



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

STAATSKOERANT

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Selling price • Verkoopprys
(GST excluded/AVB uitgesluit)

Local **50c** Plaaslik
Other countries 70c Buiteland
Post free • Posvry

VOL. 268

CAPE TOWN, 14 OCTOBER 1987

No. 10972

KAAPSTAD, 14 OKTOBER 1987

STATE PRESIDENT'S OFFICE

No. 2293.

14 October 1987

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

No. 80 of 1987: Co-operatives Amendment Act, 1987.

KANTOOR VAN DIE STAATSPRESIDENT

No. 2293.

14 Oktober 1987

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

No. 80 van 1987: Koöperasiewysigingswet, 1987.

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

GENERAL EXPLANATORY NOTE:

- I** 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 further define "agricultural product"; to extend the objects of primary agricultural co-operatives so as to include certain insurance business; to provide for the marketing of agricultural products from self-governing territories and independent states in the Republic as well as aid from the Republic's agricultural co-operatives to such territories and states; to further regulate the membership of certain co-operatives; to provide for the attendance of the registrar at meetings of co-operatives; to further regulate the liability of directors and officers; to provide that certain co-operatives may prescribe in their statutes the number of persons that may request a vote by ballot paper at general meetings; to repeal the requirement that the registrar approve the appointment of a co-operative's auditor; to provide for co-operatives to make compromises and arrangements; to provide for the registration by the registrar of deeds of any conversion, amalgamation, compromise or arrangement, the registration, if necessary, of property other than fixed property, and the exemption of the payment of certain registration fees; to provide that members of co-operatives under liquidation do not have to bring claims against members' funds; to provide for the judicial management of co-operatives; to further regulate the amendment, substitution and repeal of certain notices and proclamations, and to provide for contraventions of those notices and proclamations; and to repeal Schedule 1; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 30 September 1987.)*

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,
as amended by
section 1 of
Act 42 of 1985.

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 of "agricultural product" of the following definition:—"agricultural product" means any article [specified in Part A of Schedule 1 or] derived from farming operations, and in relation to an agricultural co-operative or a special farmers' co-operative also any product derived from the processing or manufacturing of that article, and declared to be an agricultural product [under subsection (2) of this section] from time to time by the Minister by notice in the *Gazette*"; and
 - (b) by the deletion of subsection (2).

5

10

15

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

ALGEMENE VERDUIDELIKENDE NOTA:

- [** Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeningen aan.
- Woorde met 'n volstreep daaronder dui invoegings in bestaande verordeningen aan.

WET

Tot wysiging van die Koöperasiewet, 1981, ten einde "landbouproduk" verder te omskryf; die doelstellings van primêre landboukoöperasies uit te brei om sekere versekeringsbesigheid in te sluit; voorsiening te maak vir die bemarking van landbouprodukte van selfregerende gebiede en onafhanklike state in die Republiek asook hulpverlening deur die Republiek se landboukoöperasies aan sodanige gebiede en state; die lidmaatskap van sekere koöperasies verder te reël; voorsiening te maak vir die bywoning deur die registrateur van vergaderings van koöperasies; die aanspreeklikheid van direkteure en beampies verder te reël; voorsiening te maak dat sekere koöperasies in hulle statute die getal persone mag voorskryf wat 'n stemming per stembriefie op algemene vergaderings kan aanvra; die vereiste dat die registrateur die aanstelling van 'n koöperasie se ouditeur goedkeur, te herroep; voorsiening te maak vir koöperasies om skikkings en reëlings aan te gaan; voorsiening te maak vir die registrasie deur die registrateur van aktes van enige omskepping, amalgamasie, skikking of reëling, die registrasie, indien nodig, van ander goed as onroerende goed, en die vrystelling van betaling van sekere registrasiegeld; voorsiening te maak dat lede van koöperasies onder likwidasie nie eise teen die ledefondse hoof in te stel nie; voorsiening te maak vir die geregtelike bestuur van koöperasies; die wysiging, vervanging en herroeping van sekere kennisgewings en proklamasies verder te reël, en vir oortredings van daardie kennisgewings en proklamasies voorsiening te maak; en Bylae 1 te herroep; en om vir bykomstige aangeleenthede voorsiening te maak.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 30 September 1987.)

DAAR WORD BEPAAL 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 "landbouproduk" deur die volgende omskrywing te vervang:
 "landbouproduk" 'n artikel [in Deel A van Bylae 1 genoem of kragtens subartikel (2) van hierdie artikel] wat deur boerdery verkry word, en met betrekking tot 'n landboukoöperasie of spesiale boerekoöperasie ook die produk wat deur die verwerking of vervaardiging van daardie artikel verkry word, en wat van tyd tot tyd deur die Minister by kennisgeving in die Staatskoerant tot 'n landbouprodukt verklaar word;" en
- 10 (b) deur subartikel (2) te skrap.

Wysiging van artikel 1 van Wet 91 van 1981, soos gewysig deur artikel 1 van Wet 42 van 1985.

Act No. 80, 1987**CO-OPERATIVES AMENDMENT ACT, 1987**

Amendment of
section 21 of
Act 91 of 1981.

2. (1) Section 21 of the principal Act is hereby amended by the addition to paragraph (g) of subsection (1) of the following subparagraph:

“(iii) an agent or intermediary in connection with insurance business referred to in section 49 (1) (s).”

(2) Anything done by a primary agricultural co-operative or a primary special farmers' co-operative from the date of commencement of the principal Act and which could have been done if subparagraph (iii) of section 21 (1) (g) of the principal Act, as inserted by subsection (1), was in operation shall be deemed to have been done in terms of that subparagraph.

(3) A primary agricultural co-operative or primary special farmers' co-operative which existed immediately prior to the date of commencement of the principal Act, and which had as one of its objects the object referred to in subparagraph (iii) of section 21 (1) (g) of the principal Act, as inserted by subsection (1), shall be deemed to have that object from the said date as one of its objects.

Amendment of
section 54 of
Act 91 of 1981,
as amended by
section 8 of
Act 42 of 1985.

3. Section 54 of the principal Act is hereby amended—

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

“(c) subsection (1) (f) or (g) (iii) or (2) (a) of that section, does insurance business with such a person;”;

and

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

“(c) subsection (1) (f) or (g) (iii) or (2) (a) of that section, means the amount of insurance premiums received by a co-operative during a financial year;”.

Amendment of
section 57 of
Act 91 of 1981.

4. Section 57 of the principal Act is hereby amended—

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

“(v) undertakings approved by the Minister which have been incorporated outside the Republic or in an area within the Republic where this Act is not applicable and which carry out [according to co-operative practice] an object for which an agricultural co-operative may be formed under this Act;”;

and

(b) by the addition to paragraph (a) of subsection (1) of the following subparagraph:

“(vi) a trustee of a trust carrying on farming operations on behalf of the trust in an area where this Act is applicable;”.

30

40

Amendment of
section 58 of
Act 91 of 1981.

5. Section 58 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (v) of paragraph (a) of the following subparagraph:

“(v) undertakings approved by the Minister which have been incorporated outside the Republic or in an area within the Republic where this Act is not applicable and which carry out [according to co-operative practice] an object for which a special farmers' co-operative may be formed under this Act;”;

and

(b) by the addition to paragraph (a) of the following subparagraph:

“(viii) a trustee of a trust carrying on farming operations on behalf of the trust in an area where this Act is applicable;”.

55

50

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

2. (1) Artikel 21 van die Hoofwet word hierby gewysig deur by paragraaf (g) van subartikel (1) die volgende subparagraaf te voeg:

5 “(iii) agent of tussenganger in verband met versekeringsbesigheid in artikel 49 (1) (s) bedoel.”.

(2) Enigets wat deur 'n primêre landboukoöperasie of primêre spesiale boerekoöperasie vanaf die datum van inwerkingtreding van die Hoofwet gedoen is en wat gedoen sou kon word indien subparagraaf (iii) van artikel 21 (1) (g) van die 10 Hoofwet, soos bygevoeg deur subartikel (1), van krag was, word geag ingevolge daardie subparagraaf gedoen te gewees het.

(3) 'n Primêre landboukoöperasie of primêre spesiale boerekoöperasie wat onmiddellik voor die datum van inwerkingtreding van die Hoofwet bestaan het, en as een van sy doelstellings 15 die doelstelling bedoel in subparagraaf (iii) van artikel 21 (1) (g) van die Hoofwet, soos bygevoeg deur subartikel (1), gehad het, word geag daardie doelstelling vanaf genoemde datum as een van sy doelstellings te hê.

3. Artikel 54 van die Hoofwet word hierby gewysig—

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

“(c) subartikel (1) (f) of (g) (iii) of (2) (a) van daardie artikel, met so iemand versekeringsbesigheid te doen nie;” en

25 (b) deur paragraaf (c) van subartikel (4) deur die volgende paragraaf te vervang:

“(c) subartikel (1) (f) of (g) (iii) of (2) (a) van daardie artikel, die bedrag van die versekeringspremies gedurende 'n boekjaar deur 'n koöperasie ontvang;”.

Wysiging van artikel 54 van Wet 91 van 1981, soos gewysig deur artikel 8 van Wet 42 van 1985.

30 4. Artikel 57 van die Hoofwet word hierby gewysig—

(a) deur subparagraaf (v) van paragraaf (a) van subartikel (1) deur die volgende subparagraaf te vervang:

“(v) ondernemings deur die Minister goedgekeur wat buite die Republiek of in 'n gebied binne die Republiek waar hierdie Wet nie van toepassing is nie met regspersoonlikheid beklee is en 'n doelstelling waarvoor 'n landboukoöperasie ingevolge hierdie Wet opgerig kan word, [volgens koöperatiewe praktyk] uitvoer;” en

40 (b) deur by paragraaf (a) van subartikel (1) die volgende subparagraaf te voeg:

“(vi) 'n trustee van 'n trust wat namens die trust in 'n gebied waar hierdie Wet van toepassing is, boerdery beoefen;”.

Wysiging van artikel 57 van Wet 91 van 1981.

45 5. Artikel 58 van die Hoofwet word hierby gewysig—

(a) deur subparagraaf (v) van paragraaf (a) deur die volgende subparagraaf te vervang:

“(v) ondernemings deur die Minister goedgekeur wat buite die Republiek of in 'n gebied binne die Republiek waar hierdie Wet nie van toepassing is nie met regspersoonlikheid beklee is en 'n doelstelling waarvoor 'n spesiale boerekoöperasie ingevolge hierdie Wet opgerig kan word, [volgens koöperatiewe praktyk] uitvoer;” en

55 (b) deur by paragraaf (a) die volgende subparagraaf te voeg:

“(viii) 'n trustee van 'n trust wat namens die trust in 'n gebied waar hierdie Wet van toepassing is, boerdery beoefen;”.

Wysiging van artikel 58 van Wet 91 van 1981.

Act No. 80, 1987

Amendment of
section 112 of
Act 91 of 1981.

CO-OPERATIVES AMENDMENT ACT, 1987

6. Section 112 of the principal Act is hereby amended by the addition of the following subsection:

- (4) (a) A co-operative shall at the written request of the registrar notify him and forward to him the agenda and relevant documents of any meeting of its board of directors or of a committee of that board on the same day as the directors or members of such committee are notified of any such meeting.
- (b) The registrar may attend any meeting of which he was notified in terms of paragraph (a) and shall have the right to take part in the proceedings thereof but shall not have the right to vote, and his participation shall be noted in the minutes referred to in section 113 (1).
- (c) If default is made in complying with any requirement of paragraph (a) the co-operative and every director and officer of the co-operative who knowingly are parties to such default shall be guilty of an offence.”.

5

10

15

Substitution of
section 116 of
Act 91 of 1981.

7. The following section is hereby substituted for section 116 of the principal Act:

**“Liability of
directors and
officers.** **116.** (1) A director or officer of a co-operative shall not be liable to any person in his personal capacity for any loss or damage which may occur in or in connection with the performance of his duties, unless—

- (a) the loss or damage is due to his wilful misconduct, dishonesty or gross negligence or to the fact that he wilfully contravened or that he refused to comply with a provision of this Act or the statute of the co-operative and such loss or damage is not covered by a fidelity guarantee policy or any other similar policy taken out by the co-operative; or
- (b) the loss or damage is due to his reckless conduct, or conduct which is or was intended to defraud any person or for any other fraudulent purpose,

in which case he shall be liable in his personal capacity without any limitations of liability.

(2) Without prejudice to any other criminal liability incurred, where any business of a co-operative is carried on in any manner contemplated in subsection (1), every director or officer who is knowingly a party to the carrying on of the business in any such manner shall be guilty of an offence.”.

30

35

40

Amendment of
section 122 of
Act 91 of 1981.

8. Section 122 of the principal Act is hereby amended by the addition of the following subsection:

“(5) The provisions of section 112 (4) shall *mutatis mutandis* apply to any annual general meeting of a co-operative.”.

45

Amendment of
section 123 of
Act 91 of 1981.

9. Section 123 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The provisions of section 112 (4) shall *mutatis mutandis* apply to any extraordinary general meeting of a co-operative.”.

50

Amendment of
section 129 of
Act 91 of 1981.

10. Section 129 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A vote by ballot shall not be held unless it is demanded, in the case of a general meeting of a primary co-operative, by at least five persons present at the meeting and entitled to vote in a vote by ballot or, in the case of a

55

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

6. Artikel 112 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

"(4) (a) 'n Koöperasie moet op die skriftelike versoek van die

- 5 registrateur hom in kennis stel en die agenda en ter-saaklike dokumente aan hom stuur van enige vergadering van die koöperasie se raad van direkteure of van 'n komitee van daardie raad op dieselfde dag as wat die direkteure of lede van so 'n komitee van so 'n vergadering in kennis gestel word.
- 10 (b) Die registrateur kan enige vergadering waarvan hy in-gevolge paragraaf (a) in kennis gestel is, bywoon en het die reg om aan die verrigting daarvan deel te neem maar het nie die reg om 'n stem uit te bring nie, en sy deelname moet in die notule bedoel in artikel 113 (1) aangeteken word.
- 15 (c) Indien daar versuim word om aan 'n bepaling van para-graf (a) te voldoen, is die koöperasie en elke direk-teur en beampete van die koöperasie wat wetens 'n par-tyn by die versuim is aan 'n misdryf skuldig."

20 **7.** Artikel 116 van die Hoofwet word hierby deur die volgende artikel vervang:

"Aansprek-
likheid van
direkteure
en beampetes.
25 116. (1) 'n Direkteur of beampete van 'n koöpera-sie is nie in sy persoonlike hoedanigheid teenoor enigiemand aanspreeklik vir enige verlies of skade wat by of in verband met die verrigting van sy pligte voorkom nie, tensy—

- 30 (a) die verlies of skade te wyte is aan sy opsetlike wangedrag, oneerlikheid of growwe nalatigheid of aan die feit dat hy 'n bepaling van hierdie Wet of die statuut van die koöperasie opsetlik oortree het of dat hy geweier het om aan so 'n bepaling te voldoen en sodanige verlies of skade nie deur 'n getrouheidswaarborgpolis of enige ander soortgelyke polis deur die koöperasie uit-geneem, gedeck is nie; of
- 35 (b) die verlies of skade te wyte is aan sy roekeloze optrede, of optrede wat bedoel is of was om ie-mand te bedrieg of vir enige ander bedrieglike doel,
40 in welke geval hy, sonder enige beperking op aan-spreklikheid, in sy persoonlike hoedanigheid aan-spreklik is.
- (2) Sonder om afbreuk te doen aan enige ander strafregtlike aanspreeklikheid opgedoen, waar besigheid van 'n koöperasie op enige wyse in subartikel (1) beoog, gedryf word, is elke direkteur of beampete wat wetend 'n party is by die dryf van die besigheid op so 'n wyse aan 'n misdryf skuldig."

45 **8.** Artikel 122 van die Hoofwet word hierby gewysig deur die 50 volgende subartikel by te voeg:

"(5) Die bepalings van artikel 112 (4) is *mutatis mutandis* van toepassing op 'n jaarlikse algemene vergadering van 'n koöperasie."

55 **9.** Artikel 123 van die Hoofwet word hierby gewysig deur die 55 volgende subartikel by te voeg:

"(4) Die bepalings van artikel 112 (4) is *mutatis mutandis* van toepassing op 'n buitengewone algemene vergadering van 'n koöperasie."

60 **10.** Artikel 129 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) 'n Stemming met stembriefies word nie gehou nie tensy sodanige stemming geëis word, in die geval van 'n al-gemene vergadering van 'n primêre koöperasie, deur min-stens vyf persone wat op die vergadering teenwoordig is en

Wysiging van
artikel 112 van
Wet 91 van 1981.

Vervanging van
artikel 116 van
Wet 91 van 1981.

Wysiging van
artikel 122 van
Wet 91 van 1981.

Wysiging van
artikel 123 van
Wet 91 van 1981.

Wysiging van
artikel 129 van
Wet 91 van 1981.

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

general meeting of a central or federal co-operative, by [at least two] the number of [such] persons prescribed in the statute of the co-operative.”.

Repeal of
section 148 of
Act 91 of 1981.

Substitution of
heading of
Chapter VIII of
Act 91 of 1981.

Insertion of
sections 169A,
169B and 169C in
Act 91 of 1981.

11. Section 148 of the principal Act is hereby repealed.

12. The following heading is hereby substituted for the heading of Chapter VIII of the principal Act:
“CONVERSIONS [AND], AMALGAMATIONS, COMPROMISES AND ARRANGEMENTS”.

13. The following subheading and sections are hereby inserted in the principal Act after section 169:

“Compromises and arrangements

- Compromise and arrangement between co-operative, its members and creditors.
- 169A.** (1) If any compromise or arrangement is proposed between a co-operative and its creditors or any class of them or between a co-operative and its members, the court may, on the application of the co-operative or any creditor or member of the co-operative or, in the case of a co-operative being wound up, of the liquidator, or if the co-operative is subject to a judicial management order, of the judicial manager, order a meeting of the creditors or class of creditors or of the members of the co-operative, as the case may be, to be summoned in such manner as the court may direct.
- (2) If a compromise or arrangement is agreed to by—
- (i) a majority in number representing three-fourths in value of the creditors or class of creditors present and voting either in person or by proxy at the meeting; or
 - (ii) a special resolution, as the case may be, such compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members, as the case may be, and also on the co-operative or on the liquidator if the co-operative is being wound up, or on the judicial manager if the co-operative is subject to a judicial management order.
- (3) No such compromise or arrangement shall affect the liability of any person who is a surety for the co-operative.
- (4) (a) An order by the court sanctioning a compromise or arrangement shall have no effect until a certified copy thereof has been lodged with the registrar and registered by him.
- (b) A copy of such order of court shall be annexed to every copy of the statute of the co-operative.
- (5) If a co-operative fails to comply with the provisions of subsection (4) (b) the co-operative and every director and officer of the co-operative who are parties to the failure shall be guilty of an offence.

- Information as to compromises and arrangements.
- 169B.** (1) If a meeting of creditors or any class of creditors or of members is summoned under section 169A (1) for the purpose of agreeing to a compromise or arrangement, there shall, with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement—
- (i) explaining the effect of the compromise or arrangement;

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

5 geregig is om in 'n stemming met stembrieëlies te stem, of, in die geval van 'n algemene vergadering van 'n sentrale of federale koöperasie, deur [**minstens twee**] die getal [**sodanige**] persone wat in die statuut van die koöperasie voorgeskrif word.”.

11. Artikel 148 van die Hoofwet word hierby herroep.

Herroeping van artikel 148 van Wet 91 van 1981.

12. Die opskrif van Hoofstuk VIII van die Hoofwet word hierby deur die volgende opskrif vervang:
10 “**OMSKEPPINGS [EN], AMALGAMASIES, SKIKKINGS EN REËLINGS**”.

Vervanging van opskrif van Hoofstuk VIII van Wet 91 van 1981.

13. Die volgende tweede opskrif en artikels word hierby in die Hoofwet na artikel 169 ingevoeg:
“Skikkings en reëlings

Invoeging van artikels 169A, 169B en 169C in Wet 91 van 1981.

15 Skikking en reëling tussen koöperasie, sy lede en krediteure.	<p>169A. (1) As 'n skikking of reëling voorgestel word tussen 'n koöperasie en sy skuldeisers of 'n klas van hulle of tussen 'n koöperasie en sy lede, kan die hof, op aansoek van die koöperasie of 'n skuldeiser of lid van die koöperasie of, in die geval van 'n koöperasie wat gelikwideer word, van die likwidateur, of as die koöperasie aan 'n geregtelike bestuursbevel onderworpe is, van die geregtelike bestuurder, beveel dat 'n vergadering van die skuldeisers of klas van skuldeisers of van die lede van die koöperasie, na gelang van die geval, byeengeroep word op die wyse wat die hof gelas.</p> <p>(2) As tot die skikking of reëling toegestem word deur—</p> <ul style="list-style-type: none"> (i) 'n meerderheid in getal wat driekwart in waarde van die skuldeisers of klas van skuldeisers verteenwoordig wat of persoonlik of deur 'n gevollmigtigde op die vergadering aanwesig is en stem; of (ii) 'n spesiale besluit, na gelang van die geval, bind die skikking of reëling, as die hof dit goedkeur, al die skuldeisers of die klas van skuldeisers of die lede, na gelang van die geval, en ook die koöperasie of, as die koöperasie gelikwideer word, die likwidateur of, as die koöperasie aan 'n geregtelike bestuursbevel onderworpe is, die geregtelike bestuurder. <p>(3) Geen sodanige skikking of reëling raak die aanspreeklikheid van 'n persoon wat 'n borg vir die koöperasie is nie.</p> <p>(4) (a) 'n Hofbevel wat 'n skikking of reëling goedkeur, is kragteloos totdat 'n gesertifiseerde afskrif daarvan by die registrateur ingedien en deur hom geregistreer is.</p> <p>(b) 'n Afskrif van so 'n hofbevel moet by elke afskrif van die statuut van die koöperasie aangeheg word.</p> <p>(5) As 'n koöperasie versuim om aan die bepalings van subartikel (4) (b) te voldoen, is die koöperasie en elke direkteur en beampete van die koöperasie wat 'n party by die versuim is, aan 'n misdryf skuldig.</p>
55 Inligting oor skikkings en reëlings.	<p>169B. (1) Indien 'n vergadering van skuldeisers of 'n klas van skuldeisers of van lede kragtens artikel 169A (1) byeengeroep word ten einde tot 'n skikking of reëling toe te stem, moet daar met elke kennisgeving waarby die vergadering byeengeroep word en wat aan 'n skuldeiser of lid gestuur word, ook 'n verklaring gestuur word wat—</p> <ul style="list-style-type: none"> (i) die uitwerking van die skikking of reëling verduidelik;
60	

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

Provisions
facilitating
reconstruction or amal-
gamation.

(ii) stating all relevant information material to the value of the shares and debentures concerned in any arrangement.

(2) If a co-operative fails to comply with any requirement of this section the co-operative and every director or officer of the co-operative who are parties to the failure shall be guilty of an offence, and for the purpose of this subsection any judicial manager of the co-operative shall be deemed to be an officer of the co-operative.

169C. (1) If an application is made to the court under section 169A for the sanctioning of a compromise or an arrangement proposed between a co-operative and any such persons as are referred to in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any co-operative or co-operatives or the amalgamation of any two or more co-operatives, and that under the scheme the whole or any part of the undertaking or the property of any co-operative concerned in the scheme (in this section referred to as the 'transferor co-operative') is to be transferred to another co-operative (in this section referred to as the 'transferee co-operative'), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

(a) The transfer to the transferee co-operative of the whole or any part of the undertaking and of the property or liabilities of any transferor co-operative;

(b) the allotment by the transferee co-operative of any shares or other like interests in that co-operative which under the compromise or arrangement are to be allotted by that co-operative to the members of the transferor co-operative;

(c) the continuation by or against the transferee co-operative of any legal proceedings pending by or against any transferor co-operative;

(d) the dissolution without winding-up of any transferor co-operative;

(e) the provision to be made for any persons who within such time and in such manner as the court may direct dissent from the compromise or arrangement;

(f) such incidental, consequential and supplementary matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no order for the dissolution without winding-up of any transferor co-operative shall be made under this subsection prior to the transfer in due form of all the property and liabilities of the said co-operative.

(2) If an order under this section provides for the transfer of property or liabilities, that property shall by virtue of the order vest in, subject to transfer in due form, and those liabilities shall become the liabilities of, the transferee co-operative.

(3) If an order is made under this section every co-operative in relation to which the order is made shall within 30 days after the making of the order cause a copy thereof to be lodged with the registrar for registration, and if default is made in complying with this subsection the co-operative shall be guilty of an offence.

5

10

15

20

25

30

35

40

45

50

55

60

65

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

- (ii) al die relevante inligting van belang by die waarde van die aandele en skuldbriewe betrokke by 'n reëeling vermeld.
- (2) As 'n koöperasie versuim om 'n vereiste van hierdie artikel na te kom, is die koöperasie en elke direkteur of beampte van die koöperasie wat 'n party by die versuim is, aan 'n misdryf skuldig, en by die toepassing van hierdie subartikel word 'n geregtelike bestuurder van 'n koöperasie geag 'n beampte van die koöperasie te wees.
- Bepalings wat rekonstruksie of amalgamasie vergemaklik.**
- 169C.** (1) Indien kragtens artikel 169A by die hof aansoek gedoen word om goedkeuring van 'n skikking of reëeling voorgestel tussen 'n koöperasie en enige sodanige persone wat in daardie artikel bedoel word, en daar aan die hof bewys word dat die skikking of reëeling voorgestel is vir die doeleindes van of in verband met 'n skema vir die rekonstruksie van 'n koöperasie of koöperasies of die amalgamasie van twee of meer koöperasies, en dat kragtens die skema die geheel of 'n gedeelte van die onderneming of die goed van 'n koöperasie betrokke by die skema (in hierdie artikel die 'oordraende koöperasie' genoem) oorgedra moet word aan 'n ander koöperasie (in hierdie artikel die 'oornemende koöperasie' genoem), kan die hof, hetsy deur 'n bevel wat die skikking of reëeling goedkeur of deur 'n latere bevel, voorsiening maak vir sommige van of al die volgende aangeleenthede:
- (a) Die oordrag aan die oornemende koöperasie van die geheel of 'n gedeelte van die onderneming en van die goed of verpligtinge van 'n oordraende koöperasie;
 - (b) die toewysing deur die oornemende koöperasie van aandele of ander soortgelyke belang in daardie koöperasie wat kragtens die skikking of reëeling deur daardie koöperasie toegewys moet word aan lede van die oordraende koöperasie;
 - (c) die voortsetting deur of teen die oornemende koöperasie van geregtelike stappe wat aanhangig is deur of teen 'n oordraende koöperasie;
 - (d) die ontbinding van 'n oordraende koöperasie sonder likwidasie;
 - (e) die voorsiening wat gemaak moet word vir persone wat binne die tydperk en op die wyse wat die hof gelas die skikking of reëeling afkeur;
 - (f) die bykomstige, gevolglike of aanvullende aangeleenthede wat nodig is om te verseker dat die rekonstruksie of amalgamasie ten volle en doeltreffend deurgevoer word:
- Met dien verstande dat geen bevel tot ontbinding sonder likwidasie van 'n oordraende koöperasie kragtens hierdie subartikel gegee word nie voordat al die goed en verpligtinge van bedoelde koöperasie op gepaste wyse oorgedra is.
- (2) As 'n bevel kragtens hierdie artikel voorsiening maak vir die oordrag van goed of verpligtinge gaan daardie goed uit hoofde van die bevel, onderworpe aan oordrag op die gepaste wyse, oor op, en word daardie verpligtinge die verpligtinge van, die oornemende koöperasie.
- (3) As 'n bevel kragtens hierdie artikel gegee word, moet elke koöperasie met betrekking tot wie die bevel gegee word binne 30 dae na die gee van die bevel 'n afskrif daarvan by die registrateur vir registrasie laat indien, en as versuim word om aan hierdie subartikel te voldoen, is die koöperasie aan 'n misdryf skuldig.

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

Amendment of
section 171 of
Act 91 of 1981.

(4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes 'duties'."

14. Section 171 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) The registrar of deeds concerned shall on submission to him of—

(i) a certificate referred to in section 158 (3) (b), 163

(3) (b) or 166 (3) (b); or

(ii) an order of court, or a certified copy thereof, referred to in section 169A (4) (a) or 169C (3),

make such entries and endorsements in or on any relevant register, title deed or other document in his office or laid before him as he may deem necessary in order 15 to register any fixed property or real right vested in a co-operative in terms of a provision of this Chapter in the name of such co-operative.

(b) If any property or right other than that contemplated in paragraph (a) is vested in a co-operative as a result of a conversion, amalgamation, compromise or arrangement in terms of this Act, and such property or right is required by any law to be registered, the person by whom such registration is to be done shall, on submission to him of a certificate referred to in paragraph (a), make such entries or endorsements in or on any relevant register or document in his office or laid before him as he may deem necessary to effect the registration of such property or right in the name of the co-operative.".

Amendment of
section 215 of
Act 91 of 1981.

15. Section 215 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person who has a claim against a co-operative being wound up, excluding a claim against a members' fund, shall within 90 days after the date of publication of 35 the notice referred to in section 197 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 40 his claim against a members' fund to proceed he shall inform the liquidator in writing thereof.".

Amendment of
section 217 of
Act 91 of 1981.

16. Section 217 of the principal Act is hereby amended by the insertion after paragraph (c) of subsection (1) of the following paragraph:

"(cA) of the amount standing to the credit of each member in the members' fund of the co-operative;".

Amendment of
section 219 of
Act 91 of 1981.

17. Section 219 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) thereafter in paying all other claims admitted or proved 50 in terms of section 215, including any unpaid portions of secured claims contemplated in section 218 (3) and any credit amounts in the members' fund, or, if the balance of the said proceeds is insufficient to satisfy the said claims, [and] portions of claims and credit 55 amounts in full, in paying a proportionate share of each;".

Insertion of
Chapter XA in
Act 91 of 1981.

18. The following Chapter is hereby inserted in the principal Act after Chapter X:

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

(4) In hierdie artikel omvat die uitdrukking 'goed' goed, regte en bevoegdhede van welke aard ook al, en omvat die uitdrukking 'verpligte' pligte."

14. Artikel 171 van die Hoofwet word hierby gewysig deur 5 subartikel (1) deur die volgende subartikel te vervang:

"(1) (a) Die betrokke registrator van aktes moet by voorlegging aan hom van—

(i) 'n sertifikaat in artikel 158 (3) (b), 163 (3) (b) of 166 (3) (b) bedoel; of

10 (ii) 'n bevel van die hof, of 'n gesertifiseerde afskrif daarvan, in artikel 169A (4) (a) of 169C (3) bedoel,

15 die inskrywings of aantekeninge wat hy nodig ag in of op enige tersaaklike register, titelbewys of ander stuk in sy kantoor of aan hom voorgelê, maak ten einde enige onroerende goed of saaklike reg wat ingevolge 'n bepaling van hierdie Hoofstuk op 'n koöperasie oorgegaan het, op die naam van die koöperasie te registreer.

(b) As enige ander goed of reg as dié in paragraaf (a)

20 beoog, op 'n koöperasie oorgaan as gevolg van 'n om-skepping, amalgamasie, skikking of reëling ingevolge die bepalings van hierdie Wet, en sodanige goed of reg volgens enige wet geregistreer moet word, moet die persoon deur wie so 'n registrasie gedoen moet word, by die voorlegging aan hom van 'n sertifikaat bedoel in paragraaf (a), sodanige inskrywings of aantekeninge as wat hy nodig ag in of op enige tersaaklike register of stuk in sy kantoor of aan hom voorgelê, maak ten einde die registrasie van sodanige goed of reg op die 25 naam van die koöperasie te bewerkstellig."

30 15. Artikel 215 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

35 "(1) Iemand wat 'n eis teen 'n koöperasie in likwidasie het, uitgesonderd 'n eis teen 'n ledefonds, moet binne 90 dae na die datum van publikasie van die kennisgewing in artikel 197 bedoel 'n beëdigde of plegtige verklaring waarin die bedrag van die eis en die voorgeskrewe besonderhede betreffende die eis vermeld word, by die likwidateur indien tesame met die stawende stukke (as daar is): Met dien verstande dat indien 'n lid om welke rede ook al nie sy eis teen 'n ledefonds wil laat voortgaan nie hy die likwidateur skriftelik daarvan in kennis moet stel."

40 16. Artikel 217 van die Hoofwet word hierby gewysig deur na paragraaf (c) van subartikel (1) die volgende paragraaf in te voeg:

45 "(cA) van die bedrag wat in die ledefonds van die koöperasie tot elke lid se krediet staan;".

50 17. Artikel 219 van die Hoofwet word hierby gewysig deur paragraaf (e) deur die volgende paragraaf te vervang:

55 "(e) daarna om alle ander eise wat ingevolge artikel 215 erken of bewys is, met inbegrip van enige onbetaalde gedeelte van gesekureerde eise in artikel 218 (3) beoog en enige kredietbedrae in die ledefonds, te betaal, of, indien die saldo van bedoelde opbrengs nie voldoende is om bedoelde eise, [en] gedeeltes van eise en kredietbedrae ten volle te betaal nie, 'n eweredige gedeelte van elkeen te betaal;".

18. Die volgende Hoofstuk word hierby in die Hoofwet na Hoofstuk X ingevoeg:

Wysiging van artikel 171 van Wet 91 van 1981.

Wysiging van artikel 215 van Wet 91 van 1981.

Wysiging van artikel 217 van Wet 91 van 1981.

Wysiging van artikel 219 van Wet 91 van 1981.

Invoeging van Hoofstuk XA in Wet 91 van 1981.

"CHAPTER XA"JUDICIAL MANAGEMENT

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

- 237A.** (1) When any co-operative by reason of mismanagement or for any other cause—
 (a) is unable to pay its debts or is probably unable to meet its obligations; and
 (b) has 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 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 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 Minister on the recommendation of the registrar.
- (3) When an application for the winding-up of a co-operative is made in terms of section 181 to a competent court and it appears to that court 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 may grant such an order in respect of that co-operative.

Provisional judicial management order.

- 237B.** (1) A court may, on an application made under section 237A, 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 shall contain—
 (a) directives that the co-operative named therein shall be under the management and control, subject to the supervision of the registrar, of a provisional judicial manager appointed as herein-after provided, and that any person vested with the management and control of the co-operative's affairs shall from the date of the order be divested thereof;
 (b) such other directives as the court 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 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.

- (3) The court 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 the Minister

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

"HOOFSTUK XA

GEREGTELIKE BESTUUR

5 Omstandig-
hede waarin
koöperasies
onder gereg-
telike be-
stuur geplaas
kan word.

10

15

20

25

30

40

45

50

55

60

65

35 Voorlopige
geregtelike
bestuurs-
bevel.

237A. (1) Wanneer 'n koöperasie weens wanbe-
stuur of om 'n ander rede—

- (a) nie in staat is om sy skulde te betaal nie of waarskynlik nie in staat is om sy verpligte na te kom nie; en
- (b) nie 'n suksesvolle onderneming geword het nie of verhinder word om dit te word,

en daar 'n redelike waarskynlikheid bestaan dat, indien hy onder geregtelike bestuur geplaas word, hy in staat gestel sal word om sy skulde te betaal of om sy verpligte na te kom en 'n suksesvolle onderneming te word, kan 'n bevoegde hof, indien dit reg en billik voorkom, 'n geregtelike bestuursbevel ten opsigte van daardie koöperasie verleen.

(2) 'n Aansoek by 'n bevoegde hof om 'n geregtelike bestuursbevel ten opsigte van 'n koöperasie kan gedoen word—

- (a) deur 'n koöperasie vrywilliglik na 'n spesiale besluit te dien effekte;
- (b) deur 'n belanghebbende persoon; of
- (c) deur die Minister op aanbeveling van die registrator.

(3) Wanneer 'n aansoek om die likwidasie van 'n koöperasie ingevolge artikel 181 by 'n bevoegde hof gedoen word en dit vir daardie hof voorkom dat indien die betrokke koöperasie onder geregtelike bestuur geplaas word die gronde van sy likwidasie uit die weg geruim kan word en dat dit 'n suksesvolle onderneming kan word, en dat die verlening van 'n geregtelike bestuursbevel reg en billik sal wees, kan die hof so 'n bevel ten opsigte van daardie koöperasie verleen.

237B. (1) 'n Hof kan by aansoek kragtens artikel 237A 'n voorlopige geregtelike bestuursbevel verleen met vermelding van die keerdatum of die aansoek van die hand wys of 'n ander bevel gee wat hy goedvind.

(2) 'n Voorlopige geregtelike bestuursbevel bevat—

- (a) voorskrifte dat die daarin genoemde koöperasie onder die bestuur en beheer staan, onderworpe aan die toesig van die registrator, van 'n voorlopige geregtelike bestuurder aangestel soos hieronder bepaal, en dat enige persoon by wie die bestuur en beheer van die koöperasie se sake berus, vanaf die datum waarop die bevel verleen is, daarvan ontdoen word;
- (b) die ander voorskrifte wat die hof nodig ag aangaande die bestuur en beheer van die koöperasie, of 'n aangeleentheid in verband daarmee, met inbegrip van voorskrifte wat aan die voorlopige geregtelike bestuurder die bevoegdheid verleen om, behoudens die regte van die skuldeisers, sonder magtiging van die lede van die koöperasie geld op enige wyse op te neem,

en kan opdragte bevat dat terwyl die koöperasie onder geregtelike bestuur is alle gedinge, geregtelike stappe en die tenuitvoerlegging van alle lasbriewe, dagvaardings en ander regsproses teen die koöperasie opgeskort word en nie sonder die verlof van die hof voortgesit word nie.

(3) Die hof wat 'n voorlopige geregtelike bestuursbevel verleen het, kan te eniger tyd en op enige wyse op aansoek van die applikant, die koöperasie, 'n skuldeiser of 'n lid van die koöperasie, die voorlopige geregtelike bestuurder of die Minister op aanbe-

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

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

- 237C.** (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 shall 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 shall without delay appoint a provisional judicial manager, who shall give such security for the proper performance of his duties in his capacity as such as the registrar may direct, and who shall, subject to the provisions of subsection (2), hold office until discharged by the court as provided in section 237G (3) (a). 10
 15
 20

(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.

Effect of provisional judicial management order.

- 237D.** (1) When a provisional judicial management order is granted—
 (a) no shares in the co-operative or amount of money from a members' fund shall 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 statute of the co-operative shall 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 statute 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 shall be suspended. 25
 30
 35
 40

(2) The registrar may at any time terminate the suspension referred to in subsection (1) (b) and notify the provisional judicial manager in writing thereof. 45

Functions of provisional judicial manager.

- 237E.** A provisional judicial manager appointed under section 237C (1) (b) or (2) shall—
 (a) assume the management and control of the co-operative and recover and take into his possession all the assets of the co-operative; 50
 (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 section 237F; 55
 (c) prepare and lay before the meetings convened under paragraph (b) a report containing—
 (i) an account of the general state of the affairs of the co-operative; 60
 (ii) a statement of the reasons why the co-operative is 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; 65
 (iii) a statement of the assets and liabilities of the co-operative;

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

- veling van die registrator, die bepalings van sodanige bevel wysig of dit ophef.
- 237C.** (1) Wanneer 'n voorlopige geregtelike bestuursbevel verleen is—
- (a) is al die persone wat onmiddellik voor die aanvang van die geregtelike bestuursbevel van die koöperasie die amp van direkteur, bestuurder of sekretaris van die koöperasie beklee gesamentlik en afsonderlik verantwoordelik vir die bewaring van al die bates van die koöperasie wat onder die koöperasie se beheer is totdat 'n voorlopige geregtelike bestuurder aangestel is en sy amp aanyaar het;
 - (b) moet die registrator onverwyld 'n voorlopige geregtelike bestuurder aanstel, wat die sekerheid wat die registrator gelas, moet stel vir die behoorlike uitvoering van sy pligte in sy hoedanigheid as sodanig, en wat die amp moet beklee totdat hy, behoudens die bepalings van subartikel (2), deur die hof daaruit ontslaan word soos bepaal in artikel 237G (3) (a).
- (2) Die registrator kan te eniger tyd en om redes wat hy goedvind 'n voorlopige geregtelike bestuurder uit sy amp ontslaan en iemand anders in sy plek aanstel.
- 237D.** (1) Wanneer 'n voorlopige geregtelike bestuursbevel verleen is—
- (a) word geen aandele in 'n koöperasie of bedrag geld uit 'n ledefonds aan 'n lid of aan enige lid wie se lidmaatskap binne ses maande voor die verlening van die voorlopige geregtelike bestuursbevel beëindig is, uitbetaal nie; en
 - (b) bly die statuut van die koöperasie van krag vir sover dit nie strydig is met die voorskrifte van die voorlopige geregtelike bestuursbevel nie, tensy die registrator van mening is dat die toepassing van 'n bepaling van die statuut nie in belang van die lede of krediteure gedurende die voorlopige geregtelike bestuur is nie, en hy die voorlopige geregtelike bestuurder skriftelik in kennis stel dat so 'n bepaling opgeskort moet word.
- (2) Die registrator kan te eniger tyd die opskorting bedoel in subartikel (1) (b) beëindig en die voorlopige geregtelike bestuurder skriftelik daarvan in kennis stel.
- 237E.** 'n Voorlopige geregtelike bestuurder kragtens artikel 237C (1) (b) of (2) aangestel, moet—
- (a) die bestuur en beheer van die koöperasie op hom neem en al die bates van die koöperasie opvorder en dit in sy besit neem;
 - (b) binne 60 dae, of sodanige langer tydperk as wat die registrator op skriftelike versoek van die voorlopige geregtelike bestuurder bepaal, gesamentlike of afsonderlike vergaderings van die skuldeisers en lede van die koöperasie vir die doeleindes bedoel in artikel 237F belê;
 - (c) 'n verslag opstel en dit voorlê aan die vergaderings kragtens paragraaf (b) belê wat bevat—
 - (i) 'n relaas van die algemene toestand van die sake van die koöperasie;
 - (ii) 'n uiteensetting van die redes waarom die koöperasie nie in staat is om sy skulde te betaal nie of waarskynlik nie in staat is om sy verpligte na te kom nie of nie 'n suksesvolle onderneming geword het nie of verhinder is om dit te word;
 - (iii) 'n uiteensetting van die bates en laste van die koöperasie;

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

- (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 shall 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.

Purpose of meetings convened under section 237E(b).

- 237F.** (1) (a) Any meeting convened under section 237E (b) shall 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) shall be convened—

(i) in the case of a meeting of the members of the co-operative concerned, in the manner prescribed in the statute 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 section 237E (c), and the desirability or not of placing the co-operative finally under judicial management, shall be considered, taking into account the prospects of the co-operative becoming a successful concern.

(3) The chairman of any such meeting shall prepare and lay before the court a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under subsection (2).

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

- 237G.** (1) Any return day fixed under section 237B
(1) shall 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 con-
sideration of—
(a) the opinion and wishes of creditors and mem-
bers of the co-operative;
(b) the report of the provisional judicial manager
under section 237E (c);
(c) the report referred to in section 237F (3); and
(d) a report of the registrar if he does not preside at
the meeting referred to in section 237F (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 shall con-
tain—
(a) directives for the vesting of the management and

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

- (iv) 'n volledige lys van skuldeisers van die koöperasie, met inbegrip van voorwaardelike en verwagte skuldeisers, en van die bedrag en die aard van die eis van elke skuldeiser;
- 5 (v) besonderhede aangaande die bron waaruit geld opgeneem is of gaan word vir die doel-eindes van die dryf van die besigheid van die koöperasie en die voorwaardes waarop dit terugbetaal sal word; en
- 10 (vi) die oorwoë mening van die voorlopige geregtelike bestuurder aangaande die vooruitsigte van die koöperasie om 'n suksesvolle onderneming te word en van die verwydering van die feite of omstandighede wat verhinder dat die koöperasie 'n suksesvolle onderneming word.
- 15 Doel van vergaderingsbelê kragtens artikel 237E (b).
- 20 237F. (1) (a) 'n Vergadering belê kragtens artikel 237E (b) vind plaas onder voorsitterskap van die registrator of 'n landdros met regsbevoegdheid in die gebied waar die vergadering gehou word.
- (b) 'n Vergadering bedoel in paragraaf (a) word belê—
- 25 (i) in die geval van 'n vergadering van lede van die betrokke koöperasie, op die wyse wat in die statuut van daardie koöperasie voorgeskryf is vir die belê van 'n algemene vergadering; en
- 30 (ii) in die geval van 'n vergadering van skuldeisers, deur 'n kennisgewing in die *Staatskoerant* en in een of meer koerante in omloop in die gebied waarin die geregistreerde kantoor van die koöperasie geleë is, nie minder nie as sewe dae voor so 'n vergadering.
- 35 (2) By die vergadering word die verslag van die voorlopige geregtelike bestuurder kragtens artikel 237E (c), en die wenslikheid al dan nie om die koöperasie finaal onder geregtelike bestuur te plaas, oorweeg, met inagneming van die vooruitsigte dat die koöperasie 'n suksesvolle onderneming sal word.
- 40 (3) Die voorsitter van so 'n vergadering moet 'n verslag opstel en aan die hof voorlê oor die verrigtinge by daardie vergadering, met inbegrip van 'n opsomming van die redes vir 'n gevolgtrekking waartoe kragtens subartikel (2) gekom is.
- 45 Keerdag van voorlopige geregtelike bestuursbevel, en bevoegdhede van hof.
- 50 237G. (1) 'n Keerdag vasgestel kragtens artikel 237B (1) is nie later nie as 60 dae na die datum van die voorlopige geregtelike bestuursbevel maar kan deur die hof om 'n gegronde rede aangevoer, verleng word.
- (2) Op so 'n keerdag kan die hof na oorweging van—
- 55 (a) die mening en wense van skuldeisers en lede van die koöperasie;
- (b) die verslag van die voorlopige geregtelike bestuurder kragtens artikel 237E (c);
- (c) die verslag bedoel in artikel 237F (3); en
- (d) 'n verslag van die registrator indien hy nie by die vergadering bedoel in artikel 237F (1) voor-
- 60 sit nie,
- 'n finale geregtelike bestuursbevel verleen as dit vir die hof voorkom dat die koöperasie, indien hy onder geregtelike bestuur geplaas word, in staat gestel sal word om 'n suksesvolle onderneming te word en dat dit reg en billik is dat hy onder geregtelike bestuur geplaas word, of die hof kan die voorlopige bevel ophef of 'n ander bevel gee wat hy goedvind.
- 65 (3) 'n Finale geregtelike bestuursbevel bevat—
- (a) voorskrifte vir die vestiging van die bestuur en

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

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 may consider necessary.

(4) (a) When a final judicial management order is granted, the registrar shall without delay appoint a final judicial manager, who shall give such security for the proper performance of his duties in his capacity as such as the registrar may direct, and who shall hold office until he is discharged in terms of paragraph (b) or until the judicial management order is withdrawn or is deemed to be withdrawn in terms of section 237M.

- (b) The registrar may at any time for reasons which he deems fit dismiss a final judicial manager from his office and appoint another person in his place.

(5) The court 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 members 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.

Effect of final judicial management order. **237H.** The provisions of section 237D shall *mutatis mutandis* apply when a final judicial management order is granted.

Functions of final judicial manager. **237I.** A final judicial manager shall, subject to the provisions of the statute 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 made in the final judicial management order or any variation thereof;
- (d) keep such accounting records and have such annual 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 pro-

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

- beheer van die koöperasie, onderworpe aan die toesig van die registerieur, in die finale geregtelike bestuurder, die oorhandiging van alle aangeleenthede en die verantwoording deur die voorlopige geregtelike bestuurder aan die finale geregtelike bestuurder, en die ontslag van die voorlopige geregtelike bestuurder, waar nodig;

(b) die ander voorskrifte wat die hof nodig ag aangaande die bestuur en beheer van die koöperasie of 'n aangeleentheid in verband daarvan, met inbegrip van voorskrifte wat aan die finale geregtelike bestuurder die bevoegdheid verleen om, behoudens die regte van die skuldeisers van die koöperasie, sonder magtiging van die lede van die koöperasie geld op enige wyse op te neem.

(4) (a) Wanneer 'n finale geregtelike bestuursbevel verleen is, moet die registerieur onverwyld 'n finale geregtelike bestuurder aanstel, wat die sekerheid wat die registerieur gelas, moet stel vir die behoorlike uitvoering van sy pligte in sy hoedanigheid as sodanig, en wat sy amp moet beklee totdat hy ingevolge paragraaf (b) uit sy amp ontslaan is of totdat die geregtelike bestuursbevel ingevolge artikel 237M ingetrek is of geag word ingetrek te wees.

(b) Die registerieur kan te eniger tyd om redes wat hy goedvind 'n finale geregtelike bestuurder uit sy amp ontslaan en iemand anders in sy plek aanstel.

(5) Die hof wat 'n finale geregtelike bestuursbevel verleen het, kan te eniger tyd en op enige wyse die bepalings van so 'n bevel wysig op aansoek van die registerieur, die finale geregtelike bestuurder, of 'n verteenwoordiger wat namens die skuldeisers of lede van die betrokke koöperasie optree kragtens 'n besluit geneem, in die geval van skuldeisers, deur 'n meerderheid in waarde en in getal van sodanige skuldeisers op 'n vergadering van daardie skuldeisers of, in die geval van lede, deur 'n meerderheid van lede aanwesig op 'n algemene vergadering.

237H. Die bepalings van artikel 237D is *mutatis mutandis* van toepassing wanneer 'n finale geregtelike bestuursbevel verleen word.

237I. 'n Finale geregtelike bestuurder moet, behoudens die bepalings van die statuut van die betrokke koöperasie vir sover as wat hulle nie met 'n voorskrif vervat in die betrokke geregtelike bestuursbevel onbestaanbaar is nie of nie skriftelik deur die registerieur opgeskort is nie—

(a) die bestuur en beheer van die koöperasie van die voorlopige geregtelike bestuurder oorneem;

(b) sodanige bestuur en beheer voer, onderworpe aan die bevele van die registerieur, op die wyse wat hy as die mees ekonomiese en mees bevorderlike beskou vir die belang van die lede en skuldeisers van die koöperasie ten einde die koöperasie as 'n suksesvolle onderneming te herstel;

(c) 'n voorskrif van die hof gegee in die finale geregtelike bestuursbevel of 'n wysiging daarvan nákom;

(d) die rekeningkundige aantekeninge hou en sodanige finansiële jaarstate laat opstel wat die koöperasie verplig sou gewees het om te hou of op te stel as dit nie onder geregtelike bestuur geplaas was nie;

(e) die jaarlikse algemene vergadering en ander vergaderings van lede van die koöperasie belé

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

- vided for by this Act, and in that regard comply with all the requirements with which the directors of the co-operative would in terms of this Act have been obliged to comply if the co-operative had not been placed under judicial management; 5
- (f) convene meetings of the creditors of the co-operative by notices issued separately on the dates on which the notices convening annual general 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 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; 10
- (g) lodge with the registrar copies of all the documents submitted to the meetings as provided for in paragraphs (e) and (f); 15
- (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 this Act or has committed any other offence which gave rise to the circumstances referred to in section 237A(1); 20
- (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; 25
- (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 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. 30
- 35
- 40
- 45

Application
of assets dur-
ing judicial
management.

237J. (1) A judicial manager shall 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. 50

(2) Any money of the co-operative becoming available to the judicial manager shall 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. 55

Position of
auditor in ju-
dicial man-
agement.

237K. 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-

5

10

15

20

25

30

35

40

45

50

55

60

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

waarvoor hierdie Wet voorsiening maak, en in daardie verband al die vereistes nakom wat direkteure van die koöperasie ingevalgloge hierdie Wet verplig sou gewees het om na te kom as die koöperasie nie onder geregtelike bestuur geplaas was nie;

- (f) vergaderings van die skuldeisers van die koöperasie belê deur kennisgewings afsonderlik uitgereik op die datums waarop die kennisgewings waardeur die jaarlike algemene vergaderings van die koöperasie belê word, uitgereik word of waarop 'n tussentydse verslag aan lede gestuur word, en moet aan sodanige vergaderings verslae voorlê wat die bates en laste van die koöperasie aantoon, asook sy skulde en verpligte soos bevestig deur die ouditeur van die koöperasie, en al die inligting wat nodig is om die skuldeisers in staat te stel om ten volle vertroud te raak met die toestand van die koöperasie soos op die datum van die einde van die boekjaar of van die einde van die tydperk gedeck deur so 'n tussentydse verslag;
- (g) by die registrator afskrifte indien van alle dokumente voorgelê aan die vergaderings soos voorgeskryf in paragrawe (e) en (f);
- (h) die sake en transaksies van die koöperasie voor die aanvang van die geregtelike bestuur ondersoek ten einde vas te stel of 'n direkteur, voormalige direkteur, beampete of voormalige beampete van die koöperasie 'n bepaling van hierdie Wet oortree of skynbaar oortree het of 'n ander misdryf gepleeg het wat gelei het tot die omstandighede bedoel in artikel 237A (1);
- (i) die sake en transaksies van die koöperasie voor die aanvang van die geregtelike bestuur ondersoek ten einde vas te stel of 'n direkteur, voormalige direkteur, beampete of voormalige beampete van die koöperasie persoonlik aanspreeklik is of skyn te wees vir skadevergoeding of skadeloosstelling aan die koöperasie of vir skulde of verpligte van die koöperasie;
- (j) indien hy te eniger tyd van mening is dat die voortsetting van die geregtelike bestuur nie die koöperasie in staat sal stel om 'n suksesvolle onderneming te word nie, by die hof aansoek doen na minstens 14 dae kennisgiving per aangetekende pos aan die registrator en aan alle lede en skuldeisers van die koöperasie om die intrekking van die betrokke geregtelike bestuursbevel en die uitreiking van 'n bevel vir die likwidasié van die koöperasie.

Aanwending
van bates tydens geregtelike bestuur.

237J. (1) Behalwe in die gewone loop van die koöperasie se besigheid mag 'n geregtelike bestuurder nie sonder verlof van die hof enige van die koöperasie se bates verkoop of andersins vervaam nie.

(2) Geld van die koöperasie wat vir die geregtelike bestuurder beskikbaar word, moet deur hom aangewend word ter vereffening van die koste van die geregtelike bestuur en vir die dryf van die koöperasie se besigheid ooreenkomsdig die geregtelike bestuursbevel en, vir sover as wat die omstandighede dit toelaat, ter vereffening van die skulde van die koöperasie wat voor die datum van die voorlopige bestuursbevel aangegaan is.

65 Posisie van
ouditeur by
geregtelike
bestuur.

237K. Ondanks die verlening van 'n geregtelike bestuursbevel ten opsigte van 'n koöperasie en vir so lank as wat die bevel van krag is, bly die bepalings van hierdie Wet met betrekking tot die aanstelling en

Act No. 80, 1987

CO-OPERATIVES AMENDMENT ACT, 1987

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

Cancellation
of judicial
management
order.

Remunera-
tion of pro-
visional and
final judicial
manager.

Amendment of
section 241 of
Act 91 of 1981.

appointment of an auditor and the rights and duties of an auditor shall 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.

237L. In every case in which a co-operative is placed under judicial management the provisions of sections 210, 211, 212, 213 and 235 shall apply as if the co-operative under judicial management were a co-operative being wound up and the judicial manager were the liquidator.

237M. (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 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 shall be divested of his functions.

(2) In cancelling any such order the court shall 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 107 (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 shall 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 167.

237N. The registrar shall 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.”

19. Section 241 of the principal Act is hereby amended—

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

“(b) A notice or proclamation referred to in paragraph (a) may at any time be amended, substituted or withdrawn by the Minister by notice in the *Gazette*.; and

(b) by the addition of the following paragraphs:

“(c) An amendment, substitution or withdrawal of a notice or proclamation referred to in paragraph (a)—

(i) shall take place at the request of the agricultural co-operative or special farmers' co-operative to which that notice or proclamation relates as a result of a resolution passed at a general meeting of that co-operative;

(ii) shall relate to the agricultural product contemplated in that notice or proclamation, or shall pertain to an agricultural product from which the agricultural products contemplated in that notice or proclamation originate; and

(iii) is limited to the area referred to in that notice or proclamation.

(d) A producer who, when he is by virtue of a notice or proclamation referred to in paragraph (a) compelled to sell or otherwise dispose of the agricultural product to which such notice or proclamation relates through the co-operative stated in such notice or proclamation, sells or disposes of the said

5

10

15

20

25

30

35

40

50

55

60

65

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

	heraanstelling van 'n ouditeur en die regte en pligte van 'n ouditeur van toepassing asof 'n verwysing in bedoelde bepalings na die direkteure van die koöperasie 'n verwysing na die geregtelike bestuurder was.
5	
10	Toepassing op geregtelike bestuur van sekere bepalings bylikwidasie.
15	Intrekking van geregtelike bestuursbevel.
20	
25	
30	(2) By die intrekking van so 'n bevel gee die hof die voorskrifte wat nodig is vir die hervatting van die bestuur en beheer van die koöperasie deur 'n raad van direkteure in artikel 107 (1) bedoel, met inbegrip van voorskrifte vir die belê van 'n algemene vergadering van lede vir die doel om sodanige direkteure te kies.
35	(3) Wanneer 'n koöperasie wat onder geregtelike bestuur is met 'n ander koöperasie amalgameer, word daar geag dat die geregtelike bestuursbevel ingetrek is vanaf die datum waarop eersbedoelde koöperasie ingevolge artikel 167 opgehou het om te bestaan.
	237N. Die registereur moet die grondslag van die besoldiging van 'n voorlopige of finale geregtelike bestuurder vasstel, en kan te eniger tyd sodanige besoldiging verminder of weier indien daar volgens sy oordeel 'n gegronde rede bestaan om dit te doen.”.
	19. Artikel 241 van die Hoofwet word hierby gewysig—
40	(a) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:
	“(b) 'n Kennisgiving of proklamasie in paragraaf (a) bedoel, kan te eniger tyd deur die Minister by kennisgiving in die Staatskoerant gewysig, vervang of ingetrek word.”; en
45	(b) deur die volgende paragrawe by te voeg:
	“(c) 'n Wysiging, vervanging of intrekking van 'n kennisgiving of proklamasie bedoel in paragraaf (a)—
50	(i) geskied op versoek van die landboukoöperasie of spesiale boerekoöperasie waarop daardie kennisgiving of proklamasie betrekking het na aanleiding van 'n besluit op 'n algemene vergadering van daardie koöperasie geneem;
55	(ii) moet verband hou met die landbouproduk in daardie kennisgiving of proklamasie beoog, of betrekking hê op 'n landbouproduk waarvan die landbouprodukte in daardie kennisgiving of proklamasie bedoel, afkomstig is; en
60	(iii) is beperk tot die gebied in daardie kennisgiving of proklamasie bedoel.
65	(d) 'n Produsent wat, wanneer hy uit hoofde van 'n kennisgiving of proklamasie in paragraaf (a) bedoel, verplig is om die landbouproduk waarop so 'n kennisgiving of proklamasie betrekking het deur die tussenkoms van die koöperasie in so 'n kennisgiving of proklamasie vermeld, te verkoop

Wysiging van artikel 241 van Wet 91 van 1981.

Act No. 80, 1987**CO-OPERATIVES AMENDMENT ACT, 1987**

agricultural product otherwise than through the said co-operative, and any person who buys or otherwise obtains that agricultural product except through the said co-operative, shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.” 5

Repeal of
Schedule 1 to
Act 91 of 1981.

Short title and
commencement.

20. Schedule 1 to the principal Act is hereby repealed.

21. (1) This Act shall be called the Co-operatives Amendment 10 Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of the different provisions of this Act.

KOÖPERASIEWYSIGINGSWET, 1987

Wet No. 80, 1987

of van die hand te sit, bedoelde landbouproduk anders verkoop of van die hand sit as deur die tussenkoms van bedoelde koöperasie, en iemand wat daardie landbouproduk van so 'n produsent koop of anders verkry behalwe deur die tussenkoms van bedoelde koöperasie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R1 000 of gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.”.

20. Bylae 1 by die Hoofwet word hierby herroep.

Herroeping van
Bylae 1 by
Wet 91 van 1981.

21. (1) Hierdie Wet heet die Koöperasiewysigingswet, 1987, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.
15 (2) Verskillende datums kan aldus ten opsigte van die verskillende bepalinge van hierdie Wet bepaal word.

Kort titel en
inwerkingtreding.

