AN ANALYSIS OF STRATEGIES DRIVING, AND THE
SUCCESSES ACHIEVED AFTER THE CONVERSION OF
AGRICULTURAL CO-OPERATIVES TO ALTERNATIVE
BUSINESS FORMS IN SOUTH AFRICA

BY

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for the degree of
Magister in Business Administration
at the Nelson Mandela Metropolitan University

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JANUARY 2005
DECLARATION

I, Marius Neser, ID No 650428 5108 085, hereby declare that:

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- this dissertation has not previously been submitted in full or partial fulfilment of the requirements of an equivalent or higher qualification at any other recognised educational institution; and
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MARIUS NESER      DATE
ABSTRACT

During the period 1994 to 2004, the Registrar of Co-operatives, situated in Pretoria (South Africa), considered applications and subsequently de-registered 102 agricultural and non-agricultural South African co-operatives, which then converted to alternative business forms.

This research was conducted to determine the strategies driving co-operatives to convert to alternative business forms in South Africa, and to evaluate the level of success achieved in a specific case.

During the research, the changing legislation relating to co-operatives was identified as one of the main drivers to convert, although during pilot testing, the respondents submitted capital forming or growth restrictions as main drivers for conversions. The main concerns about the impact of changing legislation were about voting rights changing to a one-person-one-vote, which, according to the respondents, could affect control within the co-operative.

Financial ratio analysis to determine liquidity, debt management and profitability of a specific converted case was conducted by disseminating and processing data by means of Microsoft Excel spreadsheets. In the selected case the conversion did not guarantee success, and the financial figures showed that a conversion did not have immediate impact, although the last three years of the 10-year period analysed showed signs of a positive growth on the return on total assets (ROA).

External influences, especially legislation in the broad sense, and specifically regarding Broad Based Black Economic Empowerment (BBBEE), Employment Equity and Labour practise may have serious impact on the choice of business form the prospective entrepreneur decides upon, or the existing enterprise bases its decisions on as to its future business form.
ACKNOWLEDGEMENTS

The successful completion of this research would not have been possible without the support, advice, assistance and encouragement of others.

I would like to record my sincere thanks and appreciation to the following people:

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CHAPTER 1

PROBLEM STATEMENT AND DEFINITION OF CONCEPTS

1.1 INTRODUCTION

During the period 1994 to 2004, the Registrar of Co-operatives, situated in Pretoria (South Africa), considered applications and subsequently de-registered 102 agricultural and non-agricultural South African co-operatives, which then converted to alternative business forms. The bulk of these conversions were done from 1997 onwards, with the majority of the conversions being made to public or private company status.

Co-operative values are advocated worldwide and include the following principles:

- Voluntary and open membership;
- Democratic member control;
- Member economic participation;
- Autonomy and independence;
- Education, training and information;
- Co-operation among co-operatives; and
- Concern for community.

The purpose of business is mainly to create shareholder wealth. The specific business form in which an enterprise exists, can however determine what the group within the business - referred to as the shareholders - is made up of. Shareholder composition in the co-operative and the company can be vastly different, resulting in different perceptions of the wealth being created for the shareholder.

This raises the question of which strategies are being pursued in considering the decision to convert a co-operative to an alternative.

The aim of this research was to investigate selected cases of conversions and to analyse the level of success achieved.
1.2 MAIN PROBLEM STATEMENT

The aim of the research project is to identify the rationale behind the conversion of co-operatives to alternative business forms, or more specifically, to address the question:

“What are the strategies driving the conversion of co-operatives to alternative business forms in South Africa, and how successfully were they implemented?”

1.3 SUB-PROBLEMS

The following sub-problems were identified and will be addressed in order to deal with and solve the main problem:

Sub-problem one:
How are co-operatives and companies defined, and what principles, advantages and/or disadvantages are there for these business forms?

Sub-problem two:
What strategies were followed in the conversion of the selected companies that converted from co-operatives to companies within the period 1994 - 2004?

Sub-problem three:
What were the positive or negative implications on shareholders resulting from the conversion from co-operatives to alternatives, or from refraining to do so?

Sub-problem four:
What are the main changes to the Co-operative Act, No 91 of 1981 as described in the Co-operatives Bill drafted in June 2004, and what would the anticipated effect of these proposed changes be on current co-operatives in South Africa?
1.4 DELIMITATION OF RESEARCH

Co-operatives exist in different forms, which may vary from agricultural, housing, and financial to many other forms according to the goals of the association. Furthermore, a distinction is drawn between types of co-operatives, which vary between primary co-operatives, central co-operatives and federal co-operatives (see 1.5.2).

The delimitation of subjects included in the research was done on a basis of accessibility, and include a previous primary agricultural co-operative that converted to company status and a current primary agricultural co-operative. Further delimitation was done on the basis that the converted subject should have been in existence as a company for at least five years, in order to obtain reliable financial data sets.

Due to the nature of the research and the possible confidentiality of financial information, the names of the subjects included in the research are being withheld, and reference is only made to Companies and Co-operatives A, B, C and D. Table 1.1 contains relevant information about the businesses in question.

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1.5 DEFINITION OF KEY CONCEPTS

To ensure clarity and common understanding, the key concepts applying to the research are defined as follows:

1.5.1 Strategy

Bateman (1999), as quoted by Nieman and Pretorius (2004:107) formulates strategy as being “a pattern of action and resource allocation to achieve the goals of the organisation”. Coulter (2002:7) echoes the previous statement with “strategy is a series of goal-directed decisions and actions that match the organisation’s skills and resources with the opportunities and threats in its environment”.

The management of strategy, or *strategic management*, refers to the set of managerial decisions and actions that determines the long-run performance of the organisation, including strategy formulation, implementation, evaluation and control (Wheelen & Hunger, 1990:7).

1.5.2 Co-operative

The co-operative is described as “an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise and which is organised and operated on co-operative principles” (http://www.wisc.edu/uwcc/icic/). Ter Woorst, as quoted by Van Niekerk (1988:129) defines a co-operative as “that form of economic organisation in which individual economic subjects, who do not compete with each other, perform one or more economic functions, or part thereof collectively so as to improve the economic result of the associated subjects”.

Co-operatives are typed into different categories as mentioned in 1.4, and Van Niekerk (1988:79) states that they must exist in one of the following forms:

- **Primary co-operatives:** These serve as the foundation of the whole co-operative structure and are directly related to the needs of the farmer. There is direct contact with the members and certain functions are performed to assist
the farmers as to their specific needs, from a variety of branches spread over the area of operation, if necessary.

- Central co-operatives: These mainly have the functions of rendering services to members regarding selling, purchasing and manufacturing requirements. Marketing of products, although restricted, is also the function of the central co-operative.
- Federal co-operatives: Federal co-operatives render services to central co-operatives regarding co-ordination of inter modal transportation services such as road to rail to sea transport.

Unless stated otherwise, any reference in the text to the term “co-operative” refers to a primary agricultural co-operative.

### 1.5.3 Alternative business forms

Business or enterprises exist in various forms. Apart from co-operatives, described in 1.5.2, the alternatives are (excluding non-profit organisations and Trusts):

- The sole proprietorship;
- The partnership;
- The close corporation; and
- The company (private or public).

### 1.6 KEY ASSUMPTIONS

Although other reasons are not excluded, Dr T Doyer, - CEO South African Agricultural Union (personal communication, 6 December 2004) argues that it is assumed that the main drivers for the conversion of co-operatives to alternative business forms in South Africa were the changing legal environment, and capital forming (primarily through the issue of equity). Capital forming is accepted as an inherent restriction for the co-operative as a business form to expand, and this will be tested by the research.
1.7 SIGNIFICANCE OF THE RESEARCH

The results of this research could provide a scientific basis for future decision-making concerning the conversion of co-operatives to alternative business forms.

1.8 RESEARCH METHODOLOGY

The approach set out below was followed in an attempt to solve the main and sub-problems:

1.8.1 Literature survey

Literature research was done to develop a thorough understanding of the business forms in question – those of co-operatives and companies. Of particular importance is the listing of key principles of these business forms and how laws and statutes govern them. This was to address the first sub-problem: “How are co-operatives and companies defined, and what principles, benefits and/or disadvantages are there for these business forms?”

In addition, a survey and literature research was undertaken to define strategy and to investigate the strategies for growth and development of the various business forms. This addressed the second sub-problem: “What strategies were followed in the conversion of the selected companies that converted from co-operatives?”

Furthermore, a comparison was made between the Co-operative Act, No 91 of 1981, and the proposed changes as set out in the Co-operatives Bill White Paper (June 2004). This will address the fourth sub-problem: “What are the main changes to the Co-operative Act, No 91 of 1981 as described in the Co-operatives Bill drafted in June 2004, and what would the anticipated effect of these proposed changes be on current co-operatives in South Africa?”
1.8.2 Research design

A non experimental, quantitative and qualitative research method was followed to address the third sub-problem: “What were the positive or negative implications resulting from the conversion of co-operatives to companies, or refraining from doing so?” For purposes of the qualitative research a questionnaire was developed to test management’s perceptions as to the way they experienced change over time after conversion to another business form (Appendix E).

The quantitative research was in the form of analysing financial statements for the period before and after the conversion, if applicable, and then drawing conclusions by the use of financial ratio analysis as to the performance of the companies after the conversion from a co-operative.

1.8.3 Data collection

Data collection was done using the following methods:

- Interviews: Qualitative data was obtained mainly through personal interviews. Additional information was obtained through telephonic interviews with individuals that are deemed to be the “drivers of change” within the organisations, usually comprising top management;

- Questionnaires: Questionnaires were developed to probe three areas relating to actual conversions or considerations thereof, namely business strategy, successes achieved and the effects of changing legislation with specific reference to the Co-operatives Act, No 91 of 1981.

1.8.4 Sampling

Judgement sampling, a non-probability sampling technique, was used to make contact with a few cases in the population, who then identified further members in the population, who were then contacted.
1.8.5 Data analysis

Data was processed and analysed using Microsoft Excel spreadsheets. The outcome of the analysis was integrated with the information derived from the literature in order to draw conclusions and to make recommendations.

1.9 STRUCTURE OF THE RESEARCH REPORT

The following main research report sections are contained in this dissertation and are as indicated below:

Chapter 1: Introduction, problem statement, delimitation of the research, key assumptions, significance of the research and an outline of the research approach.

Chapter 2: Co-operatives and companies: Definitions, principles, advantages and disadvantages.

Chapter 3: Growth in the organisation.


Chapter 5: Research methodology.

Chapter 6: Results and analysis of the empirical survey.

Chapter 7: Conclusion and recommendations.
1.10 CONCLUSION

This chapter addressed the main and sub-problems that are applicable to the research. The key concepts of the various business forms of co-operatives, private companies and public companies were defined, and key assumptions were clarified. The significance of the research was pointed out, and was followed by an outline of the research approach and structure of the report.

Chapter 2 comprises a literature research, investigating the various business forms, their definitions, the principles behind them and the advantages and/or disadvantages of the business forms, with specific reference to co-operatives and companies due to its relevance to the research.
CHAPTER 2

CO-OPERATIVES AND COMPANIES: DEFINITIONS, PRINCIPLES, ADVANTAGES AND DISADVANTAGES

2.1 INTRODUCTION

The firm, enterprise or business is described by Du Plessis (1990:6) as an independent unit found in the capitalistically inclined economic system, usually encouraged by the profit motive, which produces goods and services for the satisfaction of needs. These businesses or firms can exist in various fixed forms or in a dynamic structure, the nature of which is determined by certain managerial decisions or desired outcomes.

Cilliers, Benade, Botha, Oosthuizen & De La Rey (1987:2) state that the four most important forms of enterprise in the business world are those of:

- The sole proprietorship;
- The partnership;
- The close corporation; and
- The company (private or public).

The general purpose of the firm is profit driven, or to create wealth for its shareholders. Salvatore (2001:11) argues that since both long and short-term profits are important, the theory of the firm postulates that the primary goal or objective of the firm is to maximise the wealth, or the value of the firm.

There is however another business form that exists, and it is advocated widely amongst various market segments. The co-operative, like a partnership or company, is a form of economic co-operation. It differs however from the latter, being non-profit making. It functions by joining together separate economic resources and dividing surpluses amongst its members (Du Plessis, 1987:46).

This chapter reviews literature relating to the business forms of companies and of co-operatives. The different principles, advantages and disadvantages are discussed,
followed by a brief review of the laws and statutes that currently govern these business forms in South Africa, with specific reference to shareholder composition and capital forming.

2.2 THE COMPANY AS BUSINESS FORM

Cilliers et al, (1987:3) quote the Companies Act 61 of 1973, as a company being defined as “a company incorporated in terms of the relevant provisions of the Act, or anybody, which has a company in terms of any law, which preceded the present Act”. This, they argue, is far from definition, but that a company can adequately be described as “an association of persons for the common object of the acquisition of gain”. Figure 2.1 illustrates the various forms that the company can exist in.

![Figure 2.1: Types and Forms of Companies](source: Adjusted from Cilliers et al, 1987:24)
2.2.1 The private company

Cilliers et al, (1987:27) state that for the formation of a private company, at least two persons associated for a lawful purpose are required. A situation may however arise where a one-man company is formed where only one person for any lawful purpose is required. The private company with a single member was introduced by the Act as it appeared that many private companies were in reality so called one man companies in that the second person was no more than the nominee of the first, thus the necessity of making use of a nominee merely to comply with the Act no longer exists.

The name of the private company ends with the word “(Proprietary) Limited”, or as it is better known in its abbreviated form, “(Pty) Ltd”. The private company is a company with share capital, which is subjected to the following restrictions:

- It must restrict the right to freely transfer shares to outside parties;
- It must limit its membership to 50; and
- It must prohibit any offer of its shares or debentures to the public.

In failing to comply with the above restrictions, the company becomes liable to lodge annual financial statements with the Registrar as if it was a public company (Cilliers et al, 1987:26).

2.2.2 The public company

Cilliers et al, (1987:26) states that at least seven persons associated for a lawful purpose are required for the formation, incorporation and existence of a public company. Its name ends with the word “Limited”.1

The important principle and advantage of the public company is that it can raise capital from the general public and other businesses, and that the transferability of shares and interests in the company enables its shareholders to dispose of their investments freely without withdrawing such investments from the company. The

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1 Limited =Limited liability of shareholders. The company is a separate legal person, divorced from any natural person/s. Natural persons may however sign surety for and on behalf of a company. The same applies for the private company –((Pty) Ltd).
company is therefore “open” or “public” in the sense that members of the public are, or may become, substantially interested in the concern (Cilliers et al, 1987:26).

Because of the public nature of this company, the Companies Act (Act No 61 of 1973) stipulates comprehensive provision for the public company as to its disclosure and publication of annual financial statements, interim reports and provisional financial statements, that must be lodged with the Registrar where they are available for public inspection. Annual financial reports must be published in the public media.

2.2.3 The company limited by guarantee

At least seven persons associated for a lawful purpose are required for the formation of and incorporation of a company limited by guarantee. The last word in the name is “Limited” and the statement “(Limited by Guarantee)” must be subjoined to its name to distinguish it from the ordinary public company. No share capital is employed, but the liability of its members is limited by the memorandum to the amount – not being less than one Rand per member – which the members undertake to contribute in the event of the wounding up of the company (Cilliers et al, 1987:29).

This type of company does not have the means to have share capital, as provided in the Act, so the initial working capital is not gained from its members. Funds, if required, are obtained from other sources such as endowments, fees, charges, donations, subscriptions and loans. This type of company is hardly suitable for business purposes and is used almost exclusively for ones not for gain, such as mutual benefit societies or research associations.

The section 21 companies are special kinds of companies that do not operate for profit, and which may in terms of the Act only be incorporated as companies limited by guarantee. The last word in the company name need not be “Limited”, but the statement “Association incorporated under section 21” must be subjoined to its name. This kind of company is especially suitable for an association with the main objective being promoting religion, art, sciences, education, charity or any other cultural or social group interests. As it operates not for gain any such gains may not be divided
amongst its members, but must be used to promote its main objective (Cilliers et al, 1987:30).

2.2.4 The unlimited company

Cilliers et al, (1987:30) point out that the unlimited company may no longer be registered, but that there are small numbers of this specific type of company that still exist, and may continue to exist as they were registered in terms of the Companies Act of 1926. Most of these companies were formed as a result of professionals involved in large engineering projects, and the Companies Act, No 61 of 1973 will continue to comply with it as long as it is not converted to an alternative business form.

2.3 LEGISLATION GOVERNING COMPANIES

Acts targeting the specific group govern companies and other legal entities in South Africa or association of persons that have acquired such legal personality recognised by the South African legal system. Companies are governed by the Companies Act, No 61 of 1973, and because of the nature of close corporations and its common elements with companies are often enacted in close conjunction with the Close Corporations Act, No 69 of 1984 (Cilliers et al, 1987:v).

The research report focuses on legislation governing co-operatives for its impact on decisions to convert to alternatives, therefore only mention is made of the Companies Act, No 61 of 1973, with no detailed discussion.

2.4 THE CO-OPERATIVE AS BUSINESS FORM

Various authors define the co-operative as business form. The following universal definition as formulated by the International Labour Organisation (ILO) encompass the basic principle behind the co-operative:
2.4.1 Definition

A co-operative is “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise” (http://www.wisc.edu/uwcc/icic/).

2.4.2 Values and Principles

In their statement on the Co-operative Identity, the International Co-operative Alliance (ICA) not only defines, but also lists values and principles that guide co-operatives as follows (http://www.wisc.edu/uwcc/icic/):

- **Values**: Co-operatives are based on the values of self-help, self-responsibility, democracy, equity, equality and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

- **1st Principle (Voluntary and Open Membership)**: Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.²

- **2nd Principle (Democratic Member Control)**: Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership.

- **3rd Principle (Member Economic Participation)**: Members contribute equitably to, and democratically control the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed to as a condition of membership. Members allocate surpluses for any or all of the

² Membership may have different classes based on activity within the co-operative.
purpose by developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible, benefiting members in proportion to their transactions with the co-operative, and supporting other activities approved by the membership.

- **4th Principle (Autonomy and Independence):** Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

- **5th Principle (Education, Training and Information):** Co-operatives provide education and training to their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders - about the nature and benefits of co-operation.

- **6th Principle (Co-operation Among Co-operatives):** Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

- **7th Principle (Concern for Community):** Co-operatives work for the sustainable development of their communities through policies approved by their members.

The Co-operative Policy Task Team (CPTT) was formed to aid and make recommendations to the South African Minister of Agriculture with regard to policy concerning co-operatives. They list the following characteristics as being essential in the co-operative (Ras, 1994:14):

- Voluntary association;
- Promotion of collective interests for its members;
- Equitable shares for all members; and
- Democratic control.
2.5 LEGISLATION GOVERNING CO-OPERATIVES

Various events and/or incidents in the now Republic of South Africa, paved the way for the dawning of a new agricultural era during the period 1870 – 1910 (Van Niekerk, 1988:18). The discovery of diamonds in 1871, the discovery of gold in 1886, the economic development directly as the result of the construction of the railways and the Anglo-Boer War between 1899 - 1902 all contributed to a new drive to develop agriculture in especially the northern parts of the country. Farmers formed co-operatives spontaneously in the then Union of South Africa’s four provinces, but no legislation existed that catered solely for co-operatives.

A huge failure rate amongst co-operatives led to the winding up of many co-operatives by 1910, and in 1934 a commission once again pointed out that the failure of co-operatives in the Cape Province was largely due to the absence of powerful restrictive co-operative legislation. The various provinces all dealt with co-operatives under their own Companies Acts, until the Co-operative Societies Act, Act 28 of 1922 repealed and consolidated all previous co-operative legislation. The Act was passed on 17 July 1922 and was law as from 14 August 1922 (Van Niekerk, 1988:27).

On 1 September 1939, the Co-operative and Societies Act, Act 29 of 1939, which consolidated the Act of 1922 and amendments made between 1922 and 1939, was promulgated. One of the most important provisions of the new Act was that a new type of co-operative with limited liability now permitted persons other than farmers to gain membership to this type of co-operative with the approval of the Minister of Agriculture. This Act formed the broad basis and contents of the Co-operatives Act, Act 91 of 1981, which is discussed in more detail in Chapter 4.

2.6 DIFFERENCES BETWEEN COMPANIES AND CO-OPERATIVES

In order to quantify growth constraints between the business forms of companies and co-operatives, it is also important to point out the inherent differences between these business forms. These differences are listed in Table 2.1.
## TABLE 2.1: DIFFERENCES BETWEEN COMPANIES AND CO-OPERATIVES

<table>
<thead>
<tr>
<th></th>
<th>COMPANY</th>
<th>CO-OPERATIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Nature of business form</td>
<td>• Investors invest risk capital to earn dividends.</td>
<td>• Joint concern in order to benefit all members.</td>
</tr>
<tr>
<td></td>
<td>• Shareholders and clients may or may not be the same.</td>
<td>• Shareholders and clients are the same.</td>
</tr>
<tr>
<td>2. Share capital</td>
<td>• Shares are freely transferable and tradable, reflecting net asset value and profit potential.</td>
<td>• Shares are restricted in transfer and not tradable, not reflecting net asset or profit potential.</td>
</tr>
<tr>
<td></td>
<td>• Shares may be issued to any person or institution.</td>
<td>• Statutes determine conditions of shareholding.</td>
</tr>
<tr>
<td></td>
<td>• Prohibition on reduction or buying back of shares.</td>
<td>• Shares paid back to members.</td>
</tr>
<tr>
<td>3. Control</td>
<td>• Voting determined by shareholding.</td>
<td>• Voting is determined according to turnover, or member funds and turnover.</td>
</tr>
<tr>
<td></td>
<td>• Control may be vested within a group of shareholders.</td>
<td>• Control distributed over total member base.</td>
</tr>
<tr>
<td>5. Profit motive/sharing</td>
<td>• Maximum return on investment.</td>
<td>• Advantageous inset / output prices.</td>
</tr>
<tr>
<td></td>
<td>• Dividend declaration according to share holding.</td>
<td>• Bonus declaration according patronage.</td>
</tr>
<tr>
<td>6. Trading</td>
<td>• Directors have full authority with annual report to shareholders.</td>
<td>• Members have large say in policy, nature and extent of business activities.</td>
</tr>
<tr>
<td></td>
<td>• Business activity not centred around shareholders.</td>
<td>• Business activities centred around members.</td>
</tr>
</tbody>
</table>

3 Turnover = patronage / throughput of units measured against total throughput of the co-operative.
4 Maximising variables, for instance maximising profit, maximising share price or maximising shareholders’ wealth or company growth.
<table>
<thead>
<tr>
<th>COMPANY</th>
<th>CO-OPERATIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Possibility of conflicting interests restricted.</td>
<td>• Conflict of interests (business aims and members’ aims) impose huge restrictions.</td>
</tr>
</tbody>
</table>

| 7. New entrants | • Buy shares at market value reflecting value of total business. | • Entry by acquiring of nominal share capital. New member enjoys full benefits of infrastructure and services of co-operative without capital contribution being in relation. |

(Source: Adjusted from Ras, 1998:59).

---

5 Separate ownership and management. Management mandated by shareholders.
2.7 CONCLUSION

This chapter described the company and co-operative as business forms, with their principles, advantages, disadvantages as well as an overview over the current legislation governing them. Although both the company and co-operative have unique characteristics that contribute to the sound existence of the business forms, there are certain issues with regard to growth in the co-operative that stand out as inhibiting factors.

Growth in the organisation is important for sustained development and the managing thereof requires a strategic plan incorporating various external and internal factors.

Chapter 3 investigates growth and the managing thereof by means of a literature review.
CHAPTER 3

GROWTH IN THE ORGANISATION

3.1 INTRODUCTION

The specific form of a business has characteristics, advantages and disadvantages that need to be taken into account, as they may have effect on the objectives of the entrepreneur (Marx, 1984:38). These include legal aspects, control and authority, changes in ownership, and capital requirements – all of which may affect future growth. The financing of growth in the organisation, especially in terms of working capital is of utmost importance, as it may create massive problems in cash flows, resulting in failure.

Marx (1984:38) argues that these factors are of significant importance and they need to be taken into account when deciding upon the form of ownership. Summaries of these factors are as follows:

- **Legal personality:** From a legal point of view, whether the business has an independent existence quite apart from that of the owner and if it has its own assets and liabilities;

- **Liability of the owner:** Whether or not the owner can be held responsible for debts and claims against the business;

- **Control and authority:** The extent thereof by the owner and the use of assets and distribution of profits;

- **Capital requirements:** The ability to provide for initial establishment as well as later expansion; and

- **Change of ownership:** How easy or difficult it is for the owner to transfer shares or to withdraw from the enterprise.

This chapter will focus on growth and the management thereof, by reviewing literature about the field. Capital forming will be dealt with as a separate topic as it stands out as a specific problem within the co-operative as business form.
3.2 THE IMPORTANCE OF GROWTH

Studies conducted on growth by Murphy (1996), as quoted by Nieman and Pretorius (2004:1), indicate that growth is written into the business enterprise as the hallmark of success. “It brings the promise of expansion, new premises, greater profitability, increase in personnel, and the influence in the labour market, pulling power to attract more highly developed people, or a general increase in resources, which in turn promise further growth and even higher status in the business community for the owners”.

In the South African context, growth of the organisation is seen as especially important to address the following generic development goals in the country (Nieman & Pretorius, 2004:2):

- Job creation;
- Poverty alleviation;
- Equity and participation;
- Wealth creation; and
- Social stability.

The actual value of growth is often misunderstood, whilst it is frequently a central objective for most organisations. Grundy (2003:1) argues that growth is not a good thing in itself but it is merely a vehicle for achieving other important goals that may include:

- Profitability;
- Increase in shareholder value;
- Building of market dominance;
- Capability development;
- Protecting and strengthening the business;
- Creating future opportunities;
- Future positioning;
- Advancing existing career paths; and
- Providing an ongoing sense of challenge.
Grundy (2003:2) emphasises that a business can easily slide into a sense of complacency and even deteriorate if management does not have very clear growth goals and a growth strategy, thus the importance thereof.

3.3 GROWTH TYPES

Joint studies by Crijns (2001) and Wickham (2001) as quoted by Nieman and Pretorius (2004:26) reveal that organisations should constantly view their growth and development from four major perspectives, namely:

- Financial;
- Strategic;
- Structural; and
- Organisational.

The four types of growth are interdependent and mutually supportive, calling for appropriate management goals. Figure 3.1 depicts these relationships.

![Diagram showing the dynamics and types of growth](image)

**FIGURE 3.1: DYNAMICS AND TYPES OF GROWTH**

(Source: Adjusted from Nieman & Pretorius, 2004:26).
3.3.1 Financial growth

Ross, Westerfield, Jordan and Firer (2001:78) argue that financial growth is the responsibility of the financial manager of a business concern. They however warn that financial growth, by itself, is not an appropriate goal for the financial manager. The appropriate goal should be the increase of the market value of the owners’ equity. They argue that if this is successful, growth will usually follow as a result.

Financial growth is normally expressed or determined by means of the following quantitative measures (Nieman & Pretorius, 2004:27):

- Increase in turnover (sales);
- Increase in total assets;
- Increase in profit;\(^6\)
- Increase in return on investment (ROI); and
- Increase in any other performance measure.

Ratios express the relationship between one quantity and another, and ratio analysis is used to determine past growth, and to predict future growth (Correia, Flynn, Uliana & Wormald, 2003:5-10). These ratios can be used effectively only when they are compared with historic data or with industry averages, and are categorised in the following six groups:

- Liquidity ratios;
- Asset management ratios;
- Debt management ratios;
- Profitability ratios;
- Cash flow ratios; and
- Market value ratios.

Nieman and Pretorius (2004:28) emphasise that financial growth should not occur without proportionate growth in the other three supporting pillars – those of strategic, structural and organisational growth.

\(^6\) Monetary value – not necessarily percentage.
3.3.2 Strategic growth

Strategy refers to the long term planning of a firm, and determines how the business will compete in a given market and position itself among competitors (Nieman & Pretorius, 2004:28). Johnson and Scholes (2002:362) state that three pressures influence the direction for strategic growth or development:

- **Environment-based motives:** Fitting new strategies to a changing business environment;
- **Resource-based motives:** Stretching and exploiting the competences of an organisation; and
- **Expectations-based motives:** Meeting the expectations created by the regulatory and governance framework, powerful stakeholders, ethical considerations and culture.

Organisations could develop in four strategic directions as outlined in Figure 3.2:

**FIGURE 3.2: STRATEGY DEVELOPMENT DIRECTIONS**
(Source: Adjusted from Johnson & Scholes, 2002:362).
3.3.3 Structural growth

Structure follows strategy, and ultimately the organisation should configure itself in order to align with the strategic intent of that organisation. Johnson and Scholes (2002:465) warn that an inappropriate structure could impede an organisation’s strategies, and that the mere change of configuration will not be a guarantee for success.

Businesses cannot grow financially if it does not grow structurally. Structural growth should not necessarily be linear, but should increment as there is financial growth in order to prevent the situation of overtrading,\(^7\) which occurs when the growth is too high for the asset base and resources of the company (Nieman & Pretorius, 2004:29).

3.3.4 Organisational growth

Organisational growth refers to the changes that take place in three key areas as the business grows, namely those of:

- Changes in process;
- Changes in culture; and
- Changes in attitude.

Larger organisations require different leadership styles from the small organisations, and a more formal management team is needed to lead the growing firm - a team that does not rely on past experience or rule of thumb to manage, but rather good management practices (Longenecker, Moore & Petty, 2000 as quoted by Nieman & Pretorius, 2004:30).

Gibson, Ivancevich and Donnelly (1982:534) developed a model that suggests the management of organisational development, taking into consideration all the internal and the external forces that impact on the organisation. Figure 3.3 highlights these different forces and the interrelations.

\(^7\) Overtrading happens when the entrepreneur attempts to sell more products than what its capacity is, thus stretching out cash, human capacity and resources that cannot sustain the operation. A higher fixed cost (expenditure lead) is incurred long before income (income lag). The moment a problem arises deliveries fail and the concern risks a total failure (Nieman & Pretorius, 2004:99).
3.4 GROWTH STRATEGIES

Johnson and Scholes (2002:4) argue that strategic decisions have several characteristics pertaining to:

- The long-term direction of the organisation;
- Achieving advantage over the competition;
- The scope of the organisation’s activities;
- Matching of resources and activities to the environment (strategic fit); and
- Building on existing resources and competences to create opportunities (strategic stretch).

Nieman and Pretorius (2004:110) state that implementing strategies for growth are aimed at either:

- Internal growth;
- External growth; or
- A combination of internal and external growth.
3.4.1 **Internal growth**

Internal growth refers to growth that takes place when an organisation brings new resources together in an innovative combination to create new value, thus growing the business through increase in market share, new product development, and/or entering new markets. It can take on one or more of the following forms (Nieman & Pretorius, 2004:110):

- **Increasing core market share**: In the growing market an increase in sales would positively influence the turnover of the organisation, where market share can be readily attained. In the mature market however, expansion can be the result of a drive for better efficiencies within the organisation through:
  - Achievement of economies of scale and command of technology and distribution; and
  - The command of the means of gaining and maintaining customer confidence.

- **Expansion into new markets**: Achieved through the entering of new geographical areas, entering new target markets, branding or exporting.

- **Developing new products**: With certain products reaching the maturity phase of the product life cycle, new product development by means of either modifications or completely new products may be imminent for achieving renewed growth.

3.4.2 **External growth**

Many organisations seek growth in sales, profits, market share or other measures of primary objective. The following options or methods may be pursued to grow externally (Certo & Peter, 1990:90):

- **Vertical integration**: This involves the acquisition of other companies within a channel of distribution, and are the following:
  - Backward vertical integration – the acquisition of companies that supply goods or services to the concern.
• **Forward vertical integration** – the acquisition of companies closer to the end user of the product in order to obtain greater control over a value chain.

• **Horizontal integration**: This strategy is followed when companies competing in the same line of products are acquired, the reason being increase of the potential market share of the organisation.

• **Diversification**: This strategy involves growth through the acquisition of companies in other lines of business. If the acquired business has similar products, technology or channels of distribution, it is referred to as *related or concentric* diversification. If it is completely different, it is referred to as *unrelated or conglomerate* diversification. Diversification is a strategy followed for one or more of the following reasons:
  o To accelerate growth by purchasing an organisation with a higher growth ratio;
  o In the case of excess cash on hand (for tax purposes or profitable re-investment);
  o Distribution of risk;
  o Acquisition for resources such as management talent, financial and technical resources or marketing skills;
  o To create synergy.

• **Mergers and joint ventures**: Mergers take place when one company joins another to form a new company in order to grow or join forces to expand products or services. Joint ventures refer to the situation where two or more concerns join forces when an assignment is too large, or to bridge certain gaps like trade barriers. Mergers and joint ventures are discussed in detail in paragraph 3.5.

Nieman and Pretorius (2004:113) list the following external growth strategies in addition to the above:

• **Northern integration**: Acquisition of firms wanting to enter a particular sector in order to prevent it from doing so. It is used as a drive towards some form of market domination.\(^8\)

\(^8\) Example: A cell phone provider purchases a firm wanting to enter the market.
- **Southern integration**: Acquisition of firms that supply critical substitute products, in order to preserve and maintain the original product.

Strategy determines the general direction of the company, for which strategic objectives and action plans are developed. To execute these plans, certain methods and options exist. Figure 3.3 illustrates the growth strategies and methods of implementation.

![Growth Strategies Diagram](image)

**FIGURE 3.4: GROWTH STRATEGIES AND METHODS TO IMPLEMENT**
(Source: Adjusted from Nieman & Pretorius, 2004:133).

### 3.5 CAPITAL FORMING

Growth places a tremendous strain on an organisation’s resources. Financial resources that would otherwise have been sufficient may be insufficient when entering a period of rapid growth (Allen, 1999 as quoted by Nieman & Pretorius, 2004:170).
Several options exist to finance growth, some more applicable to small, medium and micro enterprises (SMMEs), and other relevant to larger concerns. Because of the nature and the size of the businesses included in the research, financing options for SMMEs are mentioned only, whilst options for larger concerns are researched in more detail. Financing the SMME can take on one or more of the following forms:

- **Internal financing through the following means (cash flow management):**
  - Accelerated collections (debtors control);
  - Same day invoicing;
  - Same day deposits of receivables;
  - Advance payments on contracts;
  - Extended credit terms with suppliers;
  - Improved stock turnover;
  - Correct options of financing of assets over correct terms; and
  - Creation of cash wind falls.

- **External financing through:**
  - Trade credit;
  - Bank overdrafts;
  - Bills of exchange;
  - Bankers acceptances;
  - Debtor finance;
  - Customer advance payments;
  - Shipper’s finance;
  - Asset finance;
  - Medium term loans;
  - Debentures\(^9\) and
  - Mortgage bonds.

- **External financing through equity:**
  - Personal creditworthiness (in case of sole proprietorship);
  - Capital accounts (partnerships);
  - Members’ contributions (close corporations);

---

\(^9\) **Debentures** = unsecured bonds or long term debt instruments with no particular assets pledged as security (Pingle & Harris, 1982:G1).
o Share capital (companies);
o Ordinary shares; and
o Preference shares.

Every business has a life cycle, and the financing strategy needs change over the life of the business to extend the life of the business and prolong or renew the life cycle. At the startup phase of a business financing needs are to support receivables, inventory and supplies, primarily used as working capital to increase the volume of sales. In this stage the business is still trying to achieve a consistent, positive cash flow. A next level with different financing needs is entered when the business is so successful that professional investors are interested and funding can be used to take the company public and list on the securities exchange.

When deciding between financing options, it is important to take the cost and risk of financing into account. According to Nieman and Pretorius, (2004:173) the following aspects are of particular importance:

- The assets to be financed (fixed or current);
- The appropriate term (long, medium or short term);
- The methods that can be applied in raising cash to finance the assets; and
- The most appropriate mix of finance.\(^\text{10}\)

### 3.5.1 Equity

Nieman and Pretorius (2004:88) list four stages in the relationship between the entrepreneur and the investor, being pre-investment, investment, post investment and exit. Investment may be attracted from the private equity market or from funding raised through a public offering and traded on the public exchange. Table 3.1 illustrates different types of equity.

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\(^{10}\) Debt to equity ratio.
**TABLE 3.1: DIFFERENT TYPES OF EQUITY**

| Venture capital | Seed capital | • Funding for research, evaluation and development of a concept or business before the business starts trading  
|                 |             | • Typically capital invested before a business starts selling its products / services and generating revenues  
| Start up and early stage | • Funding for new companies being set up, or for the capital development of those which have been in business for a relatively short time (1-3 yrs)  
|                 |             | • Typically capital invested after a business starts generating revenue, but before the business starts breaking even and generating profit  
| Development capital | Expansion and development | • Funding for the expansion and capital and development of a business which is breaking even or trading profitably  
|                 |             | • Typically capital invested before a business has reached a point of maturity in its life cycle, or when it has identified a new avenue of growth, such as new technology, product or market  
| Buy-out capital | Management buy-out (MBO) or buy in (MBI) | • Funding to enable a management team, either existing (MBO) or new (MBI), and their backers to acquire a business from the existing owners, whether a family, conglomerate or other  
|                 |             | • Unlike venture or development capital, the proceeds of buy-out generally go to the previous owners of the entity. Buy outs are often leveraged (use of debt to acquire business)  
| Replacement | • Funding for the purchase of existing capital shares in a company from other shareholders, whether individuals, backers or the public through the stock market  
|             | • Proceeds of replacement capital transactions generally paid to the previous owners of the entity  

(Source: Adjusted from Nieman & Pretorius, 2004:189).
3.5.2 Public listing

Having reached a period of sustained growth and a phase of positive returns on investment, “going public” or “listing” may be the ultimate way of raising capital for growth. This is known as the initial public offering (IPO). Nieman and Pretorius (2004:215) are of the opinion that this is a complex process and whatever decision is arrived at, sets a series of events in motion that will change the business forever. Most businesses consider IPO once the need for growth capital has exceeded their debt capacity.

Once listed the company will experience an influx of capital due to increased numbers of shareholders and outstanding shares that provide the company with much increased financial resources.

There are minimum criteria that need to be met in order to list on the stock exchange. Ross et al (2001:16) state that minimum criteria include the asset size and number of shareholders. At the time of publishing, to be listed on the Johannesburg Securities Exchange (JSE), a company was expected to have a share capital of at least two million rand in the form of at least one million shares with the initial value that would be 100 cents.

Small to medium sized enterprises (SMME) are catered for at the Alternative Exchange (AltX), also referred to as the JSEX. The market is differentiated from from the JSE in many ways, with separate listing requirement for companies that are considered to become large in the future and that will migrate to the JSE upon maturity (Nieman & Pretorius, 2004:223).

Nieman and Pretorius (2004:216) state that the advantages and disadvantages of the Initial Public Offering, as summarised in Table 3.2, need to be taken into account before this step is taken. Table 3.2 summarises the advantages and disadvantages.
### TABLE 3.2: ADVANTAGES AND DISADVANTAGES OF THE INITIAL PUBLIC OFFERING (IPO)

<table>
<thead>
<tr>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Obtaining of new equity capital</strong>: Going public provides interest free capital for growth and expansion, adjusting debt-equity ratios and product and market development. It provides for working capital, plant and equipment as well as inventories and supplies needed for growth. It strengthens the bargaining power with respect to banks and creditors. Employees may be rewarded in the form of share options.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Obtaining value and transferability of the organisation’s assets</strong>: It provides a mechanism for valuing the company and making its shares more transferable. It is the most beneficial way of attaining the liquidity necessary to convert to alternatives with the best possible return on their earlier stage funding. It also makes acquisitions easier.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Enhancing the company’s ability to obtain future funds</strong>: It is usually easier to raise additional capital, particularly debt. Money can be borrowed at more favourable terms. Both debt financing and future equity capital are more easily obtainable with increased value.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Public exposure</strong>: Public exposure may infringe on the independence of the entrepreneur. Company financial information becomes public information and may be scrutinised by anyone.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Potential loss of control</strong>: When enough shares are sold to the public, the company can lose control over its decision-making power, which can result in a hostile take over.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Pressure to perform</strong>: Listed companies face intense pressure to perform financially in the short term in order to earn the investors the immediate gains they expect. Reporting requirements are strict, time consuming and costly.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Loss of flexibility</strong>: Decisions are made with due regard to fiduciary duties owed to the public shareholders.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Cost of listing</strong>: Accounting, legal, underwriting, listing and documentation fees are substantial.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Time consuming</strong>: The process may take several months to years and require one or more senior staff members fully tied up in the process.</td>
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</tr>
</tbody>
</table>

(Source: Adjusted from Nieman & Pretorius, 2004:218).
3.6 CONCLUSION

This chapter reviewed literature about growth, which can take several forms in the internal and external environment of the organisation. Mention was made of the fact that that the types of growth within the organisation typically occur in four major fields – those of financial, strategic, structural and organisational dimensions – all of these requiring additional funding.

Capital forming, or the financing of growth in the SMME differs from that in the larger concern and various options to raise venture or development capital are available to the entrepreneur to overcome barriers to expansion. Recent developments make it possible for these concerns to gain access to the equity market through the Alternative Securities Exchange (AltX), also referred to the JSEX.

For the larger concern, acquiring of equity through public listing is the most significant, but there are advantages and disadvantages that are inherent to this option of raising capital (see Table 3.2). This option is usually considered once the need of growth capital exceeds the debt capacity of the business.

For co-operatives, not only growth, but also legislation is being cited as reasons for wanting to convert to alternative business forms, as outlined in the assumptions in Chapter 1.

Chapter 4 reviews the changing Act governing co-operatives in South Africa, as well as the implications thereof on its area of applicability.
CHAPTER 4

CO-OPERATIVES ACT, NO 91 OF 1981: CHANGES IN LEGISLATION AND IMPLICATIONS FOR CO-OPERATIVES IN SOUTH AFRICA

4.1 INTRODUCTION

The existing Act governing co-operatives in South Africa (Co-operatives Act, No 91 of 1981), evolved over a period of nearly 70 years, and incorporated or repealed various provincial acts and amendments thereof, as described in Chapter 2. The first national legislation governing co-operatives was introduced in 1922, and has been changed in entirety on three occasions.

According to P.M. Mbewana, Deputy Director – Co-operative Development, Department of Trade and Industry (DTI), (personal communication, 19 October 2004) several drafts of the Co-operatives Act to replace Act, No 91 of 1981 were presented to the Portfolio Committee of the DTI during June, August and October 2003. The final draft of the Bill was tabled in Parliament on 27 October 2004, with effective date targeted for the first quarter of 2005.

This chapter will focus on the structure of the Co-operatives Act, No 91 of 1981, the draft Bill submitted to Parliament, the changes, and implications thereof on existing co-operatives in South Africa. For the sake of completeness, the proposed Co-operative Bill is attached as Appendix I.

4.2 THE CO-OPERATIVES ACT, NO. 91 OF 1981

At submission of this research dissertation, the effective Act governing co-operatives in South Africa was the Co-operatives Act, No 91 of 1981 (hereafter referred to as the Act). The Act provides for the establishment, incorporation, functioning, winding-up and dissolution of co-operatives, the appointment of a Registrar of Co-operatives and matters pertaining thereto. The Act was passed by Parliament in October 1981 (Van Niekerk, 1982:54). Table 4.1 (as adapted from the Act) depicts the sectional arrangements as follows:
TABLE 4.1: SUMMARY OF ARRANGEMENTS OF THE CO-OPERATIVES ACT, NO 91 OF 1981

<table>
<thead>
<tr>
<th>Sections</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-242</td>
<td>Comprehensive definitions and 11 chapters.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapters</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Application and execution of the Act, establishment of a registration office and the functions assigned to the Registrar of Co-operatives.</td>
</tr>
<tr>
<td>II</td>
<td>Formation, incorporation and dissolution of co-operatives.</td>
</tr>
<tr>
<td>III</td>
<td>Powers of and restrictions on co-operatives.</td>
</tr>
<tr>
<td>IV</td>
<td>Membership of co-operatives.</td>
</tr>
<tr>
<td>V</td>
<td>Capital and application of surplus.</td>
</tr>
<tr>
<td>VI</td>
<td>Management of co-operatives.</td>
</tr>
<tr>
<td>VII</td>
<td>Accounting records, accounting and auditing.</td>
</tr>
<tr>
<td>VIII</td>
<td>Conversions, amalgamations and, compromises and arrangements.</td>
</tr>
<tr>
<td>IX</td>
<td>Special statuary pledge.</td>
</tr>
<tr>
<td>X</td>
<td>Winding-up of co-operatives.</td>
</tr>
<tr>
<td>XA</td>
<td>Judicial management.</td>
</tr>
<tr>
<td>XI</td>
<td>General provisions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedules</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Repealed.</td>
</tr>
<tr>
<td>2</td>
<td>Requirements of annual financial statements.</td>
</tr>
<tr>
<td>3</td>
<td>Laws repealed.</td>
</tr>
</tbody>
</table>


4.3 PROPOSED CHANGES TO THE ACT

According to P.M. Mbewana, Deputy Director – Co-operative Development, DTI (personal communication, 20 October 2004) government is of the opinion that the current Act regulating co-operatives in South Africa is inadequate. According to an explanatory memorandum attached to the Draft Co-operative Bill submitted to Parliament in October 2004, the current Act can, for a number of reasons not be regarded as a suitable vehicle for development of co-operatives in modern times, of which the following are the most significant (see Appendix K):
• The definition of the co-operative is inadequate, and co-operatives registered in terms of the current Act are also not explicitly required to conform with co-operative principles;
• The current Act presupposes that the state play a highly interventionist or paternalistic role in relation to co-operatives;
• The focus of the current Act is primarily on agricultural co-operatives, with all other co-operatives categorised as trading co-operatives;
• The requirements to adhere to the current Act are relatively onerous;
• The provisions that protect the interests of the members of the co-operative, particularly vis a vis the board of directors are weakly articulated; and
• The language of the current Act is complex and difficult to understand – considered as inaccessible to the average member.

The Final Draft Bill dated June 2004, does not only re-address issues in the Co-operatives Act 91 of 1981, but includes completely new arrangements. A comparative table as to the current Act is depicted in table 4.2.

TABLE 4.2: SUMMARY OF ARRANGEMENTS OF THE FINAL DRAFT OF THE CO-OPERATIVES BILL 2004

<table>
<thead>
<tr>
<th>Sections</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-121</td>
<td>Comprehensive definitions and 13 chapters.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapters</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Application and purpose of the Act.</td>
</tr>
<tr>
<td>II</td>
<td>Registration, constitution and powers of the co-operative.</td>
</tr>
<tr>
<td>III</td>
<td>Membership.</td>
</tr>
<tr>
<td>IV</td>
<td>General meetings.</td>
</tr>
<tr>
<td>V</td>
<td>Management of co-operatives.</td>
</tr>
<tr>
<td>VI</td>
<td>Capital structure.</td>
</tr>
<tr>
<td>VII</td>
<td>Accounting records, accounting and auditing.</td>
</tr>
<tr>
<td>VIII</td>
<td>Conversions, amalgamations, divisions and transfers.</td>
</tr>
<tr>
<td>IX</td>
<td>Winding-up and deregistration.</td>
</tr>
<tr>
<td>X</td>
<td>Judicial management.</td>
</tr>
<tr>
<td>XI</td>
<td>Administration of this Act.</td>
</tr>
</tbody>
</table>
4.4 IMPLICATIONS FOR EXISTING CO-OPERATIVES

The South African Agricultural Business Chamber plays an integral part in the participative process with government in formulating legislation regarding co-operatives. According to Dr T. Doyer, CEO - South African Agricultural Business Chamber (personal communication, 6 December 2004) the co-operative as business form and the impacts of legislation changes on existing co-operatives are as follows:

4.4.1 Importance of the co-operative as business form

The co-operative is still regarded as a very important entity in South Africa. It has proved itself to be a viable businesses form, being very effective in the mobilisation of the community.

This is echoed by President Thabo Mbeki in his state of the nation address in 1999, where he states that “the government will place more emphasis on the development of a co-operative movement to combine the financial, labour and other resources among the masses of the people, rebuild our communities and engage the people in their own development through sustainable economic activity.”

A co-operative development policy for South Africa was formulated and released in January 2004, where it is stated that one of the great challenges facing the South African economy is to increase the number and variety of viable and sustainable economic enterprises. The policy statement has the following objectives:

- It forms the basis for the new Co-operative Act;
• It defines genuine co-operatives and co-operative groups for targeted support purposes;

• It points to specific support measures and programmes to support the development of a co-operative movement by all stakeholders;

• It serves as a reference for co-operative members by explaining why and how the Government supports co-operatives and by determining the relationship between the state, co-operatives, civil society and the private sector;

• It establishes a code of conduct for co-operative promoters by stating the basic principles to be respected; and

• It facilitates the horizontal and vertical integration of co-operatives from different sectors by clarifying basic policy issues relevant to all sectors.

For the sake of completeness the Co-operative Development Policy is attached as Appendix K to this report.

4.4.2 Reasons for conversions

Dr T Doyer (personal communication, 6 December 2004) argues that the drive to convert from co-operatives to companies started in the early 1990s when the former Minister of Agriculture alluded to the nationalisation of co-operatives’ assets, since these assets were acquired with government support in the form of subsidised interest rates.

Government subsidised and supported the investment of millions in infrastructure of role players in the agricultural sector, which expanded to the extent that some of the ideals and principles behind co-operatives were lost due the sheer size of the sector co-operatives. Government’s used co-operatives as the marketing tool of the Marketing Boards to boost the agricultural sector.
These were however not the reasons argued by co-operatives for converting, but the main reasons cited were:

- Capital forming / growth; and
- Portfolio management / risk distribution.

The survey conducted amongst the respondents listed confirms this statement and is discussed in Chapter 6.

### 4.4.3 Implications

According to T. Ras - General Manager, Vrystaat Koöperatief Beperk (VKB) (personal communication, 8 December 2004), the main concerns for members of the VKB regarding changing legislation are as follows:

- Voting rights – there seems to be a dogmatic approach regarding one-person-one-vote as being a co-operative principle (According to the International Cooperative Alliance (ILA) this is one of the key principles of a co-operative);
- That in reality a small number of members support and capitalise the co-operative, and that one-person-one-vote will not be acceptable to this group; and
- That government’s drive to comply with idealistic principles my lead to failures, and that it would be more desirable to establish co-operatives in an enabling environment.

It is the opinion of Dr T. Doyer (personal communication, 6 December 2004) that the main differences of the new legislation to the old are that the new Act is less regulatory and based more around social issues. He echoes T. Ras’ concerns about voting rights, but is of opinion that it would be an issue that will be difficult to change after decades of struggle to convert from the previous dispensation into one of democracy.

He further states that he regards the converted previous co-operatives no more different from current co-operatives, but that a problem that arises with new co-operatives is that Boards of Directors are compiled around their abilities to address
and manage social and political issues rather than business principles, and that this could lead to failure. He warns that organisational structure should follow strategy. A summary of implications is contained in Chapter 6.

4.5 CONCLUSION

This chapter focussed on legislation governing co-operatives in South Africa, with the aim of addressing sub-problem four: “What are the changes to the Co-operative Act, No 91 of 1981 as described in the Co-operatives Bill drafted in June 2004, and what will the effect of these proposed changes be on current co-operatives in South Africa?”

The results are included in Chapter 6 with the results of the empirical survey.

Chapter 5 will address research methodology and the design of the empirical study to address sub-problems two and three.
CHAPTER 5

RESEARCH METHODOLOGY

5.1 INTRODUCTION

In the previous chapters the literature surrounding business forms, growth and the legislation governing co-operatives were discussed. This chapter focuses on the empirical study to address the research problem outlined in Chapter 1.

Qualitative and descriptive methodologies will be discussed after which the research design, data collection and the data analysis processes are described.

5.2 RESEARCH METHODOLOGY

Leedy and Ormrod (2001:9) state that research is a cyclical process, starting with a problem and ending with interpreting of data gathered, from which new problems may or may not arise. Figure 5.1 illustrates this cyclical process.

![Figure 5.1: The Cyclical Research Process](image)

**FIGURE 5.1: THE CYCLICAL RESEARCH PROCESS**
(Source: Adjusted from Leedy & Ormrod, 2001:9).
Research methodology has two primary functions:

- To control and dictate the gathering of data; and
- To process and interpret the data and to extract meaning from it.

Two methodologies are used during research in the gathering and interpretation of data – those of qualitative and quantitative methodologies.

5.2.1 Qualitative research methodologies

Peshkin (1993) as quoted by Leedy and Ormrod (2001:148) state that qualitative research studies typically serve one or more of the following purposes:

- **Description**: They reveal the nature of certain situations, settings, processes, relationships or people;
- **Interpretation**: They enable the researcher to gain insights about the nature of a particular phenomenon, develop new concepts or theories about the phenomenon, and/or discover the problems that exist within the phenomenon;
- **Verification**: They test the validity of certain assumptions, claims, theories or generalisations within real world contexts; and
- **Evaluation**: They provide means through which the researcher can judge the effectiveness of particular policies, practises or innovations.

Five common research designs exist, each more or less suitable for the successful solving of a particular question. Table 5.1 depicts the characteristics of the different qualitative designs.

5.2.2 Descriptive research methodologies

Descriptive research encompass research designs that yield quantitative data, often used in diverse disciplines such as business, government, public health, sociology and education. The designs that are applied are correlation research, developmental designs, observation studies and survey research (Leedy & Ormrod, 2001:191).
<table>
<thead>
<tr>
<th>DESIGN</th>
<th>PURPOSE</th>
<th>FOCUS</th>
<th>METHODS OF DATA COLLECTION</th>
<th>METHODS OF DATA ANALYSIS</th>
</tr>
</thead>
</table>
| Case Study         | To understand one person or situation in great depth | One or a few cases within its natural setting | • Observations  
• Interviews  
• Appropriate written documents and/or audiovisual material | • Categorisation and interpretation of data in terms of common themes  
• Synthesis into an overall portrait of the case/s |
| Ethnography        | To understand how behaviours reflect the culture of a group | A specific field site in which a group of people share a common culture | • Participant observation  
• Structure or unstructured interviews with informants  
• Artefact / document collection | • Focus on significant events |
| Phenomenological study | To understand an experience from the participant's point of view | A particular phenomenon as it is typically lived and perceived by human beings | • In depth, unstructured interviews  
• Purposeful sampling of 5-25 individuals | • Search for meaning units that reflect various aspects of the experience  
• Integration of the meaning units into a typical experience |
| Grounded theory study | To derive a theory from data collected in a natural setting | Human actions and interactions, and how they result from and influence each other | • Interviews  
• Any other relevant data sources | • Prescribed and systematic method of coding the data into categories and identifying interrelationships  
• Continual interweaving of data collection and data analysis  
• Construction of a theory from the categories and interrelationships |
| Content analysis   | To identify the specific characteristics of a body of material | Any verbal, visual or behavioural form of communication | • Identification and possible sampling of the specific material to be analysed.  
• Coding of material in terms of predetermined and precisely defined characteristics | • Tabulation of the frequency of each characteristic  
• Descriptive or inferential statistical analyses as needed to answer the research question |

(Source: Adjusted from Leedy & Ormrod, 2001:157).
Following is a summary of descriptive research designs as outlined by Leedy and Ormrod (2001: 191-196):

- **Correlation research:** A correlation study examines the extent to which differences in one characteristic or variable are related to characteristics of one or more other characteristics or variables. A correlation exists when there is a more or less predictable change in one characteristic with the increase or decrease of one or more other characteristics of variables.

- **Developmental designs:** These are used by researchers to study how characteristics change over a period of time – like people growing older. Cross sectional studies include people from several different age groups that are sampled and compared, whilst the longitudinal study follow a single group of people over a period of time.

- **Observation studies:** This study, unlike observations in qualitative design where observations are done broad based in detail, focuses on one particular aspect of behaviour. These studies usually involve elaborate planning in advance, paying meticulous attention to detail, and may be preceded by a pilot study to identify possible problems and likely routes to follow.

- **Survey research:** Survey research capture a fleeting moment in time, and by drawing conclusions from the collection of data, the researcher may extrapolate or predict over longer periods of time. Survey research employ various methods to gather data, of which interviews and questionnaires are the most common ones used.

### 5.3 RESEARCH DESIGN

The research design for this study was selected after assessing and clarifying the main and sub-problems. The main problem researched was:

“What are the strategies driving the conversion of co-operatives to alternative business forms in South Africa, and how successfully were they implemented?”
In order to address the main problem, the following sub-problems were identified:

- How are co-operatives and the applicable alternatives defined, and what principles, benefits and/or disadvantages are there for these business forms?
- What strategies were followed in the conversion of the selected companies that converted from co-operatives?
- What were the positive or negative implications resulting from the conversion of co-operatives to alternatives, or from refraining to do so?

The first sub-problem was dealt with by doing a literature study; researching business forms available to entrepreneurs. From information obtained from the Registrar of Co-operatives, it was confirmed that the conversions from co-operatives to alternatives were mainly to company status, and the principles, advantages and disadvantages of co-operatives and companies were therefore specifically focussed on in the research.

Literature for this sub-problem study was obtained by means of an Internet search and searches of databases in the Port Elizabeth Technikon, University of Port Elizabeth and University of Stellenbosch.

The second sub-problem was dealt with by an initial telephonic survey amongst key persons in the delimited target group – current and previous agricultural co-operatives in South Africa. After this judgement sample and a letter that was sent out on 12 May 2004, a questionnaire was distributed to specific persons identified by their respective concerns (See appendix B – G). A list of the respondents is contained in Appendix A.

In addition to the questionnaire to the above-mentioned respondents, a questionnaire was sent to the Registrar of Co-operatives in Pretoria in order to obtain his views on the reasons behind the large-scale conversions from co-operatives to companies. It was from personal interviews with the personnel of the Registrar’s office and from information that was obtained during the pilot questioning that it became evident that commercial reasons were not the only ones driving conversions, but legislation governing co-operatives, and more specific, the imminent changing of legislation after a newly elected government in South Africa significantly contributed to conversions.
As a result a fourth sub-problem was included, being as follows:

- What are the changes to the Co-operative Act, No 91 of 1981 as described in the Co-operatives Bill drafted in June 2004, and what would the anticipated effect of these proposed changes be on current co-operatives in South Africa?

The fourth sub-problem was addressed by means of including it in the questionnaires to respondents, as well as personal interviews with the relevant personnel at the Department of Trade and Industry. A study of the Act, its application and the changes that it was undergoing at the time of the research was included in Chapter 4 for purposes of completeness.

The third sub-problem was addressed mainly through a range of personal interviews and analysis of financial data by means of financial ratio analysis. Both qualitative and descriptive non-experimental research methods were used to derive results (see Chapter 6).

### 5.4 DATA COLLECTION

Wegner (1993:12) state that data for statistical analysis can be obtained from two sources:

- Internal / external sources; and
- Primary / secondary sources.

Due to the nature of the research, internal sources either currently employed or previously employed by the respondents were targeted to obtain data from. Primary data was collected in the form of qualitative and quantitative data sets that were further interpreted to derive conclusions.

Data collection methods were mainly by the means of personal interviews and questionnaires. The advantages and disadvantages of these methods are (Wegner, 1993:15):

**Advantages:**

- A higher response rate;
- It allows probing for reasons;
- It is immediate;
- Greater data accuracy is usually ensured;
- It is useful when response data from a technical nature is required;
- Non-verbal responses can be observed and noted;
- Generally more questions can be asked;
- Responses are spontaneous; and
- The use of aided-recall questions is possible.

Disadvantages:
- Personal interviews are more time consuming;
- Generally fewer interviews are conducted due to time constraints and cost; and
- The possibility to gather biased data is introduced by interviewer influence.

5.4.1 Cover letters

Cover letters for the questionnaires were drafted with the aim of persuading the respondent to complete the questionnaires, taking into consideration the following guidelines:
- Content, purpose and importance of the research;
- The respondent’s importance to the study;
- The time that it will take to complete the questionnaire;
- Confidentiality and anonymity; and
- Information of how the results will be used.

5.4.2 Questionnaires

The construction and administration of the questionnaire should be done in a manner that will ensure that accurate, unbiased and relevant data of the correct type is gathered in line with the research objectives (Wegner. 1993: 18). Leedy and Ormrod (2001:202) list the following guidelines for the construction and administering of the questionnaire:
- Conciseness: The questionnaire should be short and brief enough to solicit only that information that is essential for the research project.
• **Simplicity:** Simple, clear and unambiguous language with terms that do not obscure words or technical jargon.

• **Assumptions:** Ensure that no unwarranted assumptions occur that leads to biased responses.

• **Wording:** Word questions in ways that do not give clues about preferred or desirable responses.

• **Consistency:** When issues asked about are such that respondents may answer socially acceptable responses rather than the truth, counterchecks need to be incorporated as a follow up question.

• **Coding of responses:** Consider how the responses will be processed even before writing or finalising the question.

• **Ease:** Keep the respondents’ task as simple as possible – this ensures likely replies on the questionnaires.

• **Clarity:** Provide clear instructions and communicate exactly how you want the people to respond.

• **Rationality:** Provide a rationale for any issues whose purpose may be unclear.

• **Professionalism:** Make the questionnaire appear attractive and professional.

• **Pilot testing:** Conduct a pilot test by handing the questionnaire to at least six persons to observe if they have any difficulty to answer any questions.

• **Scrutiny:** Scrutinise the final product very carefully before handing it to the respondents in order to see if the questionnaire complies with precision, objectivity, relevance and probability of favourable reception and return.

### 5.4.3 Sampling

The main and sub-problems posed to the researcher are of such a nature that judgement had to be made about the specific profiles of the individuals to be included in the questioning during the research. Because of an emphasis on strategic rather than operational reasons for conversion, the questions preferably needed to be addressed to top management, as strategic decisions such as converting, or not, are normally made by at this management level. A non-probability sampling method – judgement sampling - was used to single out specific management staff and/or financial managers to obtain the most relevant data.
5.5 DATA ANALYSIS

Quantitative data was analysed using Microsoft Excel to graphically display per cent values graphically using tools to show trends of growth of various liquidity, debt and profitability scenarios within the selected subject under investigation. Qualitative data was ordained according to the problem statement to form a logical path and analysed accordingly.

5.6 CONCLUSION

This chapter was dedicated to the design of the empirical study to address the second, third and fourth sub-problems.

Qualitative and descriptive research methodologies relevant to the research were discussed, followed by the design used for this research. Questionnaires yielding both qualitative and descriptive data sets were formulated and sent to a selected group of people on a judgement basis – a non-probability sampling method.

Financial datasets were processed and the information derived is presented and discussed in Chapter 6.
CHAPTER 6

RESULTS AND ANALYSIS OF THE EMPIRICAL SURVEY

6.1 INTRODUCTION

This chapter presents the results of the qualitative and descriptive data gathered from the selected respondents during the empirical survey. The aim is to highlight the strategies followed in the conversion of co-operatives to alternative business forms and to evaluate the successes achieved in the conversions by means of financial ratio analysis. A comparison will be drawn between these results and the perceptions of co-operatives that did not convert in order to determine the validity of growth constraints as result of the existence in co-operative business form.

Four sub-problems are addressed in an attempt to solve the main problem. Sub-problem one is addressed in Chapter 2, by means of a literature study investigating the company and the co-operative as business forms, drawing comparison between them and discussing the advantages and disadvantages of the respective enterprises.

The results from the empirical survey are addressed in this chapter relating to sub-problems two, three and four and are reflected accordingly in an attempt to solve the main problem statement. The sub problems addressed in the empirical survey are:

Sub-problem two – (BUSINESS STRATEGY)
What strategies were followed in the conversion of the selected companies that converted from co-operatives to companies within the period 1994 - 2004?

Sub-problem three:(SUCCESS LEVELS)
What were the positive or negative implications on shareholders resulting from the conversion from co-operatives to alternatives, or from refraining to do so?

Sub-problem four:(LEGISLATION)
What are the main changes to the Co-operative Act, No 91 of 1981 as described in the Co-operatives Bill drafted in June 2004, and what would the anticipated effect of these proposed changes be on current co-operatives in South Africa?
6.2 SUMMARY AND ANALYSIS OF RESULTS –BUSINESS STRATEGY

The data gathered for addressing the issue of strategic decisions surrounding the conversion, or refraining to do so, from co-operative status to an alternative are of qualitative nature and probing was done by means of judgement sampling of top management in various concerns. Table 6.1 is a summary of the strategy related questions posed to the various respondents as extracted from questionnaires attached in Appendices E, F, G and H.

During pilot testing about strategies driving conversion of co-operatives to alternative business forms, the researcher became aware of two main drivers that were instrumental in these decisions. Both growth constraints and legislation were mentioned as being the main factors. Questions were posed in questionnaires and followed up with probing in telephonic and personal interviews.

Strategy’s aim is to reach certain goals, raising the question about what exactly the goals were of the co-operatives converting to alternatives. Were these goals in fact as derived during pilot testing and as follows?

Avoiding the impact of changing legislation / control within the co-operative; and/or Capital forming.

In order to describe the exact extent of conversions from co-operatives to alternative business forms, the questionnaire attached as Appendix H was developed to probe the Registrar of Co-operatives. Two sections address areas to gather descriptive data as to the frequency and intensity of conversions and qualitative data surrounding perceptions about the changing legislation.

Qualitative research studies serve different purposes (Leedy & Ormrod, 2001:148). The aim with the datasets gathered for the business strategy was to gain insight about a specific phenomenon and to attempt developing new concepts and/or discover problems that exist in such a phenomenon.
TABLE 6.1: SUMMARY OF RESULTS – BUSINESS STRATEGY

<table>
<thead>
<tr>
<th>Question posed</th>
<th>Appendix</th>
<th>Main responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. What was the main driver for the conversion to an alternative business form?</td>
<td>E (Sect B)</td>
<td>Growth constrains and Legislation. (3 of 3 – 100 per cent)</td>
</tr>
<tr>
<td>7. Who initiated or was driving the process?</td>
<td>E</td>
<td>Combination of management and members. (2 of 3 – 66.6 per cent)</td>
</tr>
<tr>
<td>8. Was the change of government in 1994 with imminent changes in legislation a contributing factor?</td>
<td>E</td>
<td>Yes (3 of 3 – 100 per cent)</td>
</tr>
<tr>
<td>4. During a period of mass exodus from co-operative status over the period 1994 – 2003, have you ever considered converting to an alternative business form?</td>
<td>G (Sect B)</td>
<td>Yes (3 of 3 – 100 per cent)</td>
</tr>
<tr>
<td>5. If the answer was “yes”, what were the main drivers for any such considerations?</td>
<td>G</td>
<td>Changing legislation and the governments announcing of repatriating of assets invested into co-operatives.</td>
</tr>
<tr>
<td>7. Have your concern experienced growth constraints due to the nature of your organisation’s business form?</td>
<td>G</td>
<td>Yes (2 of 3 – 66.6 per cent)</td>
</tr>
</tbody>
</table>
Table 6.2 contains data compiled about the extent of conversions and new registrations of co-operatives in South Africa over the period 1994 – 2003, with a graphic display thereof in Figures 6.1 and 6.2. The section covering legislation is covered in 6.4 of this chapter.


<table>
<thead>
<tr>
<th>YEAR</th>
<th>NEW</th>
<th>CONVERSIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>30</td>
<td>5</td>
</tr>
<tr>
<td>1995</td>
<td>18</td>
<td>8</td>
</tr>
<tr>
<td>1996</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>1997</td>
<td>28</td>
<td>14</td>
</tr>
<tr>
<td>1998</td>
<td>15</td>
<td>17</td>
</tr>
<tr>
<td>1999</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>2000</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>2001</td>
<td>49</td>
<td>8</td>
</tr>
<tr>
<td>2002</td>
<td>49</td>
<td>3</td>
</tr>
<tr>
<td>2003</td>
<td>84</td>
<td>2</td>
</tr>
</tbody>
</table>

(Source: Registrar of Co-operatives).

A graphic display of the dataset contained in Table 6.2 is represented in Figures 6.1 and 6.2.

Not researched, but evident from the data contained in Table 6.2, is the growth rate of the new registrations of co-operatives, especially from 2001 to 2003 when 182 co-operatives registered over the three year period. Research concentrated on the conversions made, but posed with the question about the new registrations, E Pinkham, Assistant Director – Office of the Registrar of Co-operatives (personal communication 20 January 2005) state that the following reasons are attributable to the higher numbers:

- Closing down of the offices of previous independent states (TBVC states) and transferring of those files; and
- Increase in “promoters” within the ranks of previous disadvantaged groups.

6.3 SUMMARY AND ANALYSIS OF FINANCIAL RESULTS – SUCCESS LEVELS

Correia et al, (2003:5-12) state that for a ratio to be effectively interpreted, that it needs to be compared with historic ratios, or with management’s goals and standards and that they need to be evaluated in context of associated ratios.

The ratios that will best describe the situation change of the selected organisations are the following:
• **Liquidity ratios:** Current ratio and quick ratio – these indicate the measure of liquidity and are determined as follows:
  - Current ratio = current assets / current liabilities
  - Quick ratio = (current assets – inventory) / current liabilities

• **Debt management ratios:** Debt ratio – measures the percentage of total funds provided by creditors and other debt financing in relation to total assets and is determined as follows:
  - Debt ratio = total debt / total assets

• **Profitability ratios:** Gross profit and return on equity – these show the combined effect of liquidity, asset management and debt management on operating results, determined as follows:
  - Gross profit margin = gross profit / sales
  - Profit margin = net profit (after tax) / sales
  - Return on total assets (ROA) = earnings before tax / total assets.\(^{11}\)

Only one respondent was willing to make available financial statements for ratio analysis. Due to this small sample, deductions with high levels of confidence are impossible. It however contributes to demonstrating a test of validity of one of the reasons cited for conversion to alternative business forms, namely capital forming.

It is fair to expect, that with JSE listing, there will be an inflow of capital with a subsequent higher actual and percentage return. From the ratio analysis (Fig 6.19) it is evident that a generally downward tendency in the business could be converted to into a generally positive tendency from the year 2000.

A selected case from the respondents listed in Table 1.1 is used to do ratio analysis in order to test the success achieved after the conversion from a co-operative to a company. The selection was made upon accessibility of financial data / willingness to submit data and no parallel is drawn between the companies.

\(^{11}\) ROA is used to compare firms with different tax structures, thus excluding tax (EBIT – Earnings before interest and tax).
The company previously existed as a co-operative before converting to a company in 1997, listing in October of that year. The conversion was preceded by the amalgamation of two co-operatives in the same district, which then converted after the amalgamation. The amalgamation, listing and restructuring was done at a cost of R2 million at the time.

6.3.1 Business profile

Company A previously served farmers as members of a co-operative. After the formation of a company, the company expanded its goods and services to include not only the farming community, but also the broader community in area that stretches from Riversdale to Plettenberg Bay in the Western Cape. It has positioned itself to serve market segments in three main areas as follows:

- **Trade:** The Company has trade outlets in Plettenberg Bay, Knysna, George, Mossel Bay, Herbertsdale, Albertinia and Riversdale. Although it caters primarily for the agricultural sector, it has expanded its goods to be available for any consumer of gardening, irrigation, hardware, tools and paint. It also caters for specific agricultural input commodities like animal feeds, fencing, water tanks, fertilisers and seed.

- **Mechanisation:** The Company provides a range of goods and services to cater for the specific mechanisation needs of the farmer or other user, incorporating agencies for Massey Ferguson, New Holland, Kverneland, and Hardy Crop Protection SA.

- **Production:** Being previous co-operatives, the Company has to its avail five grain silo complexes at Riversdale, Albertinia, Glentana and Camfer, with a total storage capacity of 69 000 ton. It mills approximately 2000 tons of grain per annum to provide local bakeries. Furthermore it processes approximately 24 000 tons of animal feed by means of its pellet machines in Kleinberg and Riversdale.

The Company has share capital to the value of R50 million with a nominal share value of R1.00 per share. They are freely traded between shareholders according supply and demand, with a preferable minimum share amount of not less 1000. At the
time of releasing this report R35.6 million worth of shares had been issued and were trading at a parity value of R0.80c per share.

6.3.2 Financial ratio analysis

Scrutinising the income statements and balance sheets of the organisation for four years preceding the conversion and for six years after the conversion, the ratios described in 6.1 were determined and are displayed in table 6.3 as follows:

<table>
<thead>
<tr>
<th>YEAR 12</th>
<th>Current ratio (%)</th>
<th>Quick ratio (%)</th>
<th>Debt ratio (%)</th>
<th>Gross profit margin (%)</th>
<th>Profit margin (%)</th>
<th>Return on total assets %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>158</td>
<td>100</td>
<td>38</td>
<td>1.69</td>
<td>1.69</td>
<td>0.84</td>
</tr>
<tr>
<td>1996</td>
<td>159</td>
<td>108</td>
<td>39</td>
<td>0.66</td>
<td>0.64</td>
<td>(1.02)</td>
</tr>
<tr>
<td>1997</td>
<td>119</td>
<td>82</td>
<td>53</td>
<td>16.75</td>
<td>(1.2)</td>
<td>(0.09)</td>
</tr>
<tr>
<td>1998</td>
<td>131</td>
<td>89</td>
<td>59</td>
<td>13.33</td>
<td>(7.43)</td>
<td>(5.19)</td>
</tr>
</tbody>
</table>

Conversion from Co-operative to Private company

<table>
<thead>
<tr>
<th>YEAR 12</th>
<th>Current ratio (%)</th>
<th>Quick ratio (%)</th>
<th>Debt ratio (%)</th>
<th>Gross profit margin (%)</th>
<th>Profit margin (%)</th>
<th>Return on total assets %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>131</td>
<td>88</td>
<td>49</td>
<td>20.91</td>
<td>0.03</td>
<td>0.03</td>
</tr>
<tr>
<td>2000</td>
<td>113</td>
<td>78</td>
<td>62</td>
<td>(0.04)</td>
<td>(6.58)</td>
<td>(8.17)</td>
</tr>
<tr>
<td>2001</td>
<td>123</td>
<td>81</td>
<td>55</td>
<td>4.89</td>
<td>2.27</td>
<td>3.41</td>
</tr>
<tr>
<td>2002</td>
<td>135</td>
<td>83</td>
<td>122</td>
<td>14.45</td>
<td>1.69</td>
<td>3.38</td>
</tr>
<tr>
<td>2003</td>
<td>149</td>
<td>78</td>
<td>101</td>
<td>14.06</td>
<td>2.73</td>
<td>4.62</td>
</tr>
<tr>
<td>2004</td>
<td>163</td>
<td>89</td>
<td>63</td>
<td>15.12</td>
<td>3.39</td>
<td>1.62</td>
</tr>
</tbody>
</table>

(Source: Compiled from Income statements and Balance Sheets – Company A).

Graphic displays of single ratio results from qualitative data sets yield the following results as displayed in Figures 6.3 to 6.8, and combine ratio results in Figures 6.9 to 6.19:

12 Period ending 28 February of the specific year.
LIQUIDITY

FIGURE 6.3: COMPANY A CURRENT RATIO PER ANNUM

Note: The current ratio indicates the extent to which the claims of short-term creditors are covered by assets that can be converted to cash in the short term. The rule of thumb is at least 2:1 or 200 per cent. Company A falls short of this rule for all of the 10 years.

FIGURE 6.4: COMPANY A QUICK RATIO PER ANNUM

Note: The quick ratio or acid test is useful to measure the firm’s ability to pay short-term obligations without relying on the sale of inventory, and the rule of thumb is 1:1 or at least 100 per cent. Company A falls short for eight of the 10 periods.
FIGURE 6.5: COMPANY A DEBT RATIO PER ANNUM

Note: A debt ratio (total debt:total assets) of below 100 per cent indicates Company A is solvent. A ratio percentage exceeding 100 per cent as in 2002 and 2003 technical insolvency. Fortunately Company A had strong cash flow and could service its debt and the ratio improved to just over 60 per cent, indicating that Company A is solvent and that the ratio is improving. The higher the debt ratio, the higher the financial risk, but too low a figure warns about opportunities foregone.

FIGURE 6.6: COMPANY A GROSS PROFIT PER ANNUM

Note: The gross profit margin is one of the profitability ratios displaying the combined effect of liquidity, asset management and debt management on operating
results. Declining gross profits could point to lowering of mark up to increase turnover, a weakening in inventory control or even inventory loss (shrinkage).

FIGURE 6.7: COMPANY A NET PROFIT PER ANNUM
Note: The net profit or profit margin on sales is calculated with earnings after tax and interest, yielding a net result of profitability for the company. The improvement since 2000 can probably be attributed to relatively lower overhead costs.

FIGURE 6.8: COMPANY A ROA PER ANNUM
Note: Three methods exist to calculate ROA, but when comparing different companies it is preferable to use earnings before tax and interest, for different companies may have different tax and capital structures, which may yield skewed results.
Comparative ratio datasets per annum in respect of Company A yielded the following results as depicted in Figures 6.9 to 6.18:

<table>
<thead>
<tr>
<th>Ratio</th>
<th>1995</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current</td>
<td>158</td>
<td>159</td>
</tr>
<tr>
<td>Quick</td>
<td>100</td>
<td>108</td>
</tr>
<tr>
<td>Debt</td>
<td>38</td>
<td>39</td>
</tr>
<tr>
<td>Gross</td>
<td>-0.69</td>
<td>-0.66</td>
</tr>
<tr>
<td>Nett</td>
<td>1.69</td>
<td>0.64</td>
</tr>
<tr>
<td>ROA</td>
<td>0.84</td>
<td></td>
</tr>
</tbody>
</table>

**FIGURE 6.9: COMPANY A CONSOLIDATED RATIOS 1995**

**FIGURE 6.10: COMPANY A CONSOLIDATED RATIOS 1996**
FIGURE 6.11: COMPANY A CONSOLIDATED RATIOS 1997

FIGURE 6.12: COMPANY A CONSOLIDATED RATIOS 1998
FIGURE 6.13: COMPANY A CONSOLIDATED RATIOS 1999

FIGURE 6.14: COMPANY A CONSOLIDATED RATIOS 2000
COMPANY A CONSOLIDATED RATIOS
2001

FIGURE 6.15: COMPANY CONSOLIDATED RATIOS 2001

COMPANY A CONSOLIDATED RATIOS
2002

FIGURE 6.16: COMPANY CONSOLIDATED RATIOS 2002
FIGURE 6.17: COMPANY CONSOLIDATED RATIOS 2003

FIGURE 6.18: COMPANY CONSOLIDATED RATIOS 2004
FIGURE 6.19: COMPANY A CONSOLIDATED RATIO ANALYSIS 1995 - 2004
It is the perception of the researcher that a one-person-one-vote in the new legislation is a “legislated” problem. This will result in the loss of control if BBBEE legislation is anticipated. The strategy to avoid the loss of control is to convert to an alternative. By default it could not be any other business form except the public company.

With the risk of losing control through the free trade of shares, the perceived risk in this instance was less than under the new co-operatives legislation – probably due to the benefit of an expected inflow of equity upon conversion to a public company.

**6.4 SUMMARY AND ANALYSIS OF RESULTS - LEGISLATION**

During the pilot study, the changing legislation impacting on governance of co-operatives in South Africa were identified as being one of the main considerations when co-operatives convert to alternative business forms.

100 per cent of the respondents indicated that legislation was a matter of concern and that, together with growth constraints, was listed one of two major considerations for conversions.

The second section in Appendix H probes the Registrar’s perception about the main changes to Co-operative Act, no 91 of 1981, and the implications to existing co-operatives. Following is a summary of results of information contained in Chapter 4 and gathered by means of personal interviews from the Department of Trade and Industry, the South African Agricultural Business Chamber and respondents from the organisations listed in Table 1.1.

The main reasons stated for the amendment of the Act are that it needs to be better defined with less emphasis on agricultural co-operatives and more legible for the average member (see Chapter 4 paragraph 4.3)

The main implications as perceived by respondents for existing co-operatives are:

The threat that control may be vested in a group within a co-operative based on sheer numbers due to a one-person-one-vote; and that government’s drive to comply with
idealistic principles may lead to failures, and that it would be more desirable to establish co-operatives in an enabling environment.

6.5 CONCLUSION

Chapter 6 presented summaries of the qualitative and descriptive data gathered during the empirical survey.

The findings were sorted according to three key areas focussing on the questions posed in the sub-problems in order to investigate business strategy, success levels achieved and the changing legislation regarding co-operatives in South Africa.

Chapter 7 summarises the results, draws conclusions and makes recommendations.
CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

7.1 INTRODUCTION

The previous chapter was dedicated to the presentation and analysis of the data gathered during the empirical survey, taking into account literature about the relevant business forms, their growth strategies and how changing legislation in South Africa has effect on its decision-making processes.

This chapter summarises the main findings, problems encountered and shortcomings. Recommendations are made and opportunities for further research are highlighted.

7.2 MAIN FINDINGS

The main findings are categorised in three areas relating to the sub-problems posed in Chapter 1, those of strategy, success levels and legislation. They are summarised as follows:

**Strategy:**

- The decisions to convert from a co-operative to an alternative business form were based mainly around two key areas, namely (not in order of priority):
  - The effect of changing legislation regarding the Co-operatives Act, no 91 of 1981; and
  - Growth constraints due to the inability or difficulty to raise capital.

Inherent to the co-operative as business form, limitations to the way in which capital can be raised is a restriction for growth. One of the ways this is overcome in practice is by means of converting to company status, which enables the unlocking of capital by means of options including the initial public offering.

In order to avoid the perceived effects of the changing legislation governing co-operatives in South Africa, some co-operatives are converting to alternative business
forms. The main considerations were based around the possible loss of control within the co-operative due to the one-person-one-vote notion promulgated.

**Successes achieved resulting from conversion:**

In evaluation of the levels of success achieved for the selected case, the following findings were made

- The IPO raised equity currently valued at R35.6 million;
- Shares currently trade at R0.80c with a nominal value of R1.00;
- The increase in equity resulted in an increase in debt capacity\(^{13}\);
- The mergers and the IPO were relatively expensive at the time at a cost of R2 million; and
- The initial analysis showed a decreasing trend in profitability, but with a decreasing overhead cost and an increase in total assets a positive trend in the ROA is observed from 2001.

It is expected that further improvement in the results will follow as Company A is undergoing major infrastructure improvements.

**Legislation:**

- The Act is not merely being changed, but rewritten and is stated by the architects to be:
  - Less regulatory; and
  - More socially oriented.

From the information gathered from respondents it is evident that a perception exists from co-operatives that the risk of losing control is unacceptable. Acceptability of operating under the legislation will vest in a balance between business and social interests, and depending on the general perception of the members of a co-operative, the business form will be retained or converted.

\(^{13}\) Interest is tax deductible.
7.3 PROBLEMS ENCOUNTERED WITH THE RESEARCH

The initial target population included several previous and current co-operatives. There seemed to be an unwillingness to disclose the exact strategies driving conversion, which is clearly evident from the fact that only one respondent was willing to disclose this information to the researcher.

Analysis of the successes achieved was made on financial ratio analysis, and once again a single case study was made on a subject that was willing to submit financial statements for scrutiny.

7.4 SHORTCOMINGS

The basis of the research tested management’s perceptions as to the reasons and strategies to convert from co-operatives to alternatives only. Shareholders were not included and there may be different perceptions and opinions as to the successes achieved.

Despite the fact that perceptions, opinions and facts were obtained from very influential persons in the agricultural sector, the co-operative respondents represent less than one per cent of the number of agricultural co-operatives still operating in South Africa. Perceptions aired cannot be generalised for the total population. The same reasons can be cited for the converted respondents.

7.5 RECOMMENDATIONS

The following recommendations are made based on the findings of the research:

- Current co-operatives in South Africa that are investigating the possibility of conversion should consider the following:
  - The strategic intent of the concern that will be derived from the way in which the members perceive the importance of growth.
  - The perceptions as to the importance to members regarding the new principles of the co-operative as a business form; and
The importance of control within the co-operative and to what extent the members are willing to relinquish such control or not in a trade off against growth opportunities.

- Growth strategies should encompass an environmental analysis, both externally and internally, taking into account the changing legislative environment and deciding upon appropriate structures to support the enterprise.

### 7.6 OPPORTUNITIES FOR FURTHER RESEARCH

In this study changing legislation, with specific reference to the amendment of the Co-operative Act as a driver of change and the subsequent decision about choice of the business form in which the entrepreneur chooses to exist was highlighted. South Africa is a new democracy that is currently in an environment where many changes are initiated.

Changing legislation in the broad sense, especially legislation regarding Broad Based Black Economic Empowerment (BBBEE), Employment Equity and other socially inclined legislation may have a serious impact on the choice of business form for the prospective entrepreneur and conversion to alternatives for the existing entrepreneur. These external factors from the political arena and its influences on the organisation present opportunity for further research.

### 7.7 CONCLUSION

The entrepreneur in South Africa is living in an ever-changing environment, and has to adapt in order to serve the requirements of its shareholders at broad. The need to grow a concern is an important aspect to shareholders, which should be evaluated against the background of the changing external environment in order to adapt structurally for long-term sustainability.

The choice of the business form that the entrepreneur decides to exist in is becoming more and more dependent on how best the entity may conform to legislation governing the options.
REFERENCE LIST


### Appendix A

**LIST OF TARGETED RESPONDENTS**

<table>
<thead>
<tr>
<th>ORGANISATION</th>
<th>RESPONSE (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>KWV Limited</td>
<td>Yes (partial)(^{14})</td>
</tr>
<tr>
<td>SAD Holdings</td>
<td>Yes (partial)</td>
</tr>
<tr>
<td>Parmalat SA</td>
<td>No</td>
</tr>
<tr>
<td>Distell</td>
<td>No</td>
</tr>
<tr>
<td>Klein Karoo Groep</td>
<td>Yes (partial)</td>
</tr>
<tr>
<td>Vrystaat Koöperatief Beperk</td>
<td>Yes (partial)</td>
</tr>
<tr>
<td>Tuinroete Agri Beperk</td>
<td>Yes</td>
</tr>
<tr>
<td>NCT Forestry Co-operative Limited</td>
<td>Yes</td>
</tr>
</tbody>
</table>

\(^{14}\) A partial response refers to a response received that covered only some of the three problem areas.
Appendix B

RESPONDENT ENQUIRY – CONVERTED CO-OPERATIVES

The Managing Director
Company Name
PO Box
TOWN
Code

12 May 2004

Dear Sir,

RE: MBA RESEARCH – CONVERSION OF CO-OPERATIVE TO COMPANY

Over the past ten years in South Africa, roughly 102 co-operatives converted to alternative business forms. Most of these were to company status. I am a final year MBA student doing research about this phenomenon, with the dissertation topic being “Strategies driving the conversion of co-operatives to alternative business forms in South Africa”.

Your concern has been selected for being a previous agricultural co-operative in the Western Cape (Previous Name) that has converted to an alternative. I am in the process of designing a questionnaire to use in personal interviews with persons that were instrumental in the conversion process or have intricate knowledge of this event.

The purpose of this letter is to enquire about the name/s of the person/s you perceive may be helpful in this research, and I will appreciate a response by returning mail.

Sincerely yours,

Marius Neser
Appendix C

RESPONDENT ENQUIRY – EXISTING CO-OPERATIVES

The General Manager
Co-operative Name
PO Box
TOWN
Code

Dear Sir, 12 May 2004

RE: MBA RESEARCH – CONVERSION OF CO-OPERATIVE TO COMPANY

Over the past ten years in South Africa, roughly 102 co-operatives converted to alternative business forms. Most of these were to company status. I am a final year MBA student doing research about this phenomenon, with the dissertation topic being “Strategies driving the conversion of co-operatives to alternative business forms in South Africa”.

Your concern has been selected for being an agricultural co-operative, which unlike many other co-operatives has so far refrained from converting to an alternative. I am in the process of designing a questionnaire to use in personal interviews with persons that were instrumental in any possible decision making processes have they arisen.

The purpose of this letter is to enquire about the name/s of the person/s you perceive may be helpful in this research, and I will appreciate a response by returning mail.

Sincerely yours,

Marius Neser
Cover Letter of Questionnaire – Converted Co-operatives

Title
Concern name
PO Box ……
TOWN
Code

Dear Sir,

RE: MBA Research – Conversion of Co-operatives to Alternative Business Forms in South Africa

I refer to my enquiry to your concern dated 12 May 2004, about possible inclusion in research concerning the conversion of co-operatives to alternative business forms in South Africa. Your name was submitted as a contact person that could assist in the research. Any such assistance, in the form of information, is greatly valued and of utmost importance.

Background of the Research:
The Registrar of Co-operatives, situated in Pretoria (South Africa), considered applications and subsequently de-registered 102 agricultural and non-agricultural South African co-operatives, which then converted to alternative business forms. This was done over the period 1994 to 2004. The bulk of these conversions were done from 1997 onwards, and the majority of the conversions were to public or private company status. Research is being conducted as to the strategies that were driving these conversions, as well as the subsequent impacts these conversions had on the concerns.

The research has two focal points. One being the strategies driving and implications of conversion of co-operatives to alternative business forms, and the other being the changing legislation (Co-operative Act 18 of 1983). Your inputs will assist in the first
focal area, and will require no more than one hour of your time. For confidentiality reason your name or your organisation will not be disclosed in the dissertation results or any subsequent publication.

The research is to be included in a dissertation towards obtaining my Masters in Business Administration at the Nelson Mandela Metropolitan University, and if you wish, a summary of the findings can be submitted to you.

Attached, find the questionnaire that was formulated to probe these areas. A written response within three weeks of this date will be much appreciated. If required, I will schedule a personal interview.

Sincerely yours,

Marius Nesser
Appendix E

SURVEY – STRATEGIES DRIVING THE CONVERSION OF CO-OPE
RATIVES TO ALTERNATIVE BUSINESS FORMS

This survey forms part of a research project to determine strategies driving the conversion of co-operatives to alternative business forms in South Africa. The research results will be incorporated into a MBA dissertation that will be at the disposal of the Nelson Mandela Metropolitan University for copying and/or publishing in an article in a magazine or journal. Please respond to the questions openly and honestly. You or your organisation will not be disclosed in the dissertation results or any subsequent publication. Direct any enquiries, comments or suggestions to:

MARIUS NESER
e mail : marius@nctforest.com
Office : 044-884 0200
Fax : 044-884 0208
Cell : 082 806 4094

SECTION A: GENERAL INFORMATION

1. How long did your concern exist as a co-operative before its conversion to an alternative?

   - > 20 years
   - 15-20 years
   - 10-14 years
   - < 10 years

2. How many members were associated to the co-operative directly before the conversion?

   - < 100
   - 101 - 250
   - 251 - 500
   - > 500
3. What was the core business of the co-operative?

4. In what year did the co-operative convert?

5. What business form did the co-operative convert to?

- Private company
- Public company
- Other – please state:

**SECTION B: STRATEGIES DRIVING THE CONVERSION**

6. What was the main driver for the conversion to an alternative business form?

- Growth
- Legislation
- Control
- Other – please state

7. Who initiated or was driving the process?

- Members
- Management
- Directors
- Combination

8. Was the change of the government in 1994 with imminent change in legislation a contributing factor?

- YES
- NO
SECTION C: RESULTS OF THE CONVERSION

9. Was there a change in focus / core business after the conversion?

YES – please state

NO

10. Was there any expansion of goods and services after the conversion?

YES – please state

NO

11. Were there any significant changes in the customer basis and profile?

YES – please state

NO

12. Was there a change in the marketing strategy?

YES – please state

NO

13. Was the conversion financially beneficial? – Please quantify.

YES – please state

NO
14. In retrospect, was the conversion a good decision? Please motivate your answer.

YES – please state

NO
COVER LETTER OF QUESTIONNAIRE – EXISTING CO-OPERATIVES

Title
Concern name
PO Box ……
TOWN
Code

Dear Sir,

RE: MBA RESEARCH – CONVERSION OF CO-OPERATIVES TO ALTERNATIVE BUSINESS FORMS IN SOUTH AFRICA

I refer to my enquiry to your concern dated 12 May 2004, about possible inclusion in research concerning the conversion of co-operatives to alternative business forms in South Africa. Your name was submitted as a contact person that could assist in the research. Any such assistance, in the form of information, is greatly valued and of utmost importance.

Background of the research:
The Registrar of Co-operatives, situated in Pretoria (South Africa), considered applications and subsequently de-registered 102 agricultural and non-agricultural South African co-operatives, which then converted to alternative business forms. This was done over the period 1994 to 2004. The bulk of these conversions were done from 1997 onwards, and the majority of the conversions were to public or private company status. Research is being conducted as to the strategies that were driving these conversions, as well as the subsequent impacts these conversions had on the concerns.

The research has two focal points. One being the strategies driving and implications of conversion of co-operatives to alternative business forms, and the other being the changing legislation (Co-operative Act 91 of 1981), and its effect of current co-
operatives. Your inputs will assist to probe why some co-operatives refrained from changing to alternatives, and if it is perceived that with the changing legislation it may or may not be considered in future. For confidentiality reasons your name or your organisation will not be disclosed in the dissertation results or any subsequent publication.

The research is to be included in a dissertation towards obtaining my Masters in Business Administration at the Nelson Mandela Metropolitan University, and if you wish, a summary of the findings can be submitted to you.

Attached, find the questionnaire that was formulated to probe these areas. A written response within three weeks of this date will be much appreciated. If required, I will schedule a personal interview.

Sincerely yours,

Marius Neser
Appendix G

SURVEY – STRATEGIES DRIVING THE CONVERSION OF CO-OPERATIVES TO ALTERNATIVES, AND THE IMPACT OF CHANGING LEGISLATION ON CURRENT CO-OPERATIVES

This survey forms part of a research project to determine strategies driving the conversion of co-operatives to alternative business forms in South Africa, and the effect of changing legislation on existing co-operatives. The research results will be incorporated into a MBA dissertation that will be at the disposal of the Nelson Mandela Metropolitan University for copying and/or publishing in an article in a magazine or journal. Please respond to the questions openly and honestly. You or your organisation will not be disclosed in the dissertation results or any subsequent publication. Direct any enquiries, comments or suggestions to:

MARIUS NESER
email: marius@nctforest.com
Office: 044-884 0200
Fax: 044-884 0208
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SECTION A: GENERAL INFORMATION

1. How long has your co-operative been in existence?

   - > 20 years
   - 15-20 years
   - 10-14 years
   - < 10 years

2. How many members are associated to the co-operative?

   - < 100
   - 101 - 250
   - 251 - 500
   - > 500
3. What is the core business of the co-operative?


SECTION B: BUSINESS STRATEGY

4. During a period of mass exodus out of co-operative status over the period 1994 – 2004, have you ever considered converting to an alternative business form?


5. If the answer to Q4 was “yes”, what were the main drivers for any such considerations?


6. If “other, please state the main drivers / considerations.

7. Has your concern experienced growth constraints due to the nature of your organisation’s business form?


If “yes” – please state details.

8. What do you perceive as being the most significant implications of the changing of the Co-operative Act 91 of 1981 on current co-operatives / your specific co-operative?

(Please submit on blank paper).


-------------------------------------------00-------------------------------------------
SURVEY – STRATEGIES DRIVING THE CONVERSION OF CO-OPERATIVES TO ALTERNATIVE BUSINESS FORMS – THE REGISTRAR’S PERSPECTIVE

This survey forms part of a research project to determine strategies driving the conversion of co-operatives to alternative business forms in South Africa. The research results will be incorporated into a MBA dissertation that will be at the disposal of the Nelson Mandela Metropolitan University for copying and/or publishing in an article in a magazine or journal. Your response to the questions is of utmost importance to the research and highly regarded. Any inclusion of information will be properly referenced in the reference list. If so wished, your name will not be disclosed. Direct any enquiries, comments or suggestions to:

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email: marius@nctforest.com
Office: 044-884 0200
Fax: 044-884 0208
Cell: 082 806 4094

SECTION A: GENERAL INFORMATION

1. How many agricultural co-operatives de registered from 1994 to 2004?

2. How many agricultural co-operatives were registered from 1994 to 2004?
3. To which alternatives did the de-registered co-operatives convert?

   Dissolve  Company  Other

4. Were reasons for these conversions stated?

   YES  NO

5. If the answer to Q4 was “yes”, what were the main reasons stated?

   Growth  Legislation  Control  Other

SECTION B: THE CO-OPERATIVE ACT

5. What are the primary changes to the Co-operative Act 91 of 1981?

6. What necessitated these changes?

7. What will the implications be to current co-operatives in South Africa?
Appendix I

THE CO-OPERATIVES BILL - 2004

REPUBLIC OF SOUTH AFRICA

CO-OPERATIVES BILL


(As introduced in the National Assembly as a section 75-Bill; explanatory summary of Bill published in Government Gazette No. of 2004) (The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B – 2004]

GENERAL EXPLANATORY NOTE:

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

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

To provide for the formation and registration of co-operatives, the establishment of a Co-operatives Advisory Board, the winding up of co-operatives and to provide for matters connected therewith.

PREAMBLE

RECOGNISING -

* the co-operative values of self-help, self-reliance, self-responsibility, democracy, equality, and social responsibility;

* that a viable, autonomous, self-reliant and self-sustaining co-operative movement can play a major role in the economic and social development of South Africa, in particular by creating employment, generating income, facilitating broad-based black economic empowerment and eradicating poverty;

* that the South African economy will benefit from increasing the number and variety of viable and sustainable economic enterprises;

* that government is committed to providing a supportive legal environment to enable co-operatives to develop and flourish;

AND IN ORDER TO –

* ensure that international co-operative principles are recognised and implemented in South Africa;

* enable co-operatives to register and acquire a legal status separate from their members;

* facilitate the provision of targeted support for emerging co-operatives, particularly those owned by women and black people;

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:-
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CHAPTER 1
DEFINITIONS, APPLICATION AND PURPOSE OF ACT

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise –

“auditor” means a person registered as such in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and includes a firm as defined in that Act, and, where appropriate, any other person authorised by regulation to conduct an audit of a cooperative;

“agricultural co-operative” means a co-operative that produces, processes or markets agricultural products and supplies agricultural inputs and services to its members.

“consumer co-operative” means a co-operative that procures and distributes goods or commodities to its members and non-members and provides services to its members.

“co-operative” means an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles;

“co-operative apex organization” is a tertiary co-operative whose objects include representing the interest and welfare of its members at regional, provincial, national and international levels.

“co-operative burial society”, means a co-operative that provides funeral benefits, including funeral insurance and other services to its members and their dependants.

“co-operative principles” means the internationally accepted principles of co-operation, and as exemplified by the principles adopted by the International Co-operative Alliance;

“Department” means the Department of Trade and Industry;

“Director-General” means the Director-General of Trade and Industry;

“federal co-operative association” means an association whose members are secondary co-operatives whose object is to provide services to its members.

“financial services co-operative” means a primary co-operative whose main objective is to provide financial services to its members, or a secondary co-operative that provides financial services to a primary co-operative;

“general meeting” means a meeting of the members of a co-operative, and includes, as the context indicates, an Annual General Meeting (“AGM”), a special general meeting or a regional general meeting.
“housing co-operative” means a primary co-operative which provides housing to its members, or a secondary co-operative that provides services to primary housing co-operatives;

“marketing and supply co-operative” is one which engages in the supply of production inputs to members and markets or processes their products. This definition includes an agricultural marketing and supply co-operative.

“member loan” means a loan by a member to a co-operative;

“membership share” means a share issued to a member of a co-operative as a requirement of membership of the co-operative;

“Minister” means the Minister of Trade and Industry;

“nominal value” means the value on the face of the share;

“ordinary resolution” means a resolution passed at a general meeting by the majority of the members present;

“patronage proportion” means the proportion which the value of the transactions conducted by a member with a co-operative during a specified period bears to the value of the transactions conducted by all members with the co-operative during the same period;

“person” means a natural or juristic person;

“prescribed” means prescribed by regulation;

“primary co-operative” means a co-operative formed by a minimum of five persons whose object is to provide employment or services to its members.

“registrar” means the Registrar of Co-operatives and “deputy registrar” has a corresponding meaning;

“secondary co-operative” means a co-operative formed by two or more primary co-operatives to provide services to its members and may be known as a federal;

“services co-operative” means a co-operative that engages in housing, health care, child-care, transportation, communication and other services.

“share” includes membership shares and any additional shares that may be issued by a co-operative;

“social co-operative” is a non-profit co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick.

“special resolution” means a resolution passed at a general meeting by not less than two thirds of the members present, or such greater majority as may be specified in the constitution of a co-operative;
“surplus” means the financial surplus arising from the operations of a co-operative in a financial year;

“supervisory committee” means a committee of members that may be constituted in terms of the constitution of a primary co-operative to exercise supervision over the board of directors;

“tertiary co-operative” means a co-operative whose members are secondary co-operatives, or both primary and secondary co-operatives, and whose object is to provide services to its members.

“this Act” includes the Schedules to this Act and any regulations made in terms of this Act;

“worker co-operative” means a primary co-operative whose main objectives is to provide employment to its members, or a secondary co-operative providing services to primary workers co-operatives.

(2) This Act must be interpreted to give effect to its purpose as set out in section 2, and to develop the co-operative principles referred to in section 3.

Purpose

2. The purpose of this Act is to -

(a) Promote the development of sustainable co-operatives that comply with co-operative principles, thereby increasing the number and variety of economic enterprises operating in the formal economy;

(b) Encourage persons and groups who subscribe to values of self-reliance and self-help, and who choose to work together in democratically controlled enterprises, to register co-operatives in terms of this Act;

(c) Enable such co-operative enterprises to register and acquire a legal status separate from their members;

(d) Promote equity and greater participation by black persons, especially those in rural areas, women, persons with disability and youth in the formation of and management of co-operatives.

(e) Establish a legislative framework that will preserve the co-operative as a distinct legal entity.

(f) Facilitate the provision of support programmes that target co-operatives, specifically co-operatives that create employment or benefit disadvantaged groups.

Compliance with co-operative principles
3. (1) For the purposes of this Act, a co-operative is deemed to comply with co-operative principles if –

(a) membership of the co-operative is open to persons who can use the services of the co-operative and who are willing and able to accept the responsibilities of membership;

(b) in the case of a primary co-operative, each member has only one vote;

(c) to the extent feasible, members provide the capital required by the co-operative;

(d) the return paid on member capital is limited to the maximum percentage fixed in accordance with the constitution of the co-operative;

(e) any surplus arising from the co-operative’s operations is used -

(i) to develop its business;

(ii) to provide or improve services to members;

(iii) to provide for reserves, to be set aside in a reserve fund, a part of which must not be divisible amongst the members;

(iv) to provide for the payment of interest on member loans or on membership shares;

(v) for community welfare or the promotion of co-operative enterprises; or

(vi) as a distribution amongst its members as a patronage return.

(f) it provides education and training to its members and employees in the principles and methods of co-operation and in all fields relevant to the operation of the co-operative.

(2) Despite sub-section 1(a), the constitution of a co-operative may restrict the persons eligible for membership if the restriction –

(a) reasonably relates to the business of the co-operative as set out in its constitution and to the commercial ability of the co-operative to provide services to prospective members;

(b) does not constitute unfair discrimination.

(3) Despite subsection (1)(b), the constitution of a secondary or tertiary co-operative may provide that the members have more than one vote.

Forms and kinds of co-operatives

4. (1) This Act provides for the registration of the following forms of co-operatives –
(a) a primary co-operative which is a co-operative whose object is to provide employment or services to its members;

(b) a secondary co-operative which is a co-operative formed by two or more primary co-operatives to provide services to its members; and

(c) a tertiary co-operative which is a co-operative formed by two or more secondary co-operatives to provide services to its members.

(2) Without limiting the number and variety of different kinds of co-operatives, a co-operative registered in terms of this Act may be, but limited to, a:

(a) housing co-operative;

(b) workers’ co-operative;

(c) social co-operative;

(d) agricultural co-operative;

(e) burial co-operative;

(f) financial services co-operative;

(g) consumer co-operative;

(h) marketing and supply co-operative; and

(i) service co-operatives.

5. Application of the Act

(1) This Act applies to all co-operatives registered in terms of this Act subject to subsection (2).

(2) All financial services co-operatives must register in terms of this Act.

(3) This Act applies to a financial services co-operative that is required to register with the Registrar of Banks in terms of legislation applicable to co-operative banks, provided that:

(a) The constitution of such co-operatives complies with the provisions of Chapters 1 and 2 of this Act; and

(b) Such co-operative is registered with the Registrar of Banks.

(4) Schedule 1 to this Act further regulates particular kinds of co-operatives.

(5) The Minister may, after consulting any other relevant Minister and the Advisory Board, make regulations regarding any matter relating to the operation or administration of particular forms and kinds of co-operatives.
(6) This Act does not apply to a co-operative apex organisation that is not registered as a co-operative, but does apply to a tertiary co-operative having the objects of a co-operative apex organisation.
CHAPTER 2
REGISTRATION, CONSTITUTION AND POWERS OF CO-OPERATIVE

PART 1: APPLICATION TO REGISTER AND NAME

Minimum number of persons to register a co-operative

6. An application to register a co-operative must be made by -

(a) a minimum of five persons that intend to found a primary co-operative;

(b) a minimum of two or more primary co-operatives that intend to form a secondary co-operative; or

(c) a minimum of two or more secondary co-operatives that intend to form a tertiary co-operative.

Application procedure

7. (1) An application to register a co-operative must be submitted to the registrar in the prescribed form, and must be accompanied by –

(a) the constitution of the co-operative, signed by the founder members;

(b) a list of the founder members;

(c) a list of the directors;

(d) the prescribed fee or proof of payment thereof.

(2) Before submitting an application to found a co-operative there must be at least one meeting of interested persons at which –

(a) a constitution of the proposed co-operative is adopted;

(b) an initial plan of operation is presented; and

(c) the first directors are elected.

Registration of co-operative

8. The registrar must register the co-operative and issue a certificate of registration with a registration number, if the registrar is satisfied that -

(a) the application has been made in accordance with the Act;

(b) the constitution complies with the Act and with the co-operative principles in section 3; and
(c) the proposed name of the co-operative complies with section 11.

Effect of registration

9. (1) A co-operative will be incorporated as a legal person with effect from the date on which it is registered, as reflected on its registration certificate.

(2) A co-operative that is registered in terms of this Act, may qualify for specific support that may be facilitated or provided to registered co-operatives by the Department.

Pre-incorporation contract

10. (1) A person who enters into a written contract for or on behalf of a co-operative before it is registered, is personally bound by the contract, unless the contract expressly provides otherwise.

(2) A co-operative may, within a reasonable time after its registration, ratify the contract referred to in sub-section (1) by ordinary resolution at a general meeting.

(3) If the co-operative ratifies the contract under this section -

(a) the co-operative is bound by the contract; and

(b) the person who originally entered into the contract ceases to be bound by the contract.

(4) If the co-operative does not ratify the contract, the person who originally entered into the contract continues to be bound by the contract, unless the contract expressly provides otherwise.

Name of co-operative

11 (1) The proposed name of a co-operative must not be –

(a) the same or so similar to that of an existing co-operative that it may be misleading; or

(b) a name that is undesirable, prohibited or calculated to deceive, or otherwise, mislead.

(2) A co-operative must have the words –

(a) “co-operative” or “co-op” as part of its name; and

(b) the word “limited” or the abbreviation “ltd” as the last word of its name, unless the constitution of a co-operative does not limit the liability of its members.
(3) A secondary co-operative must have the words “secondary co-operative as part of its name and a tertiary co-operative must have the words “tertiary co-operative” as part of its name.

(4) A co-operative must set out its name in legible characters in all contracts, invoices, negotiable instruments, letters, orders and places of business.

(5) A secondary co-operative or tertiary co-operative must indicate its status as a secondary co-operative or tertiary co-operative on the documents listed in subsection

(6) If the name of a secondary or tertiary co-operative indicates a restriction on the business that may be carried on by the co-operative, the constitution of the co-operative may not be amended to remove that restriction unless its name is also amended.

Directive from registrar to change the name

12. (1) The registrar may direct a co-operative to change its name if the co-operative’s name contravenes section 11.

(2) If a co-operative does not comply with a directive issued in terms of subsection (1) within sixty days of receiving the directive –

(a) the registrar may issue a certificate of amendment revoking the name of the co-operative and assigning a new name; and

(b) from the date of the certificate of amendment, the constitution of the co-operative is deemed to be amended to reflect the name assigned to it in the certificate.

(3) On issuing a certificate of amendment under subsection (2), the registrar must publish the change of name in a publication generally available to the public in the area(s) where the majority of the members reside.

Unlawful use of the word “co-operative”

13. (1) It is an offence for any entity other than a co-operative registered in terms of this Act to –

(a) hold itself out as carrying on the business of a registered co-operative;

(b) use or authorise the use of the terms “co-operative”, “co-op”, "co-operative limited", "co-operative ltd", or "co-op ltd" as part of its name.

PART 2: CONSTITUTION AND POWERS OF CO-OPERATIVE

Co-operative constitution

14. (1) A co-operative that is registered in terms of this Act must adopt a constitution that complies with section 15.
(2) Co-operative where the members are required to hold shares, must adopt a constitution that complies with section 15 and section 16.

(3) Secondary and tertiary co-operatives must adopt a constitution that complies with section 15 and section 17.

(4) This Part contains provisions that are compulsory for all co-operatives, provisions that are compulsory for co-operatives where the members are required to hold shares, provisions that are compulsory for secondary and tertiary co-operatives, and provisions that are optional.

(5) A co-operative may include in its constitution any of the optional provisions, to the extent provided in this Part.

(6) A co-operative may in addition to the matters listed under the optional provisions adopt any other provision that is not inconsistent with this Act.

(7) The Minister may publish, by notice in the Gazette, model constitutions that may be used by co-operatives.

Compulsory provisions for all co-operatives

15. (1) The constitution of a co-operative must include the following provisions -

(a) the name of the co-operative;

(b) whether it is a primary co-operative, a secondary co-operative, or a tertiary co-operative;

(c) the main objectives of the co-operative;

(d) a description of the business of the co-operative, including any restrictions on the business of the co-operative;

(e) a provision stipulating that each member has one vote in all meetings of the co-operative at which that member is entitled to be present and to vote, except in the case of secondary or tertiary co-operatives;

(f) the minimum period of notice to be given of general meetings;

(g) the place where the registered office of the co-operative will be located;

(h) the minimum and maximum number of directors;

(i) the term of office of directors, which may not be more than four years, and whether a director may be re-appointed for a second or further term of office;

(j) the powers and restrictions on the directors of a co-operative to manage the business of the co-operative;
(k) the requirements for membership of the co-operative, subject to section 3(2);

(l) the requirements for withdrawal of membership of a co-operative, including any provisions relating to the liability of a member for a specified period after the date of withdrawal, subject to section 28;

(m) provision for a share of the surplus to be transferred to a reserve fund, the proceeds of which may not be divided amongst the members;

(n) provision for the distribution of the assets of the co-operative on its dissolution;

(o) the financial year of the co-operative;

(p) procedures for the application of membership to the co-operative that should be in accordance with co-operative principles;

(q) the rights and obligations of members;

(r) the withdrawal of membership and the periods for proper notice and repayment of shares;

(s) the transfer of membership, membership loan and membership share;

(t) the conditions and processes for the termination of membership;

(u) the conditions and processes for the suspension of membership;

(v) the structure for decision making whereby members can participate in decision-making processes in a democratic and participatory manner;

(w) how AGMs and special general meetings are convened, that will include the necessary notice periods, the election of a chairperson and provisions for the proposal of resolutions that should ensure democratic decision-making;

(x) the notice period for general meetings;

(y) the tabling and adoption of resolutions;

(z) the determination of quorums for general meetings;

(aa) voting by show of hands or ballot;

(bb) the conditions when a resolution in lieu of a meeting may be held;

(cc) the conditions and processes for requesting a general meeting;

(dd) the appointment of directors, provided that only members may be appointed as directors;
(ee) the conditions for vacation of office by directors and the filling of any vacancies in a manner that ensures democratic accountability to the members;

(ff) the conditions and processes for the appointment of the chairperson, vice-chairperson and acting chairperson; and

(gg) the conditions under which a board of directors may assign functions to a director or committee or manager.

Compulsory provisions where members are required to hold shares

16. Where a member is required to hold shares in a co-operative upon application or acceptance as a member, the constitution of a co-operative must provide as follows -

(a) the minimum number of membership shares to be issued to each member;

(b) the nominal value of the shares;

(c) whether the membership shares are to be issued fully paid up or not fully paid up, and the conditions under which shares are to be paid for;

(d) the circumstances under which additional shares may be issued to members.

(e) the maximum percentage of the share capital of a co-operative a member may hold, except in the case of a secondary or tertiary co-operative;

(f) the circumstances under which shares issued to a member may be redeemed.

Compulsory provisions for secondary and tertiary co-operatives

17. (a) The main objective of a secondary co-operative must be to provide services to the primary co-operatives that are its members, which services must be specified.

(b) The main objectives of a tertiary co-operative must include providing services to the primary and/or secondary co-operatives that are its members, which services must be specified;

(c) A secondary or tertiary co-operative must specify the number of votes a member has in proportion to the number of its members.

Optional provisions for all co-operatives

18. The constitution of a co-operative may include the following -

(a) the further objectives of the co-operative;
(b) the amount of business allowed with non-members, subject to the provisions of this Act;

(c) where a co-operative has members in more than one region, the holding of regional general meetings and a conference of delegates;

(d) provision for a member to appoint a proxy to attend and vote at a general meeting in that member’s stead, or for postal votes;

(e) provision for people who want to provide support to the co-operative without themselves becoming members, to be appointed as associate members;

(f) the establishment of a supervisory committee;

(g) the power of the board of directors to delegate to a sub-committee or director, and the limitations on that power;

(h) provisions regulating the appointment of a general manager or executive manager by the board of directors;

(i) provision to make rules consistent with the constitution and this Act concerning the holding of meetings or any other matter of procedure; and

(j) provision for the resolution of disputes between members of the co-operative, or between a member of the co-operative and the co-operative itself, by way of arbitration or otherwise.

Optional provisions for secondary or tertiary co-operative

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

(b) The further objectives of a tertiary co-operative may include representing the interests of co-operatives within a sector or region, assisting in the provision of education and training, establishing a guarantee fund to facilitate external financing of its members, and the establishment of an audit fund to assist members have their operations audited.

Consequences of invalidity

20.  The constitution of a co-operative –

(a) containing a provision which is inconsistent with the provisions of this Act, is notwithstanding such provision, valid in so far as the other provisions of the constitution are consistent with this Act;

(b) is not invalid by reason only of the fact that it does not provide for a matter for which it must provide in terms of this Act.
Amendment to constitution

21. (1) The constitution of a co-operative may be amended by the co-operative by special resolution.

(2) Notice of the general meeting at which a proposal to amend the constitution is to be considered must set out the proposed amendment.

(3) An amendment of a constitution comes into operation –

(a) on the date it is registered by the registrar; or

(b) on the date specified in the special resolution.

(4) The registrar must register an amendment to the constitution submitted in the prescribed form if the registrar is satisfied that –

(a) the amendment complies with the Act and with the co-operative principles set out in section 3;

(b) there has been compliance with the provisions of this section.

(5) The registrar must advise a co-operative in writing of the reasons for refusing to register an amendment.

(6) No amendment to the constitution affects an existing cause of action or claim or liability to prosecution in favour of or against the co-operative or its directors or any civil, criminal, administrative, investigative or other action or proceeding to which a co-operative or its directors is a party.

Powers of a co-operative

22. (1) A co-operative may do all things necessary to carry out its objectives, subject to such limitations on its powers as are imposed by its constitution, this Act and any other law.

(2) If a co-operative performs any act for which it does not have the power, the co-operative and each director of the co-operative who authorised, or participated in authorising, the performance of that act, or who performed that act, or participated in the performance of that act, knowing that the co-operative was not empowered to perform such act, will be guilty of an offence.

Registered office of co-operative

23. (1) A co-operative must maintain a registered office in the Republic in the place set out in its constitution.
(2) A co-operative must notify the registrar of the physical address of its registered office, as well as any electronic address, telephone or telefax numbers, in the prescribed form.

(3) A co-operative must notify the registrar in the prescribed form within fifteen days if the physical or electronic address as notified in subsection (2) changes.

Record keeping by a co-operative

24. (1) A co-operative must keep at its offices the following -

(a) the co-operative's constitution and rules, if any, including any amendments;

(b) the minutes of general meetings in a minute book, as envisaged in section 43;

(c) the minutes of meetings of the board of directors in a minute book, as envisaged in section 50;

(d) a list of its members, setting out -

   (i) the name and address of each member;

(ii) the date on which each member became a member;

(iii) if applicable, the date a person's membership was terminated;

(iv) the amount or number of any membership fees paid, membership shares owned or member loans;

(e) a register of its directors, setting out -

   (i) the name, address and identity number of each past and present director;

(ii) the date on which he or she became or ceased to be directors;

(iii) the name and address of any other co-operative or company or close corporation of which they are (or were in the case of former directors) a director or member, as the case may be;

(f) a register of directors' interests in contracts or undertakings, as envisaged in section 53;

(g) adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.

(2) A co-operative must retain its accounting records –
(a) in the case of a co-operative the main object of which involves its members conducting transactions with it, for a period of five years after the end of the financial year to which they relate;

(b) for all other co-operatives, for a period of three years after the end of the financial year to which they relate;

(3) The registrar may issue guidelines to co-operatives regarding the manner in which the records referred to in (1) above must be kept, including guidelines allowing a co-operative to keep records in an electronic format.

(4) A co-operative or director who fails to comply with any provision of subsection (1) is guilty of an offence.

Access to information

25. (1) Subject to subsections (2) and (3), members of a co-operative may examine the records referred to in paragraphs (a) to (g) of subsection (1) of section 24 during the normal business hours of the co-operative and have copies of records, or extracts from records made, after payment of a reasonable fee.

(2) Despite subsection (1), the board of directors may withhold information relating to any current commercial transaction for a reasonable period of time, where they have reason to believe that disclosure may be to the commercial disadvantage of the co-operative.

(3) Where the constitution of a co-operative provides for the establishment of a supervisory board, the supervisory board must determine whether the board of directors is entitled to withhold information in terms of subsection (2).
CHAPTER 3
MEMBERSHIP OF CO-OPERATIVES

Application for membership

26. The Constitution of a co-operative must include provisions for application procedures for membership to the co-operative that should be in accordance with co-operative principles.

Rights and obligations of members

27. The Constitution of a co-operative must include provisions that define the rights and obligations of members.

Liability of members

28. The liability of a member of a co-operative is limited to an amount equal to the nominal value of the shares that member holds in the co-operative for which that member has not paid.

Withdrawal of membership

29. (1) The constitution of a co-operative must include provisions relating to the conditions under which membership may be withdrawn and shall include the periods for such notice and the repayment of shares.

(2) Notwithstanding subsection (1), if a co-operative determines on reasonable grounds that the repayment envisaged in sub-section (1) would adversely affect the financial well-being of the co-operative, it may direct that the repayment be deferred for a period not exceeding two years after the effective date of a notice of withdrawal.

(3) Unless the co-operative determines otherwise, the withdrawal of a member from the co-operative does not release the member from any debt or obligation to the co-operative or any contract between the member and the co-operative.

Transfer of membership, membership loan or membership share

30. (1) The constitution of a co-operative must include provisions relating to the conditions for the transfer of membership loan and membership share.

(2) Notwithstanding any provisions contained in its constitution, if a co-operative determines on reasonable grounds that the repayment of the nominal value of a member’s shares, all other amounts held to the member’s credit including any member loan and any interest accrued on those amounts up to the date of the payment, would adversely affect the financial well-being of the co-operative, it may direct that repayment be deferred for a period not exceeding two years after the date of death of its member.

Termination of membership by members
31. The constitution of a co-operative must include provisions relating to the conditions and processes for termination of membership.

Suspension of membership

32. The constitution of a co-operative must include provisions relating to the conditions and processes for suspension of membership.

Powers of registrar in the case of reduced number of members

33. (1) If the membership of a co-operative is reduced to a number less than the number required for registration, and after six months it remains at less than that number -

(a) the co-operative is deemed to be de-registered in terms of this Act;

(b) the co-operative must convert into another legal entity, in accordance with the provisions of Chapter 8, or be wound up in accordance with the provisions of Chapter 9; and

(c) the members of that co-operative may be held personally liable for any loss or damage which may occur as a result of any activities of the co-operative thereafter.

(2) When issuing a certificate under subsection (1)(b), the registrar must publish the change of status in a publication generally available to the public in the area (s) where the majority of the members live.
CHAPTER 4
GENERAL MEETINGS

Structure for decision-making

34. (1) A co-operative’s decision-making structure provided for in its constitution must conform with the requirements of this section.

(2) The highest decision-making structure of a co-operative is a general meeting of members.

(3) The constitution must include provisions that define the structure for decision making whereby members can participate in decision-making processes in a democratic and participatory manner.

(4) The Board of Directors is accountable to –

(a) the general meeting; and

(b) between general meetings to the supervisory committee, if a supervisory committee is provided for in the constitution.

General Meetings

35. (1) The constitution must state how AGMs and special general meetings are to be convened, that will include the necessary notice periods, the election of a chairperson and provisions for the proposal of resolutions that should ensure democratic decision-making.

(2) Subject to the constitution of a co-operative and this Act, a member of a co-operative may attend a meeting of the co-operative by means of a telephonic, electronic or other communication facility, if this facility permits participants to communicate adequately with each other during the meeting.

(3) A person participating in a meeting referred to in sub-section (2) is deemed to be present at the meeting.

(4) The constitution of a co-operative may permit a member to appoint a proxy to attend and vote at a general meeting on the member’s behalf provided that no person may act as a proxy for more than twenty percent of the members entitled to vote at the meeting, or such lesser percentage of members stipulated in the co-operative’s constitution.

Annual general meetings

36. (1) A co-operative must hold –

(a) its first annual general meeting (“AGM”) within eighteen months of being incorporated;
(b) subsequent AGMs, within six months after the end of the preceding financial year.

(2) The AGM must -

(a) appoint an auditor, subject to section 65;

(b) approve a report by the board on the affairs of the co-operative for the previous financial year;

(c) approve the financial statements and auditors report, where applicable, for the previous financial year;

(d) elect directors;

(e) elect a supervisory committee, if required by the constitution;

(f) decide on the co-operative’s future business;

Notice of general meetings

37. The constitution must state how notice of general meetings will be given.

Resolutions

38. The constitution must state how resolutions are tabled and adopted.

Quorum for general meetings

39. The constitution must state how a quorum for general meetings is determined and ensure that the quorum provides for adequate member control and decision-making.

Representation at meetings

40. A juristic person entitled to vote at a meeting of a co-operative may be represented by any natural person authorised to do so.

Voting by show of hands or ballot

41. The constitution must include provisions for voting by show of hands or ballot.

Resolution in lieu of meeting

42. The constitution must state the conditions under which a resolution in lieu of a meeting may be passed.

Minutes of general meetings
43. (1) The chairperson of the meeting must –

(a) cause minutes of general meetings to be kept in one of the official languages of the Republic; and

(b) keep the minutes at its registered office in accordance with section 21.

(2) Minutes in respect of any general meeting must be –

(a) provided to members on request; and

(b) presented for approval at the next general meeting.

(3) The minutes of any general meeting, signed by the chairperson of the meeting, or a resolution adopted in terms of section 42, signed by the chairperson of the board, are in the absence of evidence to the contrary, proof of the outcome of the vote or the resolution.

Request for general meeting

44. The constitution must state the conditions and processes to be followed when requesting a general meeting.
CHAPTER 5
MANAGEMENT OF CO-OPERATIVES

Board of directors

45. (1) The affairs of a co-operative must be managed by a board of directors consisting of such number of persons as the constitution of the co-operative permits.

(2) The board of directors must exercise and perform the powers and duties of the co-operative subject to this Act and the constitution of the co-operative.

(3) The board of directors must be elected for such period as may be set out in the constitution, which period may not be more than four years.

Persons competent to be directors

46. (1) The constitution must include provisions for the appointment of directors, provided that only members may be appointed as directors.

(2) The following persons are not competent to be directors:

(a) a person of unsound mind;

(b) an unrehabilitated insolvent;

(c) a person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury or any offence involving dishonesty in connection with the formation or management of a co-operative or other corporate entity.

Vacation of office by directors and filling of vacancies

47. The constitution must include provisions for the vacation of office by directors and the filling of any vacancies in a manner that ensures democratic accountability to the membership.

Chairperson, vice-chairperson and acting chairperson

48. The constitution must state the conditions and processes for the appointment of the chairperson, vice-chairperson and acting chairperson.

Meetings and resolutions of board of directors

49. (1) A meeting of the board of a co-operative must be held at a date, time and place determined by-

(a) the board or the chairperson of the board;

(b) or by any two directors.
(2) Unless the constitution provides otherwise –

(a) a majority of all directors constitutes a quorum for any meeting of a board of directors;

(b) the decision of the majority of the directors present at a meeting of a board constitutes a resolution of the board; and

(c) in the event of an equality of votes, the chairperson or the person acting as chairperson, as the case may be, has a casting vote in addition to a deliberative vote.

(3) For the purposes of determining whether there is a quorum in terms of sub-section 2(a), directors participating by telephonic, electronic or other communication facility are deemed to be present, unless the constitution of the co-operative provides otherwise.

(4) A resolution passed by a board of directors or act performed under the authority of a board of directors is not invalid by reason only of the fact that when the resolution was passed or the act was authorised there was a vacancy on the board or a person not entitled to sit as a director sat as a director, if the resolution was passed or the act was authorised by the requisite majority of the directors entitled to sit as directors who were present at the time.

(5) Unless the constitution provides otherwise, a resolution in writing signed by all directors entitled to vote on that resolution at a meeting of the board is valid as if it had been passed at such a meeting.

Minutes of meetings of board of directors

50. (1) The board of directors must cause minutes of board meetings to be –

(a) taken in one of the official languages of the Republic; and

(b) kept at the registered office of the co-operative in accordance with section 24.

(2) The minutes must indicate which directors were present at the meeting.

(3) Minutes in respect of any meeting of a board of directors must be –

(a) circulated to the directors as soon as possible after the meeting; and

(b) presented for approval at the next board meeting.

(4) A resolution of a board of directors in the form of a written resolution signed by all directors –

(a) constitutes a decision of the board; and

(b) must be entered in the minute book referred to in sub-section (1).
(5) The minutes of any meeting of a board purporting to be signed by the chairperson of the board or a person who acted as chairperson, as the case may be, will in any court constitute proof, on the face of it, of what took place at that meeting.

Board of directors may assign functions to a director or committee or manager

51. (1) The constitution must state the conditions under which a board of directors may assign functions to a director or committee or manager.

(2) A delegation or authorisation under sub-section (1) does not prevent the exercise of the relevant power by the board itself.

(3) The provisions of section 49 apply, with such changes as the context may require, to a committee of directors referred to in sub-section (1).

Liability of directors and employees

52. (1) A director or manager or other employee of a co-operative is not liable to any person in their personal capacity for any loss or damage which may occur in or in connection with the performance of their duties, unless the loss or damage is due to

(a) wilful misconduct, dishonesty, gross negligence or reckless conduct;

(b) wilfully contravening or refusing to comply with a provision of this Act or the constitution of the co-operative;

(c) conduct intended to defraud any person or for any other fraudulent purpose.

(2) Without prejudice to any other criminal liability incurred, any director or manager who was knowingly a party to the carrying on of the business in any manner contemplated in (a) to (c) of sub-section (1) is guilty of an offence.

Disclosure of interest

53. (1) A director or manager of a co-operative must disclose in writing to the co-operative in accordance with this section –

(a) the nature and extent of any interest that they have in a material contract or transaction, or a proposed material contract or transaction, with the co-operative; and

(b) any material change to such interest.

(2) This section does not require the disclosure of an interest in a contract or transaction that is available to and customarily entered into between the co-operative and its members, if the contract or transaction is on terms generally available to members.

(3) Any disclosure must be recorded in the minutes of the meetings of directors.
(4) A disclosure that is required to be made in terms of this section, must be made
(a) at the first meeting of directors, at which the proposed contract or transaction is first considered;
(b) if the director or manager did not have an interest in the proposed contract or transaction at the time of the meeting referred to in paragraph (a), at the first meeting after the director or manager acquired an interest in it;
(c) if there is a material change in the interest, of the director or manager at the first meeting after the change;
(d) if the director or manager acquires an interest in the contract or transaction after it is made, at the first meeting after the director or manager acquires that interest;
(e) if the director or manager had an interest in the contract or transaction before becoming a director or manager, at the first meeting after becoming a director or manager; or
(f) if the contract or the transaction is one that would in the ordinary course of business not require the approval of directors, as soon as the director or manager becomes aware of the contract or transaction.

(5) If the person making the disclosure is not a member of the board of directors, the disclosure must be made in writing for submission to the board.

(6) The board of directors must keep in accordance with section 24 a register of directors' and managers' interests in contracts or undertakings containing full particulars of every disclosure of interest made in terms of this section.

Acceptance of commission, remuneration or reward prohibited in certain circumstances

54. (1) A director or manager of a co-operative may not accept any commission, remuneration or reward from any person for or in connection with any transaction to which the co-operative is a party unless such commission, remuneration or reward is paid or given in the course of the director or employee’s usual business or profession and the director or employee has disclosed his or her interest to the co-operative.

(2) A director or employee who contravenes a provision of sub-section (1) is guilty of an offence.

Returns relating to directors

55. (1) A co-operative must notify the registrar in writing within 30 days of -
(a) the full name, address and identity number of each person elected or appointed to hold office as a director;
(b) any change of address of a director upon being informed of such change by a
director;

(c) any director vacating office.

(2) A director must inform the co-operative in writing of any change of address
within 30 days.

(3) A co-operative that fails to comply with a provision of sub-section (1) and a
director who fails to comply with a provision of sub-section (2) will be guilty of an
offence.
CHAPTER 6
CAPITAL STRUCTURE

Capital of a co-operative

56 The capital contributed by members may comprise any of the following:

(a) entrance fees;

(b) membership fees or subscriptions;

(c) the consideration for membership shares or additional shares in a co-operative;

(d) member loans; and

(e) member funds, as provided in section 59.

Membership shares

57. (1) The constitution of a co-operative may provide for membership shares to be issued to members.

(2) Each member must at all times hold the minimum number of membership shares prescribed by the constitution.

(3) The constitution may permit additional shares to be issued to members.

(4) All shares issued must be of the same class and ranking.

(5) Interest on membership shares is only payable on shares, or that portion of shares, that are paid up.

(6) A transfer of membership shares is valid only if it complies with section 30 and any restrictions set out in the constitution.

Issue of certificates in respect of membership shares or member loans

58. (1) Unless the constitution of a co-operative provides otherwise, a member is entitled to a certificate in respect of –

(a) membership shares issued to that member;

(b) member loans by that member.

(2) The face of each certificate that the co-operative issues in terms of sub-section (1) must state -

(a) the name of the co-operative;

(b) that the co-operative is subject to this Act;
(c) the name of the person to whom it is issued;

(d) that the certificate represents membership shares in or member loans to the co-operative, and the number of the membership shares or the amount of the member loan.

(3) If the constitution does not require the issue of certificates, the co-operative, on the request of a member, must issue a statement of –

(a) the number of membership shares held by the member; and

(b) the amount of any member loan by the member.

Members’ funds

59. (1) The constitution of a co-operative may provide for one or more members’ funds to be established in which the member of a co-operative may be credited with –

(a) contributions made by the member to that fund;

(b) any amount set aside for future payment to members including –

(i) interest on an amount paid upon the member’s shares;

(ii) any patronage return allocated to the member;

(iii) any amount paid to the member after reducing share capital;

(c) any other money due to the member the payment of which is deferred.

(2) The money standing to the credit of a member in a members’ fund –

(a) may be applied for any purpose permitted in terms of the constitution except for writing off a loss;

(b) must be paid to the member in the manner and at the time provided for in the constitution;

(c) may bear interest at a rate fixed in terms of the constitution;

(d) may on the due date be set off against a debt owing by the member to the co-operative.

(3) Actions of a co-operative in terms of this section are not deemed to be activities prohibited by the Banks Act, 1990 (Act No.94 of 1990) by reason only of the fact that the co-operative administers a members' fund.

Patronage proportion
60. (1) A co-operative may allocate and credit or pay to its members that portion of the surplus which is not transferred to an indivisible reserve fund in terms of the constitution, allocated in proportion to the business done by the members with the co-operative in that financial year.

(2) For the purpose of sub-section (1), the board of directors, when determining the amount of business done by each member with a co-operative in a financial year, must take into account –

(a) the quantity, quality, kind and value of things bought, sold, handled, marketed or dealt in by the co-operative;

(b) the services rendered -

(i) by the co-operative on behalf of or to the member; and

(ii) by the member on behalf of or to the co-operative.

(3) A co-operative may provide in its constitution that the whole, or a part determined by the board, of the patronage proportion of a member in respect of a financial year must be applied to purchase membership shares in the co-operative for the member.

(4) If the provisions of sub-section (3) apply, the constitution must further provide for –

(a) giving notice to each member of the number of shares purchased or to be purchased for the member;

(b) the manner of issuing or transferring shares; and

(c) if applicable, issuing and forwarding share certificates to members.

Prohibited and permitted loans and security

61. (1) A co-operative may give financial assistance by means of a loan or the provision of security to -

(a) any person in the ordinary course of business if the lending of money is part of the ordinary business of the co-operative;

(b) any person on account of expenditures incurred or to be incurred on behalf of the co-operative;

(c) employees of the co-operative or of any of its members -

(i) to enable or assist them to purchase or erect living accommodation for their own occupation; or
(ii) in accordance with a plan for shares of the co-operative or any of its members to be held by a trustee;

(d) members, or members of member co-operatives, if the financial assistance is available to all members on substantially the same terms.

(2) A co-operative may not give financial assistance, whether directly or indirectly, by means of a loan or the provision of security for any purpose if there are reasonable grounds to believe that -

(a) the co-operative after giving the financial assistance, is or would be, unable to pay its liabilities as they become due; or

(b) the realisable value of the co-operative's assets, after giving the financial assistance, would be less than the aggregate of the co-operative's liabilities, share capital and reserves.

(3) In determining the realisable value of the co-operative’s assets for the purposes of sub-section (2)(b), the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, must be excluded.
CHAPTER 7
CO-OPERATIVE AUDIT

Audit

62. (1) An audit of the affairs of a co-operative must be conducted annually in respect of each financial year, in order to -

(a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;

(b) verify that the co-operative has maintained adequate records in accordance with the requirements of its constitution and this Act;

(c) report generally as to whether the assets and facilities of a co-operative are being properly managed and the operations of a co-operative are being conducted in accordance with co-operative principles; and

(d) report on any other matter the auditors are required to report on in terms of a co-operative’s constitution.

(2) A co-operative that is not able to afford the costs of an annual audit may apply in writing to the registrar for an exemption in terms of section 70.

Approval of auditors report and financial statements

63 (1) A co-operative may circulate draft financial statements to its members prior to an AGM.

(2) The AGM must consider approval of the auditor’s report and financial statements.

(3) The chairperson of the board, or the person who chaired the meeting at which the auditor’s report and financial statements were approved, must sign the auditor’s report and financial statements to confirm their approval.

(4) A co-operative may not issue, publish or circulate copies of the financial statements unless the statements are -

(a) approved by the AGM and signed in accordance with subsection (2); and

(b) accompanied by a report of the auditor.

(5) The auditor’s report and financial statements must be made available for inspection at the registered office of the co-operative for at least twenty-one days after their approval.

(6) The board of directors must –
(a) submit a copy of the financial statements and auditors’ report to the registrar within fifteen days of approval; or

(b) if for any reason an AGM fails to approve the financial statements and auditors’ report, notify the registrar within fifteen days of the reasons for that failure, and the action the co-operative proposes to address the situation.

Auditor disqualified from acting

64. (1) A person is disqualified from being an auditor of a co-operative-

(a) if that person has a personal or material interest in the co-operative or in any of the affiliates of a co-operative or in any subsidiary of a co-operative or in the business of any of its directors or senior employees; or

(b) in any other circumstances that are considered to constitute a conflict of interest in terms of accounting practice.

Appointment of auditor

65. (1) The members must appoint an auditor-

(a) at a meeting of interested persons, as envisaged in section 7(2) above, to hold office until the first annual general meeting;

(b) at each annual general meeting, to hold office until the close of the next annual general meeting.

(2) Despite sub-section (1), if an auditor is not appointed at any meeting, the incumbent auditor continues in office until a successor is appointed.

(3) If a co-operative fails to appoint an auditor in accordance with sub-sections (1) and (2), the registrar may approve the person nominated by the board of the co-operative to audit the books of a co-operative for one financial year.

(4) The fee payable to the auditor appointed in terms of sub-section (3) must be approved by the registrar.

(5) An auditor of a co-operative ceases to hold office when the auditor dies, resigns or is removed under section 66 or is struck from the roll of auditors in terms of the laws of the Republic.

(6) A resignation of an auditor becomes effective on the date on which a written resignation is received by the co-operative, or on the date specified in the resignation, whichever is later.

Removal of auditor

66. (1) The members may by ordinary resolution remove an auditor from office.
(2) A vacancy created by the removal of an auditor must be filled –

(a) at the meeting at which the auditor is removed; or

(b) if not so filled, within 30 days of the vacancy arising by the board of directors, subject to the registrar’s approval.

(3) An auditor appointed to fill a vacant post holds office for the unexpired term of his or her predecessor.

Attendance of meeting by auditor

67. (1) The auditor of a co-operative is entitled –

(a) to be given notice of any general meeting at which a report of the auditor is to be discussed;

(b) to attend such a meeting, at the expense of the co-operative;

(c) to address the meeting on matters relating to the auditor's duties.

(2) A director or member of a co-operative may require the auditor or former auditor to attend a general meeting at the expense of the co-operative and answer questions relating to the auditor's duties, provided the auditor or a former auditor of the co-operative is given ten days written notice of such meeting.

(3) A director or member that sends a notice referred to in sub-section (2) must send a copy of the notice to the co-operative at the same time.

Right to information

68. (1) At the request of the auditor, the members, directors, employees, agents or mandataries of a co-operative must provide any information, explanations, and access to any documents of the co-operative or any of its subsidiaries that are, in the opinion of the auditor, necessary for the purposes of the audit.

(2) At the request of the auditor, the directors must obtain from any present or former directors, employees, agents or mandataries of the co-operative the information and explanations that such persons are reasonably able to provide and that are, in the auditor's opinion, necessary for the purposes of the audit.

Notice of error

69. (1) A director or employee who becomes aware of any error or misstatement in a financial statement that the auditor or former auditor has reported on, must notify the auditor without delay.
(2) An auditor or former auditor of a co-operative who is notified of, or in any other way becomes aware of, a material error or misstatement in a financial statement on which they have reported, must inform the board of directors accordingly.

(3) When the auditor or former auditor informs the board of directors of an error or misstatement in a financial statement in terms of sub-section (2), the directors must

(a) prepare and issue revised financial statements; or

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

Exemptions

70. (1) Upon application in terms of subsection (2) of section 62 and subject to the requirements of subsections (2) and (3), the registrar may exempt a co-operative from full compliance with the requirements of this Chapter if satisfied-

(a) the costs of an annual audit would materially affect the financial sustainability of the co-operative;

(b) the co-operative has maintained adequate financial records, and is able to prepare annual financial statements;

(c) having regard to the size and kind of co-operative, the interests of members are adequately protected.

(2) When exempting a co-operative in terms of this section, the registrar must either require such co-operative to be audited

(a) at a period of longer than one year but not exceeding three years; or

(b) by a suitably qualified person other than an auditor;

(3) The board of directors of a co-operative that is exempted in terms of this section are nevertheless required to prepare annual financial statements for submission to an AGM, and to submit a copy to the registrar within fifteen days of the AGM approving such financial statements.

(4) In the event that an AGM fails to approve the financial statements referred to in subsection (3), the board of directors are required to comply with the provisions of paragraph (b) of subsection (6) of section 63 in the same manner as would apply to audited financial statements.

(5) The provisions of section 64 also apply to any person appointed in terms of (b) of subsection (2).

(6) The registrar may stipulate conditions to an exemption granted in terms of this section, if the registrar considers that it will serve the purpose of the Act to do so.
CHAPTER 8
AMALGAMATION, DIVISION, CONVERSION AND TRANSFER

Amalgamation

71. (1) Two or more co-operatives may agree in writing to amalgamate provided the co-operative to be constituted by the amalgamation (“the amalgamated co-operative”) will comply with the requirements for a co-operative to be registered in terms of the Act.

(2) An agreement to amalgamate envisaged in sub-section (1) must set out the terms of the amalgamation, and the means by which it will be effected, including the following -

(a) the constitution of the amalgamated co-operative;

(b) the manner in which the shares of each amalgamating co-operative are to be converted into membership shares of the amalgamated co-operative or, if applicable, other securities of the amalgamated co-operative;

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

(d) the continuation of the members’ respective interests in a members’ fund of the amalgamated co-operative;

(e) the application of any surplus or loss which may have resulted from the operations of the amalgamating co-operatives; and

(f) the name and address of each proposed director of the amalgamated co-operative.

Approval of amalgamation

72. (1) The board of directors of each amalgamating co-operative must submit the proposed agreement to amalgamate to a general meeting of each amalgamating co-operative.

(2) A copy or summary of the proposed agreement to amalgamate must accompany the notice of such meeting.

(3) An agreement to amalgamate must be approved by special resolutions of each amalgamating co-operative.

(4) After approval of an agreement to amalgamate, the constitution of the amalgamated co-operative must be submitted to the registrar for approval, together with a notice of registered office, a notice of the directors of the amalgamated co-operative and the prescribed fee.
(5) A declaration by the directors of each amalgamating co-operative must be attached to the constitution submitted in terms of sub-section (4), establishing that the relevant provisions of their constitutions have been complied with in approving the amalgamation, and that there are reasonable grounds to believe that -

(a) the amalgamated co-operative will be able to pay its liabilities as they become due;

(b) the realisable value of the amalgamated co-operative's assets will not be less than the total of its liabilities, share capital and reserves;

(c) the interests of creditors will be protected in compliance with section 79.

(6) The registrar must issue a certificate of registration in the name of the amalgamated co-operative if satisfied that -

(a) the amalgamating co-operatives have complied with all the relevant provisions of their constitutions and this Act;

(b) the name and constitution of the amalgamated co-operative comply with this Act.

(7) For the purposes of sub-section (6), the registrar may rely on the constitution and the declarations contemplated in sub-section (5).

Effect of registration of amalgamated co-operative

73. As from the date stated on the certificate of registration -

(a) the amalgamation of the amalgamating co-operatives and their continuance as one co-operative becomes effective,

(b) the registration of the amalgamating co-operatives is cancelled;

(c) members of the amalgamating co-operatives become members of the amalgamated co-operative;

(d) the assets, rights, liabilities and obligations of the amalgamating co-operative become the assets, rights, liabilities and obligations of the amalgamated co-operative.

Division of co-operatives

74. (1) A co-operative may decide to divide into two or more co-operatives, if each co-operative will comply with the requirements for a co-operative to be registered in terms of this Act.

(2) An agreement to divide a co-operative envisaged in sub-section (1) must set out the terms of the division, and the means by which it will be effected, including the following -
(a) the provisions of the constitutions of each of the co-operatives to be constituted by the proposed division;

(b) the members of the co-operative that will become members of the co-operatives to be constituted by the division;

(c) the manner in which the assets, rights, liabilities and obligations of the co-operative are to be divided between the co-operatives to be constituted by the division;

(d) the business of each of the co-operatives constituted by the division and the area or sector in which they are to operate;

(e) the name and address of the proposed directors of the co-operatives to be constituted.

Approval of Division

75. (1) The board of directors must submit a proposed agreement to divide a co-operative to a general meeting.

(2) A copy or summary of the proposed agreement to divide the co-operative must accompany the notice of such meeting.

(3) An agreement to divide a co-operative must be adopted by a special resolution.

(4) After the members of the co-operative have approved the division, the constitutions of the co-operatives to be constituted must be submitted to the registrar for approval together with a notice of registered office and a notice of the directors of the co-operatives concerned.

(5) The following declarations must also be submitted to the registrar

(a) a declaration by the directors of the co-operative being divided, establishing that the relevant provisions of its constitution have been complied with in approving the division;

(b) a declaration by the directors of each co-operative constituted by the division, establishing that there are reasonable grounds to believe that –

(i) the co-operatives to be constituted will be able to pay their liabilities as they become due;

(ii) the realisable value of the assets of the co-operative to be constituted will not be less than the total liabilities, share capital and reserves;

(iii) the interests of creditors will be protected in compliance with section 79.

(6) The registrar must issue a certificate of registration in the name of the co-operatives to be constituted if satisfied that -
(a) the co-operative has complied with all the relevant provisions of its constitution and the Act in approving the division;

(b) the constitutions of the co-operatives to be constituted comply with the Act.

Effect of registration of co-operatives constituted in terms of a division

76. As from the date of the last registration of a co-operative constituted in terms of a division -

(a) the registration of the co-operative being divided is cancelled;

(b) the members of that co-operative become the members of the co-operatives constituted in terms of the division, in accordance with the agreement to divide;

(c) the assets, rights, liabilities and obligations of the co-operative being divided become the assets, rights, liabilities and obligations of the co-operatives constituted by the division in accordance with the agreement to divide.

Conversion of co-operative to any other kind or form of juristic person

77. (1) A co-operative may apply to –

(a) convert into any other form of corporate or unincorporated body in accordance with the applicable legislation; and

(b) cancel its registration as a co-operative.

(2) An application in terms of sub-section (1) may only be made if the board of directors has submitted a proposal to a general meeting, detailing the reasons for and terms of the proposed conversion.

(3) A copy of the proposal referred to in sub-section (2) must be attached to the notice of the general meeting, and must be adopted by special resolution.

(4) A declaration by the directors of the co-operative concerned must be attached to an application in terms of sub-section (1), establishing –

(a) compliance with the relevant provisions of this Act and their constitutions;

(b) that the interests of creditors will be protected in accordance with section 79.

(5) The registrar may require the directors to submit such proof as the registrar requires in respect of any matter contained in a declaration referred to in sub-section (4).

(6) If the registrar is satisfied that there has been compliance with the provisions of this Act, the registrar must –
(a) cancel the registration of the co-operative; and

(b) remove its name from the register of co-operatives.

(7) As from the date on which the registration of a co-operative is cancelled -

(a) the co-operative ceases to exist;

(b) all assets, rights, liabilities and obligations of the co-operative vest in the corporate body or unincorporated association of persons into which the co-operative is converted, if it is by virtue of its constitution capable of owning property separate from its members;

(c) if the co-operative is converted into a company, all members of the co-operative become shareholders of the company.

Transfers

78. (1) A co-operative may apply to transfer its assets, rights, liabilities and obligations by mutual agreement to any other co-operative.

(2) If a transfer in terms of sub-section (1) is contemplated, a copy or summary of the proposed agreement to transfer, and the reasons for the transfer, must be sent to the members of the co-operatives concerned together with the notice of the general meeting at which transfer is to be considered.

(3) A transfer in terms of sub-section (1) must be approved by special resolution of each of the co-operatives concerned.

(4) A declaration by the directors of each of the co-operatives concerned must be attached to an application in terms of sub-section (1), establishing that –

(a) there has been compliance with the relevant provisions of this Act and their constitutions;

(b) that the interests of creditors will be protected in accordance with section 79.

(5) The registrar may require the directors to submit such proof as the registrar requires in respect of any matter contained in a declaration referred to in sub-section (4).

(6) The registrar must approve the application if satisfied that there has been compliance with the relevant provisions of the Act and the constitution.

Protection of creditors

79. The registrar may not register any amalgamation, division, conversion or transfer in terms of this Chapter unless the registrar is satisfied that –
(a) at least three months’ written notice of the proposal has been given to each known creditor who has a claim against any of the co-operatives affected exceeding one thousand rands or such other amount as the Minister may from time to time prescribe;

(b) any creditors who have demanded payment of any amount due to them have been paid or will be paid before the amalgamation, division, conversion or transfer is effected;

(c) no creditor will be prejudiced by the amalgamation, division, conversion or transfer.

Registration of property upon amalgamation, division, conversion or transfer

80. (1) Any property or right which vests in a co-operative or a corporate body by virtue of any provision of this Chapter must be transferred to that co-operative or corporate body, as the case may be, without payment of transfer duty, stamp duty or any other fee or charge.

(2) On submission of a certificate of amalgamation, division, conversion or transfer, as the case may be, the relevant must endorse and make entries in any relevant register, title deed or other document in his or her office or laid before him or her, to register the property and or right in the name of the co-operative or corporate body concerned.
CHAPTER 9
WINDING-UP OR DE-REGISTRATION OF CO-OPERATIVES

Modes of winding-up

81. (1) A co-operative may be wound up voluntarily by a special resolution of at least 75% of its members.

(2) A co-operative must be wound up if ordered by a court or the Minister, as provided for in this Chapter.

Winding-up by order of court

82. (1) The High Court may, on application by any interested person, order that a co-operative be wound up, if

   (a) a co-operative is unable to pay its debts; and

   (b) there is no reasonable probability that it will be able to pay its debts or become a viable co-operative; and

   (c) it appears just and equitable to do so.

(2) The court considering an application in terms of sub-section (1) may –

   (a) adjourn the hearing thereof conditionally or unconditionally; or

   (b) prior to granting or refusing the application, make any provisional or other order it may deem fit.

Winding-up or de-registration by order of Minister

83. (1) The Minister may, on the recommendation of the registrar, order that a co-operative be wound up or de-registered if the Minister has reason to believe that the co-operative -

   (a) obtained registration through fraud;

   (b) was formed for a particular period or until the occurrence of a particular event, and that period has expired or that event has occurred;

   (c) has not transacted business during a continuous period of two years;

   (d) is not operating in accordance with its constitution or in accordance with this Act.

(2) Before making an order in terms of sub-section (1), the Minister must give the relevant co-operative a right to be heard.

Transitional provisions relating to the winding-up of co-operatives
84. The winding up of a co-operative must be effected in accordance with a law of general application to be enacted regulating the law of insolvency and the winding-up of legal persons, including co-operatives. Pending the enactment of such a law, the provisions of Chapter 10 of the Co-operatives Act, 1981 (Act 91 of 1981) shall continue to apply as if they had not been repealed.

Special provisions relating to the winding-up of co-operatives

85. Having regard to co-operative principles and notwithstanding the enactment of any law of general application regulating the law of insolvency and the winding-up of legal persons, the following matters must be dealt with in accordance with this Act -

(1) the admission and proving of claims against a co-operative being wound-up;

(2) the distribution of any residue, in terms of a distribution account;

(3) the recovery of a contribution, in terms of a contribution account.

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

86. (1) Any person who has a claim, excluding a claim against a members' fund, against a co-operative that is being wound up, must lodge an affidavit with the liquidator -

(a) specifying the amount of the claim together with any supporting documents;

(b) containing any prescribed particulars relating to the claim.

(2) A claim in terms of sub-section (1) must be lodged –

(a) within 90 days of the publication of the notice appointing the liquidator;

(b) with the consent of the registrar, within a further period of 30 days.

(3) The liquidator may –

(a) admit or refuse to admit the co-operative's liability for the amount of a claim in terms of sub-section (1); or

(b) admit the co-operative's liability for any portion of such an amount.

(4) (a) Any person aggrieved by a decision taken by a liquidator under sub-section (3) in connection with that person's claim may within 30 days after being notified of that decision appeal to the registrar against such decision.

(b) The registrar may, after consideration of the grounds of the appeal and the liquidator's reasons for his or her decision, confirm the decision or set the decision
aside and order the liquidator to admit the claim or to admit it to the extent determined by the registrar.

(5) A member who does not want his claim against a members' fund to proceed must inform the liquidator in writing thereof.

(6) The provisions of this subsection do not prevent a creditor from proving a claim in any court.

Distribution account

87. (1) A distribution account must provide for any residue remaining after the payment of any claims that are secured in law or that are proved, to be applied according to the provisions of this section.

(2) The residue referred to in sub-section (1) must in the first place be applied in paying back the paid-up share capital of the co-operative to members of the co-operative.

(3) If the residue is less than the paid-up share capital, the amount to be paid to a member out of the residue must bear the same ratio to the amount of the residue as the paid-up value of the member’s shares bear to the paid-up share capital.

(4) If the residue exceeds the paid-up share capital, the balance remaining after the paid-up share capital has been paid back must, subject to sub-section (7), be allocated to the members of the co-operative -

(a) in the case of a co-operative the main object of which involves its members conducting transactions with it, in accordance with the patronage proportion;

(b) in the case of any other co-operative, in accordance with the constitution.

(5) The patronage proportion referred to in sub-section (4)(a) must be determined with reference to the shorter of –

(a) the period specified in the constitution of the co-operative, which must be at least five years;

(b) the period that the co-operative has existed.

(6) For the purposes of sub-sections (4) and (5) -

(a) the value of the transactions conducted by a former member with a co-operative during the period referred to in sub-section (5) may be added to the value of the transactions of a member who is entitled to an allocation under sub-section (4) if -

(i) the former member, or the executor or representative of a deceased member, has consented in writing to that effect to the co-operative within 90 days after the former member ceased to be a member of the co-operative; and
(ii) the constitution of the co-operative so provides;

(b) a co-operative registered in consequence of a division of a co-operative in terms of this Act is deemed to have existed as from the date of registration of the co-operative that was divided;

(c) a co-operative by virtue of an amalgamation of two or more co-operatives in terms of this Act will be deemed to have existed as from the date of registration of the most recent of those co-operatives;

(d) the value of the transactions conducted by a member through any co-operative contemplated by sub-paragraphs (b) and (c) during the appropriate period must be taken into account in determining a member’s allocation.

(7) If the constitution of a co-operative provides that an amount must be paid to any particular person or for any particular purpose in the event of the co-operative being wound up, the balance referred to in subsection (4) must in the first place be applied for the payment of such an amount.

Contribution account

88. (1) A contribution account must provide for the recovery of contributions from such persons as are liable for the payment thereof.

(2) A contribution account must, in respect of each contributory, indicate the ground on which he or she is liable for the payment of contributions, the amount for which he or she is liable and the contribution to be paid by him or her in terms of that contribution account and, in the case of a second or later contribution account, the contribution recovered from him or her in terms of a previous contribution account.
CHAPTER 10
JUDICIAL MANAGEMENT

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

89. (1) The High Court may grant a judicial management order in respect of a co-operative, when that 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 viable co-operative; and

(c) there is a reasonable probability that, if it is placed under judicial management, it will be able to pay its debts or to meet its obligations and become a viable co-operative; and

(d) it appears just and equitable to do so.

(2) An application to the High 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 to the High 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.

Transitional provisions relating to the judicial management of co-operatives

90. The judicial management of a co-operative shall be regulated in accordance with a law of general application to be enacted regulating the law of insolvency and the winding-up of legal persons, including co-operatives. Pending the enactment of such a law, the provisions of Chapter 11 of the Co-operatives Act, 1981 (Act 91 of 1981) shall apply, notwithstanding its repeal in terms of this Act.
CHAPTER 11
ADMINISTRATION OF THIS ACT

The Registrar of co-operatives

91. (1) The Minister –
(a) must appoint an officer in the public service as the registrar of co-operatives, with the authority to exercise the powers and perform the functions conferred on the registrar by or in terms of this Act;
(b) may appoint as many persons as the Minister deems necessary as deputy registrars of co-operatives, to assist the registrar perform the functions of the registrar and to exercise such powers as have been delegated to the deputy; and
(c) may from time to time designate such other officers in the Department as may be necessary to assist the registrar.

(2) The registrar may, from time to time, delegate any power conferred upon the registrar by or under this Act, to any officer in the public service.

(3) A delegation under sub-section (2) does not prevent the exercise of the relevant power by the registrar himself or herself.

Seal and official stamp of registrar

92. (1) The Minister must determine a seal of office for the registrar, which must be placed on the registration certificate of co-operatives and in so far as it may be required in terms of any provision of this Act or otherwise as prescribed, on any other document issued by the registrar in terms of this Act.

(2) The placing of the seal of the office of the registrar will be judicially noticed in evidence.

Register of co-operatives to be kept by registrar

93. (1) The registrar must keep a register to be known as the register of co-operatives in the prescribed manner, in which particulars of all registered co-operatives are entered.

(2) The register of co-operatives or any extract or a copy of that register signed by the registrar is, on the face of it, proof of the particulars contained in the register.

(4) If the registrar has reason to believe the either of the circumstances set out in paragraph (b) and (c) of subsection (1) of section 83 prevail, the registrar may send such co-operative a written notice requiring it to provide a written statement, signed by at least two directors, indicating that the co-operative is still operational.
(5) If no statement as envisaged in subsection (3) is received within 30 days, the registrar may remove such co-operative from the register.

Publication upon de-registration

94. The registrar must publish the names of any co-operative that is deemed to be de-registered by virtue of paragraph (a) of section 33, or that is removed from the register in terms of section 93 in a publication generally available to the public in the area(s) where the majority of the members live.

Submission to registrar

95. Any documentation or information that a co-operative is required to submit to the registrar must be submitted in such form and manner as may from time to time be prescribed.

Inspection of documents

96. (1) A person who has paid the prescribed fee is entitled to examine any document a co-operative has sent to the registrar as required in terms of this Act, except a report relating to transactions between a co-operative and its members, and to make copies of it or take extracts from it.

(2) The registrar must on receipt of a written application accompanied by the prescribed fee, provide any person with a copy, extract, certified copy or certified extract of any document a co-operative has sent to the registrar as required in terms of this Act, except a report relating to transactions between a co-operative and its members.

Form of records kept may be prescribed

97. The registrar must keep records in such form, system or device as may from time to time be prescribed.

Investigation by the registrar

98. (1) The registrar may order an investigation or inspection into the business of a co-operative, if the registrar has reason to believe that the co-operative is not conducting its affairs in accordance with co-operative principles or contravening any provision of this Act.

(2) The registrar may make any recommendation the registrar considers appropriate following an investigation in terms of subsection (1), including –

(a) a recommendation to the co-operative concerned;

(b) a recommendation to the Minister in terms of section 83;

(c) a recommendation to the relevant prosecuting authority.
CHAPTER 12
THE CO-OPERATIVES ADVISORY BOARD

Establishment of co-operative advisory board

99. The Co-operatives Advisory Board (“Advisory Board”) is hereby established.

Functions of Advisory Board

100. (1) The functions of the Advisory Board are to advise the Minister generally, and to make recommendations, with regard to -

(a) co-operative development policy in the Republic;

(b) the application of any of the provisions of this Act or any other law on matters affecting co-operatives;

(c) the publication of any regulations in terms of this Act that may be necessary or desirable;

(d) the provision of support programmes targeting co-operatives that create employment, benefit disadvantaged groups or lead to greater participation in the economy by women and black people;

(e) the establishment of guidelines for co-operative audits;

(f) any matter referred to the Advisory Board by a co-operative or proposed co-operative or member of a co-operative, that relates to promoting the development of co-operatives; and

(g) any decision the Minister is required to take in terms of this Act, on the request of the Minister.

(2) Subject to the laws governing the public service, the Minister may provide the Advisory Board where necessary with office space and necessary support that the Minister considers necessary for the performance of its functions.

(3) The services of this Board will be on a voluntary basis and will be an ad hoc structure. The co-operative sector will be represented in the Small Business Advisory Council and the Black Economic Empowerment Advisory Council.

Members of Advisory Board

101. (1) The Minister must appoint as members of the Advisory Board at least five but no more than 10 persons, capable of representing the interests of co-operatives in the Republic.
(2) When appointing members in terms of subsection (1), the Minister shall have regard to the need for the Advisory Board-

(a) to have appropriate expertise;

(b) to represent different relevant constituencies including trade unions, business, co-operative organisations and academics.

(3) The Minister may nominate to serve on the Advisory Board, two additional members, one from the National Empowerment Fund and one from the Enterprise Development Agency, to advise the Minister on broad financial and non-financial support needs for the sector.

(4) The Minister must designate one of the members of the Board as chairperson.

Term of office and conditions of service of members of Advisory Board

102. (1) The Minister must determine:

(a) the period of existence of this ad hoc structure when fully represented in the other advisory council bodies;

(b) the term of office of members of the Advisory Board, which may not be more than three years;

(b) Members of the Advisory Board will not be remunerated for their services, but may be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Minister, with the concurrence of the Minister of Finance.

(c) any other conditions of appointment not provided for in this section.

(2) A person whose period of office has expired, is eligible for reappointment.

(3) Members of the Advisory Board may resign in writing.

(4) The Minister may remove a member of the Advisory Board from office for –

(a) serious misconduct;

(b) permanent incapacity; or

(c) engaging in any activity that may undermine the integrity of the Advisory Board.

Meetings of Advisory Board

103. (1) The Advisory Board may make rules in relation to the holding of, and procedure at, meetings of the Advisory Board, which rules are subject to the approval of the Minister.
(2) Meetings of the Advisory Board must be held at such time and place as may be determined by the chairperson of the Advisory Board in accordance with its rules.

Public Hearings

104. The Advisory Board may hold public hearings at which co-operatives or interested parties may make oral representations on any matter it is considering in terms of this Chapter.
CHAPTER 13
MISCELLANEOUS PROVISIONS

Offences

105. (1) Subject to the provisions of the Promotion of Access to Information Act, 2000, a person commits an offence by disclosing information obtained by that person in performing any function contemplated in this Act except –

(b) to the extent that it may be necessary for administering this Act;

(c) for the purposes of the administration of justice;

(d) at the request of the Minister, the registrar or any other person entitled to the information.

(2) Any person who knowingly makes or assists in making a report, return, notice or other document to be sent to the registrar or any other person as required by this Act that contains an untrue statement of a material fact or a material omission is guilty of an offence.

(3) Any person convicted of an offence under this Act is liable to imprisonment for a period not exceeding 24 months or to a fine or both such fine and such imprisonment.

Appeal to the Minister

106. (1) Any person may appeal to the Minister on any decision of the registrar.

(2) An appeal in terms of this section must be delivered to the Minister within 30 days of receipt of the registrar's decision.

Exclusion of insurance Act

107. The provisions of the Long-term Insurance Act, 1998 (Act No.52 of 1998) do not apply to co-operatives in respect of their activities in so far as they relate to a scheme or arrangement in terms of the constitution of the co-operative under which the amount of the benefits afforded by such scheme or arrangement is not guaranteed and the liability to the amount standing to the credit of a fund is specially maintained in respect of such claim.

Regulations

108. The Minister may make regulations with regard to any matter that is necessary or expedient to prescribe in order to give effect to the purpose and provisions of this Act to ensure the proper implementation of this Act, including -
(a) prescribing the fees or the manner of determining the fees that may be charged in respect of the filing, verification or copying of a document in terms of this Act, or in respect of any services rendered by the registrar;

(b) regulating the payment of any prescribed fees, including the time when and the manner in which the fees are to be paid, the additional fees that may be charged or payable for late payment of fees and the circumstances in which any fees previously paid may be refunded in whole or in part;

(c) prescribing criteria with respect to exemptions permitted by this Act;

(d) prescribing the standards of accounting by a co-operative to be followed for the purposes of Chapter 7;

(e) categorising specific forms and kinds of co-operatives;

(f) regulating the operation or administration of specific forms and kinds of co-operatives; and

(g) prescribing where required by this Act, a threshold based on a number of members or annual turnover of a co-operative. Different thresholds may be prescribed for different purposes.;

(h) regulations arising from, or consequential to, the transitional provisions set out in section 110.

Delegation by Minister of his or her powers under this Act

109. (1) The Minister may delegate any power conferred upon the Minister by or under this Act, to the registrar, or any officer in the Public Service, except the power to make regulations.

(2) A delegation under subsection (1) will not prevent the exercise of the relevant power by the Minister himself or herself.

Transitional Provisions

110. (1) Subject to this section and notwithstanding the repeal of the Co-operatives Act, 1981 (Act 91 of 1981), a co-operative registered in terms of that Act may continue to operate as if that Act had not been repealed, except that any reference in that Act to –

(a) the Registrar of Co-operatives must be read as a reference to the registrar appointed in terms of section 91 of this Act;

(b) the Minister of Agriculture must be read as a reference to the Minister of Trade and Industry in this Act.
(2) A co-operative referred to in subsection (1) must, within three years of this Act coming into effect, -

(a) amend its constitution to the extent necessary to comply with the requirements of this Act; and

(b) submit its constitution, to the registrar for registration in terms of section (8), read with the changes required by the context.

(3) On receipt of an application in terms of sub-section (2)(b) the registrar must –

(a) issue the co-operative with a certificate stating that its constitution complies with the provisions of this Act; or

(b) issue a directive to the co-operative specifying in what respect the co-operative’s constitution fails to comply with the provisions of this Act.

(4) A directive issued in terms of paragraph (b) of subsection (3), may stipulate a time within which the co-operative must comply with the directive.

(5) The registrar may require a co-operative that fails to comply with a directive issued in terms of subsection (3)(b), or which fails to comply with subsection (2), to -

(a) convert into another legal entity, in accordance with the provisions of Chapter 8; or

(b) if the co-operative does not convert, to be wound up in terms of the provisions of Chapter 9.

(6) This Act, rather than the Co-operatives Act, 1981 will apply in respect of a co-operative from the earlier of –

(a) the date on the certificate issued in terms of sub-section 3(a);

(b) three years after this Act comes into effect.

Repeal of laws and savings

111. (1) Subject to subsection (2) the laws specified in Schedule 2 are repealed by this Act.

(2) Anything which could have been done under the provisions of the laws repealed by subsection (1) and which could be done under the provisions of this Act, is deemed to have been done under this Act.

112. This Act is called the Co-operatives Act, 2004 and comes into operation on a date determined by the President by proclamation in the Gazette.
SCHEDULE 1

SPECIAL PROVISIONS RELATING TO CERTAIN KINDS OF CO-OPERATIVES

PART 1. HOUSING CO-OPERATIVES

Application of this schedule

1. (1) This Part applies to housing co-operatives which must -

(a) comply with the requirements of this Part;

(b) comply with all other relevant provisions of the Act.

Name

2. The name of a housing co-operative must include the following words:

(a) “housing co-operative”, or “housing co-op;” and

(b) “limited” or ltd.”.

Constitution of a Housing Co-operative

3. In addition to the other requirements of this Act, the constitution of a housing co-operative must include the following provisions -

(a) in respect of a primary housing co-operative –

(i) that its main objective is to provide housing for its members;

(ii) that, in accordance with a use agreement and subject to the provisions of the constitution, its members have the right to occupy housing units allocated to them by the co-operative, for as long as they remain members of the co-operative;

(iii) that the right of a member to occupy a housing unit owned by the co-operative terminates once membership is terminated, in accordance with the constitution and this Part;

(b) in respect of a secondary housing co-operative, that its main objective is to provide services to primary housing co-operatives, and to undertake housing developments on behalf of existing or proposed housing co-operatives;

(c) in respect of all housing co-operatives, provision must be made for the establishment of adequate reserves and the maintenance of adequate insurance to protect the co-operative from loss.

Use agreements
4  (1) A use agreement must be concluded between a primary housing co-operative and each of its members.

(2) A use agreement must set out the terms and conditions on which the member occupies a housing unit.

Termination of membership

5. Notwithstanding any other provisions of this Act, the membership of a member of a primary housing co-operative may be terminated without a special resolution of the members, in accordance with the following provisions:

(1) If a member is in arrears with payments due in terms of a use agreement and is served with a written notice to pay those arrears by a date specified in the notice, that member’s membership will terminate automatically upon failure to effect payment by the date so specified.

(2) A person whose membership is terminated in terms of sub-item (1) –

(a) will not have a right to appeal the termination;

(b) may only be re-admitted to membership if that person pays the arrears that were due at the date his or her membership was terminated, as well as any other payments due by virtue of that person’s continued occupancy after that date, if applicable.

(3) The directors may terminate the membership of a member in circumstances other than as set out in sub-item (1) if there is good and sufficient reason to do so, provided that –

(a) the directors give the member concerned reasonable notice that termination is contemplated for reasons stated in that notice; and

(b) the member is afforded the right to be heard before a decision is taken.

(4) A member whose membership is terminated in terms of sub-item (3) may appeal to a general meeting, within a time limit prescribed in the constitution.

(5) A decision of the directors to terminate the membership of a member is confirmed if the members, at a duly called general meeting, do not reverse the directors’ decision.

(6) If a general meeting is duly called to consider the appeal of a terminated member and a quorum of members is not present, the decision of the directors is deemed to have been confirmed.

(7) A member has the right to occupy the unit allocated to that member until the termination has been confirmed by the members, provided that member –

(a) lodged the appeal to the members within the time-limit set out in the constitution;
(b) is not in arrears with any payments.

(8) Once a person no longer has a right to occupy a housing unit, the co-operative may regain possession by consent or by obtaining an order of court from a Magistrate’s Court to evict that person.

(9) Nothing in this section precludes the board of directors of a primary co-operative from entering into an agreement with a secondary housing co-operative that the secondary housing co-operative will manage on behalf of the primary co-operative –

(a) the collection of payments from members;

(b) the service of any notice such as envisaged in sub-item (1) above; and

(c) the institution of any proceedings to evict a person.

Exclusion

6. The provisions of the Share Block Control Act, 1980 (Act 59 of 1980) shall not apply to a housing co-operative registered in terms of this Act.

PART 2. WORKER COOPERATIVES

Application of this Part

1. (1) This Part applies to worker co-operatives which must –

(a) comply with the requirements of this Part;

(b) comply with all other relevant provisions of the Act.

Name

2. The name of a worker co-operative must include the words –

(a) “worker co-operative” or “worker co-op”; and

(b) “limited” or “ltd”.

Requirements of constitution

3. (1) In addition to the other requirements of this Act, the constitution of a worker co-operative must provide that:

(a) membership is restricted to natural persons who work for the co-operative;

(b) the maximum amount a member is required to contribute during the first year of membership, whether by way of entrance fees, payments in respect of shares or in
respect of a member loan, may not exceed half the person’s expected annual remuneration;

(c) whether the co-operative is entitled to provide employment to persons who are not members, and if so a limitation on the number of persons that are non-members that may be employed, expressed as a percentage of the number of members, which percentage should not exceed twenty five percent;

(d) the period of probation applicable to an applicant for membership, which may not exceed a period of two years;

(e) the procedure for allocating, crediting or distributing any surplus earned, including a provision that not less than fifty percent of such surplus must be paid on the basis of the remuneration earned by the members from the co-operative or the labour contributed by the members to the co-operative;

(f) the manner in which the membership of a member may be terminated, in accordance with paragraph 4 below.

(2) The constitution of a worker co-operative may provide:

(a) how work is to be allocated between members;

(b) for laying off or suspending of members when there is a lack of work, and for the recall to work of members who have been laid off;

(c) a procedure for disciplining members.

Termination of membership

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

(2) Before deciding to terminate the membership of a member, the directors must give the member concerned –

(a) reasonable notice that termination is contemplated; and

(b) reasons for the proposed termination which, in the case of a member that has served a period of probation, must relate to the conduct or capacity of the member to carry out his duties, or to the operational requirements of the co-operative; and

(b) the right to attend and address the board of directors before a decision is taken.

(3) A member whose membership is terminated by the directors must have a right to appeal to a general meeting, which right must be exercised within the time limit prescribed in the constitution.
(4) A decision of the directors to terminate the membership of a member is confirmed on appeal, if the members, at a duly called general meeting, do not reverse the directors’ decision.

(5) If a general meeting is called to consider the appeal of a terminated member and a quorum of members is not present, the decision of the directors is deemed to have been confirmed.

Laid-off member

5. (1) A temporary lay-off of a member does not result in termination of that member’s membership.

(2) If a member is laid off and two years have elapsed since the date of the lay-off without the member having resumed employment with the co-operative, the board of directors may, in accordance with the constitution, terminate the membership of the member.

(3) The provisions of sub-items (2) to (6) of item 4 apply to the termination of a member’s membership in terms of this item.

Application of labour legislation

6. (1) A member of a workers’ co-operative is not an employee as defined in terms of the Labour Relations Act, 1995 (Act 66 of 1995) and the Basic Conditions of Employment Act, 75 of 1997.

(2) Notwithstanding subsection (1), for the purposes of the Acts listed in this sub-section, a workers’ co-operative is deemed to be the employer of its members who work for the co-operative -

(a) the Skills Development Act, 97 of 1998;

(b) the Skills Development Levies Act, 9 of 1999;

(c) the Occupational Health and Safety Act, 85 of 1993;

(d) the Compensation for Occupational Injuries and Diseases Act, 130 of 1993;

(e) the Unemployment Insurance Act, 63 of 2001; and

(f) the Unemployment Insurance Contributions Act, 4 of 2002.
PART 3. FINANCIAL SERVICES COOPERATIVES

Application of this part

1. (1) This part applies to financial services co-operatives in addition to the requirements of the Act.

(2) A financial services co-operative is a co-operative whose main objective is to provide financial services to its members, and includes a credit union, co-operative bank, savings and credit co-operative or other financial services.

Requirements of Constitution

2. (1) In addition to the other requirements of this Act, the constitution of a financial services co-operative must specify the precise nature of the financial service(s) the co-operative aims to provide to its members, which may include the following:

(a) to receive and deposit money from its members;

(b) to loan money to its members;

(c) to invest money on behalf of its members, subject to such limitations regarding the nature of such investments as may be provided for in the constitution or from time to time prescribed;

(d) to stand surety on behalf of its members to any person including a body corporate to the extent of the member’s deposit in the co-operative;

(e) to provide insurance cover to its members, whether of a long-term or short-term nature;

(f) to provide medical insurance cover to its members;

(g) to provide funeral services to its members, including funeral insurance;

(h) to render any other banking or financial service.

Banks Act

3. A financial services co-operative to which legislation governing co-operative banks applies is required to register in terms of the Banks Act, 1990 (Act 94 of 1990) notwithstanding its registration in terms of this Act.

Insurance Legislation

4. A financial services co-operative providing long-term or short-term insurance to its members is required to register in terms of the Long-term Insurance Act, 1998
Medical Schemes Act

5. A financial services co-operative providing a medical benefit to its members is required to register in terms of the Medical Schemes Act, 1998 (Act 131 of 1998).

Friendly Societies Act

6. A financial services co-operative providing funeral benefits to its members is not required to register in terms of the Friendly Societies Act, 1956 (Act 25 of 1956).

Establishment of a self-regulatory body for financial service co-operatives

7. (1) The Registrar may, in consultation with the Registrar of Banks, or Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as they case may be, direct that all co-operatives to whom this part applies, or any category of co-operative to whom this part applies, belong to a secondary co-operative that will act as a self-regulatory body, in compliance with any requirement for exemption from any provision of the Banks Act, 1990 (Act 94 of 1990), the Long-term Insurance Act, 1998 (Act 52 of 1998) or Short-term Insurance Act, 1998 (Act 53 of 1998) or the Medical Schemes Act (Act 131 of 1998).

(2) The Registrar has the power to de-register any co-operative to whom this part applies that refuses or fails, within a reasonable period of time, to become a member of a secondary co-operative that meets the requirement of the Registrar of Banks to be a self-regulatory body.

Regulations

8. The Minister may, in consultation with the Registrar of Banks, or the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as they case may be, make regulations regarding any matter relating to the operation or administration of financial services co-operatives, or any category of financial services co-operatives.

7. Definitions

For the purposes of this part –

“financial service” means any financial or banking service a co-operative may provide to its members, and without limiting the generality of this definition, includes the provision of long-term and short-term insurance, as envisaged in terms of Long-term Insurance Act, 1998 (Act 52 of 1998) or Short-term Insurance Act, 1998 (Act 53 of 1998) and the business of a medical scheme, as envisaged in terms of the Medical Schemes Act (Act 131 of 1998) and funeral services.
PART 4. AGRICULTURAL CO-OPERATIVES

Application of this part

1. (1) This Part applies to agricultural co-operatives which must -

(a) comply with the requirements of this Part;

(b) comply with all other relevant provisions of the Act.

Name

2. The name of an agricultural co-operative must include the following words:

(a) “agricultural co-operative”, or “agricultural co-op;” and

(b) “limited” or ltd.”

Objectives of an agricultural co-operative

3. (1) The main objectives of a primary agricultural co-operative must be one or more of the following -

(a) to undertake the marketing of any agricultural product or anything that is derived from an agricultural product;

(b) to acquire or acquire control over any agricultural product or anything derived from an agricultural product, for the purposes referred to in sub-paragraph (i), and dispose of it;

(c) to process an agricultural product or anything derived from it, manufacture it and dispose of the end product or of the agricultural product and anything derived from it;

(d) to hire, buy, produce, manufacture, let, sell or supply services or things required for purposes of farming;

(e) to hire, buy, acquire, produce, manufacture, let, sell or supply any article for consumption;

(f) to hire, establish, erect, use or make facilities available for use in connection with farming;

(g) to render services which are necessary and useful in farming;

(h) to render any other services, including services which relate to buying, selling and hiring of fixed agricultural property;

(i) to farm and dispose of farming products, process products or manufacture articles and dispose of them;
(j) to undertake insurance business which relates to farming risks for farmers.

(2) The main objectives of a secondary agricultural co-operative are to -

(a) provide services to primary co-operatives;

(b) engage in insurance business in respect of all risks;

(c) establish and administer pension funds, provident funds and medical aid schemes.

Security for production credit and loans

4. (1) A co-operative retains ownership in respect of any debt owed to it by a farmer or member if the debt arises from any transactions related to farming or agricultural purposes, including the provision of the following:

(a) fuel, spare parts, fertilisers, plants materials, agricultural remedies, packing materials, livestock, feeding stuff, fumigating, spraying or cleansing operations or repair services, electricity, or money advanced for purposes of production.

(2) If a co-operative gives assistance to a farmer or member-

(a) the products produced or acquired by the farmer or member are deemed to be pledged to the co-operative as if they were delivered to the co-operative, under the principles applicable in the law of pledge in the Republic;

(b) the farmer or member is prohibited from selling the products referred to at sub-paragraph (a) or using them as security to a third party without the co-operative's written consent.

(3) A farmer or member of the co-operative referred to in sub-section (2) will be required by a co-operative to indicate the following:

(a) the agricultural products deemed pledged;

(b) the land on which the products deemed pledged are being produced;

(c) the exact location of the livestock which is the subject of the deemed pledge;

(d) whether the products and livestock referred to in sub-sections (b) and (c) are pledged;

(e) names of other co-operatives in which the member or farmer is a member;

(f) the extent of the member’s debt to other co-operatives and other third parties.

(4) If products cannot be found on inspection by the co-operative or its representative, the farmer or member will be required to explain the whereabouts of the products.
(5) If a farmer or member’s products or livestock are pledged to more than one co-operative-

(a) the products or livestock will be deemed to be pledged to the co-operatives jointly to the extent of the indebtedness by the farmer or member;

(b) the co-operatives must share the proceeds of the products or livestock proportionate to their claims irrespective of which co-operative has possession of them;

(c) an affected co-operative must send notice to the other affected co-operatives disclosing its interest and proof of its claim.

(6) If a farmer or member requests finance for the purposes of farming operations from a third party-

(a) the third party and the farmer or member must ask a co-operative which has a deemed pledge over the farmer or member's products to waive its rights; and

(b) a co-operative may not refuse the request unless the estimated value of the products on the farm are insufficient to cover its debts and those of the third party.

(7) If a co-operative agrees to waive its rights in terms of sub-section (6), the third party may only sell in execution (pursuant to a court order) agricultural products or livestock with the written consent of the co-operative, and thereafter pay to the co-operative what is due to it.

(8) A co-operative may refuse to give permission for a sale in execution referred to in subsection (7) if it is of the view that the sale in execution will prejudice its claim for the debt owing and secured by the deemed pledge.

(9) If there is a dispute regarding the estimated value of products –

(a) the insurer of products must be requested to evaluate;

(b) the value given by the insurer will be final and binding to all parties as an expert;

(c) the request and valuation must be completed within seven (7) working days.

(10) The farmer or member may use the products referred to in this section for consumption with his workers and family within reason.

(11) Anyone who contravenes sub-items (1), (2) and (3) of this section is guilty of an offence.

7. Definitions

For the purposes of this part –

__________________________________________________________________
“agricultural product” means any article derived from farming operations and any product derived from the processing or manufacturing of that article, and declared to be an agricultural product from time to time by the Minister responsible for agriculture by notice in the Gazette.

SCHEDULE 2

LAWS REPEALED BY SECTION 111

EXPLANATORY MEMORANDUM TO CO-OPERATIVES BILL 2004

This memorandum sets out the rationale for the adoption of the attached Co-operatives Bill, 2004

1. Introduction

1.1 In 1966 the International Labour Organisation (ILO) adopted Recommendation number 127. This was the first international instrument to acknowledge the role of co-operatives in the economic and social development of developing countries.

1.2 The International Co-operative Alliance (ICA) has defined a co-operative as “an autonomous association of persons united voluntarily to meet their economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise”. It has also developed seven international principles of the cooperative movement, based on the co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity. These seven principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; and concern for the community.

1.3 In 2002 the ILO adopted the text of a recommendation whose objective is to promote the development of co-operatives in member countries, irrespective of their level of development. The recommendation adopts the ICA’s definition of a co-operative. It also advocates promoting and strengthening the identity of co-operatives on the basis co-operative values and the co-operative principles developed by the international co-operative movement.

1.4 The history of co-operatives in South Africa dates back to the early part of the last century. Co-operatives have been successfully utilised by sections of the population, particularly in rural areas, to empower themselves economically. The first national legislation for co-operatives was introduced in South Africa in 1922 (Act 28 of 1922).
Undoubtedly the fact that there was legislation providing for the registration of co-operatives, and that also gave co-operative juristic personality, contributed to their development and success. Since then entirely new legislation regulating co-operatives has been introduced on three occasions.

1.5 There has unfortunately also been a history of misuse, or abuse, of co-operatives. Well-intentioned people have established co-operatives that have failed, because insufficient attention was given to ensuring their economic viability, or for other reasons. Others have established bodies that are co-operatives in name only, but that do not in fact subscribe to co-operative principles. There are recent allegations of such co-operatives being established in order to win government contracts, or quotas allocated by government, on the basis that their members comprise historically disadvantaged persons, whereas in reality such persons have no meaningful say in their running.

1.6 The government is committed to support the development of co-operatives, in terms of the agreement arrived at the Growth and Development Summit in 2003. However before government is able to target co-operatives for support measures, it needs to be sure that the co-operatives concerned are genuine co-operatives that in fact subscribe to co-operative principles.

1.7 The current Co-operatives Act, 1981 (Act 91 of 1981) has been amended on at least eight occasions since it was adopted. It is not considered a suitable vehicle for development of co-operatives in the present era, for a variety of reasons. These are, amongst others:

1.7.1 The definition of a co-operative is not adequate. Co-operatives registered in terms of the current Act are also not explicitly required to conform with co-operative principles;

1.7.2 The current Act presupposes that the state play a highly interventionist or paternalistic role in relation to co-operatives;
1.7.3 The focus of the current Act is primarily on agricultural co-operatives, with all other co-operatives categorised as trading co-operatives;

1.7.4 The requirements to register a co-operative are relatively onerous;

1.7.5 The provisions that protect the interests of the members of the co-operative, particularly vis a vis the board of directors, are weakly articulated; and

1.7.6 The language of the current Act is complex and difficult to understand, and is considered inaccessible to the average member.

1.8 The need for a new Act has long been apparent. The process whereby the current Bill was drafted commenced with the publication of a draft Bill in 2000 for comment. This draft Bill was prepared by the National Department of Agriculture, where the office of the registrar of co-operatives at that time was located. After an extensive process of comment a further draft was prepared by the Department of Agriculture. However at this juncture it was decided that the administration of co-operatives should be transferred to the Department of Trade and Industry (DTI). After a comparative study conducted under the auspices of the Department of Trade and Industry, in collaboration with the ILO, a further revised draft was prepared and published for comment in November 2003.

1.9 In the interim, the Department of Trade and Industry commenced a participatory process to formulate a comprehensive policy on co-operative development. This policy recognises that a section of the co-operative movement comprises established co-operatives (comprising for the most part co-operatives that benefited from the support measures provided by the previous regime). However the focus of this policy is on the emergent co-operatives established in the 1990s and subsequently, and on new forms of co-operation.

1.10 The current draft Bill has been revised following comments received from a wide range of organisations, interest groups and individuals.

1.11 The various chapters of the Co-operatives Bill are discussed below.
2. Definitions, Applications and Purpose of the Act

2.1 Chapter 1 deals with the definitions, applications and purpose of the legislation.

2.2 Section 1 contains a number of important definitions. A person is defined as a natural or juristic person. Accordingly a juristic person may be a member of a co-operative. The definition of a co-operative conforms with the internationally accepted definition of the ICA, also since adopted by the ILO. In addition, there are certain specific kinds of co-operatives defined, such as agricultural co-operatives, co-operative burial societies, financial services co-operatives, housing co-operatives, marketing and supply co-operatives and worker co-operatives. The section also identifies different forms of co-operatives, namely primary, secondary and tertiary co-operatives. Section 1 also defines co-operative principles as the internationally accepted principles of co-operation.

2.3 The purposes of the legislation are set out in section 2. These include to establish a legislative framework that will preserve the co-operative as a distinct legal entity, and to facilitate the provision of support programmes for co-operatives. The former purpose is intended to underscore, in particular, the distinction between the co-operative form of enterprise, on the one hand, and the dominant form of enterprise, being the company or close corporation, on the other.

2.4 Section 3 of the Act states that a co-operative is deemed to comply with co-operative principles if it meets the requirements of this section. In this regard, it should be borne in mind that the internationally accepted principles, being principles, are capable of differing interpretations in a differing national context, and are also not fixed. There is therefore a need to give the principles specific meaning in the South African context. The requirements of this section include the principle that in a primary co-operative each member has only one vote (whereas the current Act permits departures from this principle). The section also states that the return on member capital is limited, and that the surplus resulting from a co-operative’s operation is only used for certain specified purposes.
2.5 Section 4 clarifies the distinction between forms and kinds of co-operatives. The listing of different kinds of co-operatives is not intended to be exhaustive, since it is envisaged that in the evolution of a dynamic co-operative movement new kinds of co-operatives will emerge. It is therefore not desirable to prescribe what kinds of co-operatives may be formed.

2.6 In section 5, reference is made to Schedule 1. This schedule specifies in greater detail provisions with which certain kinds of co-operatives are expected to comply. The reason such provisions are appended in the schedule is to facilitate their amendment, as the co-operative movement evolves. For the same reason it is also envisaged that it may be necessary to supplement the schedules, by making provision for other kinds of co-operative not currently catered for.

2.7 Section 5 also provides that financial service co-operatives that are required to register with the Registrar of Banks are only obliged to comply with chapters 1 and 2 of the Act. This is to make regulatory compliance less onerous for such co-operatives while at the same time ensuring that they are in fact co-operatives.

2.8 A co-operative apex organisation is a body representing the interests of the whole or a section of the co-operative movement. Section 5 provides that a co-operative apex organisation may be registered as a tertiary co-operative. However it is not a requirement that a co-operative apex organisation is registered in terms of co-operative legislation. In many other jurisdictions such bodies are voluntary associations.

3. Registration, Constitution and Power of the Co-operative

3.1 In Part 1 of chapter 2, the requirements to register a co-operative are set out. In comparison with the current Act, the requirements are considerably simpler. The most important requirement is that a co-operative must have a constitution that complies with the Act.

3.2 The minimum number of persons required to register a co-operative is set out in section 6. A minimum of 5 persons may form a primary co-operative. This is a lower
number than in some other jurisdictions. It is also a lower number than is required in the case of a trading co-operative registered in terms of the current Act. On the other hand it is possible for certain kinds of co-operatives to be economically viable with five members. There is no reason in principle why those who elect to operate along co-operative lines should be prevented from doing so only by virtue of their number. A secondary co-operative must comprise two or more primary co-operatives. A tertiary co-operative may comprise two or more secondary co-operatives.

3.3 Section 11 imposes certain restrictions on the names a co-operative may adopt, which are consistent with legislation affecting other corporate entities. Section 13 makes it unlawful for a body that is not registered as such to call itself a co-operative. The latter provision is intended to prevent the abuse of the co-operative form by persons or organisations that do not constitute a bona fide co-operative.

3.4 In Part 2 of chapter 2 the requirements of a co-operative’s constitution are set out in some detail. Provided that it meets the minimum requirements set out in the legislation, a co-operative is given considerable latitude as to the contents of its constitution. This latitude is necessary because of the variety of different kinds and sizes of co-operative which may be formed. It is also envisaged that there will be a model constitution prescribed which groups wishing to form co-operatives may adopt.

3.5 Some co-operatives only require that members pay a subscription, and some require that their members hold shares in the co-operative. Accordingly, there are requirements that are compulsory for all co-operatives (see section 15). There are also requirements that are compulsory only for a co-operative that requires its members to hold shares (see section 16). There are also different requirements for secondary and tertiary co-operatives (see section 17).

3.6 The legislation distinguishes between the provisions in a co-operative’s constitution which are compulsory and provisions which are optional. The optional provisions are set out in section 18, and include provisions such as voting by proxy.
3.7 Section 22 provides that a co-operative may do all things necessary to carry out its objectives, subject to any limitations imposed in its constitution, or any other statutory limitations.

3.8 Section 24 prescribes certain records, which a co-operative is obliged to keep, both in order to safeguard the interests of members as well as of the general public.

3.9 The issue of the members’ right of access to information is dealt with in Section 25. While managing a commercial enterprise, the directors of a co-operative are also required to operate according to co-operative principles. It is therefore necessary for members to have certain rights of access and even to have access to the proceedings of the board of directors. However the Act also introduces certain safeguards. It also envisages that larger co-operatives may introduce the structure known as a supervisory board. This is a board elected by the members to exercise supervision over the board of directors, and to exercise a watchdog function.

4. Membership of Co-operatives

4.1 Chapter 3 concerns the requirements for membership of a co-operative. A co-operative must set out in its constitution the conditions on which members may join a co-operative as well as the rights and obligations of members (see sections 26 and 27). The liability of members is circumscribed in accordance with section 28.

4.2 Section 29 deals with the conditions on which a member may withdraw his or her membership. Because a co-operative is funded by member contributions it may be necessary to place certain limitations on the circumstances in which a member is entitled to a refund of shares acquired in the co-operative. Accordingly, this section provides for the deferment of such a repayment for a period not exceeding two years after the effective date of withdrawal.

4.3 Section 30 provides for the circumstances in which membership of a co-operative can be transferred. As a membership-based organisation, a transfer of membership is only possible if the person to whom membership is to be transferred is eligible to become a member of the co-operative concerned, and is accepted as a member.
5. General meetings

5.1 Chapter 4 regulates how general meetings are held. As a membership-based organisation, the highest decision-making structure in a co-operative is a general meeting of members. Section 34 provides that the board of directors is accountable to the general meeting. Further, where a supervisory board is elected, the board of directors is accountable to such board.

5.2 Section 35 prescribes that the manner in which general meetings are convened must be regulated in terms of the constitution of a co-operative. It also provides for the attendance of meetings by means of telephonic, electronic or other means of communication.

6. Management of Co-operatives

6.1 Matters concerning the management of co-operatives are provided for in chapter 5. A co-operative is managed by a board of directors elected at an annual general meeting. Section 49 provides how meetings of the board of directors should be held, and how decisions should be taken. Section 52 and 53 deal with the liability of the directors in certain circumstances, and the question of disclosure of an interest.

6.2 A co-operative is obliged to notify the Registrar of Co-operatives of the directors elected, and of any change in the board of directors. This is provided for in section 55.

7. Capital Structure

7.1 The capital of a co-operative is contributed by its members, in the form of entrance fees, membership fees or subscriptions, payment for membership shares or additional shares, member loans and/or other funds as provided for in chapter 6.

7.2 Section 57 provides that where a co-operative requires shares to be issued to its members as a condition of membership, each member must at all times hold the minimum number of membership shares prescribed in the constitution. Where a co-
operative issues additional shares to members, these shares must be of the same class and ranking.

7.3 If a co-operative provides for shares to be issued to members, it is required to issue a share certificate to the members or, on request, a statement to the member indicating the particulars regarding the shares held.

7.4 Co-operatives that provide services to the members commonly credit or pay to members a portion of any surplus generated, calculated in accordance with the business done by the members concerned with the co-operative in a given financial year. This calculation is referred to as the patronage proportion. The payment to members is commonly referred to as the patronage return. Section 60 regulates the manner in which the patronage proportion is calculated, and in which the patronage return may be paid.

8. Co-operative Audit

8.1 Section 62 provides that the affairs of the co-operative must be audited annually. However the costs of an annual audit by a registered auditor (see the definition of auditor in section 1) may be beyond the means of many co-operatives. Accordingly, a co-operative which is not able to afford the costs of an annual audit may apply for an exemption from the Registrar of Co-operatives.

8.2 A co-operative audit as envisaged by this section is not merely an audit of the financial records of the co-operative, but also an audit to establish whether a co-operative is being managed in accordance with co-operative principles.

8.3 Section 70 of the Act deals with the circumstances in which an exemption from the audit requirements from this chapter may be granted. A co-operative that is exempted, may either be required to be audited for a period of longer than one year but not exceeding three years, or by a suitably qualified person other than an auditor.
9. Amalgamations, Division, Conversion and Transfer

9.1 Chapter 8 regulates the conditions under which more than one co-operative may amalgamate with one another, or a single co-operative may split into more than one co-operative, or a co-operative may convert into another form of entity, such as a company or close corporation, or where the transfer of assets of one co-operative to another is proposed.

9.2 Section 79 provides that adequate notice of any such amalgamation or division or conversion or transfer must be given to the creditors of the co-operative(s) concerned.

10. Winding Up or Deregistration of Co-operatives

10.1 The circumstances in which a co-operative may be wound up are regulated in terms of chapter 9. A co-operative may either be wound up voluntarily by special resolution of its members or ordered to do so by a Court or the Minister.

10.2 The chapter envisages that pending the introduction of a law of general application regulating the winding up of all legal persons, including co-operatives, that the provisions of chapter 10 of the current Act shall still apply as if they have not been repealed.

10.3 Section 83 provides that a co-operative may be wound up or deregistered by the Minister in certain circumstances. The object of this section is to avoid unnecessary and costly litigation, where a decision to wind-up a co-operative may be appropriately made administratively.

11. Judicial Management

11.1 Chapter 10 provides that a co-operative may be placed under judicial management in essentially the same circumstances in which it may be placed under judicial management in terms of the current Act.
11.2 It is proposed in section 90 that the provisions of the current Act remain in operation until such time as a law of general application referred to in 10.2 above is enacted.

12. Administration of the Act

12.1 Chapter 11 provides for matters relating to the administration of the Act by the Registrar of Co-operatives. It specifies that the Registrar must maintain a register of co-operatives (see section 93) and that the Registrar may in certain circumstances investigate the affairs of a co-operative (see section 98).

13. Co-operatives Advisory Board

13.1 Chapter 12 provides for a new structure to be established known as the co-operatives advisory board, which will advise the Minister regarding co-operative development policy and other matters relating to the development of co-operatives.

13.2 The necessity for such a structure relates to the fact that the co-operatives that are the object of government’s development policy are at an emergent phase, and it is envisaged the co-operative movement will be of a dynamic character. In the event that the co-operative movement becomes established, it may be that the necessity for such a structure will disappear.

13.3 The members of the advisory board are appointed by the Minister and must be persons capable of representing the interests of co-operatives.


14.1 Chapter 13 covers miscellaneous provisions relating to the legislation, including the power to the Minister to make regulations regarding any matter detailed in terms of section 108.

14.2 Section 110 deals with transitional provisions applicable to co-operatives registered in terms of the current Act. A co-operative registered in terms of the current
Act must, within three years of this Act coming into effect, amend its constitution to the extent necessary to comply with the new legislation. The object of this provision is to give established co-operatives a reasonable period of time within which to comply with the provisions of the legislation, to the extent that they currently do not do so.

15. Schedules

15.1 The schedules to the Act deal with certain kinds of co-operatives for which special rules are necessary.

15.2 The kinds of co-operatives identified in terms of the schedules namely housing co-operatives, financial co-operatives, worker co-operatives and agricultural co-operatives, are either co-operatives that of their nature require specific provisions, or co-operatives that may be targeted for specific support measures, or both. As already indicated, it is envisaged that it may be necessary to supplement these schedules by providing for additional kinds of co-operatives.

15.3 Part 1 of Schedule 1 deals with housing co-operative. The necessity to have a specific schedule regulating housing co-operatives arises, amongst other things, because it is necessary to have certainty regarding questions concerning the security of tenure of the members of a housing co-operative.

15.4 Similarly, it is necessary to have certainty regarding the applicability of labour legislation in the case of a worker co-operative. Part 2 of Schedule 1 makes it clear that a member of a workers’ co-operative is not an employee for the purposes of labour legislation, although for certain purposes a member may be deemed to be an employee. At the same time Part 2 makes provision that the workers co-operative is not misused by persons wishing to evade labour legislation.

15.5 Part 3 applies to financial services co-operatives. The necessity for this part arises because of the range of other legislative provisions that may apply, or do apply, to such a co-operative.
15.6 Part 4 applies to agricultural co-operatives. As indicated above, agricultural co-operatives have been the primary beneficiaries of support measures granted by the previous regime, and most established co-operatives are agricultural co-operatives. Nevertheless there is justification for identifying agricultural co-operatives as a specific category. The schedule essentially retains the status quo in the current Act regarding security for agricultural products delivered to the co-operative by its members.
A Co-operative Development Policy
for South Africa

January 2004

“The Government will … place more emphasis on the development of a co-operative movement to combine the financial, labour and other resources among the masses of the people, rebuild our communities and engage the people in their own development through sustainable economic activity.”

*Thabo Mbeki, 25/06/1999*

“The United Nations recognizes the contribution co-operatives can make to achieving the Millennium goals of full and productive employment, eradicating poverty, enhancing social integration and promoting the advancement of women. For the co-operative movement to fulfil this potential, Governments need to develop and sustain a supportive environment that allows autonomous co-operatives to grow.

The values of co-operation – equity, solidarity, self-help and mutual responsibility – are cornerstones of our shared endeavour to build a fairer world.

*Kofi Annan, 29/06/2001*
1. **Vision statement**

One of the great challenges facing the South African economy is to increase the number and variety of viable and sustainable economic enterprises. We have a particular history that has brought about many interruptions in the development of enterprises. This has been particularly associated with our racial history and the destruction of wealth in black hands in both the rural and urban areas. This has adverse effects on income distribution, entrepreneurship and employment creation.

Accordingly it is central to government’s economic policy that it promotes the development of economic enterprises and diversifies the ownership, size and geographic location of those enterprises. This policy statement deals with an important variant of economic enterprise, namely co-operatives. This policy statement should be read in conjunction with those on Small, Medium and Micro-enterprises and the Strategy on Broad Based Black Economic Empowerment.

A viable, dynamic, autonomous, self-reliant and self-sustaining co-operative movement can play a major role in the economic, social and cultural development of South Africa, through effective and efficient services extended by co-operative enterprises to their members. By doing so, co-operatives contribute to the creation of jobs, income generation, resources mobilization, and broad-based economic empowerment, thereby enhancing sustainable human development in South Africa.

2. **Participatory co-operative development policy formulation**

This policy is South Africa’s first explicit co-operative development policy. This document was drafted shortly after the adoption of the new ILO Recommendation No. 193, which was adopted by the General Conference of the International Labour Organization on 20 June 2002, with the delegation of the Republic of South Africa being one of the major driving forces in the process of formulating the new Labour Standard.
The policy document is the result of an intense consultation process, which was initiated in 1997 with the establishment of a Co-operative Policy Task Team, the process involved the main stakeholders in South Africa’s co-operative development at the time. The responsibility for co-operative development was at that time with the National Department of Agriculture. Among others, the Task Team organized altogether nine regional workshops and one national co-operative conference to discuss the main policy issues.

This was followed by establishment of a task force by the co-operative development unit of the Department for Trade and Industry (the dti) that initially dealt with the process of transferring the responsibility for co-operative development from the National Department of Agriculture (NDA) to the dti. However, the participatory development of South Africa’s first Co-operative Development Policy document was later continued. The Government will continue to consult co-operative organizations as well as other stakeholders concerned, in the formulation and revision of legislation, policies and regulations applicable to co-operative development.

3. Objectives of having an explicit co-operative development policy

The Government of South Africa believes that a clear, comprehensive, and widely agreed co-operative development policy:

- Forms the basis for the new Co-operative Act
- Defines genuine co-operatives and co-operatives groups for targeted support purposes;
- Points to specific support measures and programmes to support the development of a co-operative movement by all stakeholders;
- Serves as a reference for co-operative members by explaining why and how the Government supports co-operatives and by determining the relationship between the state, co-operatives, civil society and the private sector;
- Establishes a code of conduct for co-operative promoters by stating the basic principles to be respected; and
Facilitates the horizontal and vertical integration of co-operatives from different sectors by clarifying basic policy issues relevant to all sectors.

4. **Scope of the co-operative development policy**

This Government co-operative development policy applies to *all types and forms* of co-operatives, in all sectors of the economy. Hence, it also applies to so-called established co-operatives but the emphasis is on supporting emerging co-operative enterprises and so-called existing informal co-operative groups.

5. **Definitions, co-operative values and core principles of co-operation**

In its support to co-operative development, the Government subscribes to and upholds the principles upon which co-operatives were founded. The Government will review its co-operative development policy in accordance with international developments and the demands of an ever changing economic, social and political environment. The Government is committed to the universally accepted definition, principles and values central to co-operatives. They are as follows:

(a) **Definitions**

A *(primary) co-operative* is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

A secondary co-operative is a co-operative formed by two or more primary co-operatives to provide services to its members. The purpose of a *secondary co-operative* is to help primary enterprises serve their members more effectively and more comprehensively. They provide services such as auditing, training, bookkeeping and advise. A secondary co-operative is formed by two or more primary co-operatives.
Primary and/or secondary co-operatives may form *apex organizations* of a specific sector or regional area. Several apex organizations may in turn form a *national federation*.

Two characteristics distinguish co-operatives from other types of enterprises: they are *associations of people* who agree to be the owners, the makers of democratic decisions and users of their joint enterprise; their main purpose as an economic unit is to *promote their members* by rendering services, rather than to maximize profits.

In general, co-operatives are either *user-owned co-operatives* or *worker-owned co-operatives*: Worker-owned co-operatives are founded to meet the employment needs of their members through a collectively owned and democratically controlled enterprise. They may be formed through/by:
a conversion of a conventional private enterprise into a worker-owned co-operatives including takeovers and rescues of enterprises facing financial troubles or closure;
unemployed persons through incubation; and
opportunities coming through the restructuring of state owned assets and public services;
User-owned co-operatives are established by members that have their own enterprise and/or household. The members use the jointly owned co-operative enterprise to obtain goods and/or services required for their enterprises and/or household. Examples are agricultural marketing and supply co-operatives, savings and credit co-operatives, housing co-operatives, and consumer co-operatives.
In order to enable the people of South Africa to fully exploit their self-help potential for their own benefit and that of the nation, the Government also recognizes informal groups operating according to the co-operative model, referred to as *co-operative groups*. They shall enjoy legal recognition if registered as co-operative groups, however they may convert into fully-fledged co-operatives if members decide to do so. The new Co-operative Act shall modify certain provisions concerning registration, internal management, accounting and auditing to assist small co-operative groups to comply with the Act.
Co-operative enterprises are only one form of organized self-help. This particular form shall not be imposed on other types of grassroots organizations.

- The difference between formal co-operatives, co-operative-type organizations and co-operative groups on the one hand, as well as NGOs, community-based organizations (CBOs) and non-economic associations on the other, is that the former consists of groups of people with mainly economic goals, whereas the main difference between co-operatives and NGOs/CBOs lies with the joint ownership and democratic control of enterprise.

(b) **Co-operative values**

Co-operatives are based on the values of self-help, self-reliance, self-responsibility, democracy, equality, equity and solidarity.

In the tradition of their founders, co-operative members believe in ethical values of trust, honesty, openness, social responsibility and caring for others.

(c) **Core principles of co-operation**

The co-operative principles are the universally accepted guidelines by which co-operatives put their values into practice. They are as follows:

- **Voluntary and open membership**

  Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

- **Democratic member control**

  Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Women and men serving as elected representatives are accountable to the membership. In primary co-operatives, members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.
Member economic participation
Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative.
Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

Autonomy and independence
Co-operatives are autonomous self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

Education, training and information
Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of co-operation.

Co-operation among co-operatives
Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

Concern for community
Co-operatives work for the sustainable development of their communities through policies approved by their members.
6. **Sectors of co-operative operation**

The Government recognizes that co-operatives may operate in *all sectors* of the economy. All sectoral strategies should include proposals for strengthening co-operatives in the sector.

The Government is committed to ensuring that co-operatives have a stake in the overall economy by facilitating their expansion into areas in which they have never existed. Such expansions promote greater participation in economic activity, which constitutes a prerequisite for broad-based economic empowerment and greater equity.

7. **Potential contributions of co-operatives to development**

The Government acknowledges that a genuine, autonomous and economically viable co-operative movement and its membership have a vast development potential to:

(a) Create and develop income-generating activities and sustainable decent employment;

(b) Develop human resources capacities and knowledge of the values, advantages and benefits of the co-operative movement through education and training;

(c) Develop their business potential, including entrepreneurial and managerial capacities;

(d) Strengthen their competitiveness as well as gain access to markets and to institutional finance;

(e) Increase savings and investment;

(f) Improve social and economic well-being, taking into account the need to eliminate all forms of discrimination;

(g) Contribute to sustainable human development;

(h) Establish and expand a viable and dynamic distinctive sector of the economy which responds to the social and economic needs of the community; and
(i) Enhance broad-based economic empowerment, thereby assisting the Government in achieving the objectives of its micro-economic reform strategy, the IMS and the BEE.

The Government recognizes that the main purpose of co-operatives is to render services to members. Co-operatives contribute to the development of the nation or communities through the improvement of the socio-economic situation of their members.

Whereas the development potential of co-operatives is in principle not different from the one of other types of enterprises, the double nature of co-operatives (members are at the same time owners and users of their co-operatives), makes them more appropriate for specific population groups, geographical areas, sectors or situations. Hence, co-operatives possess an inherent special potential for socio-economic development.

8. Co-operatives and the “informal economy”

The Government acknowledges the existence, relevance and value of less formal, traditional co-operative-type organizations. It also acknowledges the important role of co-operative development in transforming the “informal economy” into legally protected work, fully integrated into mainstream economic life, however, without destroying their identity.

Government will facilitate the establishment of co-operative networks of individual entrepreneurs or micro-enterprises through which certain economic functions are organized (e.g. net control stations operated jointly by independent taxi drivers organized as a co-operative).

Co-operative model can enhance the small business competitiveness nationally and globally in accessing opportunities through its comparative advantage of economies of scale, synergies, increased bargaining power, joint innovation, member involvement, and stability.
9. **Co-operatives and specific targeted groups**

The Government acknowledges the specific potential of co-operatives, as enterprises and organizations inspired by solidarity, to respond to members’ needs and ensure greater black participation in the mainstream economy, especially persons in rural areas, women, persons with disability and youth. Government shall continuously engage with stakeholders in the youth and women sectors to design appropriate support programmes.

The Government shall also consider introducing support measures for the activities of co-operatives that meet specific social and public policy outcomes, such as employment creation and the development of activities benefiting disadvantaged groups or geographical areas.

Special consideration in co-operative promotion shall be given to increase the participation of women in the co-operative movement at all levels, particularly at management and leadership level. Coupled with this, all available and future support programmes shall place particular emphasis upon emerging black co-operative enterprises.

10. **The Government’s role and support to co-operative development**

10.1 The Government’s approach to co-operative development is one of creating a favourable legal, economic, administrative and institutional environment by, among others:

(a) Giving a clear, legal definition of a genuine co-operative enterprise;

(b) Reforming the co-operatives administration;

(c) Ensuring that the legal framework does not hinder the development and growth of co-operative enterprises;

(d) Making a clear distinction between technical support services to co-operatives and the regulatory functions of the state;
(e) Facilitating the formation of co-operatives with the objective of encouraging instead of replacing self-help;

(f) Allowing co-operatives to set up their own support service institutions; and

(g) Coordinating and orienting external assistance to co-operatives and self-help groups.

10.2 Co-operatives are not Government organizations. But the government will intervene through designing supply and demand sides support measures to grow this sector and utilizing the existing institutions and programmes available. These include efforts in ensuring that co-operatives access markets, government and private sector contracts. The support by government to grow the sector includes:

- Establishing a Co-operatives Development Fund for technical assistance and capacity-building
- Design incentives for Co-operatives Enterprise Development
- Alignment by all cotii programmes and other dti programmes to support co-operatives especially financial and non-financial support
- Avail access to Infrastructure

Furthermore, co-operatives will be assisted to access expanded public works programmes, Public Investment Initiative contracts, forestry and construction projects, preferential procurement, state and private procurements, business rescues of failing enterprises through worker buy-outs, export markets, other government related programmes opportunities and clear support programmes in key sector charters to benefit co-operatives enterprises.

11. Co-operative development administration

The dti shall be the Government department at the national level with the overall responsibility for legislative framework, policy and strategy, coordination as well as administration in consultation with key national and provincial departments including other stakeholders.
A fully-fledged *Co-operative Enterprise Development Unit* shall be established, and the Registrar of Co-operatives’ office shall be located in the dti’s *Corporate and Intellectual Property Registration Office – CIPRO*.

The functions of registration and de-registration of co-operatives shall be *decentralized* to provinces in order facilitate rapid, simple, affordable and efficient procedure. The function location provincially is still being discussed.

12. **Government functions through the dti**

The role of the Co-operative Enterprise Development Unit is threefold and includes the areas of policy, legislation, coordination, promotion and implementation as follows:

*Co-operative Legislative Framework, Policy and Strategy*: being the focal point for reviewing policies and strategies, and addressing barriers to co-operative development in partnership with stakeholders; ensuring that matters related to co-operative development are treated on the basis of wide consultations with the Government’s partners.

*Coordination*: coordination of the various Government institutions dealing with co-operative enterprises; coordination of donor initiatives in the area of co-operative development.

*Education and Training*: designing uniform training materials for the co-operative sector involving relevant government programmes.

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

The main roles of the office of the Registrar include the *registration* and *de-registration* of co-operatives in as rapid, simple, affordable and efficient a manner as possible, as well as the *legal supervision* of the compliance of laws and regulations by co-operatives.
13. **Coordination and consultation mechanisms**

Within the Government structure, the Department for Trade and Industry shall establish an interdepartmental committee responsible for coordinating the various Government institutions concerned with co-operative development, and ensuring that there is effective coordination of various government institutions concerned with co-operatives development.

The Government will establish a *Co-operative Advisory Board*, which will be a representative body for co-operatives. The Co-operative Advisory Board will be a statutory agency that advises the Minister on the following:

- Implementation of the new policy on co-operative development, and propose modifications if needed;
- Matters related to co-operative development;
- Proposed amendments to the provisions of the Co-operative Act, both current and future, and of any other relevant law; and the impact of the new legislation on co-operatives;
- Method to monitor and influence the coordination and alignment of public and private sector initiatives related to the promotion of co-operative development;
- Proposed standards and guidelines for support services that would be performed by a variety of agents, but using public funds;
- Skills development in the co-operative sector;
- Steps to be taken to create access for co-operative enterprises into value chains; and
- Constraints affecting the viability of the co-op enterprise sector.

The Co-operative advisory Board will advocate on issues of importance to the co-op sector and advise the government on key relevant issues. It will consider the impacts of co-op enterprise development, in relation to equity, growth and employment and will comment on the effectiveness of the co-op development programmes. The *dti* will provide executive support (secretariat) to the Co-operative Advisory Board.
14. **Vertical and horizontal integration of co-operative organizations**

The Government encourages co-operatives to create geographic and sectoral apex structures that operate according to co-operative model. The Government also encourages co-operation between established and emerging co-operatives in South Africa; however, co-operation among co-operatives from different origins shall be voluntary. In addition, the national apex organization/s shall represent the movement at the national level, as well as in the International Co-operative Alliance (ICA) and in other international co-operative bodies.

15. **Responsiveness to new developments**

The Government is aware of international trends in co-operative development and will keep abreast of the trends to the extent possible whilst having regard to any particular local circumstances that must be taken into account from time to time. To this end, the Government will, in consultation with all stakeholders, continually review its policy on co-operative development.

Equally, the Government encourages the co-operative movement to develop strategies that will enable its members to exploit and benefit from opportunities that may exist regionally and internationally.

16. **Links of the co-operative development policy to other Government policies and programmes**

The promotion of co-operatives is not to be viewed in isolation from wider national development policies and programmes. The Government is conscious of the link between co-operative development policy and national development plans into which co-operative development policy should be integrated. The promotion of co-operatives is considered one of the aspects of national economic and social development. **The dti** will facilitate and support other Government departments’ and agencies’ endeavour to support co-operatives development.
**Broad-based black economic empowerment strategy**

Promoting co-operative enterprises is a key programme component of the Government’s Broad-Based Black Economic Empowerment (BEE) strategy that seeks to address the imbalances of the past and equitably transfer the ownership and control of economic resources to the majority of its citizens. The BEE strategy will, among other things, encourage and support efforts by co-operatives and other forms of enterprise that support broad-based economic empowerment (Broad-based empowerment models-ESOPs, community trusts/groups, worker co-operatives, stokvels, burial societies, etc.) to assert ownership and control of economic activities in new and existing enterprises and break into new sectors of economic activity. Government is committed to work with the co-operative movement to ensure that an increasing portion of the ownership and control of the economic activities is vested amongst co-operative enterprises.

**Small and medium enterprise strategy**

All Government support programmes for small and medium enterprises as detailed in the Integrated Small Business Strategy shall also be extended to co-operative enterprises, taking into account the specific characteristics of and differences between such enterprises.

**Integrated Manufacturing Strategy (IMS)**

The above strategy identifies co-operative enterprises of all types and forms, particularly workers’ co-operatives and consumer co-operatives, as types of enterprises that Government would promote. Government will work together with co-operative enterprises in the identified growth sectors to ensure adequate enterprise representation and development of broad-based economic empowerment.
Local economic development and integrated sustainable rural development

Government recognises that co-operatives play an important role in the growth of the local economy. Local government has an important role to play in supporting co-operative development and providing an environment at the grassroots in which co-operative enterprises can flourish through existing programmes such as Integrated Sustainable Rural Development Strategy (ISRDS) and LED Strategy. In turn, co-operative enterprises enable local people to be directly involved in producing and delivering goods and services that their members and the community require.

Skills Development Strategy

The dti will facilitate and support the access of the co-operative sector to SETAs and learnership programmes.

Other Government policies

Macro-economic policies as well as measures such as trade liberalization, deregulation, commercialization and restructuring of state enterprises and public services will have an impact on co-operatives, in some instances creating opportunities and in others posing challenges for co-operatives. Policy alignment and incorporation of co-operatives across government will start growing the sector to benefit targeted sector of the society.

17. Specific support measures

The government will provide and design relevant support through designing specific support measures such as incentives and capacity building for the co-operative sector.
18. **Arbitration and settlement of disputes**

Arbitration and the settlement of disputes are regarded as internal matters of the co-operative movement. The apex organizations are encouraged to set up dispute resolution procedures to offer an alternative dispute resolution channel to members where disputes have not been resolved internally. A swift, efficient and cost-effective settlement of disputes machinery should be one of the functions of the apex organizations.

In the event of a dispute between the Government and the co-operative movement, or if all attempts of arbitration fail, co-operatives have the right to go to court.

19. **Co-operative support services**

The provision of co-operative support services such as education and training, business advisory services and access to loans, should eventually become the responsibility of the co-operative movement under the guidance of the national apex body.

*Technical support services* shall be extended by a cost-effective *support service system, which* will:

- Make use of existing support service providers (e.g. the co-operative movement, NGOs, trade unions, employers organizations, private companies, government offices, parastatal agencies, development programmes and projects);
- Assume the technical expertise to develop training manuals, management systems, audit procedures, etc., to design an intervention strategy at the grassroots level, to select, supervise and evaluate service providers, and to train the personnel of the selected service providers;
- Manage a *co-operative development fund* that has the purpose of cost-sharing the expenditures incurred by co-operatives to obtain services from service providers; and
- Be implemented under the supervision of the Co-operative Advisory Board.
In order to ensure sustainability, the co-operative movement is encouraged to take over the system’s functions in the long run. Government will promote co-operatives education and training in public education, training and society at large. With regard to financial support services, the Government will examine the feasibility of opening up existing loan schemes for small and medium enterprises such as KHULA, the Industrial Development Corporation (IDC), the National Empowerment Fund (NEF), the Land Bank and the Umsobomvu Youth Fund (UYF) to co-operative enterprises.

The Government will facilitate an autonomous system of finance for co-operatives including savings and credit, banking, and insurance co-operatives within the context of broad-based economic empowerment. Based on other policy alignment and other agreements including the Financial Sector Summit and the GDS, the Government will support new forms of financial institution within the co-operative movement in order to ensure greater access to financial services, especially for the poor.

In the long run, these institutions will provide an autonomous system of finance for the co-operative movement. The Government will encourage conditions favouring the development of the technical, commercial, and financial linkages among all forms of co-operatives in order to facilitate an exchange of experience and sharing of risks and benefits.

20. External assistance

The Government recognizes that, although co-operatives are self-help organizations, they usually neither succeed without a minimum of external assistance, nor do they simply emerge from the grassroots, which in South Africa applies to the majority of emerging co-operatives. They are initiated by community leaders, churches, NGOs etc.

In addition, the Government urges development partners, recognizing the significance of co-operatives for the attainment of sustainable development goals, to seek, in partnership with the Co-operative Advisory Board, ways and means to promote the development of emerging co-operatives.
External partners should focus technical and financial assistance on the establishment of a conducive legal, institutional and administrative environment for co-operative development, and on providing technical and financial support to organizations that work in the field.

Aid to co-operatives should not entail any obligations contrary to the autonomy and interests of co-operatives, and should be designed to encourage rather than replace the initiative and effort of the members of co-operatives. Such aid should be coordinated so as to avoid overlapping and waste of resources.

The Government encourages the South African co-operative movement to establish alliances and partnerships as well as to collaborate, to the greatest extent possible, with other co-operative movements in the Southern African region as well as globally, for the benefit of its member organizations. It also encourages and promotes relationships between national and international bodies and institutions involved in the development of co-operatives in order to permit the establishment of commercial relations between co-operatives.

21. Partnerships with organised labour or unions and employers organisations

The Government encourages the co-operative movement to establish and – where existing – intensify relationships and co-operation with South Africa’s employers’ organisations and organised labour. Should seek together with co-operatives organisations, ways and means of co-operative promotion for the attainment of sustainable development goals.

Employers’ organisations should consider where appropriate the extension of membership to co-operatives wishing to join them and provide appropriate support services on the same terms and conditions applying to other members.
The Government encourages workers’ organizations (organised labour or unions) to:

(a) advise and assist workers in user-owned co-operatives to join unions;

(b) assist their members to establish co-operatives, including with the aim of facilitating access to basic goods and services;

(c) participate in committees and working groups at the local, national and international levels that consider economic and social issues having an impact on co-operatives;

(d) assist and participate in the setting up of new co-operatives with a view to the creation or maintenance of employment, including in cases of proposed closures of enterprises;

(e) assist and participate in programmes for co-operatives aimed at improving their productivity;

(f) business should support co-operatives, especially emerging co-operatives, through their procurement, training, marketing, other available programmes and other activities.

(g) promote equality of opportunity in co-operatives;

(h) promote the exercise of the rights of worker-members of co-operatives; and

(i) undertake any other activities for the promotion of co-operatives, including education and training.

(j)

Co-operatives are subject to South Africa’s Labour Relations Act and other related legislation. They have a legal obligation to ensure that the rights of workers are regulated in accordance with the labour law.
22. **Implementation of the co-operative development policy**

The Government recognizes the need for the formulation and implementation of a comprehensive, longer-termed *strategy* for the development of co-operatives, in full co-operation with all stakeholders in co-operative development in South Africa.

The strategy will clearly state the steps that need to be taken for a successful implementation of the Government’s co-operative development policy. Part of the implementation strategy will be the amendment of existing laws (current Co-operative Act and others) in line with the new policy.

The progress made regarding the implementation of the new co-operative development policy shall be regularly reviewed and evaluated.

23. **Monitoring and Evaluation**

Co-operative development policy will be subject to on-going review and enhancement. To this end, the Co-operative Advisory Board and an inter-departmental committee will be responsible for the monitoring and evaluation of the impact of government policy and strategy on co-operative development.