

EXPLANATORY MEMORANDUM:

THE NEW COASTAL FARMERS' CO-OPERATIVE LIMITED ('Coastals') CONSTITUTION

1. INTRODUCTION

This memorandum attempts to highlight the important clauses that will stay the same, the clauses that have changed and the new concepts that will be introduced in the new Coastals Constitution. This memorandum is not a full explanation of all provisions, and it is advisable that members peruse the new Constitution in order to understand its effect on your rights and duties.

2. BACKGROUND

The current Coastals Statute was based on the Co-operative's Act 91 of 1981. In 2005, a new Co-operative's Act was introduced, which commenced on 2 May 2007. Co-operatives were given three years to amend their constitutions to be aligned with the provisions of the new Act.

Shortly after the introduction of the 2005 Act, it became clear that it had numerous shortcomings and stakeholders made representations regarding the shortcomings. On 12 May 2010 Minister Rob Davies issued a government notice stating that the 2005 Act will be amended, and it allowed co-operatives to wait for the enactment of the amendment act before they had to align their constitutions with the 2005 Act.

The Co-operative's Amendment Act was published in 2013, but only became effective on 1 April 2019. In terms of section 97 of the Amendment Act Co-operatives are given 2 years to update their constitutions in accordance with the 2005 Act as amended.

As such, it has become necessary for Coastals to update its constitution. Failure to do so by 31 March 2021 will result in the deemed deregistration of Coastals as a co-operative.

Shortly after the enactment of the Co-operative's Amendment Act, the Minister published regulations on 18 April 2019.

Following these publications, the Coastals executive management and board familiarized themselves with the new provisions and commenced with the drafting of a new constitution in consultation with an attorney.

It should be noted that the 2005 Act is substantially different to the 1981 Act, however, the new constitution has been drafted in such a way that it complies with the new legislative framework without compromising the core provisions contained in the old Statute.

3. CLAUSES WHICH WILL MATERIALLY STAY THE SAME

3.1 Surplus

Members will still be able to share in the surplus, if any, and as declared by the Board. This will still be allocated in line with the value of transactions conducted with Coastals during the preceding financial year.

3.2 Member participation

Members will still be able to participate in the decision-making at a general meeting and through the duly elected board of directors. The provisions related to the general meetings have essentially stayed the same. Members may still participate through a proxy, however there are some minor changes as required by the 2005 Act. A member may now act as proxy to not more than 5% of the membership.

3.3 Voting

Voting at the general meeting will still take place as always. If a matter is voted by a show of hands, members will be afforded one vote, and if it is a vote by poll, members will be allocated additional votes, depending on the value of business conducted with the Co-operative in the preceding financial year.

3.4 Application for membership

The application for membership will essentially stay the same. Persons and juristic entities will still formally apply to the Board for membership.

3.5 Transfer of membership

Membership can still be transferred to qualifying parties upon approval by the Board. It should be noted that such transfer may be refused if the transferee will generally not qualify for membership in his own right.

4. CLAUSES WHICH WILL CHANGE OR ARE NEW

4.1 No shares

The 2005 Act, as amended, makes it possible for co-operatives to have a shares-based membership or a no shares-based membership. It is proposed that Coastals moves from a shares-based membership to a no shares-based membership.

This may be seen as the most significant change; however, this will have no significant impact on members.

Companies issue shares to shareholders for a number of reasons, none of which apply to Coastals.

- 4.1.1. Shares give shareholders a portion of the voting rights at a general meeting. The voting rights at Coastals are not based on your shareholding, but on the value of a member's business with Coastals during the previous financial year.
- 4.1.2. Shares give shareholders an opportunity to share in dividends. Coastals does not declare dividends but may apportion the surplus to members in the form of a bonus or as an 'agterskot', as it sometimes known. This apportionment is also based on the business conducted during the preceding financial year and not on the number of shares a member holds.
- 4.1.3. The number of shares a shareholder owns determines how a shareholder may share in the residue in the event of liquidation. Coastals members will share in this residue in accordance with the value of surpluses paid to members over the period of seven years prior to the date of liquidation.
- 4.1.4. Shares can generally be sold to third parties, subject to the provisions of shareholders agreements. Coastals shares cannot be sold, however, they may be transferred in limited circumstances.
- 4.1.5. A shareholder in a company owns a part of that company, but a shareholder in a co-operative does not own part of the co-operative.
- 4.1.6. Most importantly, shares in a profit company have a value, depending on the profitability of the company, but shares in a co-operative do not have such a value.
- 4.1.7. Finally, the amount paid for shares is recorded as share capital in a company's balance sheet. The amount paid by a Coastals member for shares is not recorded as an equity item, but as a liability in accordance with the IFRS rules.

We have found over the years that the concept of Coastals shares are often misunderstood by the auditors and accountants of members and have led to some administrative issues. In particular, there are difficulties when a member dies and leaves his shares in his will to his heir. This is because Coastals shares are linked to membership, and the person to whom the member left his shares might not qualify for membership in his or her own right. We have simplified the transfer of membership upon the death of a member in the new constitution.

It can therefore be seen that Coastals shares are not truly shares as understood in the general sense and therefore doing away with them has no negative effect on members. As can be seen from paragraph 3 above, the material matters which includes voting, share in the surplus, share in any residue, transfer of membership will still carry on as always without shares.

4.2 Appointment of directors

The new Constitution still makes provision for a minimum of 3 and a maximum of 14 directors. 9 directors will continue to be elected by the Members on a ward basis and an additional 4 directors may be appointed by the Board.

Elected directors will now serve for a period of 3 years (previously 2 years) and appointed directors will retire at each AGM. The process of nominating and electing directors stays the same. In line with good practice, there is an age limit of 75 for any member to be elected to the Board.

4.3 Reserve fund

The 2005 Act puts an obligation on co-operatives to hold between 1% and 5% of the net asset value in a General Reserve which is indivisible amongst its members. This means that these funds cannot be used as a "bonus". The purposes of this fund are set out in clause 4.2.3. We anticipate that this will mainly be used in cases of financial distress. This portion may however not be sufficient, and as such an additional portion may be held in another reserve for cases as set out in clause 4.2.4. Coastals has always had a strong reserve and as such this is not a new practice; it is simply a new clause.

4.4 Conversion

The previous Statute did not provide for the allocation of shares to members in the event of a conversion to a profit company. This has been incorporated into the new Constitution in order to avoid any future conflict. The allocation of shares is in line with the transaction value over a period of 7 (seven) years prior to the decision to convert. It is proposed to use the period of 7 years, as this is the same period which would have been used to determine the member share in the residue in the event of a liquidation.

4.5 Termination of membership

It is proposed that the expulsion of members be dealt with at board level. In terms of the old Statute, expulsion required a special resolution of the members.

As the Board has the power to approve membership, it is proposed that the Board should also have the power to terminate membership. Especially in the event of disciplinary matters as members would be placed in an unfair position to decide the fate of another member where they have not been actively part of the disciplinary procedure.

4.6 Simplified constitution

The Constitution has been simplified and where there used to be lengthy provisions, these provisions have now been reduced to simpler clauses. Some provisions have been left out as it is dealt with in the Act and is not required to be in the Constitution. It should be noted that the Act superseded any provisions in the Constitution if there is conflict.

A number of clauses dealt with the actual business practices between members and Coastals. These practices have over years become well developed and are contained in the contractual arrangement with members.

5. PROCEDURE AND TIMELINE

Members will need to approve the new Constitution by way of special resolution. This will be done at the AGM on 08 October 2020. At the same meeting subject to approval of the new Constitution, all shares will be redeemed and canceled. Members will be refunded all of their paid-up share capital.

All membership numbers will stay the same. All share certificates will no longer be valid and will be retrieved from members.

The new Constitution will be available on the website.

All comments and queries must be put in writing and addressed to devan@coastals.co.za



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