

(1 April 2019 – to date)

CO-OPERATIVES ACT 14 OF 2005

(Gazette No. 27912, Notice No. 832 dated 18 August 2005. Commencement date: 2 May 2007 [Proc. No. R6, Gazette No. 29830])

CO-OPERATIVES ADMINISTRATIVE REGULATIONS, 2016

Government Notice R593 in Government Gazette 42408 dated 18 April 2019. Commencement date: 1 April 2019. Date of commencement of the Co-operatives Amendment Act 6 of 2013 - 1 April 2019 [Proc. No. 14 in Government Gazette 42320 dated 19 March 2019]

I, Ms L Zulu, Minister of Small Business Development, in terms of section 95 of the Co-operatives Act, 2005 (Act No. 14 of 2005) as amended by Co-operatives Amendment Act No. 6 of 2013) hereby make Co-operative Regulations and Principles of Good Governance[sic] as set out in the schedule hereto.

(Signed)

Ms L Zulu (MP)

MINISTER OF SMALL BUSINESS DEVELOPMENT

DATE: 26/03/2019

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CHAPTER 1: CO-OPERATIVE REGISTRATION AND SUPPORT

PART 1: CO-OPERATIVE REGISTRATION, GOVERNANCE AND MAINTENANCE

1. Repeal of previous Regulations

Prepared by:

The Regulations provided for in section 95 of the Act and promulgated under Government Notice 366 of 30 April 2007 are hereby repealed.

2. Definitions

- (1) In these regulations, unless the context otherwise indicates, the definitions of the Act apply, and –

"access code" means the unique identification particulars, whether alphanumeric, biometric or otherwise, enabling the CIPC system to identify a person;

"annual report" means a report prepared by the Board containing financial statements, a social report and management decision report. (Only applicable to Category A1 and category A2 primary co-operatives.)

"annual return" means annual submission of Form CO-OP 08 together with the co-operative's audited report, or independently reviewed report or annual report;

"the Act" means the Co-operatives Act, 2005 (Act 14 of 2005), as amended by Co-operatives Amendment Act, 2013 (Act 6 of 2013);

"CIPC" means the Companies and Intellectual Property Commission established under section 85 of the Companies Act, 2008 (Act 71 of 2008), constituting a combined administrative office for the various registration offices established or deemed to be established and registers kept under the Act, the Companies Act, 2008 (Act 71 of 2008), the Close Corporations Act, 1984 (Act 69 of 1984), the Co-operatives Act, 2005 (Act 14 of 2005), the Trademarks Act, 1993 (Act 194 of 1993), the Designs Act, 1993 (Act 195 of 1993), and the Patents Act, 1978 (Act 57 of 1978); PLUS other IP ACTs

"CIPC customer" means any person making use of CIPC services, whether electronic services or manual services and includes any person who has been allowed by the Registrar to use electronic services, who is legally entitled to act on behalf of a co-operative and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

"CIPC portal" means the internet website or other electronic portal forming part of the CIPC system;

"CIPC record retention system" means the system used by CIPC to store records for subsequent access, whether in paper, microfilm, electronic or other form;

"CIPC system" means the computer system, including the CIPC portal, through which CIPC provides electronic services, irrespective of the medium or form of technology underlying or forming part of such services;

"electronic services" means the services provided or made available by CIPC through the CIPC system in terms of regulation 3;

"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 (statement of comprehensive income); (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.

"forms" means the prescribed forms contemplated in Schedule 2;

"High Court Rules" means the Rules Regulating the Conduct of the Several Provincial and Local Divisions of the High Court of South Africa, published by Government Notice R48 in Government Gazette 999 of 12 January, 1965, as amended from time to time;

"inspect" includes obtaining access to a record via the CIPC system;

"inspectors" are individuals appointed by the registrar and who exercise their statutory powers and the delegated powers of the registrar;

"lodge" includes the creation of a record on the CIPC system;

"operational requirements" means the requirements provided for in regulation 3(2);

"record" in relation to a co-operative, includes any document and vice versa, accounting records, minutes and registers as contemplated in section 21 of the Act;

"registrar" in the Act and these regulations is the commissioner as referred to in the Companies Act, 2008 (Act 71 of 2008);

"Regulation" includes any Table, Schedule or Form included within or referred to in a Regulation.

3. Electronic services

- (1) Any requirement under the Act or these Regulations, including requirements in respect of lodgement of forms, returns, other information, records and payment of fees, may be satisfied in electronic form, subject to the provisions of the operational requirements.
- (2) The Registrar may publish operational requirements on the CIPC portal setting out the requirements, processes and procedures in respect of all or certain electronic services, including –
 - (a) registration procedures;

- (b) identification, authentication and verification;
 - (c) form and format of records;
 - (d) manner and form of payment of fees and penalties;
 - (e) information security requirements; and
 - (f) record retention requirements.
- (3) The operational requirements may be published in different forms over different parts of the CIPC portal.
- (4) Unless another form of electronic signature is specified in the operating requirements, any signature requirement under the Act or these Regulations in respect of a record to be accessed from or lodged with CIPC is satisfied by the CIPC customer entering his or her access code on the CIPC system and any record lodged after the CIPC customer having entered the access code shall be deemed to have been duly signed by the person whose signature is required under the Act or these Regulations for purposes of such record.
- (5) Where any form under the Act or these Regulations makes provision for a signature and such form is deemed to be signed as provided for in sub-Regulation (4), it shall not be necessary to have recorded on such form that it had been signed.
- (6) Unless CIPC receives prior written notification from the holder of an access code to disable such access code, CIPC shall be entitled to accept that the person using electronic services is the person to whom the access code was issued or such person's duly authorized representative acting within the scope of such person's authority.
- (7) CIPC may suspend or terminate electronic services at any time without incurring any liability for doing so: Provided that proper notice of such suspension or termination shall be given and that such suspension or termination will not affect existing rights of any person who has been using such electronic services.

4. Seal of Office of the Registrar

The seal of office of the registrar, in manual or electronic format, must bear the title, registrar of co-operatives at CIPC, and must appear on every document, which the registrar registers whether manually or by way of electronic means.

5. Documents

- (1) All documents lodged with the Registrar must, unless he or she otherwise directs, be written in block capitals or be typewritten, or printed in legible characters, with deep permanent black ink on one side only of strong white paper of a size approximately 298 millimetres by 207 millimetres (international paper size A4): Provided that the requirements of this Regulation are met if documents have been lodged in accordance with the operational requirements and proof of payment of the prescribed fee, where applicable, *[sic]* has been provided.
- (2) The registrar may reject any document which in his or her opinion is unsuitable for purposes of record or which does not satisfy the operational requirements.
- (3) All documents lodged with the Registrar must be in one of the official languages of the Republic.
- (4) A copy of any document reproduced from the CIPC record retention system, purporting to be certified by the Registrar or an officer or employee contemplated in section 78(2) of the Act, shall without proof or production of the original, upon the mere production thereof in proceedings, whether in a court of law or otherwise, be admissible as evidence in respect of the contents of such document.
- (5) All communications to the Registrar may be made, or any document required to be sent to or lodged with the Registrar may be lodged personally or sent through the post or transmitted in such electronic form and by such electronic means as authorized by the Registrar for electronic services under the operational requirements.

6. Preservation of records

- (1) Any document lodged with the Registrar or created on the CIPC system in terms of Regulation 3(1) may be stored in such form and format as the Registrar may approve from time to time for the CIPC record retention system.
- (2) Any document lodged with the Registrar or any record in the CIPC record retention system may, subject to the provisions of any law, be moved to other locations, stored in another form, or be destroyed, as the case maybe.
- (3) All co-operatives must retain and securely archive all accounting records, after the expiration of the five-year period as envisaged in section 21(2), for historical purposes. Documents may be archived in a suitable electronic form and must be stored in a place or manner that will ensure its safety.

7. Checking and verification of correctness of documents

When any person considers the registration of any document and submits a draft thereof to the Registrar for the verification of correctness, or requires the checking of any document or draft for any other reason, the fees mentioned in Schedule 1 in respect of such checking, shall be payable.

8. Office hours

The office of the Registrar shall be open to the public from Mondays to Fridays from 08:00 to 15:00, except on the following days or times:

- (a) all days proclaimed public holidays in terms of any law; and
- (b) days of which notice may from time to time be given by means of displaying a notice in a conspicuous place at the said office or in such other manner as the Registrar may think fit.

9. Forms, fees and penalties

- (1) The forms contained in Schedule 2 to these Regulations must be used in all cases to which they apply and may be modified as directed by the Registrar to meet other cases or as circumstances may require.
- (2) The fees to be paid in terms of the Act and these Regulations are those set out in Schedule 1 to these Regulations.

10. Manner, proof and date of payment

- (1) The payment of all prescribed fees, additional fees and other moneys payable to the Registrar in terms of the Act, these Regulations or in relation to any form prescribed in these Regulations, must be effected in such manner, including such electronic form of payment, as the Registrar may direct.
- (2) Proof of payment of such fees, additional fees or other moneys shall be furnished in accordance with the Registrar's requirements for such payment or, if such payment is electronically effected through the CIPC system, in accordance with the operational requirements.
- (3) The date of payment of fees, additional fees or other moneys referred to in sub-Regulation (1), shall be the date, as the case may be –
 - (a) on which a payment was made in a manner contemplated in sub-Regulation (1); or
 - (b) as indicated on the electronic billing system when the electronic transaction on the billing system was performed.

11. Inspection of documents

- (1) Any person who personally applies to inspect any document or to obtain a copy of any document kept by the registrar under the Act, must complete Form CO-OP 14, provided by the office and pay the appropriate fee set out in Schedule 1.

- (2) Any person who does not personally, at the Registrar's Office, inspect a document, kept by the Registrar under the Act, or uplift a copy or extract thereof, may apply in writing to the Registrar for any information relating to the document or for a copy of or extract from any such document and the Registrar must upon payment of the fee set out in Schedule 1, provide the information requested, in such format as he or she is able to provide.
- (3) Copies of documents, kept by the Registrar under the Act, or information in relation thereto or extracts thereof, may also be obtained through the CIPC electronic services upon payment of the fee set out in Schedule 1.
- (4) The fee set out in Schedule 1 shall be payable in respect of inspection of documents relating to any one co-operative and in respect of copies of documents the fee shall be payable in respect of each document.
- (5) Any person who, whilst inspecting any document at the office, knowingly and without the consent of the registrar –
 - (a) removes any document from the custody of the Registrar or the office;
 - (b) makes or causes to be made any entry on such document;
 - (c) destroys or mutilates any such document; or
 - (d) alters or causes to be altered any entry on such document, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

12. Name reservation

- (1) Any person who intends to form a co-operative or any co-operative which intends to change its name must, on Form CO-OP 5 and on payment of the fee set out in Schedule 1 and together with such evidence as envisaged in sub-regulation 3 hereof, apply to the Registrar for the reservation of a name.
- (2) A reservation contemplated in sub-regulation (1) shall be valid from the date of approval by the registrar for a period not exceeding six months.
- (3) If the proposed co-operative name contains any word, or combination of words, in any language that constitute –
 - (a) a registered trade mark; or

- (b) a mark in respect of which an application has been filed in the Republic for registration as a trade mark; or
- (c) a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No 194 of 1993);

the application or notice filed to reserve or use that name must include satisfactory evidence that the applicant or the co-operative to use that name is entitled to use that word or combination of words. Satisfactory evidence shall consist of:

- (i) the result of a search conducted by the Registrar of Trade Marks in terms of regulation 47 of the Trade Marks Regulations in accordance with the Trade Marks Act, 1993 (Act 194 of 1993); or
- (ii) a certified copy of an entry in the Register of Trade Marks as provided for in section 22(5) of the Trade Marks Act, 1993.

If such evidence is proved through either (i) or (ii) as stated above, the Registrar will accept on face value that no trade mark name will be infringed.

13. Registration of primary, secondary and tertiary co-operative and the national apex co-operative

- (1) The following documents must be lodged for the registration of a primary, secondary, tertiary co-operative and the national apex co-operative:
 - (a) Form CO-OP 1 containing the application for registration of a co-operative;
 - (b) the proposed constitution of the co-operative complying with the provisions of section 13 of the Act and duly signed by at least such number of founding members as are required to form a co-operative of that particular form;
 - (c) Form CO-OP 5 containing particulars of the name reserved;
 - (d) if Form CO-OP 1 and the constitution is not signed by a founder member personally, a power of attorney signed by the founder member in favour of the person signing on his or her behalf; and
 - (e) certified copies of the identity documents of the directors and the founder members who have signed the constitution.
- (2) Proof of payment of the registration fee contemplated in section 6(2)(d) of the Act must be submitted with the documents referred to in sub-regulation (1).

14. Certificate of registration and registration number

Prepared by:

- (1) After registration and allocation of a registration number to the co-operative, the Registrar must issue a certificate of registration in the format of Form CO-OP 11 and provide the co-operative with a copy of the certificate of registration with CIPC electronic seal and signed constitution.
- (2) The Registrar may change or amend the registration number of any co-operative allocated either in terms of section 7 of the Act, any repealed law or in terms of any administrative ruling, in order to rectify duplications of such numbers or to achieve any other objective which he or she considers necessary or expedient in order that the purposes of the Act in respect of the register of co-operatives may be achieved: Provided that if the registration number is so changed or amended, the Registrar must issue the co-operative concerned with a certificate confirming such change or amendment.

15. Amendment of constitution (Section 18), Form CO-OP 6.1

- (1) A special resolution for the amendment of the constitution of a co-operative must be lodged for registration on Form CO-OP 6.1 and must be accompanied by a copy of the notice of the general meeting in terms of section 18(2) of the Act, which sets out the proposed amendment.
- (2) If the co-operative has changed its name by such special resolution, the registrar must issue the co-operative with a certificate of change of name in the format of Form CO-OP 12 with the CIPC electronic seal.

16. Notice of registered office of co-operative

- (1) Notice of the registered office of a co-operative, its postal address, electronic address, telephone and fax numbers and any change thereof, must be given on Form CO-OP 3.
- (2) Form CO-OP 3 must be lodged upon registration of the co-operative and within fifteen days of any change of the particulars referred to in sub-regulation (1).

17. Returns relating to directors and register of members

- (1) A co-operative must notify the Registrar of the particulars of its directors and Board of directors required in terms of section 39 of the Act, and any change to those particulars, on Form CO-OP 2 within fifteen days after any appointment has been made or any change has occurred.
- (2) Certified copies of the identity documents, passports or birth certificates of all the directors must be submitted with Form CO-OP 2, unless the Registrar otherwise directs.
- (3) The list of members contemplated in section 21(1)(d) of the Act must be kept in the form of a register at the office of the co-operative.

18. Reserves for Co-operatives

- (1) The indivisible and other reserves of a co-operative must be separately recorded in the financial records of the co-operative.
- (2) A co-operative must use its reserves only in accordance with the manner and for the purposes contemplated in its constitution. The purposes for which the indivisible reserve, which must be indivisible amongst members, may be used, may include –
 - (a) to sustain the co-operative during periods of financial crisis;
 - (b) to finance capital expenditure; and
 - (c) to finance training and capacity building.
- (3) A co-operative must report fully on all its reserves as well as on the use of these reserves in its financial statements.

19. Monetary thresholds for primary co-operatives

The monetary thresholds for the co-operative's annual revenue as per its financial statements or projected annual revenue to categorise primary co-operatives for purposes of sections 15A and 47 of the Act are as follows:

- (a) Less than R1 Million constitutes a Category A1 Primary co-operative which is a very small primary co-operative;
- (a) At least R 1 Million but less than R10 Million constitutes a Category A2 primary co-operative which is a small primary co-operative;

(Note – Numbering as published in original Gazette)

- (b) At least R10 Million but less than R25 Million constitutes a Category B primary co-operative which is a small to medium primary co-operative; and
- (c) R25 Million or more constitutes a Category C primary co-operative which is a medium to large co-operative.

20. Submission of audited report, independent reviewed report or annual report (sections 47 and 48)

- (1) The Board of directors of a co-operative must submit a copy of the audited report, independent reviewed report or annual report (Forms CO-OP 15.1 or CO-OP 15.2) of the co-operative including the financial statements compiled in accordance with regulation 30, as well as the management decision and social

reports within fifteen (15) days of the discussion and consideration thereof by the annual general meeting under cover of Form CO-OP7 to the registrar.

- (2) In the event that the annual general meeting resolves to delay submitting the said audited report, independent reviewed report or annual report and the financial statements to the registrar, the chairperson of the Board or the person who acted as chairperson at the general meeting, must within 15 days of the resolution notify the registrar of the decision to delay the submission of the audited report, independently reviewed report or annual report, the reasons for the delay and the action the co-operative proposes to take to address the situation under cover of Form CO-OP 7.

21. Annual submission of information to the registrar (annual return) with duly completed Form CO-OP 8 (section 26A)

- (1) Every co-operative must submit an annual submission to the registrar (hereinafter referred to as the annual return) in accordance with section 26A of the Act and this regulation on Form CO-OP 8.
- (2) The annual return must reflect the annual information pertaining to the co-operative as requested in Form CO-OP 8 as accurately as possible and must be accompanied by payment or proof of payment of the annual fee payable in terms of section 26A of the Act, as set out in Schedule 1.
- (3) The annual return must be submitted together with the submission by the co-operative of its audited report, independent reviewed report or annual report including the financial statements in terms of regulation 30 as well as the management decision and social reports. 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 to delay as well as the reasons for such delay and the action the co-operative intends taking in order to address the situation: Provided that should a co-operative fail to submit the return within 30 days from the original due date the prescribed annual fee would increase to the amount indicated in Schedule 1.

22. Notice of error or misstatement in financial statements

Notice of any error or misstatement in the financial statements of a co-operative must be given on Form CO-OP 7 and lodged together with a copy of the revised financial statements.

23. Special resolution for voluntary winding up

A special resolution for the voluntary winding up of the co-operative in terms of section 71A of the Act, must comply with all the requirements of a special resolution and must be lodged for registration on Form CO-OP 10 together with a copy of the notice of the general meeting in terms of section 18(2) of the Act.

24. Functions of the national apex co-operative.

The functions of the national apex co-operative are as follows:

- (a) A national apex co-operative may establish relations with other co-operative organisations at national and international level.
- (b) A national apex co-operative may perform the following functions –
 - (i) provide professional advice to its members;
 - (ii) establish a guarantee fund to be used by its members in order to acquire funds to carry out economic activities;
 - (iii) set up a solidarity fund, that may be used as capital by its members in times of financial distress;
 - (iv) assist its members in order to improve their effectiveness, efficiency and sustainability;
 - (v) assist, and provide on an annual basis information in respect of its members to the Co-operative Development Agency as contemplated in section 94A as regards all matters relating to the establishment and effective functioning of co-operatives in the Republic of South Africa;
 - (vi) conduct and participate in awareness campaigns;
 - (vii) undertake research relevant to the needs and growth of the co-operative movement;
 - (viii) play an advocacy role by lobbying, and representing the interests of its members, to government by participating in the establishment of an appropriate policy, regulatory and administrative framework that promotes the co-operative movement;
 - (ix) advise its members on developments, both nationally and internationally, relating to, or impacting on, its members in particular, and the co-operative movement in general;
 - (x) provide training to its members;
 - (xi) provide legal and other related services to its members;
 - (xii) maintain membership information in respect of its tertiary co-operative members and where applicable, secondary co-operative members and their membership information; and

(xiii) monitor the operational and economic status of the co-operative movement in South Africa and its contribution to the national and sectoral gross domestic product.

(xiv) the creation of a fund to assist members to comply with financial reporting requirements

25. Application for exemption from labour legislation in respect of employees of worker co-operatives

- (1) Any worker co-operative bound by a collective agreement with a bargaining council or a sectoral determination in terms of the Basic Conditions of Employment Act, 1997, or other labour law requirement may apply for exemption of such requirement in terms of item 6 of Part 2 of Schedule 1 of that Act.
- (2) All applications must be in writing and fully motivated in terms of the grounds listed in regulation 26 and sent to the office of the bargaining council for the area in which the applicant is located or to the Minister of Labour where there is no bargaining council with jurisdiction over the sector within which the co-operative operates.
- (3) Where additional and/or outstanding information is requested in respect of an exemption application and such information is not received within a period of 90 days the applicant shall be informed that the application will lapse.
- (4) In scrutinising an application for exemption the bargaining council or the said Minister must consider the views expressed by the co-operative and its members, together with any other representations received in relation to that application.
- (5) The worker co-operative must consult with its members and must include the views expressed by its members in the application. Where there are differing views the reasons for the views expressed must be submitted with the application. Where an agreement between the co-operative and its members is reached, the signed written agreement must accompany the application. Alternatively a special resolution sanctioning the application for exemption by the workers co-operative must be submitted.
- (6) The exemption must not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of the labour laws in the Industry in which the worker co-operative operates or terms that would give an unfair business advantage to the co-operative in relation to other businesses in that industry.

26. Grounds for exemption of worker co-operatives from labour laws

The bargaining council or the Minister of Labour must consider all applications for exemption with reference to all or any of the following grounds:

- (a) The extent of consultation between the worker co-operative and its members as well as its employees and the petition for or against granting the exemption;
- (b) the specific requirements from the collective agreement, sectoral determination or labour legislation and scope for which exemption is requested and the terms thereof;
- (c) any special economic or other circumstances that exist and make a material difference in the viability of the business of the worker co-operative warranting the granting of the exemption;
- (d) the fairness¹ to the worker co-operative, its members and employees;
- (e) the assistance with economic hardship and the saving of unnecessary job loss;
- (f) the *bona fide* representation of the members on the Board of directors of the worker co-operative, the election of Board members by the members and filling of vacancies on the said Board. Minutes of the general meeting of members where the directors were elected, other resolutions for appointment of directors and the provisions of the constitution of the worker co-operative dealing with the rights of members to appoint directors, must accompany the application.
- (g) the limiting of the exemption to a period of agreement or operation of the sectoral determination in the applicable sector.

27. Certificate of exemption of workers co-operative from labour legislation

- (1) Subject to regulation 1(3) the application for exemption must be considered as soon as possible but not later than 30 days after the application has been received.
- (2) Upon granting of the exemption the bargaining council or Minister, as the case may be, must issue a certificate of exemption setting out –
 - (a) the applicant's name;
 - (b) the provisions for which the exemption has been granted; and
 - (c) the period of the exemption.

PART 2: FINANCIAL REPORTING FRAMEWORK FOR CO-OPERATIVES

28. Interpretation of regulations on financial reporting

¹ Not in contravention to the Act or the worker co-operative's objectives as stipulated in its constitution in that unfairness would materially disadvantage the worker co-operative.

For purposes of this Part of the regulations –

- (a) "IFRS" means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body;
- (b) "IFRS for SMEs" means the International Financial Reporting Standards for Small and Medium-sized Entities, as issued from time to time by the International Accounting Standards Board or its successor body; and
- (c) "ISRE 2400" means the International Standard for Review Engagements to Review Historical Financial Statements (ISRE) 2400 (revised), as issued from time to time, by the International Auditing and Assurance Standards Board, or its successor body.

29. Financial year and accounting records

- (1) A co-operative must notify the registrar of a change in its financial year end by filing Form CO-OP 9: Provided that a co-operative may only extend or shorten the period of its current financial year once by a maximum of six months subject to section 29(1)(b) of the Act. Provided further that the newly established financial year end must be later than the date on which the Registrar is notified of the change.
- (2) A co-operative must keep accounting records as necessary to provide an adequate information base sufficient to –
 - (a) enable the co-operative to satisfy all reporting requirements applicable to it; and
 - (b) provide for the compilation of financial statements, and the proper conduct of an audit, or independent review, of its financial statements, as applicable for the particular co-operative.
- (3) The accounting records of that co-operative must include –
 - (a) a record of the co-operative's assets and liabilities including, but not limited to –
 - (i) a record of the co-operative's non-current assets, showing for each such asset or, in the case of a group of relatively minor assets, each such group of assets –
 - (aa) the date the co-operative acquired it, and the acquisition cost;
 - (bb) the date the co-operative re-valued it, if applicable, and the amount of the revaluation and, if it was re-valued after the Act took effect, the basis of, and reason for, the re-valuation; and

- (cc) the date the co-operative disposed of or retired it, once it has been disposed of or retired, and the value of the consideration, if any, received for it and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred;
- (ii) a record of any loan by the co-operative to a member, director, or employee of the co-operative, or to a person related to any of them, including the amount borrowed, the interest rate, the terms of re-payment, and material details of any breach, default or re-negotiation of any such loan; and
- (iii) a record of any liabilities and obligations of the co-operative including, but not limited to –
 - (aa) a record of any loan to the co-operative from a member, director, or employee of the co-operative, or from a person related to any of them, including the amount borrowed, the interest rate, and the terms of repayment, and material details of any breach, default or re-negotiation of any such loan; and
 - (bb) a record of any guarantee, surety ship or indemnity granted by the co-operative in respect of an obligation to a third party incurred by a member, director, or employee of the co-operative, or by a person related to any of them, including the amount secured, the interest rate, the terms of re-payment, the expiry date, and the circumstances in which the co-operative may be called upon to honour the guarantee, surety ship or indemnity;
- (b) a record of any property held by the co-operative –
 - (i) in a fiduciary capacity; or
 - (ii) in any capacity or manner contemplated in section 65 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (c) a record of the co-operative's revenue and expenditures, including –
 - (i) daily records of all money received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash transactions, the names of the parties to the transactions to be identified;

- (ii) daily records of all goods purchased or sold on credit, and services received or rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
 - (iii) statements of every account maintained in a financial institution in the name of the co-operative, or in any name under which the co-operative carries on its activities, together with vouchers or other supporting documents for all transactions recorded on any such statement; and
 - (d) if the co-operative trades in goods, a record of inventory and stock in trade, statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined.
- (4) In addition to the requirements set out above, a co-operative must maintain adequate records of all revenue received from donations, grants, and member's fees, or in terms of any funding contracts or arrangements with any party.
- (5) The accounting records required to be kept by the Act and this regulation must be kept in such a manner as –
- (a) to provide adequate precautions against –
 - (i) theft, loss or intentional or accidental damage or destruction; and
 - (ii) falsification; and
 - (b) to facilitate the discovery of any falsification; and
 - (c) to comply with any other applicable law dealing with accounting records, access to information, or confidentiality.
- (6) If a co-operative keeps any of its accounting records in electronic form, the co-operative must –
- (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
 - (d) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems, storage media, or software, to the extent necessary from time to time.

(Note – Numbering as published in original Gazette)

- (7) For greater certainty, the requirements of this regulation are in addition to, and not in substitution for, any applicable requirements to keep accounting records set out in terms of any other law, or any agreement to which the co-operative is a party.

30. Financial Reporting Framework

- (1) Nothing in this regulation precludes a co-operative –
- that is required to prepare its financial statements to the standards of IFRS for SMEs, from preparing its financial statements to the standards of IFRS instead; or
 - that is not subject to any prescribed standards, from preparing its financial statements to the standards of either IFRS or IFRS for SME's:

Provided that the basis of preparation of the financial statements must be disclosed in the financial statements.

- (2) For any particular co-operative any financial statements contemplated in this regulation and this Part must comply with the applicable standards for that Category as follows:

Category of co-operative	Financial reporting framework	Level of reporting
Category A Primary Co-operative	Category A1: Only provide an income statement and balance statement (statement of financial position) as per Form CO-OP 15.1.	Annual submission of – <ul style="list-style-type: none"> Form CO-OP 7; Form CO-OP 8; and Form CO-OP 15.1 Form CO-OP 15.1 must be completed by the Board of Directors
	Category A2: The financial reporting framework as per Form CO-OP15.2 or a financial reporting framework as determined by the co-operative, provided that such reporting framework complies with the requirements for financial statements as defined in the Act.	Annual submission of - <ul style="list-style-type: none"> Form CO-OP 7; Form CO-OP 8; and Form CO-OP 15.2 Form CO-OP 15.2 must be completed by the Board of Directors
Category B Primary Co-operative	IFRS for SMEs: Provided that the co-operative meets the	Annual submission of - <ul style="list-style-type: none"> Form CO-OP 7; and

Category of co-operative	Financial reporting framework	Level of reporting
	scoping requirements outlined in IFRS for SME's. If the co-operative does not meet the scoping requirements outlined in IFRS for SME's the financial reporting framework as per Form CO-OP 15.2 or financial framework as determined by the co-operative provided that such reporting framework complies with the requirements for financial statements as defined in the Act.	<ul style="list-style-type: none"> Form CO-OP 8 The co-operative must appoint an independent reviewer and submit Form CO-OP 4 containing particulars of the appointment
Category C Primary Co-operative	IFRS for SMEs: Provided that the co-operative meets the scoping requirements outlined in IFRS for SME's. If the co-operative does not meet the scoping requirements outlined in IFRS for SME's the financial reporting framework as per Form CO-OP 15.2 or financial framework as determined by the co-operative provided that such reporting framework complies with the requirements for financial statements as defined in the Act.	Annual submission of - <ul style="list-style-type: none"> Form CO-OP 7; and Form CO-OP 8 The co-operative must appoint an auditor and submit Form CO-OP 4 containing particulars of the appointment
Secondary Co-operative Tertiary Co-operative National Apex Co-operative	IFRS for SMEs: Provided that the co-operative meets the scoping requirements outlined in IFRS for SME's. If the co-operative does not meet the scoping requirements outlined in IFRS for SME's the financial reporting framework as per Form CO-OP 15.2 or financial framework as determined by the co-operative provided that such	Annual submission of - <ul style="list-style-type: none"> Form CO-OP 7; and Form CO-OP 8 The co-operative must appoint an auditor and submit Form CO-OP 4 containing particulars of the appointment

Category of co-operative	Financial reporting framework	Level of reporting
	reporting framework complies with the requirements for financial statements as defined in the Act.	

- (3) All co-operatives must circulate audited report, the independently reviewed report or annual report to all members at least fourteen days prior to the annual general meeting.

31. Audit, independent review and approval of social and management decision reports

- (1) For purposes of the audit and independent review of the social report and management decision report the requirements will be met if the auditor or independent reviewer reports that (a) in his/her responsibility to verify that a certificate has been submitted by the co-operative declaring that the Board confirms that to the best of their knowledge and belief, the co-operative has complied with all legal requirements as well as the requirements contained in the co-operative's own constitution and that the social and ethical performance of the co-operative is in relation to its stated vision, mission, goals and code of social responsibility as set out in its constitution, or has not been submitted; or (b) that in his/her responsibility to read the social report and management decision report, and in doing so, consider whether these reports are materially inconsistent with the financial statements or his/her knowledge obtained in the audit or independent review or otherwise appear to be materially misstated, and report any findings in this regard.
- (2) The social and management decision reports for a category A1 or and A2 primary co-operative, prepared by the Boards of directors, must be distributed to members, together with the annual report at least fourteen days prior to the annual general meeting for consideration by the members at the annual general meeting.

32. Reporting of reportable irregularity by an independent reviewer or auditor

- (1) For purposes of this regulation "reportable irregularity" means any act of omission committed by any person responsible for the management of a co-operative, which –
- (a) unlawfully, has caused or is likely to cause material financial loss to the co-operative or to any member, creditor or investor of the co-operative in respect of his, her or its dealings with that entity; or
 - (b) is fraudulent or amounts to theft; or
 - (c) causes or has caused the co-operative to trade under insolvent circumstances.

(2)

- (a) An independent reviewer or auditor of a co-operative that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that co-operative must, without delay, send a written report to the registrar.

The report must give particulars of the reportable irregularity referred to in paragraph (a) and must include such other information and particulars as the independent reviewer considers appropriate.

(Note – Numbering as published in original Gazette)

- (4) The independent reviewer or auditor must as soon as reasonably possible but not later than 20 business days from the date on which the report referred to in sub regulation (2) was sent to the registrar –
 - (a) take all reasonable measures to discuss the report referred to in sub regulation (2) with the members of the Board of the co-operative;
 - (b) afford the members of the Board of the co-operative an opportunity to make representations in respect of the report; and
 - (c) send another report to the registrar, which report must include –
 - (i) a statement that the independent reviewer is of the opinion that –
 - (aa) no reportable irregularity has taken place or is taking place; or
 - (bb) the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
 - (cc) The reportable irregularity is continuing and
 - (ii) Detailed particulars and information supporting the statement referred to in subparagraph (i).
- (5) The registrar must as soon as reasonably possible afford the Board of the co-operative the opportunity to make representations in respect of the report and to rectify the position.
- (6) If the matter cannot be resolved to the satisfaction of the registrar he or she may investigate the matter and notify any appropriate regulator in writing of the details of the reportable irregularity.

33. Social Report

- (1) The Board of directors for Categories A1 and A2 primary co-operatives, who does not have to appoint independent reviewers or auditors to independently review or audit their annual returns, must prepare a social report to accompany the financial statements, evaluating 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 and must conclude on whether the co-operative complies with the assessment criteria, defined in the co-operative principles.
- (2) The social report should, where relevant, cover the following matters:
 - (a) **Voluntary and open membership dealing with the following:**
 - (i) Confirm that form CO-OP 8 has been completed and submitted to CIPC and the principle of open membership is applied as per the requirements of the co-operative's constitution;
 - (ii) Report on obstacles to membership; and
 - (iii) The number of membership applications rejected and reasons for rejection.
 - (b) **Democratic member control dealing with the following:**
 - (i) Confirm that all meetings have been conducted in accordance with legislative requirements as well as the requirements stated in the constitution of the co-operative, that members actively participated in meetings and that quorum requirements were met;
 - (ii) The number of general meetings held;
 - (iii) Information on the attendance of general meetings;
 - (iv) Number of members that actively participate in meetings;
 - (v) Reasons for nonattendance of meetings by members;
 - (vi) Number of Board meetings held;
 - (vii) Number of committee meetings held; and
 - (viii) Voting rights applied by members.
 - (c) **Member economic participation**
 - (i) Confirm that all members contribute economically to the co-operative and that the co-operative the co-operative has an indivisible reserve complies with the minimum

requirements stipulated in section 46 of the Act and that the indivisible and other reserves are used in accordance with the requirements stipulated in the constitution of the co-operative;

- (ii) Number of members contributing to share capital and savings deposits and the total value of the contributions made;
- (iii) Allocation of patronage refunds to members; and
- (iv) Services and products offered to members

(d) Autonomy and independence

- (i) Confirm that the co-operative is an autonomous, self-help organisation controlled by its members; and
- (ii) Report on decisions that were influenced by non-members, agencies or nongovernmental organisations.

(e) Education, training and information

- (i) Confirm that the co-operative ensure that members are informed of their benefits and rights as members of the co-operative and offer appropriate education and training to members, elected representatives or employees;
- (ii) Report on the education and training offered to members, elected representatives and employees; and
- (iii) Report on information made available to members, elected representatives and employees.

(f) Co-operation with other co-operatives

- (i) Report on cooperation with other co-operatives for the mutual benefit of members and initiatives taken to strengthen the co-operative movement;
- (ii) Report on partnerships, cooperation and/or alliances with other co-operatives and civil society formations; and
- (iii) Participation in the co-operative movement, secondary/tertiary/national apex co-operative.

(g) Concern for environment and community

- (i) Report on initiatives to promote community development and social upliftment through policies and initiatives approved by the members of the co-operative;
 - (ii) Social and economic development projects undertaken;
 - (iii) Environmental protection programs and activities; and
 - (iv) Sponsorships and business support
- (3) Co-operatives that must appoint independent reviewers or auditors to independently review or audit their annual returns may also complete the social report. If co-operatives that must appoint independent reviewers or auditors to independently review or audit their annual returns prefer not to complete the social report the Board must certify that to the best of their knowledge and belief, that the social and ethical performance of the co-operative is in relation to its stated vision, mission, goals and code of social responsibility as set out in its constitution.

34. Management Decision Report

- (1) The Board of directors of Category A1 and A2 primary co-operatives who does not have to appoint independent reviewers or auditors to independently review or audit their annual returns, must prepare a report to accompany the financial statements that assesses the co-operative's compliance with all legal requirements of any applicable legislation and the requirements contained in its own constitution.
- (2) The objective of the management decision report should, where relevant, cover the following matters –
- (a) The achievement of the objectives of the co-operative.
 - (b) Whether proper written policies and procedures are in place for staff recruitment and administration, finance, procurement, loans and credit.
 - (c) Whether all policies and procedures laid down by the members and the Board have been implemented and are being adhered to.
 - (d) Whether Board members are democratically elected.
 - (e) How duties and authority are delegated.
 - (f) If there is a proper business plan and whether it is realistic and reviewed on a regular basis.
 - (g) Whether Board and general meeting decisions are implemented and communicated.

- (h) Whether a register of declarations of interest by staff and Board members is in place and updated regularly.
- (3) Co-operatives that must appoint independent reviewers or auditors to independently review or audit their annual returns may also complete a management decision report. If co-operatives that must appoint independent reviewers or auditors to independently review or audit their annual returns prefer not to complete the management decision report the Board must certify that to the best of their knowledge and belief, the co-operative has complied with all legal requirements as well as the requirements contained in the co-operative's own constitution.

PART 3: CO-OPERATIVES TRIBUNAL

35. Interpretation of regulations on the co-operatives tribunal

For purposes of this Part of the regulations –

- (a) **"answer"** means a document as described in regulation 37 filed by a respondent;
- (b) **"applicant"** means a person who submits an application to the Tribunal in terms of the Act or these Regulations;
- (c) (d)[sic]**"application"** means a request submitted to the Tribunal in terms of the Act or these Regulations;
- (d) **"complaint"** means a matter that has been submitted to the Tribunal by either the Minister, Advisory Council, supervisory committee or member of a co-operative;
- (e) **"file"** or **"filing"** means to deliver a document to the Tribunal in the manner and form, if any, prescribed for that document;
- (f) **"initiating document"**, means either an application or a complaint;
- (g) **"initiating party"**, depending on the context, means the Commission or the Applicant;
- (h) **"intervener"** means any person who has been granted standing to participate in particular proceedings before the Tribunal;
- (i) **"Inspector"** a person appointed by the Tribunal or the Registrar with the powers to carry out inspections on behalf of the Tribunal;
- (j) **"Investigator"** a person appointed by the Tribunal or the Registrar with the powers to carry out investigations on behalf of the Tribunal;

- (k) **"presiding member"** means the member designated by the chair to preside over particular proceedings of the Tribunal;
- (l) **"prohibited practice"** means either –
 - (i) an action or matter inconsistent with the Act; or
 - (ii) an infringement of a person's rights in terms of the Act or a co-operatives constitution or rules.
- (m) **"Replying Affidavit"** means a document as described in regulation 37 and filed by a respondent;
- (n) **"respondent"**, when used in respect of –
 - (i) an application to review a notice issued by, or a decision of, the Commission, means –
 - (aa) the Commission, and
 - (bb) the person concerned, if that person is not the applicant;
 - (ii) any other application, means the person against whom the relief is sought.

36. Application to Tribunal

- (1) A person may apply to the Tribunal for an order in respect of any matter contemplated in the Act or these Regulations by completing and filing with the Commission's Recording Officer –
 - (a) an Application in Form CT1; and
 - (b) a supporting affidavit setting out the facts on which the application is based.
- (2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within five (5) business days after filing it.
- (3) An application in terms of this Regulation must –
 - (a) indicate the basis of the application; or
 - (b) depending on the context –
 - (i) set out the Registrar's or Tribunal's decision that is being appealed or reviewed;

- (ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;
 - (iii) set out the Regulation in respect of which the applicant seeks condemnation;
 - (c) indicate the order sought; and
 - (d) state the name and address of each person in respect of whom an order is sought.
- (4) A Form CT1 must be supported by an affidavit setting out in numbered paragraphs –
- (a) a concise statement of the particulars of the application or complaint; and
 - (b) the points of law, or material facts relevant to the application or complaint and relied on by the respondent.

37. Answering and replying affidavits

- (1) Within ten (10) business days after being served with an application for any relief other than condonation, a respondent against whom an order is sought –
- (a) may serve an answering affidavit on the applicant, and on any other person against whom the order is sought; and
 - (b) must file the affidavit with proof of service.
- (2) Within ten (10) business days after being served with an answering affidavit that raises issues not addressed in the application or its supporting affidavit, the applicant may –
- (a) serve a replying affidavit on the respondent, the Tribunal and or any other person against whom the order is sought; and
 - (b) file a copy of the Replying affidavit and proof of service.

38. Amending documents

- (1) The person who filed an application or complaint may apply to the Tribunal by Notice of Motion in Form CT2 at any time before the end of the hearing of that application or complaint for an order authorising them to amend their application or complaint as filed.
- (2) If the Tribunal allows the amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Tribunal.

39. Completion of file

Subject to any order made by the Tribunal, the filing of documents is complete when an answering or replying affidavit has not been responded to within the time allowed.

40. Late filing, extension and reduction of time

- (1) A party to any matter may apply to the Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request in Form CT3.
- (2) Upon receiving a request in terms of sub-Regulation (1), the recording officer, after consulting the parties to the matter, must set the matter down for hearing at the earliest convenient date.

41. Pre-hearing conferences

- (1) Before, or within twenty (20) business days after, the filing of documents is completed, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference on a date and at a time determined by that member with –

- (a) the Tribunal;
- (b) each person who has filed an application or complaint;
- (b) intervenors; and
- (c) the Respondent.

(Note – Numbering as published in original Gazette)

- (2) If a point of law has been raised, and it appears to the assigned member of the Tribunal at a pre-hearing conference to be practical to resolve that question before proceeding with the Conference, the member may –
 - (a) direct the recording officer to set only that question down for hearing by the Tribunal; and
 - (b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal, and the Court, if applicable.
- (3) The assigned member of the Tribunal may adjourn a pre-hearing conference from time to time.
- (4) Pre-hearing conferences may be conducted in person or by telephone or both, need not follow formal Regulations of procedure, and are not open to the public.

42. Other powers of member at pre-hearing conference

- (1) At a pre-hearing conference, the assigned member of the Tribunal may –
 - (a) establish procedures for protecting confidential information, including the terms under which participants may have access to that information;
 - (b) direct the Commission to investigate specific issues or obtain certain evidence; or
 - (c) give directions in respect of –
 - (i) technical or formal amendments to correct errors in any documents filed in the matter;
 - (ii) any pending Notices of Motion;
 - (iii) clarifying and simplifying the issues;
 - (iv) obtaining admissions of particular facts or documents;
 - (v) the production and discovery of documents whether formal or informal;
 - (vi) witnesses to be called by the Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;
 - (vii) a timetable for –
 - (aa) the exchange of summaries of expert opinions or other evidence that will be presented at the hearing; and
 - (bb) any other pre-hearing obligations of the parties;
 - (viii) determine the procedure to be followed at the hearing, and its expected duration;
 - (ix) a date, time and schedule for the hearing; or
 - (x) any other matters that may aid in resolving the complaint.
- (2) At a pre-hearing conference, the assigned member of the Tribunal may require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its argument, if any, with respect to the complaint, and identifying what it believes are the major unresolved issues.

- (3) After concluding a pre-hearing conference, the assigned member of the Tribunal must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.
- (4) A member of the Tribunal assigned by the Chairperson may schedule a further pre-hearing conference on their own motion, and the provisions of this rule apply to such a conference.

43. Settlement conference

At any time before the Tribunal makes a final order in a complaint proceeding, the Tribunal, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach agreement on any outstanding issue.

44. Initiating consent hearings

- (1) If a complaint is to be proceeded with by way of a consent order the person filing the complaint must attach the following documents to it:
 - (a) a Notice of Motion in Form CT4, for a consent order to be made;
 - (b) a copy of each consent to order filed with the Tribunal in respect of the matter, if any; and
 - (c) a draft order in the terms agreed, signed by the parties indicating their consent to the order.
- (2) At any time before the Tribunal makes a final order in a complaint proceeding, a party may request the Tribunal to make a consent order by filing a Notice of Motion in Form CT4 with the documents listed in sub-regulation (1)(b).
- (3) A party intending to file a Notice of Motion –
 - (a) must notify each complainant, in writing, that a consent order may be proposed to the Tribunal; and
 - (b) invite the complainant to inform the Tribunal in writing within five(5) business days after receiving that notice –
 - i. whether the complainant is prepared to accept damages under such an order; and
 - ii. if so, the amount of damages claimed.
- (4) A draft order filed in terms of this rule must meet the requirements set out by the Tribunal, read with the changes required by context.

45. Consent hearings

- (1) Upon receiving a draft consent order, the recording officer must convene a hearing of the Tribunal at the earliest possible date.
- (2) If the Tribunal refuses to make a consent order as requested, or requires any changes that a party is unwilling to accept –
 - (a) The complainant, may, as of right, amend the complaint and statement of particulars;
 - (b) The recording officer must serve each party, and complainant, if applicable, with –
 - (i) a notice that the motion for a consent order has been denied; and
 - (ii) a copy of the complaint and statement of particulars, in their original or amended form, as applicable;
 - (c) the Tribunal must proceed to consider the complaint in accordance with these Regulations as they apply to contested complaints generally, after –
 - (i) the time for an appeal from the decision of the Tribunal in terms of sub-Regulation (2) has expired; or
 - (ii) if an appeal has been noted from that decision, after the Court has decided that appeal; and
 - (iii) none of the members of the Tribunal who considered the motion for the consent order may participate in any further proceedings relating to that complaint.

46. Representation of parties

- (1) A representative acting on behalf of any person in any proceedings must notify the recording officer and every other party, advising them of the following particulars:
 - (a) the representative's name;
 - (b) the postal address and place of employment or business; and
 - (c) if a fax number and telephone number are available, those numbers.
- (2) A person, who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the recording officer and every other party of that

termination, and of the appointment of another representative, if any, and include that representative's particulars, as set out in Sub-Regulation (1).

- (3) On receipt of a notice in terms of Sub-Regulation (1) or (2), the address of the representative or the party, as the case may be, will become the address of record for notices to and for service on that party of all documents in the proceedings.
- (4) Despite Sub-Regulation (3), a person who, before receiving a notice in terms of sub-regulation (1) or (2), has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Tribunal orders otherwise.
- (5) A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- (6) A notice delivered in terms of Sub-Regulation (5) must state the names and addresses of each party who is being notified.
- (7) After receiving a notice referred to in Sub-Regulation (5), the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.

47. Joinder or substitution of parties

- (1) The Tribunal, or the assigned member, as the case may be, may combine any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their respective rights to relief depend on the determination of substantially the same question of law or facts.
- (2) If a party to any proceedings has been incorrectly or defectively cited, the Tribunal or the assigned member, as the case may be, on application and on notice to the party concerned, may correct the error or defect and may make an order as to costs.
- (3) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Tribunal or the assigned member, as the case may be, for an order substituting that party for an existing party, and the Tribunal or the assigned member, as the case may be, may make an order, including an order as to costs, or give directions as to the further procedure in the proceedings.
- (4) An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.

- (5) No joinder or substitution in terms of this rule will affect any prior steps taken in the proceedings.

48. Interveners

- (1) At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings by filing a Form CT5, which must –
- (a) include a concise statement of the nature of the person's interest in the proceedings, and the matters in respect of which the person will make representations; and
 - (b) be served on every other participant in the proceedings.
- (2) No more than ten (10) business days after receiving a motion to intervene, a member of the Tribunal assigned by the Chairperson must either –
- (a) make an order allowing the applicant to intervene, subject to any limitations –
 - (i) necessary to ensure that the proceedings will be orderly and expeditious; or
 - (ii) on the matters with respect to which the person may participate, or the form of their participation; or
 - (b) deny the application, if the member concludes that the interests of the person are not within the scope of the Act, or are already represented by another participant in the proceeding.
- (3) Upon making an order in terms of sub-Regulation (2), the assigned member may make an appropriate order as to costs.
- (4) If an application to intervene is granted –
- (a) the recording officer must send to the intervener a list of all documents filed in the proceedings prior to the day on which the request for leave to intervene was granted; and
 - (b) access by an intervener to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

49. Summoning witnesses

- (1) If the Tribunal requires a witness to attend any proceedings to give evidence it may have a summons issued by the recording officer in Form CT6 for that purpose.

- (2) If a witness is required to produce in evidence any document or thing in the witness's possession, the summons must specify the document or thing to be produced.
- (3) After the summons has been issued, it must be served by the sheriff in any manner authorised by Rule 4 of the High Court Regulations.
- (4) A witness who has been required to produce any document or thing at the proceedings must hand it over to the recording officer as soon as possible after service of the summons, unless the witness claims that the document or thing is privileged.

50. Witness fees

- (1) A witness in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and published by notice in the Gazette in terms of section 42 of the Supreme Court Act, 1959 (Act 59 of 1959).
- (2) Despite sub-Regulation (xx, the above Regulation), the Tribunal may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

51. Interpreters and translators

- (1) Before an interpreter may interpret in Tribunal proceedings, the interpreter must take an oath or make an affirmation in the following form before a member of the Tribunal:

"I, (full name)
swear/affirm that whenever I am called on to interpret in any proceedings before the Tribunal, I will correctly interpret to the best of my ability from the language I am called on to interpret into one or her of the official languages, and vice versa."

- (2) An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the High Court Regulations, read with the changes required by context and a printed copy of the oath or affirmation must be signed by the interpreter.
- (3) Any person admitted and enrolled as a sworn translator of any division of the High Court is deemed to be a sworn translator for the Tribunal.

52. Withdrawals and postponements

- (1) At any time before the Tribunal has determined a matter, the initiating party may withdraw all or part of the matter by –
 - (a) serving a Notice of Withdrawal in Form CT7 on each party; and

- (b) filing the Notice of Withdrawal with proof of service.
- (2) If the parties agree to postpone a hearing, the initiating party must notify the recording officer as soon as possible.
- (3) Subject to any provisions of the Act to the contrary:
 - (a) a Notice of Withdrawal may include a consent to pay costs; and
 - (b) if no consent to pay costs is contained in a Notice of Withdrawal the other party may apply to the Tribunal by Notice of Motion in Form CT7 for an appropriate order for costs.

53. Set down of matters

- (1) If a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the recording officer for it to be re-enrolled, but no preference may be given to that matter on the roll, unless^[sic] the Chairperson decides otherwise.
- (2) The recording officer must allocate a time, date and place for the hearing and send a Notice of Hearing in Form CT8 to each party.
- (3) If a matter is postponed to a specific date, the recording officer need not send a Notice of Set Down to the parties.

54. Matters struck-off

- (1) The Tribunal member presiding at a hearing may strike a matter off the Roll if the initiating party is not present.
- (2) If a matter is struck off the roll, the matter may not be re-enrolled unless –
 - (a) that party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and
 - (b) a member of the Tribunal assigned by the Chairperson, on considering the explanation offered, orders the matter to be re enrolled.

55. Default orders

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order sought issued against that person by the Tribunal.

- (2) On an application in terms of sub regulation (1) the Tribunal may make an appropriate order –
 - (a) after it has heard any required evidence concerning the motion; and
 - (b) it is satisfied that the notice or application was adequately served.
- (3) Upon an order being made in terms of sub regulation (2), the recording officer must serve the order on the person described in sub regulation (1) and on every other party.

56. Conducting a hearing

- (1) If, in the course of proceedings, a person is uncertain as to the practice and procedure to be followed, the member of the Tribunal presiding over a matter-
 - (a) may give directions on how to proceed; and
 - (b) for that purpose, if a question arises as to the practice or procedure to be followed in cases not provided for by these regulations, the member may have regard to the High Court Regulations.
- (2) Subject to these regulations, the member of the Tribunal presiding over a matter may determine the time and place for the hearing before the Tribunal.
- (3) The Tribunal may condone any technical irregularities arising in any of its proceedings.

57. Record of hearing

- (1) The recording officer must compile a record of any proceeding in which a hearing has been held, including –
 - (a) the initiating document;
 - (b) the notice of any hearing;
 - (c) any interlocutory orders made by the Tribunal or a member;
 - (d) all documentary evidence filed with the Tribunal;
 - (e) the transcript, if any, of the oral evidence given at the hearing; and
 - (f) the final decision of the Tribunal and the reasons.

58. Costs and taxation

- (1) Upon making an order, the Tribunal may make an order for costs.
- (2) Where the Tribunal has made an award of costs, the following provisions apply:
 - (a) the fees of one representative may be allowed between party and party, unless the Tribunal authorises the fees of additional representatives;
 - (b) the fees of any additional representative authorised in terms of sub-Regulation (1) must not exceed one half of those of the first representative, unless the Tribunal directs otherwise;
 - (c) the costs between party and party allowed in terms of an order of the Tribunal, or any agreement between the parties, must be calculated and taxed by the taxing master at the tariff determined by the order or agreement, but if no tariff has been determined, the tariff applicable in the High Court will apply;
 - (d) qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the Tribunal during the proceedings;
 - (e) the recording officer may perform the functions and duties of a taxing master or appoint any person as taxing master who in the recording officer's opinion is fit to perform the functions and duties signed to or imposed on a taxing master by these Regulations;
 - (f) the taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the court;
 - (g) at the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation;
 - (h) the taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation;
 - (i) despite sub-Regulation (h), notice need not be given to a party –
 - who failed to appear at the hearing either in person or through a representative; or
 - (ii) who consented in writing to the taxation taking place in that party's absence.

(Note – Numbering as published in original Gazette)

- (j) Any decision by a taxing master is subject to the review of the High Court on application.

PART 4: CO-OPERATIVE DEVELOPMENT AND SUPPORT STRUCTURES

59. Support of different kinds of co-operatives [Section 95(2)]

- (1) Co-operatives are sectoral in nature and therefore, where applicable, must be aligned and linked to a corresponding sectoral or line function Department, for example housing, financial, agricultural, workers, etc.
- (2) The relevant line function department with the assistance of the central coordinating department, Department of Small Business Development, must ensure that relevant support programmes are designed and implemented to assist with accountability to Parliament by Department of Small Business Development

60. Effective coordination across government [Section 2(i)]

- (1) The Department of Small Business Development is the central coordinating department, which must facilitate and ensure effective coordination across government and the private sector.
- (2) There must be a reporting mechanism to Parliament through the structures of the Co-operatives Advisory Council and Provincial Coordinating and the Interdepartmental Committees relating to areas of policy change and review, support programme design and implementation.

61. Co-operative development support programmes contemplated in sections 86(d) and 95(1)(j)

- (1) For purposes of this regulation and regulation 62 –

"persons living with a disability" means natural persons who have a long-term or recurring physical or mental impairment, which limits their prospects of entry into, or advancement in, employment, irrespective of race, gender or marital status;

"women" means natural persons of the female gender irrespective of their marital status or race;

"youth" means natural persons in the age group of 18 to 35 years old irrespective of gender or race.

- (2) The support programmes for co-operatives must especially target emerging co-operatives that consist of black persons, women, youth, disabled persons and persons in the rural areas and must promote equity and participation by co-operative members.

- (3) All government agencies and Departments must design and implement support programmes that will comply with these norms in order to account to the Department of Small Business Development and Parliament in terms of programme impact on the co-operatives sector.

62. Targets for support programmes [section 2]

The support programmes for co-operatives must especially target –

- (a) emerging co-operatives that consist of disadvantaged persons, black persons, women, youth, persons living with a disability and persons in the rural areas; and
- (b) must promote equity and greater participation by the co-operative members.

63. Reporting, Monitoring, Evaluation and Assessment by Institutions established or recognised under the Act

All institutions established or recognised under the Act and all structures established as a result of any requirement of the Act, must on an annual basis report to the Department on the following matters:

- (a) Type of products and services provided;
- (b) Number of co-operatives supported or serviced by the institution with reference to –
 - (i) type and size;
 - (ii) names and levels of co-operative;
 - (iii) type of service rendered;
 - (iv) cost of service type; and
 - (v) total cost per co-operative;
- (c) Information on geographical spread of co-operatives supported
- (d) Customer satisfaction;
- (e) Number of staff members involved with the support;
- (f) Competency of staff delivering services;
- (g) Training provided to staff delivering services; and

(h) Proposed new products and services

The National Apex Co-operative must on an annual basis report on the status of the co-operative movement, the various levels or forms and kinds of co-operatives and the categories of primary co-operatives.

The Department must evaluate assess and determine the impact of the exercise of powers, the performance of functions, the execution of duties and the operational efficiency of all structures established and recognised in terms of this Act.

64. Framework for Intergovernmental relations in respect of co-operatives

Whereas the South African government has prioritized the development of co-operatives to contribute towards poverty alleviation and employment creation in all spheres of the economy; and

Whereas the responsibility of promoting the development of co-operatives and collective entrepreneurship cannot be achieved by the Department of Small Business Development alone, but must involve a wide variety of participants from all levels of government as well as the private sector; and

Whereas all departments at national level have a responsibility and duty to actively promote the development of co-operatives through the formulation of sector specific co-operative strategies, support programmes and institutional arrangements for inclusion into a comprehensive system of support properly aligned with the core principles the co-operative development strategy; and

Whereas all provincial and local governments through their various departments and units responsible for economic development have a responsibility and duty to actively promote the development of co-operatives within their spheres of influence through the formulation of provincial co-operative strategies and municipal co-operative implementation plans within their integrated development plans;

Now, therefore, Government has passed the Co-operatives Amendment Act, 2013 (Act 6 of 2013), providing *inter alia* for the necessary intergovernmental support structures to enable a properly integrated and coordinated approach to achieving these objectives.

64.1 Institutions and structures

The institutions and structures referred to in section 91CC of the Act are in existence, have now been created, or must be created pursuant to the provisions of the Act and their functions are listed in section 91EE. The National Interdepartmental Co-ordinating Committee on Co-operatives must co-ordinate all co-operatives development programmes developed by sectoral national departments

64.2 Administrative and procedural arrangements

Every institution and structure's administrative and procedural arrangements must comply with this framework for intergovernmental relations on co-operatives.

64.3 Guidelines for Managing Joint Programmes

The Guidelines for Managing Joint Programmes issued under the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), will apply *mutatis mutandis* to all participating national departments, provincial governments and local governments and other participating structures in facilitating, co-ordinating in the implementing policy and legislation on co-operatives and must be applied as far as possible.

64.4 The Role of the National Interdepartmental Co-ordinating Committee on Co-operatives

This Committee has primary responsibility for:-

- alignment of the national co-operative policy, Co-operatives Act, 2005 (Act 14 of 2005) as amended, the national co-operative strategy with departmental and agency development strategies;
- the coordination of the various Government institutions dealing with co-operative enterprises in their respective provinces.
- the promotion, provision and management of non-financial and financial co-operative support services; the management of privileges and incentives for co-operatives.
- the reporting, collection, analysis and dissemination of statistics related to co-operative development; facilitation of access to markets; facilitation of access to credit; promotion of the concept and practice of co-operatives.

64.5 The Role of the Inter-Provincial Co-ordinating Committee on Co-operatives

This Committee has primary responsibility for:-

- alignment of the national co-operative policy, Co-operatives Act, 2005 (Act 14 of 2005) as amended, the national co-operative strategy and the provincial growth and development strategies in consultation with a wide range of stakeholders;
- coordination of the various Government institutions dealing with co-operative enterprises in their respective provinces;

- the promotion, provision and management of non-financial and financial co-operative support services, the management of privileges and incentives for co-operatives within the provinces;
- the reporting, collection, analysis and dissemination of statistics related to co-operative development; facilitation of access to markets; facilitation of access to credit; promotion of the concept and practice of co-operatives within the provinces.

64.6 Implementation protocols or memoranda of understanding

The various participating national departments, provincial governments and local governments and other participating structures must, when initiating joint programmes enter into implementation protocols or memoranda of understanding scoping the venture and determining –

- the exact nature of the programme;
- its primary objective;
- its priority status;
- timescales for implementation of the programme; and
- key performance indicators and performance targets for implementing the programme; and

identifying –

- the parties that will participate in implementing the programme;
- the role of each of those participants in implementing the programme; and
- the extent to which each of those participants will be involved in implementing the programme;

The protocol or memorandum must also –

- determine the capacity required for each of those parties to implement the programme;
- determine the estimated cost of implementing the programme, including how and by whom implementation of the programme, or aspects of the programme, is to be funded and budgeted for; and
- identify a department best suited to act as the coordinating department for the programme;

- provide for scoping studies before joint programmes are implemented to determine the scale of and timeframes for the programme;
- provide for the establishment of joint management mechanisms to ensure accountability for a joint programme, including –
 - a joint programme steering committee;
 - a joint Panel of Executive Authorities.

64.7 Intergovernmental structures

An intergovernmental structure established as contemplated in the Act, must –

- submit copies of the approved minutes of all meetings to the Minister, various Members of the Executive Council responsible for economic development and the entities contemplated in section 91CC, of the Act represented in such structure;
- submit quarterly reports regarding their financial and operational performance to the Minister, various Members of the Executive Council responsible for economic development and the entities contemplated in section 91CC of the Act represented in such structure; and
- be financed from money appropriated by the Department and submit annual budgets for approval to the Department.

64.8 Provincial Interdepartmental and Municipal Coordinating Structures

- (1) Provincial Interdepartmental and Municipal Coordinating Structures must be established under direction of the Premier's Office and must be chaired by the provincial department dealing with economic development, which will provide secretariat support to the structure.
- (2) Provincial Interdepartmental and Municipal Coordinating Structures must develop provincial co-operative development strategies and submit these to the Premier's Office for approval.
- (3) Quarterly reports on financial and operational performance of Provincial Interdepartmental and Municipal Coordinating Structures will be submitted to the National Interdepartmental Co-ordination Committee.
- (4) Annual reports on progress on the provincial co-operative development strategies will be submitted to the Provincial Legislature and circulated to other relevant provincial and local structures.

64.9 Meetings

Prepared by:

Committees must meet at least once every four months. The date for the meeting must be advised by not less than 14 days' notice. The venue for the meeting and catering expenses will rest with the hosting department or province.

64.10 Record of meetings

The Department of Small Business Development, unless otherwise indicated, must provide the secretariat to record the salient points/decisions raised and agreed to at meetings and circulate minutes to members of Committees within 7 days.

64.11 Recommendations and decision makers

Recommendations will be made by consensus by the members of Committees. The Department of Small Business Development may implement the recommendations subject to requisite internal approvals.

64.12 Dispute resolutions

Any dispute that may arise as a consequence of the work done by any Committee must be resolved through mutual dialogue.

64.13 Strategic outcomes of the committees

The strategic outcomes of the committee must be as follows:

- National Departments as well as provincial departments responsible for economic development as well as local governments' co-operatives development strategies must be aligned to the National Integrated Strategy for the Development and Promotion of Co-operatives in South Africa, 2012-2022.
- Government policy and strategy across government and agencies on the development of co-operatives must be aligned, coordinated, implemented and monitored.
- Support instruments to promote the development of co-operatives sectorally must be designed and promoted.
- Policy must be articulated
- Gaps must be identified in existing government policy, so as to develop and formulate policy in order to fill the identified gaps against the strategic outcomes.

- Recommendations must be submitted to Minmec and the Co-operative Advisory Council.
- Status of co-operatives must be reported on.

CHAPTER 2. WINDING-UP AND JUDICIAL MANAGEMENT OF CO-OPERATIVES

PART A. WINDING-UP OF CO-OPERATIVES

65. Definitions for Chapter

For purposes of this Chapter of the regulations –

“contribution” means a contribution to be made by a contributory in terms of a contribution account towards the payment of the debt of the co-operative or any portion thereof;

“contribution account” means an account contemplated in regulation 109;

“contributory” means a member or former member of a co-operative or the estate of any such member or former member who is liable in respect of the debt of the co-operative or any portion thereof by virtue of –

- (a) shares in the co-operative of which he is or was the holder and which are not fully paid up;
- (b) section 40 of the Land Bank Act, 1944 (Act 13 of 1944);

“disposition”, in relation to property, means any transfer or waiver of a right to property and includes a sale, donation, exchange, lease, hypothecation or pledge of property, and ‘dispose’ will have a corresponding meaning;

“distribution account” means an account contemplated in regulation 107;

“liquidator”, in relation to a co-operative being wound up, means a person appointed under sub regulation (1) of regulation 78 to carry out the winding-up of the co-operative, and includes a temporary liquidator contemplated in sub regulation (2) of that regulation;

“security”, in relation to a creditor's claim, means property over which the creditor has a preferment right for the payment of his or her claim;

“trading account” means an account contemplated in regulation 106.

66. Suspension of certain proceedings pending decision of application for winding-up order

At any time after application is made to a competent court or the Tribunal for a co-operative to be wound up, any action for the recovery of an amount from the co-operative or in connection with an asset of the co-operative, or any execution of a judgement in any such action may on the application of the co-operative or any other interested person be suspended by the court in which that action is under consideration or by which that judgement was given pending the decision of such application.

Provisional winding-up

67. Provisional winding-up order

- (1) If a court or the Tribunal in which an application in terms of section 72 or 72B is under consideration in respect of a co-operative issues a provisional winding-up order in respect of such a co-operative it must appoint a provisional liquidator for such co-operative or direct the registrar to appoint a provisional liquidator.
- (2) A provisional liquidator appointed under sub regulation (1) will hold office for as long as it pleases the court, but not after the date of commencement of the winding-up of the co-operative (if the co-operative is wound up thereafter).
- (3) The provisions of regulations 79, 81(1), (3) and (4), 82, 83(1) 86(1), and 89 will *mutatis mutandis* apply in respect of a provisional liquidator appointed under sub regulation (1): Provided that costs referred to in regulation 79(2) and the remuneration referred to in regulation 81(1) must be paid by the co-operative concerned.

68. Functions of provisional liquidator

- (1) A provisional liquidator appointed under regulation 67 must –
 - (a) assume the management of the co-operative concerned and recover and take into his or her possession all the assets of the co-operative;
 - (b) continue as far as may be possible to carry out the objects of the co-operative;
 - (c) investigate any matter which the court or Tribunal which issued the provisional liquidation order required him to investigate, and report to the court or Tribunal on his or her findings.
- (2) A provisional liquidator may subject to the provisions of this Act do anything reasonably necessary for the effective performance of his or her duties, and may in particular exercise any power mentioned in paragraphs (a), (b), (c), (f) and (g) of regulation 90(1).
- (3) Unless the registrar deems it necessary in the interests of the creditors of members of the co-operative a provisional liquidator will not have the power to liquidate any assets of the co-operative.

- (4) A provisional liquidator must, at the request of the registrar and within a period determined by the registrar, compile and submit to the registrar an inventory of all assets and liabilities of the co-operative as at the date of this appointment.

69. Effects of provisional winding-up order

During the period for which a provisional winding-up order is in force in respect of any co-operative –

- (a) the functions of the Board of directors of the co-operative will be suspended save in so far as the continuation thereof has been approved by the registrar or the provisional liquidator;
- (b) no judgement in any action against the co-operative for the recovery of an amount or the delivery of anything may be executed;
- (c) the issue, transfer or cancellation of shares in the co-operative will be void.

70. Commencement of winding-up

The winding-up of a co-operative will be deemed to commence –

- (a) in the case of a voluntary winding-up, at the time when the special resolution authorizing the winding-up is registered by the registrar; and
- (b) in the case of a winding-up by an order of the court or the Tribunal, at the time when a final order that the co-operative be wound up is issued by the court or the Tribunal.

71. Effects of winding-up on status of co-operative and on Board of directors

- (1) A co-operative being wound up will continue to be a juristic person, but will as from the commencement of its winding-up cease to carry out its objects except in so far as it is necessary for the purposes of its winding-up.
- (2) The functions of the Board of directors of a co-operative being wound up will terminate at the commencement of its winding-up except in so far as the continuation thereof has been approved by the registrar or liquidator.

72. Persons responsible for the performance of duties of co-operatives being wound-up

The persons who immediately prior to the commencement of the winding-up of a co-operative hold office as a director, manager or secretary of the co-operative will jointly and severally be responsible for the performance of a duty to be performed by a co-operative in terms of this Chapter.

73. Effects of winding-up on legal proceedings

After the commencement of the winding-up of a co-operative –

- (a) no civil proceedings to which the co-operative is a party may be instituted or proceeded with until a liquidator has been appointed under regulation 14(1)(a);
- (b) any attachment or execution put into force against an asset of the co-operative under a judgement given by a court before the commencement of the winding-up will be void.

74. Issue, transfer or cancellation of shares in co-operative being wound up

The issue, transfer or cancellation of shares in a co-operative being wound up will be void.

75. Effects of winding-up on assets of co-operative

Unless the court or the Tribunal giving a final liquidation order or the registrar otherwise directs, the persons referred to in regulation 8 will as from the commencement of the winding-up of a co-operative up to the appointment of a liquidator jointly and severally be responsible for the custody of all the assets of the co-operative under the co-operative's control.

76. Notice of voluntary winding-up to be given to registrar

A co-operative must within 14 days after a special resolution referred to in section 71A was passed by the co-operative send a copy of such resolution to the registrar together with a sworn or solemn statement by the person who acted as the chairperson of the general meeting at which that special resolution was passed –

- (a) that such meeting was held on a date mentioned in the statement;
- (b) that he has satisfied himself that proper notice of the meeting and the object thereof was given to the members of the co-operative; and
- (c) that such special resolution was passed by the requisite majority.

77. Inventory of assets and liabilities to be submitted to registrar by co-operative

- (1) A co-operative being wound up must draw up an inventory of all the assets and liabilities of the co-operative as at the date of commencement of the winding-up and submit such inventory to the registrar within 30 days of such date.

- (2) The provisions of sub regulation (1) will not apply to a co-operative in respect of which a liquidator is appointed within 30 days of the commencement of the winding-up.
- (3) If a co-operative fails to comply with a provision of sub regulation (1) every person referred to in regulation 72 will be guilty of an offence.

Liquidators

78. Appointment of liquidators

- (1)
 - (a) The registrar must appoint one or more liquidators in respect of a co-operative being wound up.
 - (b) If a liquidator ceases to hold office the registrar must, if such liquidator was the only liquidator, or may, if such liquidator was one of a plurality of liquidators, appoint any person to fill the vacancy.
- (2) The registrar may appoint any person as the temporary liquidator of a co-operative being wound up until a liquidator is appointed under sub regulation (1)(a) or a vacancy is filled under sub regulation (1)(b).

79. Giving of security by liquidator

- (1) A liquidator will not be deemed to be appointed until he has given security to the satisfaction of the registrar for the proper performance of his or her functions as liquidator.
- (2) The cost of giving such security to an amount which the registrar considers reasonable will form part of the costs of liquidation of the co-operative concerned.
- (3) The registrar may on written request by a liquidator consent to a decrease in the security given by such liquidator.

80. Notice of appointment of liquidator

A liquidator or liquidators appointed under regulation 78(1)(a) must after his or her or their appointment forthwith publish a notice in the Gazette and in a newspaper circulating in the area in which the registered office of the co-operative concerned is situated in which his or her name and address or their names and addresses are given and his or her or their appointment is made known.

81. Remuneration of liquidator

- (1) A liquidator will be entitled to the remuneration set out in Schedule 2 for his or her services: Provided that if more than one liquidator is appointed the remuneration must be distributed among them on such basis as may be approved by the registrar.

- (2) Unless the registrar otherwise directs the remuneration of a liquidator must not be paid otherwise than in accordance with a liquidation account.
- (3) The registrar may decrease the remuneration of a liquidator or disallow such remuneration if in his or her opinion there is good cause for doing so.
- (4) No person who employs or is a fellow employee or in the ordinary employment of a liquidator will be entitled, except with the approval of the registrar, to receive any remuneration out of the assets of the co-operative for services rendered in connection with the functions of the liquidator, and no liquidator will be entitled either by him- or herself or his or her partner to receive out of the assets of the co-operative remuneration for his or her services except the remuneration to which he is entitled under these regulations.

82. Plurality of liquidators, liability and disagreement

- (1) If two or more liquidators have been appointed they must act jointly in performing their functions as liquidators, and will jointly and severally be liable for every act performed by them jointly.
- (2) If such liquidators disagree on any matter relating to the co-operative of which they are the liquidators' one or more or all of them may refer the matter to the registrar, who may thereupon settle the issue or give directions as to the procedure to be followed in settling such issue.

83. Control of registrar over liquidators

- (1) A liquidator must perform his or her functions subject to the control and directions of the registrar.
- (2) The registrar may at any time require a liquidator to answer any inquiry in connection with the winding-up in which such liquidator is engaged and may examine such liquidator on oath concerning the wind-up.
- (3) The registrar may at any time investigate or seize the books and other documents relating to the winding-up of a co-operative.
- (4) Any expenses incurred by the registrar in carrying out any provision of this section will form part of the costs of liquidation of the co-operative concerned.

84. Removal from office of liquidator

The registrar may at any time remove a liquidator from office if in his or her opinion there is good cause for doing so.

85. Circumstances under which winding-up may be carried out without liquidator

If the registrar is of the opinion that the value of the assets of a co-operative being wound up is less than R10 000 or such other amount as the Minister may by notice in the Gazette determine, he or she may order the winding-up of the co-operative to be carried out, notwithstanding anything to the contrary contained in any law, in such manner and by such person as may be determined by him or her.

Functions of liquidators

86. Inventory of assets and liabilities to be submitted to registrar by liquidator

- (1) A liquidator referred to in regulation 78(1)(a) must draw up an inventory of all assets and liabilities of the co-operative being wound up as at the date of his or her appointment and submit such inventory to the registrar within 30 days of his or her appointment.
- (2) The provisions of sub regulation (1) will not apply to a liquidator of a co-operative in respect of which a provisional or temporary liquidator was appointed, if such provisional or temporary liquidator drew up and submitted such an inventory to the registrar.

87. General duty of liquidator

The liquidator of a co-operative must subject to the provisions of this Act forthwith recover and take into his or her possession all the assets of the co-operative, realize those assets and apply the proceeds thereof in accordance with the provisions of these regulations.

88. Banking account and investments

- (1) The liquidator of a co-operative –
 - (a) must open with a banking institution registered under the Banks Act, 1965 (Act 23 of 1965), a current account in the name of the co-operative, and must deposit therein to the credit of the co-operative all the money received by him or her on the co-operative's behalf as soon as may be possible but not later than seven days of the receipt thereof;
 - (b) may, with the written consent of the registrar, open with such a banking institution or any other financial institution approved by the registrar, a savings account in the name of such co-operative, and may transfer thereto money deposited in the amount referred to in paragraph (a) and not immediately required;
 - (c) may, with the written consent of the registrar, place money deposited in the account referred to in paragraph (a) and not immediately required on interest-bearing deposit with such a banking institution or financial institution;

- (d) must not withdraw any money in a savings account referred to in paragraph (b) or on interest-bearing deposit referred to in paragraph (c) otherwise than by way of a transfer to the said current account.
- (2) The liquidator of a co-operative must forthwith notify the registrar of –
- (a) the banking or financial institution and the branch with which he or she has opened an account referred to in paragraph (a) or (b) of sub regulation (1) or with which he or she has placed a deposit referred to in paragraph (c);
 - (b) the number of that account or the reference number under which that deposit has been placed;
 - (c) any transfer of money in such an account or so placed in deposit to any other banking institution or financial institution or branch of such a banking or financial institution.
- (3) A banking or financial institution referred to in sub regulation (2) must on the registrar's request forthwith furnish him or her with a statement showing deposits paid into and withdrawals made from an account referred to in sub regulation (1)(a) or (b).
- (4) The registrar and any surety for a liquidator will have the same right to information in regard to an account referred to in paragraph (a) or (b) of sub regulation (1) or a deposit referred to in paragraph (c) of that sub regulation as the liquidator him- or herself self-possesses, and may examine all documents in relation thereto, whether in the possession of the liquidator or a banking or financial institution.
- (5) The registrar may after notice to the liquidator in writing order a banking or financial institution with which an account referred to in paragraph (a) or (b) of sub regulation (1) has been opened or where a deposit referred to in paragraph (c) of that sub regulation has been placed not to allow any withdrawal from any such account or of any such deposit except with the approval of the registrar.
- (6) All cheques or orders drawn on an account referred to in sub regulation (1)(a) must contain the name of the payee and the cause of payment, and must be drawn to order and be signed by the liquidator or his or her duly authorized agent.

89. Register to be kept by liquidator

- (1) Immediately after his or her appointment a liquidator must open a register in which he or she must enter a statement of all money and property and all books, accounts and other documents received by him or her on behalf of the co-operative.

- (2) The registrar may at any time order a liquidator to submit to him or her any such register, book, account or other document or to make any such register, book, account or other document available for inspection by an interested person.

90. Powers of liquidator

- (1) A liquidator may subject to the provisions of the Act and these regulations do anything reasonably necessary for the effective performance of his or her duties, and may in particular –
- (a) with the approval of the registrar institute, defend or take any action or other legal proceeding of a civil nature in the name and on behalf of the co-operative;
 - (b) with the approval of the registrar obtain legal advice on any question of law affecting the winding-up of the co-operative;
 - (c) carry on any part of the business of the co-operative in so far as may be necessary for the beneficial winding-up thereof;
 - (d) with the approval of the registrar agree to any reasonable offer of composition made to the co-operative by any debtor, and accept payment of any part of a debt due to the co-operative in settlement thereof;
 - (e) with the approval of the registrar write off any debts;
 - (f) submit to the determination of arbitrators any dispute concerning the co-operative of a claim by the co-operative;
 - (g) terminate contracts to which the co-operative is a party.
- (2) A liquidator must not dispose of immovable property of a co-operative except with the approval of the registrar.

91. Realization of movable assets in possession of creditors as security

- (1) A creditor of a co-operative being wound up holding a movable asset as security for his or her claim against the co-operative must within 30 days of publication of the notice referred to in regulation 80 notify the liquidator of such co-operative of his or her possession of such asset, the nature of such asset and the grounds of his or her preference to such asset.
- (2) If such asset consists of securities or a bill of exchange the creditor may after he or she has given such notice realize such asset in terms of sub regulation(4).

- (3) If such asset does not consist of securities or a bill of exchange the liquidator may take over such asset from the creditor at a value agreed upon between the liquidator and the creditor or at the full amount of the creditor's claim, and if the liquidator does not so take over such asset, the creditor may realize such asset in terms of sub regulation (4).
- (4) A creditor may realize an asset referred to in sub regulation (2) or (3) in the following manner, namely-
 - (a) if it consist of a thing ordinarily sold through a stockbroker the creditor may forthwith cause it to be sold by a stockbroker approved by the liquidator;
 - (b) if it consists of a thing which in the opinion of the liquidator can profitably be sold at a public auction, the creditor may cause it to be sold by public auction through an auctioneer approved by the liquidator;
 - (c) if it consists of a thing which in the opinion of the liquidator cannot profitably be sold by public auction, the creditor may cause it to be realized in a manner approved by the liquidator.
- (5) As soon as a creditor has realized an asset in terms of sub regulation (4) he or she must forthwith pay the net proceeds thereof and submit all supporting documents relating to the realization of such asset to the liquidator.
- (6) If the asset concerned has not been realized within 90 days of the publication of the notice referred to in regulation 16 the creditor must forthwith deliver such asset to the liquidator.

92. Assets acquired by co-operative under hire-purchase contract

A movable asset delivered to a co-operative under a hire-purchase contract may after the commencement of the winding-up of the co-operative be delivered to the creditor under such contract, and thereupon the creditor will be deemed to be holding that asset as security for his or her claim and the provisions of regulation 91 will apply.

Voidable dispositions

93. Disposition not for value

- (1) Any disposition of property made by a co-operative not for value may on application by the liquidator of the co-operative be declared void by a competent court if the property was disposed of –
 - (a) more than two years before the commencement of the winding-up of the co-operative and it is proved that immediately after the disposition was made the liabilities of the co-operative exceeded the value of its assets;

- (b) within two years before the commencement of the winding-up of the co-operative and the person to whom the property was disposed of is unable to prove that immediately after the disposition was made the value of the co-operative's assets exceeded its liabilities;

Provided that if it is proved that the liabilities of the co-operative/[sic] at any time after the disposition was made exceeded the value of its assets by less than the value of the property disposed of, the disposition may be declared void only to the extent of such excess.

- (2) A disposition of property not made for value which was declared void under sub regulation (1) or which was not completed by the co-operative will not give rise to any claim in competition with the co-operative's creditors.
- (3) If the court declares any disposition of property void under sub regulation (1) the court may summarily issue an order directing that the property disposed of be delivered to the liquidator or that an amount equal to the value of the relevant property as at the date of the disposition thereof be paid to the liquidator.

94. Voidable preferences

- (1) Any disposition of property made by a co-operative within 180 days before the commencement of its winding-up and which has had the effect of preferring any one or more of its creditors above another may on application by the liquidator be declared void by a competent court if immediately after such disposition was made the liabilities of the co-operative exceeded the value of its assets, unless the person to whom the property was disposed of proves that the disposition was made in the ordinary course of business and that it was not intended thereby to prefer a creditor above another.
- (2) Any disposition of property by a co-operative made at a time when its liabilities exceeded the value of its assets and with the intention of preferring any one or more of its creditors above another may at any time after the commencement of the winding-up of the co-operative on application by the liquidator be declared void by a competent court.
- (3) If the court declares any disposition of property void under sub regulation (1) or (2) the court may summarily issue an order directing that the property disposed of be delivered to the liquidator or that an amount equal to the value of the relevant property as at the date of the disposition thereof be paid to the liquidator.

95. Collusive dealings to prejudice creditors or to prefer certain creditors above others

- (1) Any collusion to dispose of property of a co-operative in a manner prejudicing the co-operative's creditors or preferring a creditor above another may at any time after the commencement of the winding-up of such a co-operative on application by the liquidator be declared void by a competent court.

- (2) Any person being a party to any collusion declared void by the court under sub regulation (1) may summarily be ordered by the court to make good to the co-operative any decrease in the value of the assets of the co-operative caused by such collusion, and if such person is a creditor of the co-operative he or she will forfeit his or her claim against the co-operative.

96. Voidable set-off

Any set-off of debts between a co-operative and another person within 180 days before the commencement of the co-operative's winding-up and which has had the effect of preferring such person as creditor above another creditor of the co-operative may on application by the liquidator be declared void by a competent court if at the time when such set-off was effected the liabilities of the co-operative exceeded the value of its assets, unless such person proves that the debts which were set off arose in the ordinary course of business between him or her and the co-operative.

97. Interested person may make application to court on behalf of liquidator

If the liquidator is requested by any interested person to make application to the court under regulations 93, 94, 95 or 96 and the liquidator omits to make such application within 30 days as from the date of the request such person may upon his or her indemnifying the liquidator against all costs in the action make the relevant application on behalf of the liquidator.

Admission and proving of claims

98. Admission and proving of claims against co-operative being wound up

- (1) Any person who has a claim against a co-operative being wound up, excluding a claim against a members' fund, must within 90 days after the date of publication of the notice referred to in regulation 16 lodge with the liquidator a sworn or solemn statement specifying the amount of the claim and the prescribed particulars relating to the claim together with the supporting documents (if any): Provided that if a member for any reason whatsoever does not want his or her claim against a members' fund to proceed he or she must inform the liquidator in writing thereof.
- (2) The liquidator may admit or refuse to admit the co-operative's liability for the amount of a claim referred to in sub regulation (1) or may admit the co-operative's liability for any portion of such an amount.
- (3) Any person aggrieved by a decision taken by a liquidator under sub regulation (2) in connection with his or her claim may within 30 days after he or she was notified of such decision appeal to the registrar against such decision, and the registrar may after consideration of the grounds of the appeal and the liquidator's reasons for his or her decision confirm the decision, or set the decision aside and order the liquidator to admit the claim or the admit it to the extent determined by the registrar.

(4)

- (a) Any person referred to in sub regulation (1) who has failed to lodge his or her claim with the liquidator within the period mentioned in that sub regulation, may thereafter with the consent of the registrar lodge his or her claim with the liquidator within a period of 30 days after the termination of the said period.
 - (b) The provisions of sub regulations (2) and (3) will *mutatis mutandis* apply in respect of a claim referred to in paragraph (a).
- (5) The provisions of this section will not prevent a creditor from proving a claim against a co-operative in any court, but no person must institute an action to prove a claim against a co-operative being wound up or proceed with any such action which has been suspended in terms of regulation 73, unless he or she has lodged his or her claim with the liquidator within the period mentioned in sub regulation (1), or, with the consent of the registrar, within the further period mentioned in sub regulation (4), or has otherwise given notice to the liquidator in writing of the action or intended action within a period of 120 days after the date of publication of the notice referred to in regulation 80.

Liquidation, trading, distribution and contribution accounts and application of proceeds

99. Submission of certain accounts to registrar

- (1) The liquidator must within 180 days after the date of publication of the notice referred to in regulation 80 draw up the following accounts, certify them and submit them in duplicate to the registrar, namely-
- (a) a liquidation account;
 - (b) a trading account, if the liquidator has carried on a business of the co-operative;
 - (c) a distribution account, if the proceeds of the co-operative's assets exceed the sum of the amounts to be paid out of such proceeds in terms of regulation 101(1) and (2) and 102(a), (b), (c), (d) and (e);
 - (d) a contribution account, if the said proceeds are less than the sum of the said amounts and there are contributories.
- (2) The accounts referred to in sub regulation (1) must be accompanied by all supporting documents available to the liquidator.
- (3) If the said accounts are not the final accounts the liquidator must within such period as the registrar may determine draw up further accounts and submit them to him or her in duplicate.
- (4) If the liquidator is unable to submit an account or documents mentioned in sub regulation (1), (2) or (3) to the liquidator within the required period he or she must before the termination of the period concerned

submit to the registrar a written explanation of the reasons for his or her inability, and the registrar may thereupon grant an extension of time to the liquidator for the submission of the relevant account or documents.

100. Liquidation account

- (1) A liquidation account must contain an accurate record –
- (a) of all money received and of all money disbursed by the liquidator otherwise than in the course of a business which he or she carries on behalf of the co-operative;
 - (b) of the expected or real costs of liquidation;
 - (c) of every claim against the co-operative proved or admitted in terms of regulation 98;
 - (d) of the amount standing to the credit of each member in the members' fund of the co-operative;
 - (e) if such a claim is a secured claim, of the property which serves as security for the claim, or if the property has already been realized, the amount of the proceeds thereof;
 - (f) in the case of a second or later liquidation account, of the amount paid on every claim in terms of a previous liquidation account;
 - (g) in the case of a liquidation account which is not the final liquidation account –
 - (i) of all aspects yet to be realized;
 - (ii) of all debts yet to be recovered;
 - (iii) of the reasons why such assets have not yet been realized or such debts have not yet been recovered.
- (2) A liquidation account must subject to the provisions of regulations 101, 102, 103, 104, and 105 provide for the application of the proceeds of the assets of the co-operative.

101. Application of proceeds of assets which served as security

- (1) The proceeds of any asset which served as security for a claim admitted or proved in terms of regulation 97 must, after deducting therefrom the liquidator's expenses with respect to such asset and such pro rata portion of the costs of liquidation as may be determined by the liquidator, in the first place be applied in paying such claim.

- (2) If there is more than one such claim the relevant claims must be paid in the order of their preference.
- (3) If the portion of the said proceeds which may be applied in paying any such claim or claims is less than the amount of such claim or claims the creditor or creditors concerned must be an ordinary creditor or ordinary creditors in respect of the unpaid portion of his claim or their claims.

102. Application of proceeds after payment of secured claims

Subject to the provisions of regulation 101 the proceeds of the assets of a co-operative being wound up must be applied as follows, namely –

- (a) in the first place in paying expenses incurred by the liquidator in connection with the winding-up and the other costs of liquidation;
- (b) thereafter paying any amounts due by the co-operative with respect to the matters referred to in paragraph (b) of section 98A(1), or in paragraphs (a) to and including (e) of section 99(1), of the insolvency[sic] Act, 1936 (Act 24 of 1936), which have been admitted or proved in terms of regulation 98, or, if the balance of the said proceeds is insufficient to pay the said amounts in full, in paying a proportionate share of each;
- (c) thereafter in paying outstanding salaries and wages of full-time employees of the co-operative which have been admitted or proved in terms of regulation 98 for a period not exceeding two months prior to the commencement of the winding-up of the co-operative, or, if the balance of the said proceeds is insufficient to pay the said salaries and wages in full, in paying a proportionate share of each;
- (d) thereafter in paying income tax for which the co-operative is liable;
- (e) thereafter in paying all other claims admitted or proved in terms of regulation 98, including any unpaid portions of secured claims contemplated in regulation 101(3) and any credit amounts in the members' fund, or, if the balance of the said proceeds is insufficient to satisfy the said claims, portions of claims and credit amounts in full, paying a proportionate share of each;
- (f) there after any residue must be applied in accordance with the distribution account.

103. Tacit hypothecs

- (1) A tacit hypothec, other than a landlord's legal hypothec, will not confer any preference when a co-operative is being wound up.

- (2) A landlord's legal hypothec will confer a preference with regard to property which is subject to that hypothec for any rent calculated in respect of any period immediately prior to and up to the commencement of the winding-up but not exceeding –
- (a) three months, if the rent is payable monthly or at shorter intervals than one month;
 - (b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months;
 - (c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months;
 - (d) fifteen months in any other case.

104. Certain mortgage bonds not to confer preference

- (1) A mortgage bond, other than a kustingbrief, registered in any office for the registration of deeds against immovable property of a co-operative for the purpose of securing payment of –
- (a) a debt not previously secured which arose more than 60 days prior to the lodging of the relevant bond for registration in such office; or
 - (b) a debt incurred in novation of or substitution for a debt referred to in paragraph (a);

will not confer any preferences with regard to such property or the proceeds thereof if the co-operative is wound up with 180 days after the lodging of such bond.

- (2) A general mortgage bond, including a general clause in a mortgage bond hypothecating particular immovable property, will not confer any preference with regard to the property of a co-operative being wound up or the proceeds thereof.

105. Ranking of mortgage bonds for future debts

Priority under any mortgage bond registered in any office for the registration of deeds against immovable property of a co-operative for the purpose of securing payment of future debts will depend on the date of registration of that mortgage bond and not on the date upon which any such debt arises.

106. Trading account

A trading account must contain an accurate record of –

- (a) the value of the stock on hand at the commencement of the winding-up;

- (b) the value of the stock on hand on the last day of the period in respect of which the account is made up;
- (c) the daily totals of receipts and payments in connection with the business.

107. Distribution account

- (1) A distribution account must subject to the provisions of regulation 108 provide for a residue referred to in regulation 102(f) to be applied according to the provisions of this regulation.
- (2) The residue referred to in sub regulation (1) must in the first place be applied in paying back the paid-up share capital of the co-operative to shareholders of the co-operative.
- (3) If such residue is less than the paid-up share capital the amount to be paid to a shareholder out of such residue must be an amount which bears the same ratio to the amount of such residue as the paid-up value of his shares bears to the paid-up share capital.
- (4) If such residue exceeds the paid-up share capital the balance remaining after the paid-up share capital has been paid back must subject to the provisions of sub regulation (8) be allocated to the members of the co-operative-
 - (a) in the case of a co-operative the main object of which involves that its members conduct transactions with or through it, in accordance with the patronage proportion;
 - (b) in the case of a co-operative the main object of which does not involve that its members conduct transactions with or through it, in accordance with a basis set out in the constitution.
- (5) The patronage proportion mentioned in sub-regulation (4)(a) must be determined with reference to either the period specified in the constitution of the co-operative which preceded the commencement of the winding-up of the co-operative or the period for which the co-operative has existed, whichever period is the shorter: Provided that the period mentioned in the constitution of the co-operative must not be less than five years.
- (6) For the purposes of sub regulations (4) and (5) –
 - (a) the value of the transactions conducted by a former member with or through such co-operative during the appropriate period referred to in sub regulation (5) may be added to the value of the transactions of a member who is entitled to an allocation under sub regulation (4), provided –

- (i) the former member, or, if he or she is deceased, his or her executor, has submitted his or her written consent to that effect to the co-operative within 90 days after such former member ceased to be a member of the co-operative; and
 - (ii) the constitution of the co-operative so provides;
 - (b) a co-operative incorporated in consequence of a conversion under section 66 will be deemed to have existed as from the date of incorporation of the previous co-operative so converted, and the value of the transactions conducted by a member of the first-mentioned co-operative during the appropriate period with or through the previous co-operative as a member may be added to the value of the transactions conducted by him or her with or through the first-mentioned co-operative;
 - (c) a co-operative incorporated in consequence of an amalgamation of two or more co-operatives under section 56 must be deemed to have existed as from the date of incorporation of the most recent of those co-operatives, and the value of the transactions conducted by a member of the amalgamated co-operative during the appropriate period with or through any of the previous co-operatives of which he or she was then a member may be added to the value of the transactions conducted by him or her with or through the amalgamated co-operative.
- (7) The registrar may notwithstanding the provisions of sub regulations (4), (5) and (6) direct the liquidator to allocate the balance remaining after the paid-up share capital has been paid back, to the members of the co-operative on any basis determined by the registrar.
- (8) If the constitution of a co-operative provides that an amount must be paid to any particular person or for any particular purpose in the event of the co-operative being wound up, the balance referred to in sub regulation (4) must in the first place be applied for the payment of such an amount.

108. Disposal of small residues

If a residue referred to in regulation 102(f) is so small that the payment thereof to the persons referred to in regulation 107 is in the opinion of the registrar not justified the registrar may direct the liquidator to dispose of such residue, the provisions of that section notwithstanding, in any manner determined by the registrar.

109. Contribution account

- (1) A contribution account must provide for the recovery of contributions from such persons as are liable for the payment thereof.
- (2) A contribution account must in respect of each contributory indicate the ground on which he or she is liable for the payment of contribution, the amount for which he or she is liable and the contribution to be

paid by him or her in terms of that contribution account and, in the case of a second or later contribution account, the contribution recovered from him or her in terms of a previous contribution account.

110. Inspection of liquidation, distribution or contribution account by interested persons

- (1) Every liquidation, distribution or contribution account or a copy thereof must be made available in the Co-operatives Division of the Companies and Intellectual Property Commission, and, if the registered office of the co-operative is not situated in the magisterial district of Pretoria, also in the office of the magistrate of the district in which the registered office of the co-operative is situated, for such period as may be determined by the registrar, for inspection by interested persons.
- (2) The liquidator must give notice to interested persons in the Gazette and in a newspaper circulating in the area in which the registered office of the co-operative is situated of the period for which and the place or places where the liquidation, distribution or contribution account will be available for inspection and that objection against such account may be lodged with the registrar before a date to be stated in the notice, which must be a date not less than seven days after the end of the said period.
- (3) The magistrate of the office where an account is available for inspection must affix a notice in a public place in or at his or her office in which is mentioned that the account concerned is available in his or her office for inspection by interested persons during the relevant period, and must upon the expiry of such period issue a certificate that the relevant account was available for inspection during the relevant period and transmit the certificate and account to the registrar.

111. Objections against liquidation, distribution or contribution account

- (1) Any person who has an interest in the winding-up of a co-operative may before the date stated in the notice referred to in sub regulation (2) of regulation 46 lodge an objection with the registrar against any entry in an account made available for inspection in terms of sub regulation (1) of that regulation.
- (2) An objection referred to in sub regulation (1) must be contained in an affidavit or a solemn declaration in which the grounds of appeal are fully set forth.
- (3) The registrar may uphold, partially uphold or reject an objection referred to in sub regulation (1).

112. Amendment of liquidation, distribution or contribution account

- (1) If the registrar upholds or partially upholds an objection against a liquidation, distribution or contribution account under regulation 111(3), or if he or she is of the opinion that any such account is incorrect in any respect, he or she must order the liquidator to amend the relevant account in such manner as may be determined by him or her.

- (2) If the registrar is of the opinion that the interests of any person are materially prejudiced by an amendment of a liquidation, distribution or contribution account under sub regulation (1), the provisions of regulation 110 and 111 and this regulation will be applicable to the amended account unless the said person submits a written statement to the registrar that he or she has no objection against such amendment.

113. Appeal to court against registrar's decisions

- (1) Any person whose objection against a liquidation, distribution or contribution account has been rejected or partially upheld under regulation 111(3) may within 30 days after he or she was notified of the registrar's decision with regard to the objection appeal against that decision by way of application on notice of motion to any competent court.
- (2) A liquidator may within 30 days after he or she was ordered by the registrar under regulation 111(1) to amend a liquidation, distribution or contribution account appeal against that decision by way of application on notice of motion to any competent court.

114. Confirmation of liquidation, distribution or contribution account

If the registrar is satisfied that a liquidation, distribution or contribution account has been made available for inspection in accordance with the requirements of these regulations that any objections against it have been finalized and that the necessary amendments (if any) have been effected thereto, he or he must confirm the account.

115. Payments in terms of liquidation or distribution account and recovery of contribution

- (1) The liquidator must as soon as may be practicable after –
 - (a) a liquidation or distribution account was confirmed in terms of regulation 114 make all payments to be made in accordance therewith;
 - (b) a contribution account was so confirmed, recover the contributions to be paid in accordance therewith.
- (2) Any payment in terms of a liquidation or distribution account must be made by way of a cheque payable to the person entitled to such payment or his order and drawn on an account contemplated in regulation 88(1)(a).
- (3) The liquidator must forthwith submit to the registrar proof of every payment made by him or her in terms of a liquidation or distribution account.

116. Disposal of unclaimed payments

Prepared by:

If a cheque by which any payment is made in terms of a liquidation or distribution account, is not cashed or deposited within 90 days after it was issued, the liquidator must, unless the registrar otherwise directs, stop payment of the cheque and forthwith deposit the amount concerned in the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), to be credited to the said person.

117. Recovery of contribution

- (1) If any contributory liable to pay contribution in terms of a contribution account fails to pay the amount of such contribution to the liquidator within 30 days after a letter of demand in which particulars of such contribution are set out was sent to him or her by registered post to his or her last-known residential or business address, the magistrate of the district in which the registered office of the co-operative is situated must upon written request by the liquidator issue a writ of execution against the property of such contributory.
- (2) Any such writ must be executed against the movable property of such contributory, and if sufficient movable property is not found to satisfy the writ, then against his or her immovable property.
- (3) A writ of execution issued under sub-regulation (1) must be deemed to have been issued pursuant to a judgement of a magistrate's court.

General provisions

118. Summoning and examination of persons concerning affairs of co-operative being wound up

- (1) The magistrate of the district in which the registered office of a co-operative being wound up is situated may, on application by the registrar, the liquidator of the co-operative or any other person who has an interest in the winding-up of such co-operative, summon before him or her any person known or suspected to have in his or her possession any asset of the co-operative or believed to be indebted to the co-operative, or any person whom the magistrate deems capable of giving information concerning the affairs, transactions or assets of the co-operative.
- (2)
 - (a) Such magistrate may examine on oath or affirmation any person summoned under sub regulation (1), or authorize the registrar, the liquidator or any such other interested person to examine such person or to cause such person to be examined, concerning any matter referred to in that sub regulation, either orally or on written interrogatories, and may reduce his or her answers to writing and require him or her to sign them.

- (b) Any such person may be required to answer any question put to him or her at the examination, notwithstanding that the answer might tend to incriminate him or her, and any answer given to any such question may thereafter be used in evidence against him or her.
- (3) Such magistrate may require any such person to produce any book or other document in his or her custody or under his or her control relating to the co-operative, but without prejudice with regard to any right which he or she or any other person may have to such book or document.
- (4) If any person summoned under sub regulation (1) fails to appear before the magistrate concerned at the appointed time such magistrate may cause him or her to be apprehended and brought before him or her for examination.

119. Co-operative struck off register

When a co-operative has been wound up to the satisfaction of the registrar the co-operative must be struck off the register of co-operatives by him or her and the co-operative will dissolve when so struck off the register.

120. Release of liquidator

The liquidator of a co-operative may at any time after dissolution of the co-operative apply to the registrar for his release, who may grant such release if he or she deems it expedient.

121. Disposal of books and documents

After six months from the date of release of the liquidator the books and documents for the co-operative and those relating to the winding-up of the co-operative may be destroyed, unless the registrar otherwise directs.

PART B. JUDICIAL MANAGEMENT OF CO-OPERATIVES

122. Circumstances in which co-operatives may be placed under judicial management

- (1) When any co-operative by reason of mismanagement or for any other cause –
 - (a) is financially distressed in that it appears reasonably unlikely that the co-operative will be able to pay all of its debts or discharge its financial obligations as they become due and payable within the immediate ensuing six months; or
 - (b) it appears to be reasonably likely that the co-operative will become insolvent within the immediate ensuing six months; or

- (c) has otherwise not become or is prevented from becoming a successful concern, and there is a reasonable probability that, if it is placed under judicial management, it will be enabled to pay its debts or to meet its obligations and become a successful concern, a competent court or the Tribunal may, if it appears just and equitable, grant a judicial management order in respect of that co-operative.
- (2) An application to a competent court or the Tribunal for a judicial management order in respect of a co-operative may be made –
 - (a) by a co-operative voluntarily after a special resolution to that effect;
 - (b) by any interested person; or
 - (c) by the Tribunal on its own accord or on the recommendation of the registrar.
- (3) When an application for the winding-up of a co-operative is made in terms of section 72 or 72B to a competent court or the Tribunal and it appears to that court or the Tribunal that if the co-operative concerned is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern, and that the granting of a judicial management order would be just and equitable, such court or the Tribunal may grant such an order in respect of that co-operative.

123. Provisional judicial management order

- (1) A court or the Tribunal may, on an application made under regulation 122, grant a provisional judicial management order stating the return day or dismiss the application or make any other order that it deems fit.
- (2) A provisional judicial management order must contain –
 - (a) directives that the co-operative named therein will be under the management and control, subject to the supervision of the registrar and support by the Tribunal, of a provisional judicial manager appointed as hereinafter provided, and that any person vested with the management and control of the co-operative's affairs will from the date of the order be divested thereof.
 - (b) such other directives as the court or the Tribunal may deem necessary as to the management and control of the co-operative, or any matter incidental thereto, including directives conferring upon the provisional judicial manager the power, subject to the rights of the creditors, to raise money in any way without the authority of the members of the co-operative as the court or the Tribunal may deem necessary;

and may contain instructions that while the co-operative is under judicial management, all actions, legal proceedings and the execution of all writs, summonses and other legal process against the co-operative be stayed and not be proceeded with without the leave of the court or the Tribunal.

- (3) The court or the Tribunal which has granted a provisional judicial management order may at any time and in any manner on the application of the applicant, the co-operative, a creditor or a member of the co-operative, the provisional judicial manager or on the recommendation of the registrar, vary the terms of such order or discharge it.

124. Custody of property and appointment of provisional judicial manager on granting of judicial management order

- (1) When a provisional judicial management order is granted –
 - (a) all persons who immediately prior to the commencement of the provisional judicial management order of the co-operative hold office as director, manager or secretary of the co-operative will jointly and severally be responsible for the custody of all the assets of the co-operative under the co-operative's control until a provisional judicial manager is appointed and has assumed office.
 - (b) the registrar must without delay appoint a provisional judicial manager, who must give such security for the proper performance of his duties in his or her capacity of such as the registrar may direct, and who must, subject to the provisions of subsection (2), hold office until discharged by the court or the Tribunal or dismissed by the registrar under sub regulation (2).
- (2) The registrar may at any time and for reasons which he deems fit dismiss a provisional judicial manager from his office and appoint another person in his place.

125. Effect of provisional judicial management order

- (1) When a provisional judicial management order is granted –
 - (a) no shares in the co-operative or amount of money from a members' fund may be refunded to any member or to any member whose membership was terminated within six months prior to the granting of the provisional judicial management order; and
 - (b) the constitution of the co-operative will remain in force in so far as it is not in conflict with the directives of the provisional judicial management order, unless the registrar is of the opinion that the application of any provision of the constitution is not in the interests of the members or creditors during the provisional judicial management, and he notifies the provisional judicial manager in writing that such provision must be suspended.

- (2) The registrar may at any time terminate the suspension referred to in sub regulation (1)(b) and notify the provisional judicial manager in writing thereof.

126. Functions of provisional judicial manager

A provisional judicial manager appointed under regulation 124(1)(b) or (2) must –

- (a) assume the management and control of the co-operative and recover and take into his possession all the assets of the co-operative;
- (b) convene within 60 days, or such longer period as the registrar may determine at the written request of the provisional judicial manager, joint or separate meetings of the creditors and members of the co-operative for the purposes referred to in regulation 127;
- (c) prepare and lay before the meetings convened under paragraph (b) a report containing-
 - (i) an account of the general state of affairs of the co-operative;
 - (ii) a statement of the reasons why the co-operative is in financial distress or unable to pay its debts or is probably unable to meet its obligations or has not become or is prevented from becoming a successful concern;
 - (iii) a statement of the assets and liabilities of the co-operative;
 - (iv) a complete list of creditors of the co-operative, including contingent and prospective creditors, and of the amount and the nature of the claim of each creditor;
 - (v) particulars as to the source from which money has been or is to be raised for the purposes of carrying on the business of the co-operative and the conditions on which it must be repaid; and
 - (vi) the considered opinion of the provisional judicial manager as to the prospects of the co-operative becoming a successful concern and of the removal of the facts or circumstances which prevent the co-operative from becoming a successful concern.

127. Purpose of meetings convened under regulation 126(b)

- (1)
- (a) Any meeting convened under regulation 126(b) must be presided over by the registrar or a magistrate having jurisdiction in the area where the meeting is held.
 - (b) Any meeting referred to in paragraph (a) must be convened –

- (i) in the case of a meeting of the co-operative concerned, in the manner prescribed in the constitution of that co-operative for the convening of a general meeting; and
 - (ii) in the case of a meeting of creditors, by a notice in the Gazette and in one or more newspapers circulating in the area in which the registered office of the co-operative is situated, not less than seven days prior to such meeting.
- (2) At the meeting the report of the provisional judicial manager under regulation 126(c), and the desirability or not of placing the co-operative finally under judicial management, must be considered, taking into account the prospects of the co-operative becoming a successful concern.
- (3) The chairman of any such meeting must prepare and lay before the court or the Tribunal a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under sub-regulation (2).

128. Return day of provisional judicial management order and powers of court

- (1) Any return day fixed under regulation 122(1) must not be later than 60 days after the date of the provisional judicial management order but may be extended by the court on good cause shown.
- (2) On such return day the court may after considering of –
 - (a) the opinion and wishes of creditors and members of the co-operative;
 - (b) the report of the provisional judicial manager under regulation 126(c);
 - (c) the report referred to in regulation 127(3); and
 - (d) a report of the registrar if he does not preside at the meeting referred to in regulation 127(1),grant a final judicial management order if it appears to the court that the co-operative will, if placed under judicial management, be enabled to become a successful concern and that it is just and equitable that it be placed under judicial management, or the court may discharge the provisional order or make any other order it may deem fit.
- (3) A final judicial management order must contain –
 - (a) directives for the vesting of the management and control of the co-operative, subject to the supervision of the registrar, in the final judicial manager, the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager, and the discharge of the provisional judicial manager, where necessary;

- (b) such other directives as to the management and control of the co-operative, or any matter incidental thereto, including directives conferring upon the final judicial manager the power, subject to the rights of the creditors of the co-operative, to raise money in any way without the authority of the members of the co-operative, as the court or the Tribunal may consider necessary.

(4)

- (a) When a final judicial management order is granted, the registrar must without delay appoint a final judicial manager, who must give such security for the proper performance of his duties in his or her capacity as such as the registrar may direct, and who will hold office until he or she is discharged in terms of paragraph (b) or until the judicial management order is withdrawn or is deemed to be withdrawn in terms of regulation 134.
- (c) The registrar may at any time for reasons which he or she deems fit dismiss a final judicial manager from his or her office and appoint another person in his or her place.

(Note – Numbering as published in original Gazette)

- (5) The court or the Tribunal which has granted a final judicial management order may at any time and in any manner vary the terms of such order on the application of the registrar, the final judicial manager, or a representative acting on behalf of the creditors or member of the co-operative concerned by virtue of a resolution passed, in the case of creditors, by a majority in value and number of such creditors at a meeting of those creditors or, in the case of members, by a majority of members present at a general meeting.

129. Effect of final judicial management order

The provisions of regulation 125 will *mutatis mutandis* apply when a final judicial management order is granted.

130. Functions of final judicial manager

A final judicial manager must, subject to the provisions of the constitution of the co-operative concerned in so far as they are not inconsistent with any directive contained in the relevant judicial management order or suspended by the registrar in writing –

- (a) take over the management and control of the co-operative from the provisional judicial manager.
- (b) conduct such management and control, subject to the orders of the registrar, in such manner as he may deem most economic and most promotive of the interests of the members and creditors of the co-operative in order to restore the co-operative as a successful concern;

- (c) comply with any directive of the court or the Tribunal made in the final judicial management order or any variation thereof;
- (d) keep such accounting records and have such financial statements prepared as the co-operative would have been obliged to keep or have prepared if it had not been placed under judicial management;
- (e) convene the annual general meeting and other meetings of members of the co-operative provided for by the Act, and in that regard comply with all the requirements with which the directors of the co-operative would in terms of the Act have been obliged to comply if the co-operative had not been placed under judicial management;
- (f) convene meetings of the creditors of the co-operative by notices issued separately on the dates on which the notices convening annual meetings of the co-operative are issued or on which any interim report is sent out to members, and submit to such meetings reports showing the assets and liabilities of the co-operative, its debts and obligations as verified by the auditor or independent reviewer of the co-operative, and all such information as may be necessary to enable the creditors to become fully acquainted with the co-operative's position as at the date of the end of the period covered by any such interim report;
- (g) lodge with the registrar copies of all the documents submitted to the meetings as provided for in paragraphs (e) and (f);
- (h) examine the affairs and transactions of the co-operative before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the co-operative has contravened or appears to have contravened any provision of the Act or has committed any other offence which gave rise to the circumstances referred to in regulation 58(1);
- (i) examine the affairs and transactions of the co-operative before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the co-operative is or appears to be personally liable for damages or compensation to the co-operative or for any debts or liabilities of the co-operative;
- (j) if at any time he is of the opinion that the continuation of the judicial management will not enable the co-operative to become a successful concern, apply to the court or the Tribunal after not less than 14 days' notice by registered post to all members and creditors of the co-operative for the cancellation of the relevant judicial management order and the issue of an order for the winding-up of the co-operative;

131. Application of assets during judicial management

- (1) A judicial manager may not without the leave of the court sell or otherwise dispose of any of the co-operative's assets save in the ordinary course of the co-operative's business.
- (2) Any money of the co-operative becoming available to the judicial manager must be applied by him in paying the costs of the judicial management and in the conduct of the co-operative's business in accordance with the judicial management order and so far as the circumstances permit in the repayment of debts of the co-operative incurred before the date of the provisional judicial order.

132. Position of auditor in judicial management

Notwithstanding the granting of a judicial management order in respect of any co-operative and for so long as the order is in force, the provisions of this Act relating to the appointment and re-appointment of an auditor or independent reviewer and the rights and duties of an auditor or independent reviewer will continue to apply as if any reference in the said provisions to the directors of the co-operative were a reference to the judicial manager.

133. Application to judicial management of certain provisions on winding-up

In every case in which a co-operative is placed under judicial management the provisions of regulations 93, 94, 95, 96 and 118 will apply as if the co-operative under judicial management were a co-operative being wound up and the judicial manager were the liquidator.

134. Cancellation of judicial management order

- (1) If at any time on application by the judicial manager or any person having an interest in the co-operative it appears to the court or the Tribunal which granted a judicial management order that the purpose of such order has been fulfilled or that for any reason it is undesirable that such order should remain in force, that court may cancel such order, and thereupon the judicial manager will be divested of his functions.
- (2) In cancelling any such order the court or the Tribunal must give such directives as may be necessary for the resumption of the management and control of the co-operative by a Board of directors referred to in section 32(1), including directives for the convening of a general meeting of members for the purpose of electing such directors.
- (3) When a co-operative under judicial management amalgamates with another co-operative it will be deemed that the judicial management order is cancelled with effect from the date on which the first-mentioned co-operative ceased to exist in terms of section 58.

135. Remuneration of provisional and final judicial manager

The registrar must determine the basis of the remuneration of a provisional or final judicial manager, and may at any time decrease or disallow such remuneration if in his opinion there is good cause for doing so.

136. Short title

These Regulations are called the Co-operatives Administrative Regulations, 2016, and come into operation on the date when the Co-operatives Amendment Act, 2013 (Act 6 of 2013) comes into operation.

SCHEDULE 1 – FEES

The prescribed fees to be paid in respect of the filing, verification or copying of a document in terms of the Act, or in respect of any registration and other services rendered by the registrar, are stipulated below. The fees are payable by the co-operative concern to CIPC. Fees must be paid in cash at application.

NATURE OF GOODS OR SERVICE	TARIFF/FEE
1. Application to register a co-operative [Section 6(1)]	R 125.00 per application
2. Registration of special resolution for amendment of constitution	R17.50 per section with a maximum of R125.00
3. Inspection of a document received and kept by the registrar under the Act	R22.50 per co-operative
4. Obtaining a copy of or extract from a document – When it follows inspection When otherwise requested When it is provided programmatically	R 1.50 per page photocopied R 22.50 per co-operative plus R1.50 per page photocopied R 22.50 per co-operative plus disk
5. Application to convert a company into a co-operative [Section 66(1)]	R 125.00 per application
6. Application for the amalgamation of two or more co-operatives [Section 57(4)]	R 125.00 per application
7. Division of co-operative: <ul style="list-style-type: none"> the registration fees for registration of the new co-operatives; the fee for registering the special resolution 	R 125.00 per co-operative R 17.50 per section with a maximum of R 125.00
8. Conversion of co-operative from one type to another: <ul style="list-style-type: none"> the fee for registering the special resolution 	R 17.50 per section with a maximum of R 125.00

NATURE OF GOODS OR SERVICE	TARIFF/FEE
9. Application by co-operative to transfer its assets, rights, liabilities and obligations to any other co-operative and registration of special resolution	R 125.00 per application and the fee for registering the special resolution – R 17.50 per section with a maximum of R 125.00
7. Additional fee for late lodgement of documents required to be lodged within a specified period [Section 95(1)(b)]	R 52.50 per document
8. Checking of documents and drafts of documents	R 52.50 per document
9. Application for the reservation of a name, translated form or shortened form of name	R 75.00 per application if applied for manually and R50.00 if applied for electronically through the CIPC system
10. Annual fees a able b co-operatives - Category A1 and A2 Primary Co-operative	R 50.00 and R 100.00 if submitted more than 30 days after due date
Category B Primary Co-operative	R 450.00 and R 600.00 if submitted more than 30 days after due date
Category C Primary Co-operative	R 3 000.00 and R 4 000.00 if submitted more than 30 days after due date
Secondary Co-operative, Tertiary Co-operative and National Apex Co-operative with an annual or projected annual revenue of less than R25 Million.	R 450.00 and R 600.00 if submitted more than 30 days after the due date
Secondary Co-operative, Tertiary Co-operative and National Apex Co-operative with annual or projected annual revenue of R25 Million or more.	R 3 000.00 and R 4 000.00 if submitted more than 30 days after due date

SCHEDULE 2

REMUNERATION OF LIQUIDATORS

ITEM TAXED		SCALE OF TAXATION
1.	The gross proceeds of movable property (other than shares and similar securities) sold, and the gross amount collected under promissory notes or book debts or as rent interest, contributions or other income	10%
2.	The gross proceeds of immovable property, shares and similar securities sold, mortgage bonds recovered, and the balance recovered in respect of immovable property sold prior to liquidation	3%
3.	The – (a) money found in the estate; (b) gross proceeds of cheques and postal orders payable to the co-operative and found in the estate; and	1%

ITEM TAXED		SCALE OF TAXATION
	(c) gross proceeds of amounts standing to the credit standing to the credit of the co-operative in current, savings and other accounts and fixed deposits and other deposits at banking and financial institutions.	
4.	Sales by the liquidator in carrying on the business of the co-operative, or any part thereof, in terms of regulation 19.	6%
5.	The amount distributed in terms of a composition, excluding any amount on which remuneration is payable under any other item of this tariff	2%
6.	The value at which movable property in respect of which a creditor has a preferred right, has been taken over by such creditor	5%

SCHEDULE 3 - CO-OP FORMS

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- Co-op 6.1 - Special resolution: Amendment to Constitution
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- Co-op 15.1 - Annual return for Category A1 Primary Co-operatives
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- CT1 - Application to Co-operatives Tribunal
- CT2 - Amendment of Application to the Co-operatives Tribunal
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- CT4 - Notice of Motion for Consent Order
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- CT6 - Witness Summons
- CT7 - Notice of Withdrawal
- CT8 - Notice of Hearing

(Please note that the forms listed above will be provided upon request. Kindly refer to our website for our contact details.)