

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CO-OPERATIVES BILL**

[B 4 -2005]

*(As agreed to by the Portfolio Committee on Trade and Industry)
(National Assembly))*

[B 4A-2005]

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AMENDMENTS AGREED TO

CO-OPERATIVES BILL [B 4-2005]

ENABLING SECTION

On page 2, after "IT" to insert "THEREFORE".

CONTENTS

1. On page 3, in line 14, to omit "powers" and to substitute "functions".
2. On page 3, in line 21, to omit "Powers" and to substitute "Functions".

CHAPTER 5

1. On page 3, in line 43, to omit "Persons competent to be" and to substitute "Appointment of"

CLAUSE 1

1. On page 6, from line 11, to omit the definition of "**co-operative apex**".
2. On page 6, after line 20, to insert:

"deputy registrar" means a person appointed as such by the Minister to assist the registrar in the performance of his or her functions;
3. On page 6, from line 22, to omit the definition of "**federal co-operative association**".
4. On page 6, in line 32, after "provides" to insert "technical sectoral".
5. On page 6, in line 50, before "persons" to insert "natural".
6. On page 6, in line 50, after "members" to insert "and to facilitate community development".
7. On page 6, in line 51, to omit "and **"deputy registrar"** has a corresponding meaning".
8. On page 6, after line 52, to insert:

"reserve" means a portion of the surplus that is set aside in a reserve fund and that is indivisible amongst the members of a co-operative;
"reserve fund" means a fund established in terms of section 46;
9. On page 6, from line 53, to omit the definition of "**secondary co-operative**" and to substitute:

"secondary co-operative" means a co-operative formed by two or more primary co-operatives to provide sectoral services to its members and may include other juristic persons";

10. On page 7, from line 9, to omit the definition of "**tertiary co-operative**" and to substitute:

"tertiary co-operative" means a co-operative whose members are secondary co-operatives and whose object is 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;

CLAUSE 2

1. On page 7, from line 34, to omit paragraph (f) and to substitute:

(f) facilitate the provision of support programmes that target emerging co-operatives, specifically those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas and that promote equity and greater participation by its members;

2. On page 7, after line 36, to add:

(g) ensure the design and implementation of the co-operative development support programmes by all the agencies of national departments including but not limited to Khula, NEF, NPI, SEDA, IDC, SAQI, SABS, CSIR, PIC, DBSA, SALGA and SETA's, and compliance with uniform norms and standards prescribed by this Act;

(h) ensure the design and implementation of the co-operatives support measures across all spheres of government, including delivery agencies, and adherence to a uniform framework of established norms and standards that reflect fairness, equity, transparency, economy, efficiency, accountability and lawfulness; and

(i) facilitate the effective co-ordination and reporting mechanism across all spheres of government through the department.

CLAUSE 3

1. On page 7, in line 38, to omit "is deemed to comply" and to substitute "complies".

2. On page 7, in line 41, to omit "willing and".

3. On page 7, from line 48, to omit paragraph (e) and to substitute:

(e) at least five per cent of the surplus is set aside as a reserve in a reserve fund and is not divisible amongst its members .

4. On page 7, from line 57, to omit "in the principles and methods of co-operation and in all fields relevant to the operation of a co-operative".

5. On page 8, in line 7, to omit "Despite subsection (1)(b)".

6. On page 8, in line 8, after "vote" to insert:

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.

CLAUSE 4

On page 8, in line 20, to omit "burial co-operative" and to substitute "co-operative burial society".

CLAUSE 5

1. On page 8, from line 27, to omit subsections (2) and (3).

CLAUSE 6

1. On page 9, in line 3, after "adopted" to insert "and".
2. On page 9, in line 4, to omit paragraph (b).

CLAUSE 7

1. On page 9, in line 10, after "constitution" to insert "of a co-operative".
2. On page 9, in line 10, after "principles" to insert "referred to".

CLAUSE 8

On page 9, from line 16, to omit subsection (2) and to substitute:

(2) The department may provide a co-operative with the necessary support, if that co-operative—

- (a) is registered as a co-operative in terms of this Act;
- (b) complies with the co-operative principles referred to in section 3; and
- (c) consists of black persons, women, youth, disabled persons or persons in the rural areas and promotes equity and greater participation by its members.

CLAUSE 14

1. On page 10, in line 51, after including to insert "the necessary period for the notice of withdrawal and the repayment of shares, and".
2. On page 11, from line 1, to omit paragraph (m) and to substitute:

(m) a provision relating to the manner in which a portion of the surplus that is transferred as a reserve fund in accordance with section 3(e), may be utilised.
3. On page 11, in line 8, after "(q)" to insert "a provision for".
4. On page 11, from line 9, to omit paragraph (r).
5. On page 11, in line 11, after "(s)" to insert "a provision for".
6. On page 11, in line 20, after "(x)" to insert "a provision for".
7. On page 11, in line 22, after "(y)" to insert "a provision for".
8. On page 11, in line 25, to omit paragraph (aa) and to substitute:

(aa) a provision relating to the manner in which voting may be conducted

9. On page 11, in line 29, after "(dd)" to insert "a provision for".
10. On page 11, in line 35, to omit "assign" and to substitute "delegate".
11. On page 11, after line 36, to add:
 - (hh) a provision relating to the manner in which a portion of the surplus that is not transferred to the reserve fund, may be utilised.
12. On page 11, from line 43, to omit paragraph (d) and to substitute:
 - (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, or for such lesser percentage of members stipulated in the constitution of the co-operative;
13. On page 11, in line 47, to omit paragraph (f) and to substitute:
 - (f) a provision relating to the manner on which the supervisory committee may be constituted;
14. On page 11, from line 48, to omit paragraph (g) and to substitute:
 - (g) the conditions under which the board of directors may delegate functions to a director, committee or manager.
15. On page 11, in line 55, to omit "by way".
16. On page 11, in line 56, to omit "of arbitration or otherwise".

CLAUSE 16

1. On page 12, in line 17, after "of" to insert "sectoral".
2. On page 12, in line 17, to omit "and".
3. On page 12, in line 18, to omit "such services must be specified".
4. On page 12, from line 19, to omit paragraph (b) and to substitute:
 - (b) the main objectives of a tertiary co-operative which must include advocating and engaging organs of state, the private sector and stakeholders on behalf of its members.

CLAUSE 19

1. On page 13, in line 5, to omit "**Powers**" and to substitute "**Functions**".

CLAUSE 22

1. On page 14, in line 7, to omit "subsections" and to substitute "subsection".
2. On page 14, in line 7, to omit "and (3)".
3. On page 14, from line 11, to omit subsection (2) and to substitute:

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(2) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the board of directors may for a reasonable period of time refuse information relating to any commercial transaction of the co-operative if there are reasonable grounds to believe that the disclosure may be to the disadvantage of that co-operative.

4. On page 14, in line 16, to omit "board" and to substitute "committee".
5. On page 14, in line 16, to omit "board" and to substitute "committee".

CLAUSE 24

1. On page 14, from line 25, to omit subsection (1).
2. On page 14, from line 28, to omit subsection (2) and to substitute:

(2) Despite any provisions contained in its constitution, if a co-operative determines that the repayment of shares would adversely affect its financial well-being, the co-operative may direct that the repayment be deferred for a period not exceeding two years after the effective date of the notice of withdrawal.

CLAUSE 25

1. On page 14, from line 36, to omit subsection (1).

CLAUSE 27

1. On page 15, from line 22, to omit subsection (3).

CLAUSE 28

1. On page 15, from line 30, to omit subsection (1).
2. On page 15, from line 40, to omit subsection (4).

CLAUSE 31

1. On page 16, in line 19, to omit "of the meeting".

CLAUSE 33

1. On page 16, in line 30, to omit the **"Persons competent to be"** and to substitute **"Appointment of"**.
2. On page 16, from line 31, to omit subsection (1) and to substitute:

(1) The directors of a co-operative must be appointed in accordance with such conditions as may be provided for in its constitution.

CLAUSE 37

Clause rejected.

CLAUSE 38

1. On page 18, after line 27, to insert:

(7) A director or manager of a co-operative who fails to comply with subsection (1) is, in the manner prescribed, subject to disqualification.

CLAUSE 43

1. On page 18, in line 30, after "issued" to insert "and".

CLAUSE 44

1. On page 19, in line 45, after "share capital" to insert "and".
2. On page 19, in line 51, after "constitution" to insert "of a co-operation".
3. On page 19, in line 52, after "constitution" to insert "of a co-operative".
4. On page 19, in line 52, after "constitution" to insert "and".

CLAUSE 45

1. On page 20, from line 5, to omit subsection (1) and to substitute:

(1) A co-operative may allocate and credit or pay to its members a portion of the surplus that is not transferred as a reserve to a reserve fund in terms of section 3(1)(e) and such a portion must be allocated in proportion to the value of transactions conducted by a member with a co-operative during a specified period.

2. On page 20, in line 13, after "co-operative" to insert "and".

CLAUSE 46

1. On page 20, in line 37, after "trustee" to insert "and".

NEW CLAUSE

1. That the following be a new Clause:

Reserve fund of members

46. (1) A co-operative must set up a reserve fund wherein such co-operative must deposit at least five per cent of the surplus as a reserve that is indivisible amongst its members, during a financial year.

(2) A co-operative may use the fund referred to in subsection (1) only in accordance with the manner contemplated in its constitution.

(3) The reserve of a co-operative will be monitored for compliance by the registrar through the audited annual financial statements.

CLAUSE 48

1. On page 21, in line 31, to omit "twenty one" and to substitute "21"

2. On page 21, in line 35, to omit "fifteen" and to substitute "15".

CLAUSE 50

1. On page 21, in line 50, after "meeting" to insert "and".

CLAUSE 52

1. On page 22, in line 24, after "co-operative" to insert "and".

CLAUSE 55

1. On page 23, in line 8, after "statements" to insert "and".
2. On page 23, in line 17, to omit "fifteen" and to substitute "15".
3. On page 23, from line 23, to omit subsection (5).

CLAUSE 57

1. On page 24, in line 14, after "reserves" to insert "and".
2. On page 24, in line 19, after "Act" to insert "and".

CLAUSE 58

1. On page 24, in line 30, after "co-operative" to insert "and".

CLAUSE 59

1. On page 24, in line 42, after "co-operative" to insert "who".
2. On page 24, in line 48, after "operate" to insert "and".

CLAUSE 60

1. On page 25, in line 2, after "constituted" to insert ,by the division" .
2. On page 25, in line 14, after "reserves" to insert "and" .
3. On page 25, in line 19, after "division" to insert "and" .

CLAUSE 61

1. On page 25, in line 27, after "divide" to insert "and".

CLAUSE 62

1. On page 25, in line 44, after "co-operative" to insert "and".
2. On page 25, in line 58, after "members" to insert "and".

CLAUSE 63

1. On page 26, in line 15, after "co-operatives" to insert "and" .
2. On page 26, in line 20, after "application" to insert "referred to in subsection (1)".

CLAUSE 64

On page 26, in line 31, after "effected" to insert "and".

NEW CLAUSES

That the following be a new Clauses:

Application to convert company into co-operative

66. (1) A company that intends to conduct its affairs according to co-operative principles and that passed a resolution at a general meeting that authorises the conversion of that company into a co-operative of a particular kind and form, may apply to the registrar on the prescribed form to be converted.

(2) An application referred to in subsection (1) must be accompanied by—

- (a) a sworn statement by a person who acted as the chairperson of the general meeting referred to in subsection (1)—
 - (i) that the meeting has passed a resolution authorising the conversion of the company into a co-operative of the required kind and form;
 - (ii) that the meeting was specially convened to consider the resolution;
 - (iii) that the chairperson has satisfied himself or herself that proper notice of the meeting was given to the members of the company;
- (b) a copy of the resolution and an explanation of the reasons for the proposed conversion;
- (c) proof of the company's registration under any law as a company;
- (d) two certified copies of the company's memorandum and articles of association and articles of association;
- (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 into line with the provisions of this Act;
- (e) a certified copy of the company's latest audited annual financial statements;
- (f) a schedule containing the full names and addresses of the members of the company, the number of shares and class of shares held by each one of them in the company, and, if application is made to convert the company into a co-operative, also the occupations of the members;
- (g) a schedule containing the full names and addresses of the directors of the company;
- (h) a schedule stating the particulars and extent of the company's interest in any other company;
- (i) the prescribed application fees.

(3) A company may instead of a document referred to in subsection (2)(e) give the registrar an undertaking in writing that if it is converted into a co-operative it will within one year of its conversion replace its memorandum and articles of association with a constitution in terms of this Act or will otherwise amend its

memorandum and articles of association so as to bring them into line with the provisions of this Act.

Consideration of application

67. (1) An application referred to in section 66 must be submitted to the registrar together with any such other documents as he or she may require.

(2) The registrar must consider the application submitted to him or her in terms of subsection (1), and if he or she is satisfied that the provisions of this Act have been complied with in respect of the application and that–

- (a) the conversion of the company into a co-operative;
- (b) the incorporation of the proposed co-operative; and
- (c) the company's memorandum and articles of association,

with due regard to the proposed amendment, or the proposed new constitution, if such proposed amendment or new constitution accompanied the application, are not inconsistent with this Act, he or she must approve the application, or if he or she is not so satisfied, he or she may conditionally approve or reject the application.

(3) If the registrar approves or conditionally approves an application, the registrar must ensure that–

- (a) the name and other particulars of the company to be entered in the register of co-operatives;
- (b) the memorandum and articles of association or new constitution, as the case may be, to be registered conditionally or unconditionally, and a certificate to be 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.

(4) One copy of the certificate and of the memorandum and articles of association or 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.

Effects of incorporation of company as co-operative

68. As from the date on which the entry is made in terms of section 67(3)(a) in the register of co-operatives–

- (a) the company is converted into a co-operative;
- (b) the company ceases to exist;
- (c) if a new constitution was not substituted the memorandum and articles of association of the company is considered to be the constitution of a co-operative;
- (d) the persons who at the date of conversion of the company were members of the company accordingly become members of the co-operative;
- (e) all assets, rights, liabilities and obligations of the company vest in the co-operative;
- (f) the constitution or the memorandum and articles of association, as the case may be, bind the co-operative and each member to the same extent as if it had been signed by each member, subject to this Act.

Special provision relating to company which has given an undertaking under section 66(3)

69. (1) A co-operative which as a company has given an undertaking under section 66(3) to the registrar must within one year of the date of its incorporation amend its memorandum and articles of association or replace its memorandum and articles of association

with a new constitution so as to bring it into conformity with the provisions of this Act.

(2) A co-operative referred to in subsection (1) which has failed to comply with section 66(3) is considered to have remained a company.

(3) The name and particulars of a co-operative which has failed to comply with the provisions of subsection (1) must be struck off the register of co-operatives by the registrar.

Registrar to give notice of conversion to Registrar of Companies

70. The registrar must give notice of any conversion of a company into a co-operative in terms of this Act and of any default referred to in section 69(2) to the Registrar of Companies mentioned in section 7 of the Companies Act, 1973 (Act No. 61 of 1973).

CLAUSE 68

1. On page 27, in line 19, after "years" to insert "and".

CLAUSE 69

1. On page 27, in line 28, after "documents" to insert "and".
2. On page 27, in line 30, after "to" to insert "in".
3. On page 27, in line 38, to omit "(a)".
4. On page 27, in line 41, to omit "(h)" and to substitute "(5)".
5. On page 27, in line 45, to omit "(5)" and to substitute "(6)".
6. On page 27, in line 47, to omit "(6)" and to substitute "(7)".

CLAUSE 70

1. On page 28, in line 8, after "it" to insert "and".
2. On page 28, in line 31, after "co-operative" to insert "and".

CLAUSE 81

1. On page 30, from line 38, to omit paragraph (d) and to substitute:

(d) the provision of support programmes that target co-operatives, especially those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas and promote equity and greater participation by its members;
2. On page 30, in line 45, to omit "at the request of the Minister".
3. On page 30, from line 47, to omit subsections (2) and (3).
4. On page 31, from line 1, to omit subsection (4).

CLAUSE 82

1. On page 31, in line 4, to omit "at least" and to substitute "not less than".

2. On page 31, in line 5, to omit "no" and to substitute "not".
3. On page 31, in line 9, after "expertise" to insert "and".
4. On page 31, in line 11, after "co-operative" to insert "support".
5. On page 31, from line 12, to omit subsection (3).

CLAUSE 83

1. On page 31, from line 20, to omit paragraph (a).
2. On page 31, in line 23, after "years" to insert "and".
3. On page 31, in line 28, to omit "will" and to substitute "are".
4. On page 31, in line 28, to omit "be".

CLAUSE 84

1. On page 31, after line 41, to add:

(3) Members of the Advisory Board are accountable to Parliament.

CLAUSE 85

1. On page 31, in line 44, to omit "it is" and to substitute "the Advisory Board".
2. On page 31, in line 44, to omit "considering" and to substitute "considers".

NEW CLAUSE

1. That the following be a new Clause:

Accountability to Parliament

91. All the national departments and their agencies that provide co-operative development support programmes may be required by Parliament, in line with the principles contained in Chapter 3 of the Constitution, to report on the progress made regarding the design and implementation of such programmes.

CLAUSE 86

1. On page 31, in line 49, after "2000" to insert "(Act No. 2 of 2000)".
2. On page 32, in line 1, after "justice" to insert "or".
3. On page 32, from line 3, to omit subsection (2) and to substitute:

(2) Any person who knowingly—

 - (a) makes or assist in making a report, return, notice or any other document to be sent to the registrar or any other person, as required by this Act, that contains an untrue statement of a material fact; or

- (b) omits to state the material fact on any of the documents referred to in paragraph (a), that will be sent to the registrar or any other person, as required by this Act, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months or to both a fine and such imprisonment.

- 4. On page 32, from line 7, to omit subsection (3) and to substitute:

(3) Any person who contravenes or who fails to comply with the provisions of section 12, 19, 21, 37, 39 and 40, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months or to both a fine or such imprisonment

CLAUSE 89

- 1. On page 32, in line 38, to omit "and".
- 2. On page 32, after line 38, to insert:
 - (i) the procedure in which an amendment to the constitution of a co-operative may be made;
 - (j) the prescription of norms and standards to which co-operative development support programmes must conform with;
 - (k) the manner on which a co-operative may notify the registrar of the change of a co-operative's details;
 - (l) the procedure for disqualification of a director or manager of a co-operative as contemplated in 37(7); and
- 3. On page 32, in line 39, to omit "(i)" and to substitute "(m)".

CLAUSE 91

- 1. On page 33, in line 2, after "Act" to insert "and".
- 2. On page 33, in line 26, after "3(a)" to insert "or"

SCHEDULE 1

PART 1

ITEM 1

- 1. On page 34, in line 7, after "must" to insert "comply with".
- 2. On page 34, in line 8, to omit "comply with".
- 3. On page 34, in line 8, after "Part" to insert "and".
- 4. On page 34, in line 9, to omit "comply with" .

ITEM 5

- 1. On page 34, in line 38, after "5" to insert "(1)".
- 2. On page 34, in line 39, to omit "in".

3. On page 34, from line 40, to omit "accordance with the following provisions:".
4. On page 34, in line 41, to omit "(a)".
5. On page 34, in line 41, to omit "If" and to substitute "if".
6. On page 34, in line 45, to omit "(b)" and to substitute "2".
7. On page 34, in line 45, to "paragraph (a)" and to substitute "subitem (1)".
8. On page 35, in line 1, to omit (c) and to substitute "(3)".
9. On page 35, in line 2, to omit "paragraph (a)" and to substitute "subitem (1)".
10. On page 35, in line 6, to omit "(d)" and to substitute "(4)".
11. On page 35, in line 7, to omit "paragraph (c)" and to substitute "subitem (3)".
12. On page 35, in line 8, after "constitution" to insert "of a co-operative".
13. On page 35, in line 9, to omit "(e)" and to substitute "(5)".
14. On page 35, in line 12, to omit "(f)" and to substitute "(6)".
15. On page 35, in line 15, to omit "(g)" and to substitute "(7)".
16. On page 35, in line 18, after "constitution" to insert "and".
17. On page 35, in line 20, to omit "(h)" and to substitute "(8)".
18. On page 35, in line 23, to omit "(i)" and to substitute "(9)".
19. On page 35, in line 23, to omit "section" and to substitute "item".
20. On page 35, in line 28, to omit "paragraph (a)" and to substitute "subitem (1)".

ITEM 6

1. On page 35, in line 31, to omit "shall" and to substitute "do".

PART 2

ITEM 1

1. On page 35, in line 36, after "must" to insert "comply with".
2. On page 35, in line 37, to omit "comply with".
3. On page 35, in line 37, after "Part" to insert "and".
4. On page 35, in line 38, to omit "comply with".

ITEM 3

1. On page 36, in line 8, after "co-operative" to insert "and".

2. On page 36, in line 14, after "off" to insert "and".

ITEM 5

1. On page 36, in line 41, after "constitution" to insert "of a co-operative".

ITEM 6

1. On page 36, in line 49, to omit "for the purposes of the Acts listed in this subsection".
2. On page 36, in line 51, after "co-operative" to insert "for the purposes of the following Acts:".
3. On page 36, in line 52, to omit "the" and to substitute "The".

PART 3**ITEM 1**

1. On page 37, in line 5, after "must" to insert "comply with".
2. On page 37, in line 6, to omit "comply with".
3. On page 37, in line 6, after "Part" to insert "and".
4. On page 37, in line 7, to omit "comply with".

ITEM 2

1. On page 37, in line 18, to omit the second "the" and to substitute "its".
2. On page 37, in line 19, after "or" to insert "prescribed".
3. On page 37, in line 19, to omit "prescribed".

ITEM 3

1. On page 37, from line 27, to omit item 3.

PART 4**ITEM 1**

1. On page 38, in line 24, after "must" to insert "comply with".
2. On page 38, in line 25, to omit "comply with".
3. On page 38, in line 25, after "Part" to insert "and".
4. On page 38, in line 26, to omit "comply with".

ITEM 3

1. On page 39, in line 2, after "them" to insert "and".
2. On page 39, in line 6, after "risks" to insert "and".

ITEM 4

1. On page 39, in line 19, after "Republic" to insert "and".
2. On page 39, in line 25, to omit "the" and to substitute "The".
3. On page 39, in line 30, after the second "member" to insert "and".
4. On page 39, in line 41, after "them" to insert "and".
5. On page 39, in line 59, after "(9)" to insert "(a)".
6. On page 39, in line 60, to omit "(a)".
7. On page 40, in line 1, to omit "the" and to substitute "The".
8. On page 40, in line 1, to omit "will be" and to substitute "is".
9. On page 40, in line 1, to omit "as an".
10. On page 40, in line 2, to omit "expert".
11. On page 40, in line 3, to omit "the" and to substitute "The".
12. On page 40, in line 3, after "valuation" to insert "referred to in paragraph (a)".