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STATE PRESIDENT'S OFFICE

No. 783.

12 April 1985

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 42 of 1985: Co-operatives Amendment Act, 1985.

KANTOOR VAN DIE STAATSPRESIDENT

No. 783.

12 April 1985

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 42 van 1985: Koöperasiewysigingswet, 1985.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Co-operatives Act, 1981, so as to replace certain obsolete designations, and to further define "branch"; to delete the requirement that the schedule accompanying an application for the registration of a statute and the incorporation of a co-operative shall specify the occupations of persons who applied for membership of the co-operative; to provide that the Registrar of Co-operatives shall issue a certificate whenever the statute of a co-operative is amended to alter the name of the co-operative; to provide for the amendment of registers and documents as a result of the change of name of a co-operative; to further regulate the use and publication of the name of a co-operative; to extend the powers of co-operatives; to place further restrictions on the conclusion of transactions by an agricultural or special farmers' co-operative with persons who are not members of that co-operative; to delete the requirement that the occupations of members of certain co-operatives shall be entered in the register of members; to provide that a capital gain shall be set aside as a general reserve and that a capital loss may be written off against a general reserve; to create certain offences for contraventions of the said Act; to declare further persons incompetent to hold the office of director of certain co-operatives; to make further provision in connection with representatives of juristic persons at general meetings; to further regulate the appointment of proxies by members and the said representatives; to abolish the restriction on matters which may be disposed of at series of meetings; to further define certain duties of the auditor of a co-operative; to make further provision in connection with the special statutory pledge of co-operatives; and to increase the maximum fine which may be imposed after conviction of offences in terms of the said Act; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 26 March 1985.)

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

Amendment of
section 1 of
Act 91 of 1981.

1. Section 1 of the Co-operatives Act, 1981 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in subsection (1) for the definition 5 of "branch" of the following definition:

"branch", in relation to a co-operative, means a place where or from where a co-operative may carry out any or all of its objects, but does not include a 10
place used exclusively as a place where or from 10
where a co-operative disposes of an agricultural product or any thing which was derived by it from

ALGEMENE VERDUIDELIKENDE NOTA:

- []** Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____** Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Koöperasiewet, 1981, ten einde sekere verouderde benamings te vervang, en "tak" nader te omskryf; die vereiste dat die staat wat 'n aansoek om die registrasie van 'n statuut en die inlywing van 'n koöperasie vergesel, die beroepe moet aandui van persone wat om lidmaatskap van die koöperasie aansoek gedoen het, te skrap; te bepaal dat die Registrateur van Koöperasies 'n sertifikaat moet uitreik wanneer die statuut van 'n koöperasie gewysig word om die naam van die koöperasie te verander; voorsiening te maak vir die wysiging van registers en stukke as gevolg van die naamsverandering van 'n koöperasie; die gebruik en publikasie van die naam van 'n koöperasie verder te reël; die bevoegdhede van koöperasies uit te brei; verdere beperkings te plaas op die aangaan van transaksies deur 'n landbou- of 'n spesiale boerekoöperasie met persone wat nie lede van daardie koöperasie is nie; die vereiste dat die beroepe van lede van sekere koöperasies in die lederegister aangeteken moet word, te skrap; te bepaal dat 'n kapitaalwinst as 'n algemene reserwe opsygesit moet word en dat 'n kapitaalverlies teen 'n algemene reserwe afgeskryf kan word; sekere misdrywe vir oortredings van genoemde Wet te skep; verdere persone onbevoeg te verklaar om die amp van direkteur van sekere koöperasies te beklee; verdere voorsiening te maak in verband met verteenwoordigers van regspersone op algemene vergaderings; die aanstelling van gevolmagtigdes deur lede en genoemde verteenwoordigers verder te reël; die beperking op aangeleenthede wat op reekse vergaderings afgehandel kan word, op te hef; sekere pligte van die ouditeur van 'n koöperasie nader te omskryf; verdere voorsiening te maak in verband met die spesiale statutêre pand van koöperasies; en die maksimum boete wat na skuldigbevinding aan misdrywe ingevolge genoemde Wet opgelê kan word, te verhoog; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 26 Maart 1985.)*

DAAR WORD BÉPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

1. Artikel 1 van die Koöperasiewet, 1981 (hieronder die Hoofwet genoem), word hierby gewysig—
- 5 (a) deur in subartikel (1) die omskrywing van "direkteur-generaal" deur die volgende omskrywing te vervang: "direkteur-generaal" die Direkteur-generaal: **[Landbou en Visserye]** Landbou-ekonomie en -bemarking";
- 10 (b) deur in genoemde subartikel (1) die omskrywing van "Minister" deur die volgende omskrywing te vervang: "Minister" die Minister van **[Landbou en Visserye]** Landbou-ekonomie;"; en

Wysiging van
artikel 1 van
Wet 91 van 1981.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

an agricultural product, or of a product or thing into which it was converted by it or an article which was manufactured by it therefrom;";

- (b) by the substitution in the said subsection (1) for the definition of "director-general" of the following definition: 5

"'director-general' means the Director-General: **[Agriculture and Fisheries]** Agricultural Economics and Marketing;"; and

- (c) by the substitution in the said subsection (1) for the definition of "Minister" of the following definition: 10

"'Minister' means the Minister of **[Agriculture and Fisheries]** Agricultural Economics;".

Amendment of section 4 of Act 91 of 1981.

2. Section 4 of the principal Act is hereby amended by the substitution for the words "Agriculture and Fisheries" of the words "Agricultural Economics and Marketing". 15

Amendment of section 26 of Act 91 of 1981.

3. Section 26 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:

- "(d) a schedule containing the full names and addresses **[, and, in the case of a primary agricultural co-operative or a primary special farmers' co-operative, also the occupations,]** of the persons who applied for membership of the co-operative, the date on which each of them applied, the number of shares subscribed for by each of them and the amount paid by each of them on such shares;". 20 25

Amendment of section 33 of Act 91 of 1981.

4. Section 33 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) Whenever the statute of a co-operative is amended to alter the name of the co-operative or a translation or abbreviated form thereof the registrar shall— 30

(a) enter the new name or the translation or abbreviated form thereof in the register of co-operatives in the place of the previous one; and 35

(b) issue a certificate to the co-operative specifying the fact that the co-operative's name or the translation or abbreviated form thereof has been changed in accordance with this Act, and also the new name or the translation or abbreviated form thereof." 40

Insertion of section 38A in Act 91 of 1981.

5. The following section is hereby inserted in the principal Act after section 38:

"Amendment of registers and documents as a result of change of name.

38A. (1) Whenever the name of a co-operative has been altered in terms of this Act, any registrar, or other officer, charged with the maintenance of a register in terms of any law shall, upon the mere production to such registrar or officer of the certificate contemplated in section 33 (8) (b), or a certified copy thereof, make the amendments in his register and any other document in his office or submitted to him which may be necessary on account of the alteration of the name of the co-operative. 45 50

(2) Subsection (1) shall not be construed so as to exempt the co-operative from the payment of any money which would otherwise have been payable to such registrar or officer had the co-operative applied in terms of the said law for the making of the amendment in question." 55

Amendment of section 41 of Act 91 of 1981.

6. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 60

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

(c) deur in genoemde subartikel (1) die omskrywing van "tak" deur die volgende omskrywing te vervang:

5 "tak", met betrekking tot 'n koöperasie, 'n plek waar of waarvandaan 'n koöperasie enige van of al sy doelstellings kan uitvoer, maar nie ook 'n plek wat uitsluitlik gebruik word as 'n plek waar of waarvandaan 'n koöperasie 'n landbouprodukt of iets wat deur hom van 'n landbouprodukt verkry is, of 'n produkt of iets waarin dit deur hom omgesit is of 'n artikel wat daarvan deur hom vervaardig is, van die hand sit nie;"

2. Artikel 4 van die Hoofwet word hierby gewysig deur die woorde "Landbou en Visserye" deur die woorde "Landbou-
10 ekonomie en -bemarking" te vervang. Wysiging van artikel 4 van Wet 91 van 1981.

15 3. Artikel 26 van die Hoofwet word hierby gewysig deur paragraaf (d) van subartikel (2) deur die volgende paragraaf te vervang: Wysiging van artikel 26 van Wet 91 van 1981.

20 "(d) 'n staat bevattende die volle name en adresse [en, in die geval van 'n primêre landboukoöperasie of 'n primêre spesiale boerekoöperasie, ook die beroepe,] van die persone wat om lidmaatskap van die koöperasie aansoek gedoen het, die datum waarop elkeen van hulle aansoek gedoen het, die getal aandeel waarvoor elkeen van hulle ingeteken het en die bedrag deur elkeen van hulle op sodanige aandeel betaal;"

4. Artikel 33 van die Hoofwet word hierby gewysig deur subartikel (8) deur die volgende subartikel te vervang: Wysiging van artikel 33 van Wet 91 van 1981.

30 "(8) Wanneer die statuut van 'n koöperasie gewysig word om die naam van die koöperasie of 'n vertaling of verkorte vorm daarvan te verander, moet die registrateur—

(a) die nuwe naam of die vertaling of verkorte vorm daarvan in die plek van die vorige in die register van koöperasies inskryf; en

35 (b) 'n sertifikaat aan die koöperasie uitreik waarin die feit dat die koöperasie se naam of die vertaling of verkorte vorm daarvan ooreenkomstig hierdie Wet verander is, asook die nuwe naam of die vertaling of verkorte vorm daarvan, vermeld word."

40 5. Die volgende artikel word hierby in die Hoofwet na artikel 38 ingevoeg: Invoeging van artikel 38A in Wet 91 van 1981.

45 "Wysiging van registers en stukke as gevolg van naamsverandering. 38A. (1) Wanneer die naam van 'n koöperasie in-gevolge hierdie Wet verander is, moet 'n registrateur, of ander beampte, wat ingevolge die een of ander wet belas is met die hou van 'n register, by blote voorlegging aan sodanige registrateur of beampte van 'n sertifikaat beoog in artikel 33 (8) (b), of 'n gewaarmerkte afskrif daarvan, die wysigings in sy register en enige ander stuk in sy kantoor of aan hom voorgelê, aanbring wat nodig mag wees vanweë die verandering van die naam van die koöperasie.

50 (2) Subartikel (1) word nie so uitgelê dat dit die koöperasie onthef van die betaling van enige geld wat andersins aan so 'n registrateur of ander beampte betaalbaar sou wees indien die koöperasie ingevolge bedoelde wet om die aanbring van die betrokke wysiging aansoek gedoen het nie."

6. Artikel 41 van die Hoofwet word hierby gewysig—
55 (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: Wysiging van artikel 41 van Wet 91 van 1981.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

Amendment of
section 49 of
Act 91 of 1981.

- “(a) in a conspicuous position and in characters easily legible display its name or a translation **[or abbreviated form]** thereof as set out in its statute, on the outside of its registered office and every branch, depot and other place where business is carried on;”;
- (b) by the deletion in the said subsection (1) of the words “or abbreviated form” wherever they occur in paragraph (b) and the proviso.

7. Section 49 of the principal Act is hereby amended—

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

“(f) with the approval of the Minister and on such conditions as may be determined by the Minister, in the Republic or elsewhere establish, or acquire interests or shares in, companies or other juristic persons or partnerships **[, and participate in such companies, juristic persons or partnerships]** and finance them subject to the provisions of section 52;”;

(b) by the insertion after paragraph (s) of subsection (1) of the following paragraph:

(sA) participate in companies, other juristic persons or partnerships established by it in terms of paragraph (f) or in which it acquired interests or shares in terms of that paragraph; or in other co-operatives (including the performance of services on behalf of such companies, juristic persons, partnerships and co-operatives), as agreed with them in writing;”; and

(c) by the addition of the following subsection:

“(3) If a co-operative performs any act for which it does not have the power under subsection (1) or (2), the co-operative and each director of the co-operative who authorized the performance of such act, or participated in the granting of such authorization or in the performance of such act, knowing that the co-operative is not empowered to perform such act, shall be guilty of an offence.”.

Amendment of
section 54 of
Act 91 of 1981.

8. Section 54 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) a transaction concluded by a co-operative with the consent of or through a member of such co-operative with any person who is an affiliated member of such co-operative by virtue of his membership of any agricultural co-operative or special farmers’ co-operative;”.

Amendment of
section 66 of
Act 91 of 1981.

9. Section 66 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the names and addresses of the members **[and, in the case of a primary agricultural co-operative or a primary special farmers’ co-operative, also the occupations of the members];”.**

Amendment of
section 78 of
Act 91 of 1981.

10. Section 78 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) No co-operative shall, subject to subsection (3) of this section and subsection (2) of section 81, make a repayment of paid-up share capital to a member thereof unless that repayment is caused by a reduction of share capital in accordance with this section.”

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

“Elke koöperasie moet sy naam of ’n vertaling [of verkorte vorm] daarvan soos in sy statuut uiteengesit—”; en

- (b) deur in die voorbehoudsbepaling by genoemde subartikel (1) die woorde “of afkorting” te skrap.

7. Artikel 49 van die Hoofwet word hierby gewysig—

Wysiging van artikel 49 van Wet 91 van 1981.

- (a) deur paragraaf (f) van subartikel (1) deur die volgende paragraaf te vervang:

“(f) met die goedkeuring van die Minister en op die voorwaardes wat die Minister bepaal, in die Republiek of elders maatskappye of ander regspersone of vennootskappe oprig of belange of aandele daarin verkry **[, en aan sodanige maatskappye, regspersone of vennootskappe deelneem]** en hulle behoudens die bepalings van artikel 52 finansier;”;

- (b) deur na paragraaf (s) van subartikel (1) die volgende paragraaf in te voeg:

(sA) aan maatskappye, ander regspersone of vennootskappe wat hy ingevolge paragraaf (f) opgerig het of waarin hy ingevolge daardie paragraaf belange of aandele verkry het, of aan ander koöperasies, deelneem (met inbegrip van die verrigting van dienste ten behoeve van sodanige maatskappye, regspersone, vennootskappe en koöperasies), soos skriftelik met hulle ooreengekom;”; en

- (c) deur die volgende subartikel by te voeg:

“(3) Indien ’n koöperasie ’n handeling verrig waar-
toe hy nie die bevoegdheid kragtens subartikel (1) of (2) het nie, is die koöperasie en elke direkteur van die koöperasie wat die verrigting van die handeling gemagtig het, of deelgeneem het aan die verlening van sodanige magtiging of aan die verrigting van sodanige handeling, wetende dat die koöperasie nie die bevoegdheid het om die handeling te verrig nie, aan ’n misdryf skuldig.”.

8. Artikel 54 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

Wysiging van artikel 54 van Wet 91 van 1981.

- (b) ’n transaksie wat ’n koöperasie met die toestemming of deur die tussenkoms van ’n lid van die koöperasie aangaan met iemand wat uit hoofde van sy lidmaatskap van enige landboukoöperasie of spesiale boerekoöperasie ’n geaffilieerde lid van die koöperasie is;”.

9. Artikel 66 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

Wysiging van artikel 66 van Wet 91 van 1981.

- (a) die name en adresse van die lede **[en, in die geval van ’n primêre landboukoöperasie of ’n primêre spesiale boerekoöperasie, ook die beroepe van die lede];**”.

10. Artikel 78 van die Hoofwet word hierby gewysig deur na subartikel (2) die volgende subartikels in te voeg:

Wysiging van artikel 78 van Wet 91 van 1981.

- “(2A) Geen koöperasie mag, behoudens subartikel (3) van hierdie artikel en subartikel (2) van artikel 81, ’n terugbetaling van opbetaalde aandelekapitaal aan ’n lid daarvan maak nie tensy daardie terugbetaling meegebring word deur ’n vermindering van aandelekapitaal ooreenkomstig hierdie artikel.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

(2B) A co-operative which contravenes a provision of this section shall be guilty of an offence."

Amendment of
section 82 of
Act 91 of 1981.

11. Section 82 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) a capital gain, including a gain resulting from the re-valuation of a capital asset, shall not be applied other than for the setting aside thereof as a general reserve."

Amendment of
section 83 of
Act 91 of 1981.

12. Section 83 of the principal Act is hereby amended by the addition of the following subsection:

"(3) If a co-operative pays interest in contravention of the provisions of subsection (2), the co-operative and every director of the co-operative shall be guilty of an offence."

Amendment of
section 84 of
Act 91 of 1981.

13. Section 84 of the principal Act is hereby amended by the addition of the following subsection:

"(6) If a co-operative pays a bonus in contravention of the provisions of this section, the co-operative and every director of the co-operative shall be guilty of an offence."

Amendment of
section 86 of
Act 91 of 1981.

14. Section 86 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Unless authorized thereto by its statute a co-operative shall not write off a loss which is not a capital loss against its general reserve."

Amendment of
section 108 of
Act 91 of 1981.

15. Section 108 of the principal Act is hereby amended—

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

"(a) unless he is—

(i) a member or an affiliated member of the co-operative; or

(ii) a member of a company which is either itself a member of the co-operative or a member of any other company, co-operative or juristic person which is a member of the co-operative;"

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

"(aA) if such person is a member of a company referred to in paragraph (a) (ii) of which another member is a director of the co-operative and such person is not also a member or affiliated member referred to in paragraph (a) (i) of the co-operative;"

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

"(1A) Notwithstanding the provisions of subsection (1) a person who by virtue of his membership of a trading co-operative is an affiliated member of an agricultural co-operative or a special farmers' co-operative shall not hold the office of director of that agricultural co-operative or special farmers' co-operative unless he is a person who carries on farming operations as contemplated in section 57 (1) (a) (i)."

Amendment of
section 124 of
Act 91 of 1981.

16. Section 124 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The representative of a juristic person referred to in subsection (1) may be any person who is not in terms of section 108, excluding section 108 (1) (g), incompetent to be a director of the co-operative of which such juristic person is a member."

Amendment of
section 125 of
Act 91 of 1981.

17. Section 125 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

(2B) 'n Koöperasie wat 'n bepaling van hierdie artikel oortree, is aan 'n misdryf skuldig.'.

11. Artikel 82 van die Hoofwet word hierby gewysig deur paragraaf (d) deur die volgende paragraaf te vervang:
- 5 “(d) 'n kapitaalwinst, met inbegrip van 'n wins wat ontstaan uit die herwaardering van 'n kapitale bate, nie anders as vir die opsysit daarvan as 'n algemene reserwe aangewend word nie.”.
12. Artikel 83 van die Hoofwet word hierby gewysig deur die 10 volgende subartikel by te voeg:
- “(3) Indien 'n koöperasie rente in stryd met die bepalings van subartikel (2) betaal, is die koöperasie en elke direkteur van die koöperasie aan 'n misdryf skuldig.”.
13. Artikel 84 van die Hoofwet word hierby gewysig deur die 15 volgende subartikel by te voeg:
- “(6) Indien 'n koöperasie 'n bonus in stryd met die bepalings van hierdie artikel betaal, is die koöperasie en elke direkteur van die koöperasie aan 'n misdryf skuldig.”.
14. Artikel 86 van die Hoofwet word hierby gewysig deur sub- 20 artikel (3) deur die volgende subartikel te vervang:
- “(3) Tensy daartoe deur sy statuut gemagtig, skryf 'n koöperasie nie 'n verlies wat nie 'n kapitaalverlies is nie, teen sy algemene reserwe af nie.”.
15. Artikel 108 van die Hoofwet word hierby gewysig—
- 25 (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:
- “(a) tensy hy—
- (i) 'n lid of geaffilieerde lid van die koöperasie is; of
- 30 (ii) 'n lid van 'n maatskappy is wat of self lid van die koöperasie is of lid is van 'n ander maatskappy, koöperasie of regspersoon wat lid van die koöperasie is;”;
- (b) deur in subartikel (1) na paragraaf (a) die volgende 35 paragraaf in te voeg:
- “(aA) indien so iemand 'n lid is van 'n in paragraaf (a) (ii) bedoelde maatskappy waarvan 'n ander lid 'n direkteur van die koöperasie is en so iemand nie ook 'n in paragraaf (a) (i) bedoelde lid of geaffilieerde lid van die koöperasie is nie;”;
- 40 en
- (c) deur na subartikel (1) die volgende subartikel in te voeg:
- “(1A) Ondanks die bepalinge van subartikel (1) be- 45 klee iemand wat uit hoofde van sy lidmaatskap van 'n handelskoöperasie 'n geaffilieerde lid van 'n landboukoöperasie of 'n spesiale boerekoöperasie is, nie die amp van direkteur van daardie landboukoöperasie of spesiale boerekoöperasie nie tensy hy 'n persoon is wat boerdery beoefen soos beoog in artikel 57 (1) (a) (i).”.
- 50 16. Artikel 124 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Die verteenwoordiger van 'n regspersoon in subarti- 55 kel (1) bedoel, moet iemand wees wat nie ingevolge artikel 108, uitgesonderd artikel 108 (1) (g), onbevoeg is om 'n direkteur van die koöperasie waarvan die regspersoon 'n lid is, te wees nie.”.
17. Artikel 125 van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

Wysiging van
artikel 82 van
Wet 91 van 1981.

Wysiging van
artikel 83 van
Wet 91 van 1981.

Wysiging van
artikel 84 van
Wet 91 van 1981.

Wysiging van
artikel 86 van
Wet 91 van 1981.

Wysiging van
artikel 108 van
Wet 91 van 1981.

Wysiging van
artikel 124 van
Wet 91 van 1981.

Wysiging van
artikel 125 van
Wet 91 van 1981.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

"A member of a co-operative or a representative referred to in section 124 may, **[unless prohibited]** if authorized thereto by the co-operative's statute, appoint any person who is not in terms of section 108, excluding section 108 (1) (g), incompetent to be a director of the co-operative, as his proxy to attend, to speak and to vote in his stead at a general meeting of the co-operative: Provided that **[unless the statute of a co-operative otherwise provides]**—".

Amendment of
section 132 of
Act 91 of 1981.

18. Section 132 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

"(1) If more than one-tenth of the members of a primary co-operative are resident further than 50 kilometres from the registered office of the co-operative a series of meetings of members may instead of a general meeting be convened and held on the basis of the different areas in which the members are resident, to dispose of any matter which shall or may be disposed of by a general meeting **[other than the winding-up of the co-operative, the conversion of the co-operative into any other kind or form of co-operative or the amalgamation of the co-operative with another co-operative]**." 15 20

Amendment of
section 153 of
Act 91 of 1981.

19. Section 153 of the principal Act is hereby amended by the substitution for paragraph (1) of the following paragraph:

"(1) satisfy himself that the co-operative has complied with the provisions of this Act, in so far as they relate to the carrying out of its objects, and the provisions of Chapter III and of its statute." 25

Amendment of
section 173 of
Act 91 of 1981.

20. Section 173 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 30

"(c) (i) all agricultural products of a class with which the co-operative deals in the normal course of business; and
(ii) all agricultural products from which the agricultural products referred to in subparagraph (i) were or are derived; and 35
(iii) if a State-guaranteed credit scheme is applicable in respect of that debt, also all other agricultural products, of which that member is the owner at the date on which the debt arose or which are produced or acquired by him after that date, shall be deemed to be pledged to the co-operative as fully and effectually as if such products were delivered to the co-operative;" 40 45

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

"(a) require of a member referred to in subsection (1)—
(i) to indicate the agricultural products deemed in terms of paragraph (c) of that subsection to be pledged to the co-operative, or the land on which such products are being or are to be produced, or, in the case of livestock, where such livestock are being or are to be kept; and 50 55
(ii) to furnish the name of every other agricultural or special farmers' co-operative of which he is a member and the amount and nature of his debt to such co-operative, if any, and to indicate whether that debt or any part thereof is secured by the pledging of agricultural products in terms of this section;" 60

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

“’n Lid van ’n koöperasie of ’n verteenwoordiger in artikel 124 bedoel, kan, **[tensy] indien** deur die koöperasie se statuut **[verbied]** daartoe gemagtig, iemand wat nie ingevolge artikel 108, uitgesonderd artikel 108 (1) (g), onbevoeg is om

5 ’n direkteur van die koöperasie te wees nie, as sy gevolmagtigde aanstel om namens hom teenwoordig te wees, te praat en te stem op ’n algemene vergadering van die koöperasie: Met dien verstande dat **[tensy die statuut van ’n koöperasie anders bepaal]**—”.

10 18. Artikel 132 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Wysiging van
artikel 132 van
Wet 91 van 1981.

“(1) Indien meer as een tiende van die lede van ’n primêre koöperasie verder as 50 kilometer van die geregistreerde kantoor van die koöperasie woonagtig is, kan in stede van

15 ’n algemene vergadering ’n reeks vergaderings van lede volgens die verskillende gebiede waarin die lede woon, belê en gehou word om enige aangeleentheid **[behalwe die likwidasie van die koöperasie, die omskepping van die koöperasie in ’n ander soort of vorm van koöperasie of die amalgamasie van die koöperasie met ’n ander koöperasie]** af te handel

20 wat deur ’n algemene vergadering afgehandel moet word of kan word.”.

19. Artikel 153 van die Hoofwet word hierby gewysig deur paragraaf (1) deur die volgende paragraaf te vervang:

Wysiging van
artikel 153 van
Wet 91 van 1981.

25 “(1) hom daarvan vergewis dat die koöperasie die bepalinge van hierdie Wet, in soverre hulle betrekking het op die uitvoering van sy doelstellings, en die bepalinge van Hoofstuk III en van sy statuut nagekom het.”.

20. Artikel 173 van die Hoofwet word hierby gewysig—

30 (a) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:

Wysiging van
artikel 173 van
Wet 91 van 1981.

“(c) word—

(i) alle landbouprodukte van ’n klas waarmee die koöperasie in die gewone loop van sake handel; en

35 (ii) alle landbouprodukte waarvan die landbouprodukte in subparagraaf (i) bedoel, verkry is of word; en

40 (iii) indien ’n Staatsgewaarborgde kredietskema ten opsigte van daardie skuld van toepassing is, ook alle ander landbouprodukte, waarvan daardie lid op die datum waarop die skuld ontstaan het die eienaar is of wat na daardie datum deur hom geproduseer of verkry word, geag aan

45 die koöperasie verpand te wees so volkome en werkdadiglik asof daardie produkte aan die koöperasie gelewer is;”;

(b) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

50 “(a) van ’n lid in subartikel (1) bedoel, vereis—

(i) om die landbouprodukte aan te dui wat ingevolge paragraaf (c) van daardie subartikel geag word aan die koöperasie verpand te wees, of die grond aan te dui waarop daardie produkte geproduseer word of gaan word, of, in die geval van lewende hawe, waar daardie lewende hawe gehou word of gehou gaan word; en

60 (ii) om die naam van elke ander landbou- of spesiale boerekoöperasie waarvan hy lid is en die bedrag en aard van sy skuld aan so ’n koöperasie, as daar is, te verstrek en om aan te dui of daardie skuld of enige gedeelte daarvan deur die verpanding van landbouprodukte ingevolge hierdie artikel verseker is;”;

65

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

- (c) by the substitution for paragraph (b) of the said subsection (2) of the following paragraph:
“(b) authorize any person to enter, **[with at least 24 hours’ notice]** at any reasonable time, any land on which such member carries on or presumably carries on farming operations and to view or inspect any agricultural products or any thing from which an agricultural product is derived;”;
- (d) by the substitution for subsection (4) of the following subsection:
“(4) If any particular agricultural products of any person (hereinafter referred to as the pledger) are deemed in terms of subsection (1) (c) to be pledged to more than one co-operative—
(a) those products shall, subject to paragraph (b), be deemed as aforesaid to be pledged to those co-operatives jointly;
(b) the powers referred to in subsection (1) (d) may be exercised by each of the said co-operatives separately from the other as if the products were pledged to such co-operative alone;
(c) the pledger, if he disposes of those products through any one of the said co-operatives, and any other person, if he acquires those products from such co-operative, shall be deemed to have complied with the provisions of subsection (1) (e);
(d) none of the said co-operatives shall, on account of the fact that those products are deemed to be pledged to it and the other co-operatives jointly, be entitled to a greater part of the proceeds of those products than an amount which bears the same ratio to the amount of the net proceeds of the products as the amount owing to it by the pledger as at the date on which the products are received for marketing by a co-operative in accordance with its statute or a provision of the Marketing Act, 1968, or are otherwise disposed of by the pledger, bears to the sum of the respective amounts owing by the pledger to the said co-operatives as at that date;
(e) any one of the said co-operatives having possession of the proceeds of those products, may, at the written request of any one of the other of the said co-operatives and without the consent of the pledger, on behalf of any such last-mentioned co-operative set off against those proceeds, and pay to the said co-operative, the amount, or any part thereof, owing by the pledger to such co-operative in settlement or part settlement of the said debt.”;
- and
- (e) by the insertion after subsection (4) of the following subsection:
“(4A) For the purposes of—
(a) subsection (4) (d)—
(i) any amount owing to a co-operative by the pledger which is not secured by the pledging of the agricultural products in question, shall be disregarded;
(ii) agricultural products of which quantities are received by a co-operative mentioned therein, or disposed of by the pledger, over a period of two or more days, shall be deemed to be so received or disposed of, as the case may be, on the first day of that period; and
(b) subsection (4) (e)—
(i) no amount owing by the pledger to a co-operative which is not secured by the pledging of

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

(c) deur paragraaf (b) van genoemde subartikel (2) deur die volgende paragraaf te vervang:

“(b) iemand magtig om **[met minstens 24 uur kennisgewing]** te enige redelike tyd enige grond waarop daardie lid boerdery beoefen of vermoedelik beoefen, te betree en enige landbouprodukte of iets waarvan ’n landbouproduk verkry word, te besigtig of te ondersoek;”;

(d) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Indien bepaalde landbouprodukte van die een of ander persoon (hieronder die pandgewer genoem) aan meer as een koöperasie ingevolge subartikel (1) (c) geag word verpand te wees—

(a) word daardie produkte, behoudens paragraaf (b), soos voormeld geag gesamentlik aan daardie koöperasies verpand te wees;

(b) kan die bevoegdhede bedoel in subartikel (1) (d) deur elk van bedoelde koöperasies afsonderlik van die ander uitgeoefen word asof die produkte aan so ’n koöperasie alleen verpand is;

(c) word die pandgewer, indien hy daardie produkte deur bemiddeling van enigeen van bedoelde koöperasies van die hand sit, en enige ander persoon, indien hy daardie produkte van so ’n koöperasie verkry, geag aan die bepalings van subartikel (1) (e) te voldoen het;

(d) is geeneen van bedoelde koöperasies, vanweë die feit dat daardie produkte geag word gesamentlik aan hom en die ander koöperasies verpand te wees, geregtig op ’n groter deel van die opbrengs van daardie produkte nie as ’n bedrag wat in dieselfde verhouding staan tot die bedrag van die netto opbrengs van die produkte as waarin die bedrag deur die pandgewer aan hom verskuldig soos op die datum waarop die produkte deur ’n koöperasie ooreenkomstig sy statuut of ’n bepaling van die Bemerkingswet, 1968, vir die bemerking daarvan ontvang word of andersins deur die pandgewer van die hand gesit word, staan tot die som van die onderskeie bedrae deur die pandgewer aan bedoelde koöperasies soos op daardie datum verskuldig;

(e) kan enigeen van bedoelde koöperasies wat oor die opbrengs van daardie produkte beskik, op skriftelike versoek van enigeen van die ander van bedoelde koöperasies en sonder die toestemming van die pandgewer, die bedrag, of enige deel daarvan, deur die pandgewer aan so ’n laasgenoemde koöperasie verskuldig, namens bedoelde koöperasie teen daardie opbrengs verreken en aan die koöperasie betaal ter vereffening of gedeeltelike vereffening van bedoelde skuld.”; en

(e) deur na subartikel (4) die volgende subartikel in te voeg:

“(4A) By die toepassing van—

(a) subartikel (4) (d)—

(i) word enige bedrag deur die pandgewer aan ’n koöperasie verskuldig wat nie deur die verpanding van die betrokke landbouprodukte verseker is nie, buite rekening gelaat;

(ii) word landbouprodukte waarvan hoeveelhede oor ’n tydperk van twee of meer dae deur ’n daarin bedoelde koöperasie ontvang word of deur die pandgewer van die hand gesit word, geag op die eerste dag van daardie tydperk aldus ontvang of van die hand gesit te wees, na gelang van die geval; en

(b) subartikel (4) (e)—

(i) word geen bedrag deur die pandgewer aan ’n koöperasie verskuldig wat nie deur die ver-

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

the agricultural products in question, shall be set off in accordance with the authority contained therein and paid over to such co-operative;

- (ii) the co-operative having possession of the proceeds of the products shall accept the amount specified in the written request mentioned therein as the amount which is owed by the pledger to the co-operative making the request and which is secured by the pledging of the products in question if that request is accompanied by either a written acknowledgement by the pledger or an affidavit by an officer of the co-operative concerned to the effect that the amount so specified in the written request represents an amount which is owed by the pledger to the co-operative and secured by the pledging of the products in question;
- (iii) the co-operative having possession of the proceeds of the products shall give an account to the pledger of every payment made by him under the said subsection."

Substitution of section 239 of Act 91 of 1981.

21. The following section is hereby substituted for section 239 of the principal Act:

"Penalties for offences.

239. Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding **[R1 000]** R5 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment."

Short title.

22. This Act shall be called the Co-operatives Amendment Act, 1985.

KOÖPERASIEWYSIGINGSWET, 1985

Wet No. 42, 1985

- panding van die betrokke landbouprodukte verseker is nie, ooreenkomstig die magtiging daarin vervat, verreken en aan so 'n koöperasie oorbetaal nie;
- 5 (ii) moet die koöperasie wat oor die opbrengs van die produkte beskik die bedrag vermeld in die daarin vermelde skriftelike versoek as die bedrag aanvaar wat deur die pandgewer aan die koöperasie wat die versoek rig, verskuldig is
- 10 en deur die verpanding van die betrokke produkte verseker is indien daardie versoek vergesel gaan van òf 'n skriftelike erkenning deur die pandgewer òf 'n beëdigde verklaring deur 'n beampte van die betrokke koöperasie met
- 15 die strekking dat die bedrag aldus in die skriftelike versoek vermeld 'n bedrag verteenwoordig wat deur die pandgewer aan die koöperasie verskuldig is en deur die verpanding van die betrokke produkte verseker is;
- 20 (iii) moet die koöperasie wat oor die opbrengs van die produkte beskik aan die pandgewer rekenskap gee van elke betaling deur hom kragtens genoemde subartikel gedoen.".

21. Artikel 239 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van artikel 239 van Wet 91 van 1981.

- "Strawwe vir misdrywe. 239. Iemand wat aan 'n misdryf ingevolge hierdie Wet skuldig bevind word, is strafbaar met 'n boete van hoogstens **[R1 000]** R5 000 of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande of met sowel sodanige boete as sodanige gevangenisstraf."
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22. Hierdie Wet heet die Koöperasiewysigingswet, 1985.

Kort titel.

