. 25

Part 3

National government oversight and executive authority

Executive authority

- 91J.** (1) The Minister is the executive authority for the Agency in terms of the Public Finance Management Act and the Public Service Act, 1994 (Proclamation No. 103 of 1994). 30
- (2) The Agency is accountable to the Minister.
- (3) The Minister must—
- (a) ensure that the Agency complies with this Act, the Public Finance Management Act and any other applicable legislation; 35
 - (b) ensure that the Agency is managed responsibly and transparently;
 - (c) ensure that the Agency meets its contractual and other obligations related to the performance of its functions;
 - (d) after consultation with the Agency, provide guidelines for communication between the Minister and the Agency; and 40
 - (e) monitor and annually review the performance of the Agency.

Information

91K. The Agency must provide the Minister with access to any information as may be reasonably requested. 45

CHAPTER 12B

CO-OPERATIVES TRIBUNAL

Establishment, legal status and composition of Co-operatives Tribunal

91L. (1) The Co-operatives Tribunal is hereby established and—

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| (a) has jurisdiction throughout the Republic; | 5 |
| (b) is independent and subject to the Constitution of the Republic of South Africa, 1996, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), this Act and other applicable legislation; | |
| (c) must assist with the judicial management, winding-up, deregistration, conflict resolution and liquidation of co-operatives and the conducting of investigations into their activities so as to ensure compliance with this Act; and | 10 |
| (d) must perform its functions impartially, without fear, favour or <u>prejudice</u> . | |

Appointment and composition of Tribunal

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91M. (1) The Minister must—

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| (a) appoint a person as chairperson of the Tribunal, who may be appointed for a second consecutive term; | |
| (b) appoint no more than ten other persons as full-time or part-time members of the Tribunal, who may be appointed for a second consecutive term after consultation with the chairperson; | 20 |
| (c) designate a member of the Tribunal as deputy chairperson of the Tribunal; and | |
| (d) appoint persons to fill any vacancy on the Tribunal. | 25 |
| (2) A person must not be appointed as chairperson or member of the Tribunal if that person— | |
| (a) is not a South African citizen; | |
| (b) is not permanently resident in the Republic; | |
| (c) is not solvent; | |
| (d) is subject to an order of a competent court declaring that person to be mentally unfit; | 30 |
| (e) within the previous ten years has been or is convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; | 35 |
| (f) has been convicted of any offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect and sentenced to imprisonment without the option of a fine; or | 40 |
| (g) has, as a result of dishonesty or other improper conduct, been removed from an office of trust. | |
| (3) The membership of a member of the Tribunal ceases if he or she— | |
| (a) becomes disqualified in terms of subsections (1) or (2) from being a member of the Tribunal; | 45 |
| (b) resigns by written notice addressed to the chairperson of the Tribunal or the Minister; | |
| (c) is declared by the High Court to be of unsound mind, mentally ill or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973); | |
| (d) has, without the leave of the Tribunal, been absent from more than two consecutive meetings of the Agency; or | 50 |
| (e) ceases to be permanently resident in the Republic. | |
| (4) If a member of the Tribunal dies or vacates his or her office before the expiration of his or her term of office, the Minister must, within 60 days from the date on which the vacancy occurred, appoint a person to fill the vacancy for the unexpired period for which that member was appointed. | 55 |
| (5) The Tribunal must comprise persons with suitable qualifications and experience in economics, law, the co-operative industry or public affairs. | |

(6) The deputy chairperson performs the functions of chairperson whenever—

- (a) the office of chairperson is vacant; or
- (b) the chairperson is for any other reason temporarily unable to perform his or her functions.

(7) The term of office of the chairperson and members of the Tribunal must be no longer than five years: Provided that should a term be renewed as provided for in paragraphs (1)(a) and (b), the Minister—

- (a) may determine differing terms of service for members, none of which may be longer than five years;
- (b) must take into account the need for continuity when appointments are made so that the term of office of all members of the Tribunal are not terminated at the same time; and
- (c) may not appoint a chairperson or member for a third term, consecutive or otherwise.

(8) The Minister may, after due inquiry, dissolve the Tribunal if it fails to—

- (a) adhere to this Act;
- (b) perform the functions as contemplated in section 91N.

(9) Upon dissolution of the Tribunal as contemplated in subsection (8), the Minister must appoint an interim Tribunal in the manner set out in this section, for a period not exceeding six months.

Functions of Tribunal

91N. The Tribunal or a member of the Tribunal acting in accordance with this Act, may—

- (a) adjudicate applications by any member or director of a co-operative whose rights in terms of the constitution of the co-operative or this Act have been infringed and make such order it considers fit;
- (b) adjudicate any other application regarding any other infringement of this Act or the constitution of the co-operative and make such order as it considers fit;
- (c) assist in respect of conflict or dispute resolution as directed by the Minister or as requested or applied for by the Advisory Council, supervisory committee or member of a co-operative after all internal conflict resolution mechanisms have been exhausted;
- (d) recommend to the Unit responsible for co-operative policy, legislation, strategy and administrative support the appointment of inspectors, investigators and other support staff to carry out inspections or investigations or to provide services to the Tribunal;
- (e) assist in respect of the process, reference and processing of the requested dissolution, winding-up or liquidation of a co-operative, either by directive from the Minister or upon written request submitted by such co-operative or creditors of such co-operative directly to the Tribunal;
- (f) assist the relevant agencies with the enforcement of and compliance with the provisions of this Act;
- (g) assist the registrar of co-operatives in maintaining and updating the co-operative database and registration database;
- (h) monitor and compel co-operatives to submit financial information as provided for in this Act;
- (i) provide technical support in respect of any matter pertaining to a co-operative that has been transferred to it by the Agency in accordance with section 91B;
- (j) have regard to international developments in the field of co-operative law;
- (k) consult any person, organisation or institution with regard to any matter relating to co-operatives; and
- (l) where the Agency has referred a co-operative to it for the purposes of placing that co-operative under judicial management, comply with the judicial management provisions set out in section 77 and Schedule 1B.

Prohibition on Tribunal

- 91O.** The Tribunal or any member of the Tribunal must not—
- (a) adjudicate on any matter related to the Co-operative Banks Appeals Board or any other body with similar powers; and
 - (b) take receipt of any matter referred to it by the Co-operative Banks Appeals Board or any other body with similar powers.

Appointment and composition of investigators, inspectors or inspectorate

- 91P.** (1) The Tribunal, as directed by the Minister—
- (a) must recommend the appointment of any suitable employee of the Tribunal or any other suitable person employed by the State, as the case may be, as inspector or investigator; and
 - (b) must issue each inspector or investigator with a certificate in the prescribed form stating that the person has been appointed as an inspector or investigator in terms of this Act.
- (2) When an inspector or investigator performs any of his or her functions in terms of this Act, the inspector or investigator—
- (a) must be in possession of a certificate issued by the Tribunal to him or her in terms of subsection (1);
 - (b) must inform any person who is affected by the inspector's or investigator's actions in terms of this Act of the existence of the certificate referred to in sub-section (2)(a) and of that person's right to see it; and
 - (c) must show that certificate to any such person who—
 - (i) is affected by the inspector's or investigator's actions in terms of this Act; and
 - (ii) requests to see the certificate.

Adjudication of hearings before Tribunal

- 91Q.** (1) The Tribunal—
- (a) must conduct its adjudication proceedings contemplated in this Act expeditiously and in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
 - (b) may conduct its adjudication proceedings informally at a time and place determined by the Tribunal.
- (2) Adjudication proceedings before the Tribunal must be open to the public, provided that the Tribunal may exclude members of the public or specific persons or categories of persons from attending the proceedings—
- (a) if in the opinion of the Tribunal, the evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
 - (b) if proper conduct of the hearing requires it; or
 - (c) for any other reason that would be justifiable in civil proceedings in a High Court.
- (3) At the conclusion of the adjudication of the hearing, the presiding member must issue a decision together with written reasons for the decision.

Right to participate in hearing

- 91R.** The following persons may participate in an adjudication hearing contemplated in this Chapter, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:
- (a) The Agency;
 - (b) the Commission;
 - (c) the applicant or complainant; or

- (d) any other person who has a material interest in the hearing, unless in the opinion of the Tribunal that interest is adequately represented by another participant.

Powers of Tribunal in adjudicating hearing

91S. The Tribunal may—

- (a) question any person under oath or affirmation;
 (b) give directions prohibiting or restricting the publication of any evidence given to the Tribunal; and
 (c) direct, order or summon any person—
 (i) to appear at any specified reasonable time and place;
 (ii) to produce any book, document or item necessary for the purposes of the hearing; or
 (iii) to perform any other act in relation to this Act.

Rules of procedure

91T. Subject to the provisions of this Act, the Tribunal may determine the procedure for an adjudication hearing, with due regard to the circumstances of the case and in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Witnesses

91U. (1) Any person giving evidence at an adjudication hearing before the Tribunal must answer all questions directed to him or her at the hearing.
 (2) During an adjudication hearing, the Tribunal may order a person to answer any question or to produce any article or document.

Appointment, composition and functions of Co-operative Conflict Resolution Commission

91V. (1) The Tribunal must constitute a Co-operative Conflict Resolution Commission as and when it considers it necessary or desirable, which Commission may be dissolved at the discretion of the Tribunal.

(2) The Commission must consist of not less than five members.

(3) The chairperson of the Tribunal may refer any matter that has been submitted to the Tribunal to the Commission for mediation and resolution if the chairperson is of the view that the interests of justice, the co-operative concerned and the members of the co-operative concerned would be served by such referral.

(4) Any party who does not accept the finding of the Commission may, within a period of thirty days after such finding, request in writing that the matter and the finding be referred to the Tribunal for adjudication and final decision.

Right to information

91W. (1) The Tribunal, an investigator, inspector or inspectorate as contemplated in section 91P has the right of access at all times to all records, books and documents of every co-operative, and is entitled to require from the directors or employees of the co-operative any information and explanations necessary for the performance of the functions of the Tribunal, investigator, inspector or inspectorate.

(2) A co-operative, director or employee who fails to comply with subsection (1) is guilty of an offence.

Summons

91X. (1) At any time during an investigation, the Tribunal or the Commission, as the case may be, may issue a summons to any person who is believed to be able to furnish any information on the subject of the

- investigation or to have possession or control of any book, document or other object that has a bearing on that subject, to—
- (a) appear before the Tribunal, Commission, an inspector or investigator, to be questioned at a time and place specified in the summons; or
 - (b) deliver or produce to the Tribunal, Commission, an inspector or investigator, any book, document or other object referred to in paragraph (a), at a time and place specified in the summons.
- (2) A summons contemplated in subsection (1)—
- (a) must be signed by the chairperson of the Tribunal or Commission, as the case may be, or by an employee of the Tribunal or Commission designated in writing by the chairperson concerned; and
 - (b) may be served in the same manner as a subpoena in a criminal case issued by a Magistrates' Court.
- (3) An inspector or investigator before whom a person is summoned to appear or to whom a person is required to deliver any book, document or other object, may—
- (a) interrogate and administer an oath to, or accept an affirmation from, the person named in the summons; and
 - (b) retain any such book, document or other object for examination, for a period not exceeding two months or such longer period as the Tribunal or Commission, on good cause shown, may allow.
- (4) A person questioned by the Tribunal, Commission, an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—
- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
 - (b) the person asking the questions must inform that person of the right set out in paragraph (a).
- (5) No self-incriminating answer given or statement made by any person to the Tribunal, Commission, an inspector or investigator exercising powers in terms of this Act will be admissible as evidence in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 92(2)(a) and only to the extent that the answer or statement is relevant to the offence.

Authority to enter and search under warrant

- 91Y.** (1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that—
- (a) a contravention of this Act has taken place, is taking place or is likely to take place on the premises; or
 - (b) that anything connected with an investigation in terms of this Act is in the possession of or under the control of a person who is on the premises.
- (2) A warrant to enter and search may be issued at any time and must specifically—
- (a) identify the premises that may be entered and searched; and
 - (b) authorise an investigator, inspector or police officer to enter and search the premises to question any person or inspect any books, documents or items found on the premises.
- (3) A warrant to enter and search is valid until the occurrence of the following:
- (a) the warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or by a person with similar authority as the person who issued it;
 - (c) the purpose for issuing it has lapsed; or
 - (d) the expiry of one month after the date on which it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge or magistrate who issued it, authorises that it may be executed at night at a time that is reasonable in the circumstances.

- (5) A person authorised by a warrant issued in terms of subsection (2) may enter and search the premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must—
- (a) if the owner or person in control of the premises to be searched, is present—
- (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
- (b) if none of the persons contemplated in paragraph (a) are present, affix a copy of the warrant to the premises in a prominent and visible place, and must return within a reasonable time to check if the persons contemplated in paragraph (a) have returned or take any necessary and lawful steps to secure the presence of such a person.

Powers to enter and search

- 91Z.** (1) A person who is authorised under section 91Y to enter and search premises, may—
- (a) enter the premises;
 - (b) search the premises;
 - (c) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner, or person in control, of the premises or from any person who has control of the article or document or from any other person who may have the information;
 - (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
 - (g) use any computer system on the premises, or require the assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data that has a bearing on the investigation; or
 - (iii) seize any output from that computer system that has a bearing on the investigation for examination and copying; and
 - (h) attach and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.
- (2) Section 91AA applies to—
- (a) any person questioned by an inspector or a police officer in terms of this section; and
 - (b) to any answer given or statement made to an inspector or a police officer in terms of this section.
- (3) An inspector authorised to conduct an entry and search in terms of section 91Y may be accompanied and assisted by a police officer.

Conduct of entry and search

- 91AA.** (1) A person who enters and searches any premises under this Chapter must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search contemplated in this Chapter, only a female inspector or police officer may search a female person and only a male inspector or police officer may search a male person.

- (3) A person who enters and searches any premises under this Chapter must, before questioning any person—
- (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
 - (b) allow that person reasonable time to exercise the right contemplated in paragraph (a). 5
- (4) A person who removes anything from the premises being searched, must—
- (a) issue a receipt for it to the owner or person in control of the premises; and 10
 - (b) return it as soon as practicable after achieving the purpose for which it was removed.
- (5) Subject to subsection (6), during a search a person may only refuse to permit the inspection or removal of an article or document on the ground that it contains privileged information. 15
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged. 20
- (7) The Commission must compensate anyone who suffers damage because of a forced entry during a search.

Compromise between co-operative and creditors

- 91BB.** (1) This section applies to every co-operative. 25
- (2) The board of a co-operative or the liquidator of a co-operative that is being wound up, may propose an arrangement or a compromise of its financial obligations to all its creditors or to all the members of any class of its creditors, by delivering a copy of the proposal and notice of the meeting to consider the proposal, to— 30
- (a) every creditor of the co-operative or every member of the relevant class of creditors whose name or contact details are known to or can reasonably be obtained by the co-operative; and
 - (b) the Tribunal.
- (3) A proposal contemplated in subsection (2) must contain all the information reasonably required to enable the creditors to decide whether or not to accept or reject the proposal, and must be divided into the following three parts: 35
- (a) Part A: Background, which must include at least— 40
 - (i) a complete list and valuation of all the material assets of the co-operative and an indication as to which assets are held as security by creditors as of the date of the proposal; 40
 - (ii) a complete list of the creditors of the co-operative and the amount of their claims as of the date of the proposal, an indication as to which creditors would qualify as secured, preferential or concurrent in terms of the laws of insolvency and an indication of which of the creditors have proved their claims; 45
 - (iii) the reasonably likely benefits, if any, that would be received by creditors, in their specific classes, if the co-operative were to be placed in liquidation; and 50
 - (iv) whether the proposal includes a proposal made informally by a creditor of the co-operative.
 - (b) Part B: Proposals, which must include at least— 55
 - (i) the nature and duration of any proposed debt moratorium; 55
 - (ii) the extent to which the co-operative is to be released from the payment of its debts;
 - (iii) the treatment of existing contracts and the ongoing activities of the co-operative;
 - (iv) the property of the co-operative that is proposed to be available to pay creditors' claims; 60

- (v) the order of preference in which the proceeds of property of the co-operative will be applied to pay creditors if the proposal is adopted; and
 - (vi) the benefits of adopting the proposal as compared to the benefits that would be received by creditors if the co-operative were to be placed in liquidation. 5
- (c) Part C: Assumptions and conditions, which must include at least—
- (i) a statement of the conditions that must be satisfied, if any, for the proposal to—
 - (aa) come into operation; and 10
 - (bb) be fully implemented;
 - (ii) the effect, if any, that the proposal contemplates on the number of employees and their terms and conditions of employment; and
 - (iii) a projected— 15
 - (aa) balance sheet for the co-operative; and
 - (bb) statement of envisaged income and expenses for the ensuing three years, prepared on the assumption that the proposal is accepted.
- (4) The projected balance sheet and statement contemplated in subsection (3)(c)(iii)— 20
- (a) must include a notice of any significant assumptions on which the projections are based; and
 - (b) may include alternative projections based on varying assumptions and contingencies. 25
- (5) A proposal must conclude with a certificate by an authorised director or the employee of the co-operative, stating that any—
- (a) factual information provided appears to be accurate, complete and up to date; and
 - (b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement. 30
- (6) A proposal contemplated in this section will be adopted by the creditors of the co-operative or the members of a relevant class of creditors, if it is supported by a majority in number, representing at least 75 per cent in value of the creditors or class, as the case may be, present and voting in person or voting by proxy, at a meeting called for that purpose. 35
- (7) If a proposal is adopted as contemplated in subsection (6)—
- (a) the co-operative may apply to the court for an order approving the proposal; and
 - (b) the court, on an application in terms of paragraph (a), may approve the compromise as set out in the adopted proposal if it considers it just and equitable to do so, having regard to— 40
 - (i) the number of creditors of any affected class of creditors who were present or represented at the meeting and who voted in favour of the proposal; and 45
 - (ii) in the case of a compromise in respect of a co-operative being wound up, the report as contemplated in Schedule 1A.
- (8) A copy of an order of the court approving a compromise—
- (a) must be filed with the registrar by the co-operative within five working days; 50
 - (b) must be attached to each copy of the co-operative's constitution that is kept at its registered office; and
 - (c) is final and binding on all the co-operative's creditors or all the members of the relevant class of creditors, as the case may be, as of the date on which it is filed. 55

CHAPTER 12C

INTERGOVERNMENTAL RELATIONS

Applicability of intergovernmental relations framework policies and legislation

91CC. Intergovernmental relations between the three spheres of government and specifically—

- (a) the Department;
- (b) provincial government departments responsible for economic development;
- (c) municipalities;
- (d) provincial public entities;
- (e) municipal public entities;
- (f) the Agency;
- (g) the Tribunal;
- (h) the Commission;
- (i) structures established in accordance with this Act;
- (j) structures established in accordance with any other national law; and
- (k) structures established in accordance with provincial law,

must be interpreted in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies, and other legislation regulating intergovernmental relations.

Intergovernmental structures

91DD. (1) All intergovernmental structures contemplated in this section—

- (a) functioning at the commencement of the Co-operatives Amendment Act, 2012; or
- (b) established or recognised as contemplated in national or provincial legislation,

will continue to function as contemplated in the relevant enabling legislation.

(2) The following intergovernmental local government structures are recognised for purposes of this Act:

- (a) intergovernmental local government structures as provided for in national legislation; and
- (b) any other intergovernmental local government structure established by the Minister after consultation with the Minister responsible for co-operative governance and traditional affairs as contemplated in—
 - (i) this Act; and
 - (ii) any other national legislation.

(3) The Minister, after consultation with the Minister responsible for co-operative governance and traditional affairs, may, by notice in the *Gazette*, declare provisions of this Act applicable to any structure contemplated in this chapter.

(4) Intergovernmental structures established as contemplated in this Act must, in addition to their functions contemplated in this Act, comply with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations.

Functions of intergovernmental structures

91EE. An intergovernmental structure established as contemplated in this Act must—

- (a) promote co-operative governance;

- (b) ensure co-ordination on planning, budgeting, provisioning of services and support to and monitoring and evaluation in respect of, co-operatives;
- (c) advise the Minister and the members of the Executive Council responsible for economic development on any matter related to co-operatives; 5
- (d) submit copies of the approved minutes of all meetings to the Minister, members of the Executive Council responsible for economic development and the entities contemplated in section 91CC, represented in such structure; 10
- (e) perform any functions and duties in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations; and 15
- (f) perform any functions and duties as may be determined by the Minister by notice in the *Gazette*.

Administrative and procedural arrangements

91FF. Every structure's administrative and procedural arrangements must comply with the framework for intergovernmental relations contemplated in section 91JJ. 20

Establishment, composition and functions of Inter-Provincial Coordination Committee on Co-operatives

91GG. (1) The Inter-Provincial Co-ordination Committee on Co-operatives is hereby established. 25

(2) The Inter-Provincial Co-ordination Committee on Co-operatives consists of the following members appointed by the Minister:

- (a) one person to represent the Minister;
- (b) one person in the full-time employment of each of— 30
 - (i) the Department;
 - (ii) the national department responsible for co-operative governance; and
 - (iii) such other national departments of state identified by the Minister; 35
- (c) two representatives from the National Interdepartmental Co-ordination Committee on Co-operatives; and
- (d) one person from each provincial government, in the full-time employ of such government. 40

(3) The Minister must appoint from among the members of the Inter-Provincial Co-ordination Committee on Co-operatives a chairperson and a deputy chairperson. 40

(4) The deputy chairperson must act as chairperson when the chairperson is not available.

(5) A member of the Inter-Provincial Co-ordination Committee on Co-operatives may designate an alternate to attend a meeting of the Inter-Provincial Co-ordination Committee on Co-operatives in his or her place. 45

(6) The Inter-Provincial Co-ordination Committee on Co-operatives must co-ordinate all co-operatives development programmes developed at provincial level. 50

(7) The National Interdepartmental Co-ordination Committee on Co-operatives and the Inter-Provincial Co-ordination Committee on Co-operatives must meet on at least a quarterly basis to discuss matters of mutual interest. 55

Establishment of Provincial Interdepartmental and Municipal Co-ordinating Structure

91HH. (1) A Provincial Interdepartmental and Municipal Co-ordinating Structure must be established in every province by the provincial department responsible for economic development concerned, which must also outline the role of local government in the establishment of the Municipal Co-ordinating Structure. 5

(2) The Provincial Interdepartmental and Municipal Co-ordinating Structure must—

- (a) develop provincial co-operatives strategies in consultation with all relevant stakeholders: Provided that the strategies must be guided by this Act, the national co-operative policy, the national co-operative strategy and the provincial growth and development strategy; 10
- (b) co-ordinate the co-operative development and support activities for all provincial government departments dealing with co-operatives; 15
- (c) co-ordinate the provision of support of co-operatives across departments aligned with provincial priorities and the priorities of the Department;
- (d) report to the Provincial Legislature concerned and the Department;
- (e) report to the Department on activities relating to co-operatives of the provincial departments responsible for economic development; 20
- (f) support the provincial structures of the Agency; and
- (g) collaborate and co-ordinate with all municipalities as regards the promotion of, and the provision of support for, co-operatives and submit reports as prescribed. 25

Dispute and conflict resolution

91II. Any dispute or conflict in respect of the exercise, performance and carrying out by an entity contemplated in section 91DD of its powers and functions as contemplated in this Act or any other law, must be resolved in accordance with the framework contemplated in section 91JJ. 30

Framework for intergovernmental relations

91JJ. (1) The Minister must, subject to the principles of co-operative governance referred to in section 41(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005)— 35

- (a) and after consultation with the Members of the Executive Council responsible for economic development and the entities contemplated in section 91DD, develop a framework for intergovernmental relations; and
- (b) publish the framework contemplated in paragraph (a) by notice in the *Gazette* within six months after commencement of the Co-operatives Amendment Act, 2012. 40

(2) Every intergovernmental structure recognised or established in accordance with this Act must comply with the framework contemplated in subsection (1) in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations.” 45

Amendment of section 92 of Act 14 of 2005 50

67. Section 92 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) for the following subsection:

“(3) Any person who contravenes or who fails to comply with the provisions of sections 12, 19, 21, 22, 38, **[and]** 39, 53, 64(2), 84(3), 91W(2), 92(1) or item 4 of Part 4 of Schedule 1, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not 55

exceeding 24 months, or to both [a] such fine and such imprisonment.”; and

(b) by the addition of the following subsection:

“(4) Despite anything to the contrary contained in any other law, a Magistrate’s Court has jurisdiction to impose any penalty contemplated in subsection (3).”.

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Insertion of sections 94A and 94B in Act 14 of 2005

68. The following sections are hereby inserted in the principal Act after section 94:

“Reporting, monitoring, evaluation and assessment

94A. The Minister must, by notice in the *Gazette* and within six months after the commencement of the Co-operatives Amendment Act, 2012, taking into account national and relevant provincial norms and standards, publish a framework—

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(a) providing for minimum norms and standards in respect of procedures for and the frequency of monitoring, evaluation and assessment of—

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(i) all structures established or recognised in accordance with this Act;

(ii) the status of the co-operative movement;

(iii) the various levels of co-operatives contemplated in this Act; and

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(iv) the categories of primary co-operatives; and

(b) establishing the necessary mechanisms, processes, procedures and Indicators required for the effective implementation thereof,

to report on, monitor, evaluate, assess and determine the impact of the exercise of powers, the performance of functions, the execution of duties and the operational efficiency of such structures and co-operatives.

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Co-operative Policy, Legislation, Strategy and Administrative Support

94B. (1) The Department must provide for co-operative policy, legislation, strategy and administrative support that, in respect of co-operatives—

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(a) formulate, implement and update—

(i) a policy framework;

(ii) a regulatory framework; and

(iii) an administrative framework;

(b) implement the framework for monitoring and evaluation as contemplated in section 94A;

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(c) provide information at the request of the Advisory Council and Tribunal on any matter that should be considered by the Advisory Council or Tribunal;

(d) establish the structures contemplated in this Act and provide the Advisory Council and Tribunal with the financial, personnel, technical, training, infrastructural and other support that is necessary for its effective functioning; and

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(e) administer the provisions of this Act, including the appointment of support staff for the Advisory Council and the Tribunal.

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(2) The unit responsible for Co-operative Policy, Legislation, Strategy and Administrative support—

(a) must advise the Minister in respect of the Tribunal and the Agency;

(b) has a monitoring role in respect of intergovernmental structures; and

(c) must advise the Minister on—

50

(i) the status and functioning of the entities referred to in paragraph (a);

(ii) the status and functioning of intergovernmental structures established in accordance with Chapter 12A;

(iii) the status of the co-operative movement; and

55

(iv) mechanisms that would promote the co-operative movement.”.

Amendment of section 97 of Act 14 of 2005

69. Section 97 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) for the following subsection:

“(2) The provisions of this Act—

- (a) apply to a co-operative referred to in subsection (1); and
 (b) are transitional for a period of two years from the date of commencement of the Co-operatives Amendment Act, 2012, for co-operatives to update their constitutions in accordance with the provisions of this Act, and in case of non-compliance after the two-year transitional period, a co-operative will be deemed to be deregistered.”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“On receipt of [**an application in terms of subsection (2)(b)**] the constitution of a co-operative, the registrar must—”;

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) issue a directive to the co-operative specifying—

- (i) the non-compliance of the constitution with the Act;
 (ii) the period allowed for the rectification of the constitution; and
 (iii) the consequences of non-compliance in terms of section 2(b).”;

(d) by the addition of the following subsections:

“(7) The Minister must, by notice in the *Gazette*, within three months after the commencement of the Co-operatives Amendment Act, 2012, publish—

(a) model constitutions, model business plans and a framework for process planning; and

(b) such other forms that he or she may consider necessary, for use by co-operatives.

(8) An entity contemplated in section 62(1)(a) of this Act must publish a notice of its conversion within 30 days after receipt of the notification of approval from the registrar.

(9) The Minister must, before the commencement of the Co-operatives Amendment Act, 2012, appoint the chairperson and other members of the Tribunal as contemplated in section 91N.”.

Substitution of item 6 of Part 1 of Schedule 1 to Act 14 of 2005

70. The following item is hereby substituted for item 6 of Part 1 of Schedule 1 to the principal Act:

“**[Exclusion] Application of other legislation** 40

6. The provisions of the Share **[Block] Blocks** Control Act, 1980 (Act No. 59 of 1980)[,] do not apply—

- (a) to a housing co-operative registered in terms of this Act in respect of every individual unit owned by the housing co-operative concerned that is used by a member in terms of a rental agreement; and
 (b) to a housing co-operative registered in terms of this Act in respect of every individual unit of the housing co-operative concerned that has been transferred in ownership to a member.”.

Substitution of item 6 of Part 2 of Schedule 1 to Act 14 of 2005

71. The following item is hereby substituted for item 6 of Part 2 of Schedule 1 to the principal Act: 50

“**Application of labour legislation**

6. (1) An employee of a worker co-operative is any member or

non-member of a co-operative who satisfies the definition of ‘employee’ as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) All worker co-operatives must comply with labour legislation.

(3) Despite subsection (1), a co-operative may apply to a bargaining council with jurisdiction over the sector within which the co-operative operates or, where there is no such bargaining council, to the Minister of Labour for full or partial exemption from the need to comply with applicable labour legislation in respect of employees of the co-operative.

(4) The bargaining council or the Minister of Labour, as the case may be, may only grant an exemption in terms of sub-section (3) if reasonably satisfied that there are good grounds for doing so.

(5) The Minister must, in consultation with the Minister of Labour, within six months from the date of commencement of the Co-operatives Amendment Act, 2012, and thereafter from time to time, make regulations determining what constitutes good grounds for the purposes of subsection (4).”.

Insertion of item 1A in Part 3 of Schedule 1 to Act 14 of 2005

72. The following item is hereby inserted in Part 3 of Schedule 1 to the principal Act after item 1:

“Name of co-operative

1A. The name of a financial co-operative must comply with the provisions of section 10 of this Act, except where otherwise required by other legislation.”.

Substitution of item 6 of Part 3 of Schedule to Act 14 of 2005

73. The following item is hereby substituted for item 6 of Part 3 of Schedule 1 to the principal Act:

“Exemption

6A. The registrar may, in consultation with the registrar of Banks, the registrars of Long-term Insurance or Short-term Insurance, or the registrar of Medical Schemes, as the case may be, direct that all co-operatives, to whom this part applies, or any category of co-operative to whom this part applies, other than a co-operative bank, must provide a recommendation letter from the regulator as contemplated in the Banks Act, 1990 (Act No. 94 of 1990), in compliance with any requirement for exemption from any provision of the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), or the Medical Schemes Act, 1998 (Act No. 131 of 1998).”.

Substitution of item 8 of Part 3 of Schedule 1 to Act 14 of 2005

74. The following item is hereby substituted for item 8 of Part 3 of Schedule 1 to the principal Act:

“Definitions

8. For the purposes of this Part, “financial service” means any financial or banking service a co-operative may provide to its members, and includes the provision of long-term and short-term insurance, as envisaged in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the business of a medical scheme, as envisaged in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998), or funeral services, as envisaged in the Friendly Societies Act, 1956 (Act No. 25 of 1956).”.

Addition of Part 5 to Schedule 1 to Act 14 of 2005

75. The following part is hereby added in the principal Act to Schedule 1:

“Part 5***Social co-operatives*****Application of this Part**

1. (1) This Part applies to social co-operatives which must comply with—

- (a) the requirements contemplated in this Part; and
- (b) all other relevant provisions of this Act.

Requirements of constitution

2. In addition to any other requirements of this Act, the constitution of a social co-operative must specify the nature of the social service the co-operative aims to provide its members.

Surplus

3. A social co-operative may—

- (a) set aside 100 per cent of its surplus to an indivisible reserve; and
- (b) capitalise all donations and grants, in order to enjoy the benefits of public benefit organisations.

Termination of membership

4. (1) Despite any other provisions of this Act, the constitution of a social co-operative may give the Board of the social co-operative the power to terminate the membership of a member if there is good reason to do so.

(2) Before terminating the membership of a member, the Board must give such member—

- (a) written notice that termination is contemplated;
- (b) written reasons for the proposed termination which, in the case of a member who has served a period of probation, must relate to the conduct or capacity of the member to carry out his or her duties, or to the operational requirements of the co-operative; and
- (c) a right to be heard.

(3) A member whose membership is terminated by the Board has a right to appeal to a general meeting within the time limit set out in the constitution.

(4) A termination of the membership of a member by the Board is confirmed on appeal if the members, at a duly called general meeting, do not reverse the decision of the Board.

(5) If a general meeting is called to consider the appeal of a member whose membership is terminated and a quorum of members is not present, the decision of the Board cannot be confirmed.

Definitions

5. For the purposes of this part ‘social co-operative’ means a co-operative whose main objective is to provide social services to its members.”

Substitution of long title of Act 14 of 2005

76. The following long title is hereby substituted for the long title of the principal Act:

“To provide for co-operative principles and for compliance with co-operative principles; to provide for the categories, application for registration and registration of co-operatives; to provide for the

constitution and functions of co-operatives; to provide for the registered offices of co-operatives, as well as the record-keeping by co-operatives; to provide for membership and general meetings of members, and governance of co-operatives; to provide for the capital structures and the financial reporting and the independent audit or review of co-operatives; to provide for the board of directors; to provide for the management of co-operatives through their board of directors; to provide for the capital structure of co-operatives; to provide for the amalgamation, division, conversion and transfer of co-operatives to any other form of juristic person; to provide for the winding-up and deregistration of co-operatives; to provide for judicial management of co-operatives; to provide for the administration of the Act; to establish the Co-operatives Advisory Council; to provide for the membership and functions of the Council; to establish the Co-operatives Development Agency; to provide for the governance of the Agency; to provide for the legal status, functions and powers of the Agency; to establish the Board of the Agency; to provide for the governance of the Agency; to provide for the funding and financial management of the Agency; to establish the Co-operatives Tribunal; to provide for the functions and composition of the Tribunal; to provide for special provisions relating to certain kinds of co-operatives; to provide for co-operation between governmental agencies in for the promotion and support of co-operatives; and to provide for matters connected therewith.”.

Substitution of Preamble to Act 14 of 2005

77. The following Preamble is hereby substituted for the Preamble to the principal Act:

“PREAMBLE

WHEREAS the Republic of South Africa acknowledges the need for the registration of co-operatives, in accordance with—

- * the Constitution;
- * international conventions and treaties; and
- * national, provincial and local government transversal policy and statutory-regulatory frameworks,

as well as the need for the development of a viable, autonomous, self-reliant and self-sustaining co-operative movement to promote community development and entrepreneurship, create employment and successful enterprises, eradicate poverty and improve the socio-economic well-being of the members of co-operatives in accordance with the co-operative principles;

AND WHEREAS the Constitution and national legislation enjoins government to play a fundamental role in promoting the development of co-operatives:

- * in accordance with the co-operative international principles recognised and implemented in South Africa;
- * in accordance with the Millennium Development Goals, including sustainable social and economic development;
- * through the establishment of public private partnerships;
- * through support, and participation in, government initiatives relating to rural development, land reform and agrarian transformation; and
- * by addressing the developmental needs arising from the socio-economic environment of South Africa;

AND WHEREAS the Constitution and national legislation enjoins the three spheres of government to be accountable and responsible in supporting and promoting the development and effective functioning of co-operatives in order to bring about a vibrant co-operative movement in South Africa;

AND WHEREAS this Act is aligned with ILO Recommendation 193 of 2002, which was also ratified by the South African government, and with co-operative values and principles outlined in the Co-operative Statement of Identity adopted by the International Co-operative Alliance (ICA) in 1995, which states that—

- * co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity;
- * co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others; and
- * co-operative principles are guidelines by which co-operatives put their values into practice,

AND WHEREAS all co-operatives are obligated to contribute towards community development in line with the co-operative principle of concern for community.”.

Substitution of Table of Contents of Act 14 of 2005 15

78. The following Table of Contents is hereby substituted for the Table of Contents of the principal Act:

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Laws repealed by section 98.”.

Substitution of expressions in Act 14 of 2005

79. The principal Act is hereby amended by the substitution for the expressions “reserve fund” and “financial services co-operatives” wherever they appear of the expressions “indivisible reserve” and “financial co-operative”, respectively. 5

Short title and commencement of Act

80. This Act is called the Co-operatives Amendment Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CO-OPERATIVES AMENDMENT BILL, 2012

1. INTRODUCTION

The Co-operatives Act, 2005 (Act No. 14 of 2005), came into operation on 2 May 2007, introducing a new framework for the management of co-operatives in South Africa. The Co-operatives Amendment Bill (“the Bill”) seeks to amend the Co-operatives Act and aims to address issues raised by various stakeholders who participated during a series of consultative workshops held by the Department of Trade and Industry (“the Department”) and public submissions received by the Department.

2. OBJECTS OF THE BILL

The Bill seeks to amend the Co-operatives Act, 2005, so as to provide for the substitution and addition of certain definitions; to provide for co-operative principles and for compliance with co-operative principles; to provide for associate membership of co-operatives; to provide for categories of primary co-operatives; to provide for the national apex co-operative; to provide for the annual submission of information to the registrar; to amend the accounting practices and requirements for co-operatives by providing for audit and independent review of co-operatives; to provide for the payment of fees by co-operatives for the amalgamation, division, conversion or transfer of co-operatives; to provide for the voluntary winding-up of a co-operative by special resolution; to provide for a co-operative to apply for a declaratory order in respect of the liquidation process; to provide for the Tribunal to order the winding-up of a co-operative; to substitute the Advisory Board with the Advisory Council; to provide for the establishment, functions and powers of the Co-operatives Development Agency; to provide for the funding and financial management of the Agency; to provide for oversight and executive authority of the Agency; to provide for the establishment, composition and functions of the Co-operatives Tribunal; to ensure compliance with the principles of intergovernmental relations; to provide for intergovernmental relations within the co-operatives sector; and to provide for the substitution of the long title and the Preamble; and to provide for matters connected therewith.

3. CONSULTATION

The following departments and stakeholders were consulted:

- National Treasury;
- Department of Public Works;
- Department of Public Service and Administration;
- Department of Science and Technology;
- Department of Transport;
- Department of Agriculture, Forestry and Fisheries;
- Government Communication and Information System (GCIS);
- Department of Labour;
- Department of Higher Education and Training;
- Department of Mineral Resources;
- Department of Energy;
- Department of Human Settlements;
- Department of Social Development;
- Department of Arts and Culture;
- Department of Rural Development and Land Reform;
- Department of Environmental Affairs;
- Office of The Presidency;
- South African Revenue Services;
- All provinces, through the Co-operatives Inter-provincial Committee and provincial workshops;
- Municipalities, through provincial workshops;
- Government agencies, including Small Enterprise Development Agency (SEDA); Khula Enterprise Finance; Land Bank; the Industrial Development Corporation and the National Youth Development Agency (NYDA);
- The National Economic Development and Labour Council (NEDLAC); and
- The co-operatives sector, through co-operative workshops.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill will be implemented through regulations and the co-operatives development strategy. New institutions, including the Co-operatives Development Agency, the Co-operative Tribunal and the Co-operative Training Academy, will be established to also assist in the implementation of and ensuring compliance with the Co-operatives Act. Business cases for each of these institutions will be developed and costing will be done through those business cases.

5. IMPLICATIONS FOR PROVINCES

The provincial departments of Economic Development responsible for co-operatives will be responsible for co-ordinating and reporting all co-operative activities in the provinces involving other departments and all other stakeholders.

6. IMPLICATIONS FOR MUNICIPALITIES

Municipalities will be responsible for co-ordinating all co-operative activities within their areas of jurisdiction.

7. PARLIAMENTARY PROCEDURE

7.1 The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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