

REPUBLIC OF SOUTH AFRICA

**COMMUNAL PROPERTY
ASSOCIATIONS AMENDMENT
BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 40772 of 7 April 2017)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 12—2017]

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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 amend the Communal Property Associations Act, 1996, so as to amend, insert and delete certain definitions; to provide for clarity on the objective of communal property associations; to extend the application of the Act to certain labour tenants who acquired land; to provide for the establishment of a Communal Property Associations Office and the appointment of a Registrar of Communal Property Associations; to provide for general plans for land administered by an association; to repeal the provisions relating to provisional associations; to provide improved protection of the rights of communities in respect of movable and immovable property administered by an association; to provide for name changes of associations; to improve the provisions relating to the management of an association that has been placed under administration; to provide clarity on the content of an annual report in respect of associations; to make provision for transitional arrangements; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 28 of 1996, as amended by section 30 of Act 4 of 2011

1. Section 1 of the Communal Property Associations Act, 1996 (Act No. 28 of 1996) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “authorised officer” of the following definition:

“**‘authorised officer’** means a person designated as such by the **[Director-General] Registrar;**”;

(b) by the substitution for the definition of “committee” of the following definition: 10

“**‘committee’** means a committee elected by members of an association to assist the association to manage the affairs of that association;”;

(c) by the substitution for the definition of “community” of the following definition: 15

“**‘community’** means a group of persons, including labour tenants contemplated in section 2(6), whose rights to a particular property are determined by shared rules under a written constitution and which wishes or is required to form an association as contemplated in section 2;”;

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- (d) by the insertion after the definition of “constitution” of the following definitions:
 “**‘CPA Office’** means the Communal Property Associations Office contemplated in section 2B and its regional offices;
 ‘Department’ means the Department of Rural Development and Land Reform;”;
- (e) by the deletion of the definition of “holding of property in common”;
- (f) by the deletion of the definition of “interim committee”;
- (g) by the insertion after the definition of “interim committee” of the following definition:
 “**‘labour tenant’** means a labour tenant as defined in section 1 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);”;
- (h) by the deletion of the definition of “provisional association”;
- (i) by the substitution for the definition of “register” of the following definition:
 “**‘register’** means the register contemplated in section **[8(3)(b)]** 2D(d);”;
- (j) by the insertion after the definition of “register” of the following definition:
 “**‘Registrar’** means the Registrar of Communal Property Associations contemplated in section 2C(1);”;
- (k) by the deletion of the definition of “Registration Officer”; and
- (l) by the substitution for the definition of “similar entity” of the following definition:
 “**‘similar entity’** means a trust as contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), a co-operative as contemplated in the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other recognised association of persons or a company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008);”.

Amendment of section 2 of Act 28 of 1996

2. The following section is hereby substituted for section 2 of the principal Act:

“Application of Act

2. (1) The provisions of this Act shall apply to a community—
- (a) which by order of the Land Claims Court or any other competent court is entitled to restitution under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), where that Court has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;
- (b) which is entitled to restitution in terms of Act No. 22 of 1994, and which community has entered into an agreement with the Minister as contemplated in section 42D of that Act, where it is a condition of such restitution that an association be formed in accordance with the provisions of this Act;
- (c) which is entitled to restitution in terms of Act No. 22 of 1994, and is the beneficiary of land purchased, acquired or expropriated in accordance with the provisions of section 42E of that Act, where it is a condition of such restitution that an association be formed in accordance with the provisions of this Act;
- [(b)] (d)** which is entitled to or receiving property or other assistance from the State in terms of an agreement or in terms of any law, where the Minister has approved such community in terms of subsection (2) and on condition that an association be formed in accordance with the provisions of this Act;
- [(c)] (e)** **[approved by the Minister in terms of subsection (2), and]** to which any property has been donated, sold or otherwise disposed of by any other person, where the Minister has approved such community in terms of subsection (2) and on condition that an association be formed in accordance with the provisions of this Act;
- [(d)] (f)** approved by the Minister in terms of subsection (2), and which is a group acquiring land or acquiring rights to land and which wishes to form an association in accordance with the provisions of this Act;

- (g) to which any property has been awarded in terms of any legislation, where the Minister has approved such community in terms of subsection (2) on condition that an association be formed in accordance with the provisions of this Act; and
- (h) contemplated in subsection (5).
- (2) The Minister may, with due regard to the objects of this Act, approve a community contemplated in paragraph [(c) or] (d), (e) (f) or (g) of subsection (1) for the purposes of this Act if he or she is satisfied that **[the community is disadvantaged and that]** it is in the public interest that such approval be given, having regard to the nature and current use of the land.
- (3) The Minister may on application by a similar entity and on advice of the Registrar, or by order of any court, and having had due regard to the objects of this Act and the public interest, by notice in the *Gazette*, and subject to such qualifications or conditions as he or she may determine[,] —
- (a) make **[the provisions of section 8, 9, 10, 11, 12, 14 or 16, or any subsection thereof,]** any provision of this Act applicable to such entity[.]; or
- (b) declare such entity to be an association as contemplated in this Act and make any provision of this Act applicable to such an association: Provided that such an entity must, within three months from the date on which it has been declared an association, apply for deregistration in accordance with the provisions of the relevant Act in terms of which it was registered and provide the Registrar with copies of such application and upon deregistration, with copies of the correspondence confirming such deregistration.
- (4) For the purposes of subsection (3)(a), any reference to an association shall be deemed to be a reference to the entity in question.
- (5) Where a community has, prior to or after the commencement of this Act, established a similar entity through a democratic process, the **[Director-General] Registrar** may, if such community wishes to establish an association contemplated in this Act, exempt such community from the provisions of section 6, 7 or 8 as may place an unnecessary burden on the community, having regard to the procedure that was followed by the community in establishing such entity.
- (6) For the purposes of subsection (1)(g), a community to which property has been awarded in terms of any legislation includes labour tenants.
- (7) A condition by the Minister that an association be formed as contemplated in section 2(1) shall only be made after a community has taken a resolution to form an association and informed the Minister of such a resolution.”.

Insertion of sections 2A, 2B, 2C, and 2D into Act 28 of 1996

3. The following sections are hereby inserted after section 2 of the principal Act:

“General plan and registration of property

- 2A.** (1) Before property contemplated in section 2 is registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), the Department shall have a general plan for such property prepared and approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997).
- (2) The general plan contemplated in subsection (1) shall outline parts of the property reserved for—
- (a) economic, social, environmental and sustainable development and infrastructure investment for the entire community;
- (b) crop fields, grazing land, water ways, wood lands, conservation, recreational and any other purpose for the entire community;
- (c) the provision of economic, social and other services for the entire community; and
- (d) subdivided portions for residential, industrial and commercial purposes.
- (3) The Minister may prescribe the format for the general plan.

(4) The Minister shall, from monies appropriated by Parliament for this purpose, pay the costs of transfer, surveying and registration required to give effect to this Act.

(5) Notwithstanding section 2 and section 42A of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), property contemplated in this Act shall be registered in the name of the community. 5

Establishment of CPA Office

2B. An office called the Communal Property Associations Office is hereby established within the Department.

Appointment and conditions of service of Registrar 10

2C. (1) The Minister shall, subject to the laws governing the public service, appoint a person as the Registrar of Communal Property Associations.

(2) The Registrar may, with the consent of the Director-General, establish a regional office for any area as may be agreed to by the Director-General, and may subject to the laws governing the public service, appoint a Deputy Registrar for each such office, to perform the functions of the Registrar in such office, subject to the control of the Registrar. 15

(3) The Registrar shall have minimum qualifications and experience as well as skills as may be determined by the Minister. 20

(4) The remuneration of the Registrar shall be determined by the Minister in consultation with the Minister of Finance.

(5) The Director-General shall in consultation with the Registrar designate any person within the Department with relevant qualifications to perform duties in the office of the Registrar or the Deputy Registrar. 25

Functions of Registrar

2D. The Registrar is responsible for the administration of the CPA Office and any regional office, and shall—

- (a) provide assistance to communities and associations for the purposes of this Act; 30
- (b) register associations, subject to the provisions of this Act, and keep record of all certificates of registration issued, copies of such certificates issued or addendums to such certificates issued in accordance with the provisions of section 8(3);
- (c) ensure compliance by associations with the provisions of this Act; 35
- (d) keep a register of registered associations and entities to which provisions of this Act have been made applicable in terms of section 2(3)(a), including entities declared as associations in terms of section 2(3)(b);
- (e) safeguard the register referred to in paragraph (d) and the seal referred to in section 3; 40
- (f) keep record of any bank account opened in the name of an association and any letter issued in terms of section 9(1)(e)(iii);
- (g) keep record of any delegation made in terms of this Act and regularly review such delegations; 45
- (h) collect and keep record of any information required for the purposes of the annual report referred to in section 17;
- (i) regularly advise the Minister and Director-General respectively on the review of any regulations prescribed or fees determined in terms of this Act; 50
- (j) on request, provide members of the public with copies of the constitution of any association or similar entity, or with information contained in the register or any other relevant records, in accordance with and subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); 55

- (k) impress the seal referred to in section 3 on any certificate of registration referred to in section 8(3)(a), on any copy of a certificate of registration referred to in section 8(3)(b), or on any addendum referred to in section 8(3)(c), on any letter referred to in section 9(1)(e)(iii) and on any other document as may be prescribed; and 5
- (l) perform any other functions assigned to the Registrar in this Act, directed by any court, or as may be requested by the Minister or Director-General to achieve the objects of this Act.”.

Amendment of section 4 of Act 28 of 1996

4. The following section is hereby substituted for section 4 of the principal Act: 10

“Exemption from liability

4. No act or omission of whatever nature by the Director-General, **[Registration Officer] Registrar** or any officer or other person performing functions under the authority of the Director-General or **[Registration Officer] Registrar**, as the case may be, in terms of this Act, shall subject the Director-General, the **[Registration Officer] Registrar**, or any such officer or person to any liability for any loss or damage sustained by any person as a result of any such act or omission, unless such act or omission was in bad faith or constituted gross negligence.”. 15

Repeal of section 5 of Act 28 of 1996 20

5. Section 5 of the principal Act is hereby repealed.

Amendment of section 6 of Act 28 of 1996

6. The following section is hereby substituted for section 6 of the principal Act:

“Drafting of constitution

6. (1) A community wishing to **[procure the registration of]** register an association under this Act may apply to the **[Director-General] Registrar** for assistance in the preparation of a draft constitution. 25

(2) The **[Director-General] Registrar** shall, after receiving an application in terms of subsection (1), designate any officer in the **[Department of Rural Development and Land Reform] CPA Office** or any other suitable person to provide the community with such assistance as may be required and available for the preparation of a draft constitution. 30

(3) A community **[may] must** submit a draft constitution to the **[Director-General] Registrar** for consideration.

(4) The **[Director-General] Registrar** may suggest amendments to such draft constitution in order to make it comply with the provisions of section 9, and shall notify the community of the reasons for such suggestions.”. 35

Amendment of section 7 of Act 28 of 1996

7. Section 7 of the principal Act is hereby amended— 40
- (a) by the substitution for subsection (1) of the following subsection:

“(1) When a community **[or a provisional association]** wishes to adopt a constitution it shall notify the **[Director-General] Registrar** accordingly and shall convene a meeting or meetings in such manner as may be prescribed for the adoption of constitutions: Provided that a constitution shall only be adopted by at least 60% of the total number of individuals, families or households of that community having the right to make decisions as contemplated in item 8 of the Schedule.” 45

- (b) by the insertion in subsection (2) after paragraph (b) of the following paragraph:

“(bA) whether members of the association have been properly identified by the community;” 50

- (c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 “(f) any other matter which the Minister may prescribe or which may be relevant to the exercise of the **[Director-General’s] Registrar’s** discretion.”; and 5
- (d) by the substitution for subsections (3) and (4) of the following subsections respectively:
 “(3) The community **[or provisional association]** shall, as soon as practicable after the adoption of the constitution, submit it together with the prescribed information to the **[Director-General] Registrar.** 10
 (4) Any person claiming to have been excluded from participation in the process of preparation and adoption of the constitution or claiming that the process was not fair may lodge a complaint with the **[Director-General] Registrar**, who may, if he or she is satisfied on reasonable grounds that the complaint is material, refuse to **[cause] register** the association **[to be registered]** until the issue has been resolved to the satisfaction of the **[Director-General] Registrar.**” 15

Amendment of section 8 of Act 28 of 1996

8. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 20
 “(1) The **[Director-General] Registrar** shall consider an application for registration of an association together with any prescribed information, the report referred to in section 7(2) and the constitution adopted by the association.”;
- (b) by substitution in subsection (2) for paragraph (b) of the following paragraph: 25
 “(b) the association has, as its main object the **[holding of property in common] administration and management of community property on behalf of a community;**”;
- (c) by the substitution in subsection (2) for the words following paragraph (f) of the following words: 30
 “Provided that the **[Director-General] Registrar** may cause an association to be registered if he or she is satisfied that—”;
- (d) by the substitution in paragraph (f) of subsection (2) for subparagraph (ii) of the following subparagraph: 35
 “(ii) the constitution reflects the view of the majority of the members of the **[association] community;**”;
- (e) by the substitution for subsections (3), (4) and (5) of the following subsections respectively:
 “(3) (a) If the **[Director-General] Registrar** is satisfied that the association qualifies for registration he or she **[shall refer the application, constitution and his or her own written consent, to the Registration Officer, who]** shall register the association in the prescribed manner, allocate a registration number, and issue a certificate of registration. 40
[(b) The Registration Officer shall keep a register of registered provisional associations, associations and similar entities to which the provisions of this Act have been made applicable in terms of section 2(3). 45
(c) On request and on payment of the prescribed fee the Registration Officer shall provide members of the public with information contained in the register and with a copy of the constitution of any registered association or similar entity.] 50
 (b) The Registrar shall, if a certificate of registration contemplated in paragraph (a) is lost or destroyed, on written application by the association and on payment of the fees determined by the Director-General, issue the association with a copy of the certificate filed in the Registrar’s Office and shall indicate on such copy that it is a true copy of the original certificate. 55

(c) The name of an association may be changed in accordance with the prescribed procedure and if the Registrar is satisfied that such procedure has been followed, he or she may issue an addendum to the certificate of registration, indicating the new name of the association.

(d) When the name of an association is changed as contemplated in paragraph (c), the Registrar shall inform the Registrar of Deeds in whose area of jurisdiction the immovable property which is administered by the association is situated, and the Registrar of Deeds shall endorse the community's title deed to reflect the new name of the association.

(4) If the **[Director-General]** Registrar is not satisfied that the association qualifies for registration he or she shall notify the community of the steps to be taken to procure the registration of the association.

(5) The **[Director-General]** Registrar may assist a community to deal with any issue which is to be addressed in order to procure the registration of the association.”;

(f) by the substitution for subsection (6) of the following subsection:

“(6) Upon the registration of an association—

(a) the community and the association [shall be established as a] become juristic [person] persons, with the capacity to sue and be sued;

(b) the community and the association may acquire rights and obligations in [its] their own names in accordance with [its] the constitution;

(c) the community and the association may, subject to the [provisions of its] constitution and section 12—

(i) acquire and dispose of immovable property and real rights therein; and

(ii) encumber such immovable property or real rights by mortgage, servitude, or lease or in any other manner: Provided that the association may only acquire, dispose of or encumber immovable property on behalf of a community;

(d) the community and the association shall have perpetual succession regardless of changes in [its] their membership;

(e) the constitution shall be a legally binding agreement between the community, the association and [its] their members and shall be deemed to be a matter of public knowledge.”;

(g) by the deletion of subsections (7) and (8); and

(h) by the substitution for subsections (10) and (11) of the following subsections respectively:

“(10) No amendment of a constitution of an association registered under this Act shall be valid or binding until it has been **[accepted by the Director-General in writing and lodged with the Registration Officer]** lodged with and accepted in writing by the Registrar.

(11) The provisions of sections 6 and 7 and subsections (1) to (5) of this section, shall apply [mutatis mutandis] with the necessary changes, with regard to any proposed amendment of the constitution of an association registered under this Act: Provided that the **[Director-General shall]** Registrar shall waive compliance with the provisions of section 7 if he or she is satisfied that the amendment was adopted in terms of the constitution, that the nature of the amendment is such that compliance with those provisions is not necessary, and that the amendment does not have a material adverse effect on the rights of members.”.

Amendment of section 9 of Act 28 of 1996

9. Section 9 of the principal Act is hereby amended—

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

“(ii) any decision to amend the constitution or dissolve the association, or to dispose of or to encumber **[the] property [of the association]**, requires an inclusive decision-making process; and”;

- (b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the following words:
 “(b) **[equality of]** fair and non-discriminatory membership, in that —”;
- (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 5
 “(d) fair access to **[the property of the association]** community property, in that—
 (i) the association shall **[manage property owned, controlled or held by it]** administer and manage community property for the benefit of the members in a participatory and non-discriminatory manner; 10
 (ii) a member may not be excluded from access to or use of any part of **[the associations’ property]** community property which has been allocated for such member’s exclusive or the communal use except in accordance with the procedures set out in the constitution; and 15
 (iii) the association may **[not]** only sell, donate or encumber **[the property of the association]** community property, or any substantial part of it, **[without the consent of a majority of the members present at a general meeting of the association]** in accordance with the provisions of section 12(1);” 20
- (d) by the substitution in subsection (1) for subparagraphs (ii), (iii) and (iv) of paragraph (e) of the following subparagraphs respectively:
 “(ii) the financial records of the association are subject to an annual independent verification, as approved by the **[Director-General]** Registrar; 25
 (iii) all the cash of the community or association shall be deposited in an account opened in the name of the community or association with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), **[or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or with the Post Office Savings Bank contemplated in section 52 of the Post Office Act, 1958 (Act No. 44 of 1958)]** the South African Postbank Limited Act, 2010 (Act No. 9 of 2010), or such other institution as may be approved by the Director-General: Provided that— 35
 (aa) an association may only open an account upon receipt of an original letter issued and signed by the Registrar, confirming that the association complies with the provisions of this Act, that it has been registered in terms of this Act and containing such other information as may be prescribed; 40
 (bb) the letter referred to in subparagraph (aa) shall be addressed to the specific bank or institution where the association wishes to open an account and shall only be valid for the period indicated in the letter; and
 (cc) the association shall, within 14 days from opening such an account, provide the Registrar with the account number and such other details as may be required by the Registrar; 45
 (iv) the association may not purchase or acquire for consideration **[shares other than shares]** securities other than securities which are listed on a licensed **[stock]** exchange as **[defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]** contemplated in section 9 of the Financial Markets Act, 2012 (Act No. 19 of 2012).” 50
- (e) by the substitution in subsection (1) for subparagraph (vi) of paragraph (e) of the following subparagraph: 55
 “(vi) the members of the association and committee members shall have fiduciary responsibilities in relation to the **[association]** community and its members, and shall exercise their powers in the best interests of all the members of the **[association]** community, without any advantage to themselves in comparison with other members who are similarly placed.” 60

Amendment of section 10 of Act 28 of 1996

10. The following section is hereby substituted for section 10 of the principal Act:

“Information, [conciliation] dispute resolution and other assistance

10. (1) The **[Director-General]** Registrar may have forms, pamphlets and other documents prepared and distributed in order to promote the achievement of the objects of this Act. 5

(2) The **[Director-General]** Registrar may, of his or her own accord or at the request of a community, an association[, a **provisional association**] or any member thereof, appoint **[a conciliator]** any person who is experienced in dispute resolution and who is acceptable to the parties to a dispute to assist in resolving any issues for the purpose of the preparation or adoption of a constitution or to resolve a dispute between a community and an association [or **provisional association and its members**] or between members or committee members of an association: Provided that if the parties to the dispute do not reach agreement on the person to be appointed, the **[Director-General]** Registrar may appoint a person who in his or her opinion has adequate experience or knowledge **[in conciliating community disputes]** of dispute resolution. 10 15

(3) A **[conciliator]** person appointed in terms of subsection (2) shall attempt to resolve the dispute— 20

- (a) by mediating the dispute;
- (b) by **[fact-finding]** determining facts relevant to the resolution of the dispute;
- (c) by making a recommendation to the parties to the dispute;
- (d) in any other manner that he or she considers appropriate. 25

(4) The **[conciliator shall]** person appointed in terms of subsection (2) shall report to the **[Director-General]** Registrar and the parties on the result of his or her **[conciliation]** dispute resolution and make recommendations in relation thereto: Provided that any recommendation accepted by the Registrar shall be binding on the association. 30

(5) All discussions taking place and all disclosures and submissions made during the **[conciliation]** dispute resolution process shall be privileged, unless the parties agree to the contrary.

(6) The **[Director-General]** Registrar may from time to time appoint persons or organisations acceptable to a community and with relevant knowledge or expertise to provide assistance and support to such community for the purposes of section 6. 35

(7) Any person contemplated in subsection (2) or (6) who is not in the full-time service of the State may from **[moneys appropriated by Parliament for this purpose]** the funds of the Department, be paid such remuneration and allowances in respect of the services rendered as **[may be determined by the Minister in consultation with the Minister of Finance]** the Minister, with the concurrence of the Minister of Finance, may determine from time to time. 40

(8) The Minister may, in consultation with the Minister of Finance institute other programmes for the provision of assistance to communities or associations **[or provisional associations]** for the purposes of this Act.”. 45

Amendment of section 11 of Act 28 of 1996

11. The following section is hereby substituted for section 11 of the principal Act:

“Monitoring and inspection 50

11. (1) An association **[or provisional association]** registered under this Act shall, at the prescribed times, furnish prescribed documents and information to the **[Director-General]** Registrar in order to enable him or her to monitor compliance with the provisions of the relevant constitution and this Act. 55

(2) The **[Director-General]** Registrar may undertake an inspection of the affairs of an association **[or provisional association]**.

(3) The **[Director-General]** Registrar may, for the purposes of this section—

- (a) inspect and remove for copying any records, reports and other documents relating to the affairs of an association **[or provisional association]**;
- (b) subpoena persons who may have relevant information or documentation in respect of the affairs of an association **[or provisional association]** to appear before him or her to provide information or documentation in relation to the affairs of the association **[or provisional association]**, if the attendance of such persons cannot reasonably be procured otherwise.

(4) A subpoena issued in terms of subsection (3)(b) shall be served in accordance with the manner prescribed for the service of subpoena in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) Any person who is duly subpoenaed in terms of subsection (3)(b) and who fails, without lawful excuse, to appear or to provide the required information or documentation, shall be guilty of an offence and liable to the punishment provided in the said Magistrates' Courts Act, 1944, for failure to comply with a subpoena issued in terms of that Act.

(6) If a dispute arises within an association **[or provisional association the Director-General]** the Registrar may, of his or her own accord, or at the request of a member of the association **[or provisional association]**—

- (a) undertake an enquiry into the activities of the association **[or provisional association]**, in which event he or she shall take reasonable steps to ensure that interested parties are made aware of the enquiry and of its outcome;
- (b) advise the association **[or provisional association]** and the members of their respective rights and obligations;
- (c) make a **[conciliator]** person contemplated in section 10(2) available to assist in the resolution of the dispute;
- (d) on good cause shown and having heard the parties concerned, dissolve a committee or relieve a committee member of his or her duties and require the members of the association to conduct an election for a new committee or appoint a new member, if the integrity, impartiality or effectiveness of the committee or any member of the committee is in question;
- (dA) appoint an interim committee from amongst members of the association pending the election of a new committee, and the interim committee shall have—
- (i) all the powers of a committee; and
- (ii) an official designated by the Registrar as one of its members;
- (e) initiate proceedings contemplated in section 13; or
- (f) take such other reasonable measures as he or she considers appropriate in the circumstances.

(6A) No person convicted of an offence in the Republic or elsewhere which involves dishonesty or any other offence for which he or she has been sentenced to imprisonment without the option of a fine, shall be elected as a committee member or, if such person has already been elected to be a member, he or she shall resign as a member.

(7) When acting in terms of subsection (6) the **[Director-General]** Registrar shall be guided by the aim of resolving the dispute in accordance with the provisions of the constitution of the association.

(8) The identity of a member making a request in terms of subsection (6) or the fact that a request has been made by a member need not be disclosed if there are reasonable grounds for believing that such member may be victimised.

(9) If the membership of a member has been terminated, the association **[or provisional association]** shall inform the **[Director-General]** Registrar and provide **[the Director-General]** him or her with the prescribed information relating to the termination.”.

Amendment of section 12 of Act 28 of 1996

12. The following section is hereby substituted for section 12 of the principal Act:

“Approval for certain transactions

12. (1) An association may not [~~dispose of or encumber or conclude any prescribed transaction in respect of the whole or any part of the immovable property of the association, or any real rights in respect thereof,~~] without the consent of the majority of members present at a general meeting of members—

- (a) sell, donate or encumber communal land or immovable property of the community or any real rights in respect thereof, or conclude any transaction including any prescribed transaction in respect thereof, or purchase any immovable property, without the written consent of the Minister and without a resolution supported by at least 60% of the total number of individuals, families or households of that community having the right to make decisions as contemplated in item 8 of the Schedule: Provided that if an association decides to sell immovable property, notice of such intention shall be given to the Director-General and the Department shall have the first option to purchase such immovable property: Provided further that the Department shall, within three months from the date of receipt of such notice, inform the association whether it intends purchasing the immovable property or not, and if it decides to purchase, such purchase shall be concluded within nine months from the date of receipt of the notice;
- (b) sell, donate or encumber any movable property, or purchase any movable property, without the consent of the majority of members of the community present at a general meeting of members and, if such movable property was bought or is to be bought through financial assistance provided by the Department, without the consent of the Registrar; or
- (c) enter into any lease agreement in respect of any immovable property without the consent of the majority of the members of the community and the Registrar: Provided that the Registrar may only provide such consent if, in his or her opinion, the provisions of the lease agreement, including the lease period, the rental to be paid and the purposes for which the property is to be used, are reasonable and in the best interest of the community.

(2) [~~Such consent~~] The consent referred to in subsection (1)(a), (b) and (c) may be given in respect of a series of transactions, without identifying each individual transaction.

(3) Any disposal, mortgage, encumbrance, purchase or prescribed transaction in contravention of subsection (1) shall be voidable.

(4) A member who alleges that an association has concluded a transaction contrary to the provisions of subsection (1) may request the [~~Director-General~~] Registrar to assist him or her in challenging the validity of such transaction.

(5) The [~~Director-General~~] Registrar may, if he or she considers it desirable having regard to the nature and seriousness of the allegation, make a [~~conciliator~~] person contemplated in section 10(2) available to assist in the resolution of the dispute.

(6) The [~~Director-General~~] Registrar shall, at the request of an association, appoint an authorised officer to attend a general meeting of an association and to take such other steps as may be necessary in order to certify that a transaction referred to in subsection (1) has been duly approved at a general meeting and is in accordance with the constitution of the association.”.

Amendment of section 13 of Act 28 of 1996

13. The following section is hereby substituted for section 13 of the principal Act:

“Administration, liquidation and deregistration

13. (1) (a) A division of the [Supreme] High Court or a Magistrate’s Court having jurisdiction in respect of the area in which the property of the association is situated [or the area in which the land which may be acquired by a provisional association is situated,] may, on application made by the [Director-General,] Registrar, an association [or provisional association] or any member thereof, or any other interested person, place the association [or provisional association] under the administration of the [Director-General] Registrar or grant a liquidation order in respect of an association [or provisional association], where the association [or provisional association], because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or when it would otherwise be just and equitable in the circumstances.

(b) If an association is placed under the administration of the Registrar as contemplated in paragraph (a), the Registrar shall, subject to any conditions as the Court, Minister or Director-General may determine, administer and manage the affairs of the association and perform the functions of the association in accordance with the provisions of this Act: Provided that if the Registrar is unable to administer or manage the affairs of such an association or if it would be in the best interest of the association that it be administered or managed by another person, the Registrar may, in consultation with the Director-General, appoint any competent person to administer and manage the affairs of the association and to perform the functions of the association in accordance with the provisions of this Act: Provided further that any person so appointed shall act under the supervision of the Registrar.

(c) Any competent person contemplated in paragraph (b) who is not in the full-time service of the State may from funds of the Department be paid such remuneration and allowances in respect of the services rendered as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

(d) Any expenses relating to the administration and management of the affairs of an association which has been placed under the administration of the Registrar, shall be defrayed from any funds held by the association, and should such funds be insufficient, from funds of the Department as may be made available by the Director-General.

[(2) The Director-General shall, pursuant to an administration order referred to in subsection (1), have such powers to manage the affairs of the association or provisional association as the Court, subject to the provisions of this Act, may determine.]

(3) The [Director-General] Registrar may, upon written application by an association [or provisional association], cause such an association [or provisional association] to be deregistered, if he or she is satisfied that—

- (a) a resolution in favour of deregistration was adopted at a meeting attended by a substantial number of the members of the association [or provisional association];
- (b) the resolution was adopted by [a majority of] at least 60% of the members present or represented at the meeting; and
- (c) all relevant matters which reasonably have to be addressed prior to deregistration, including the way in which the assets and liabilities of the association [or provisional association] will be dealt with, have been addressed.

(4) Where the Court orders the liquidation of an association [or provisional association], it shall make such order as to the distribution of the assets of the association [or provisional association] as it deems just and equitable, having considered any recommendations which the Director-General or Registrar may make in this regard.

(5) The Minister may prescribe the procedure to be followed in an application contemplated in subsection (1), and set out the powers and duties of the Director-General, the **[Registration Officer] Registrar**, the association, members and interested parties in those situations.”.

Amendment of section 14 of Act 28 of 1996

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14. Section 14 of the principal Act is hereby amended—

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

“(c) abuses any power or authority vested in him or her by the members of the association **[or provisional association]** by doing any thing or refraining from doing any thing or threatening to do or refrain from doing anything, in such a manner that the benefits or rights of a member are prejudiced or threatened.”;

(b) by the deletion in subsection (1) of paragraph (e);

(c) by the addition in subsection (1) of the following paragraphs:

“(f) breaches the provisions of the constitution relating to financial matters;

(g) contravenes the provisions of section 11(9) or 12(1);

(h) interferes with the work of the competent person contemplated in section 13 or an interim committee contemplated in section 11; or

(i) destroys, without the consent of the Registrar, any documents which may serve as proof of an investment, encumbrance, alienation or disposal of communal land or property.”;

(d) by the deletion of subsection (2); and

(e) by the substitution for subsection (3) of the following subsection:

“(3) In a prosecution **[under section 1 of the Trespass Act, 1959 (Act No. 6 of 1959), and in]** or any proceedings for the eviction of any person from **[property owned, controlled or managed]** communal land administered and managed by an association, a certificate issued by the **[Director-General] Registrar** in terms of subsection (2) shall be *prima facie* proof of the correctness of the contents thereof.”.

Substitution of section 15 of Act 28 of 1996, as amended by section 6 of Act 61 of 1998

15. The following section is hereby substituted for section 15 of the principal Act:

“Delegation of powers and assignment of duties [by Director-General] 35

15. (1) The **[Director-General] Registrar** may—

(a) delegate to any officer of the CPA Office or Department **[of Rural Development and Land Reform or, with the prior approval of the Premier of the province concerned, to any officer in the service of that provincial government,]** any power conferred upon him or her by or under this Act, either generally or in a particular case, except the power to register an association; 40

(b) authorise any such officer to perform any duty assigned to him or her by or under this Act.

(2) Any delegation under this section shall not prevent the exercise of the relevant power by the **[Director-General] Registrar** himself or herself, and the **[Director-General] Registrar** shall be entitled to rescind, review or withdraw any decision or action taken by any person to whom he or she has delegated any power.”. 45

Amendment of section 16 of Act 28 of 1996

16. The following section is hereby substituted for section 16 of the principal Act:

“Appeals

16. Any person aggrieved by a decision of the Registrar or Director-General may in the prescribed manner appeal to the Minister, who may uphold the appeal in whole or in part and rescind or vary the decision, or dismiss the appeal.”

Amendment of section 17 of Act 28 of 1996

17. The following section is hereby substituted for section 17 of the principal Act:

“Annual report [by Director-General]

17. (1) The **[Director-General shall in every calendar year]** Registrar shall annually and in respect of the preceding financial year, submit to the Minister a report complying with the provisions of subsection (2), concerning associations **[and provisional associations]** and the extent to which the objects of this Act are being achieved, and the Minister shall table the report in Parliament.

(2) The report contemplated in subsection (1) shall indicate the total number of associations registered since the commencement of this Act and in respect of the reporting year, contain information in respect of—

- (a) the number of associations registered in compliance with the provisions of section 2(1), including but not limited to the names of the associations, the number of members thereof, and information relating to the immovable property administered and managed by the associations, including but not limited to descriptions of the immovable property and information relating to the provisions of section 12(1);
- (b) the number of similar entities declared as associations in terms of section 2(3) or to which the provisions of this Act have been made applicable as contemplated in section 2(3), including the names of the similar entities or declared associations, the number of members thereof, and information relating to the immovable property administered and managed by such entities or declared associations, including but not limited to descriptions of the immovable property and information relating to the provisions of section 12(1);
- (c) the number of associations deregistered and the reasons therefor;
- (d) any dispute dealt with in accordance with the provisions of this Act, including information in respect of the nature of the dispute, the person appointed to resolve any dispute and the recommendations made by such person and accepted by the Registrar;
- (e) the number of associations placed under administration, the reasons therefor, any conditions applicable thereto and the financial implications thereof;
- (f) persons found guilty of any offence as contemplated in section 14, including but not limited to the nature of the offence and the sanction imposed;
- (g) any appeals lodged in accordance with the provisions of section 16, including but not limited to the nature of the appeal and the decision of the appeal authority;
- (h) the budget and expenses of the CPA Office;
- (i) any matter as may be directed by the Minister or Director-General; and
- (j) any matter deemed necessary by the Registrar.”

Insertion of section 17A into Act 28 of 1996

18. The following section is hereby inserted after section 17 of the principal Act:

“Fees

17A. (1) The Director-General may, in consultation with the Registrar and the National Treasury, determine any fees payable in terms of this Act and publish such fees in the *Gazette*. 5

(2) The Director-General shall, before determining fees in terms of subsection (1), publish the proposed fees for public comment.”.

Amendment of section 18 of Act 28 of 1996

19. The following section is hereby substituted for section 18 of the principal Act: 10

“Regulations

18. (1) The Minister may make regulations intended to give effect to the implementation of this Act, including regulations relating to—
 (a) the management of associations; and
 (b) the management of business affairs conducted by or on behalf 15
associations.

(2) Any regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine or imprisonment for a period not exceeding five years, or both such fine and imprisonment. 20

Insertion of section 18A into Act 28 of 1996

20. The following section is hereby inserted after section 18 of the principal Act:

“Transitional provisions

18A. (1) All functions which were, immediately before the commencement of this Act, performed by the Registration Officer, hereby vest in the Registrar. 25

(2) Any provisional association which at the commencement of this Act has not yet adopted a constitution and has not been registered as an association, must adopt a constitution and be registered as an association within 12 months from the date of commencement of this Act: Provided that the Director-General may, on application made by the provisional association or the Registrar prior to the expiry of the period of 12 months, extend the period with a further 12 months: Provided further that no further extension may be granted and should such a provisional association not adopt a constitution and be registered as an association, it shall cease to exist and any immovable or movable property or any other assets administered and managed by a provisional association must be dealt with by the Registrar in any manner he or she deems appropriate or as may be directed by the Minister, having due regard to the public interest. 30 35

(3) Any right of a provisional association to administer land prior to the repeal of section 5, remains in force during the period of 12 months or extended period of 12 months referred to in subsection (2) and may not be alienated during such period or extended period. 40

(4) A provisional association referred to in subsection (2) is a juristic person with the capacity to sue or be sued. 45

(5) Any association which has been placed under administration of the Director-General prior to the commencement of this Act shall, from the date of appointment of the Registrar, be under administration of the Registrar and subject to any conditions which may have been determined in accordance with the provisions of section 13. 50

(6) The Director-General shall, in consultation with the Minister, appoint a competent officer of the Department to perform the functions of the Registrar from the date of commencement of this Act, until the post of Registrar is filled.

(7) Communal land registered in the name of an association must, within 24 months from the date of commencement of this Act, be registered in the name of the community or name preferred by the community.” 5

Amendment of Schedule to Act 28 of 1996

21. The Schedule to the principal Act is hereby amended by the substitution for items 1, 3, 4, 5, 7, 8, 11, 12, 13, 16, 18, and 20 of the following items respectively: 10

- “1. The identity of the community and the name of the association.
3. Objects of the association [**including the identity of the community**].
4. Land or property to be owned by the [**association**] community, if known.
5. Qualifications for membership of the community or association, including a list of the names and, where readily available, identity numbers of the intended members of the community or association: Provided that where it is not reasonably possible to provide the names of all the intended members concerned, the constitution shall contain—
 - (i) principles for the identification of other persons entitled to be members of the community or association; and 15
 - (ii) a procedure for resolving disputes regarding the right of other persons to be members of the community or association. 20
7. The rights of members to the use of [**the association’s**] community property.
8. Whether membership is based on individuals, [**or**] families or households; if based on families or households, how the family or household is to be represented in the decision-making process of the association. 25
11. Whether community members may sell, donate or encumber property or their rights and, if so, to whom.
12. The nature of a community member’s right, whether ownership, lease or right to use and what [**What**] happens to such member’s right on his or her death. 30
13. How the committee is to be elected, its terms of office, which shall not exceed five years, its powers, the powers of members in relation to decisions made by the committee, the power of members to remove the committee or members of the committee, and payment (if any) of the committee members.
16. The powers of the association, including the power to dispose of certain categories of movable property without the consent of the community or Registrar, and any limitations on them. 35
18. Financial matters: How the money of the community or association will be dealt with, who will have the right to make payments on behalf of the community or association, how and by whom the financial records will be kept, what provision there will be for independent verification of the financial records, distribution and division of profits, responsibility and apportionment of working expenditure, and access to financial information by members. 40
20. How the association may be dissolved, and in that event [**what will happen to the assets of the association**] the assets vest in the community.” 45

Amendment of long title of Act 28 of 1996

22. The following long title is hereby substituted for the long title of the principal Act: 50
“To enable communities, which include labour tenants who have acquired land, to form juristic persons, to be known as communal property associations in order to [acquire, hold and] administer and manage property on a basis agreed to by members of a community in terms of a written constitution; to provide for the establishment of the Communal Property Associations Office, to provide for the appointment and functions of the Registrar; and to provide for matters connected therewith.”

Amendment of Preamble of Act 28 of 1996

23. The following Preamble is hereby substituted for the Preamble of the principal Act:

“**WHEREAS** it is desirable that [**disadvantaged**] communities should be able to establish appropriate legal institutions through which they may [**acquire, hold**] 5
administer and manage property in common;

AND WHEREAS it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members;

AND WHEREAS it is necessary to ensure that members of such institutions are 10
protected against abuse of power by other members[;]”.

Short title

24. This Act is called the Communal Property Associations Amendment Act, 2017.

MEMORANDUM ON THE OBJECTS OF THE COMMUNAL PROPERTY ASSOCIATIONS AMENDMENT BILL, 2017

1. BACKGROUND

- 1.1 The Communal Property Associations Act, 1996 (Act No. 28 of 1996) (hereinafter referred to as the Act), was enacted to enable communities to form juristic persons, to be known as Communal Property Associations (CPAs) in order to acquire, hold, administer and manage property on a basis agreed to by members of a community in terms of a written constitution.
- 1.2 The Department of Rural Development and Land Reform (the Department) has monitored the implementation of the Act since its enactment and has identified specific areas in respect of which the Act needs to be improved. One such area relates to ownership and the disposal of community property by CPAs where there have been disputes between communities and their CPAs. The other area relates to the application of the Act. It has been deemed necessary to provide more detail in this regard.
- 1.3 The administration of the Act has also proven to be challenging as far as the Department's responsibilities are concerned. It was therefore decided to make provision for dedicated capacity in the form of a CPA Office, headed by a Registrar of CPAs.
- 1.4 Another area of concern is the apparent insufficient protection of the rights and interests of a community in respect of the movable and immovable property owned by communities. The Bill is intended to strengthen such protection significantly. The Bill further seeks to enable the formation of CPAs in respect of land awarded to labour tenants. The Bill is further intended to provide clarity on the content of the annual report required by the Act, while it is proposed to delete the provisions of the Act that make provision for provisional associations. Certain transitional arrangements also have to be put in place.
- 1.5 For the reasons mentioned above, the Communal Property Associations Amendment Bill, 2017 (hereinafter referred to as the Bill), proposes certain amendments to the Act, to address the shortcomings mentioned and therefore to improve the application and implementation of the Act.

2. OBJECTS OF BILL

The objects of the Bill are to—

- (a) clarify the objective of CPAs;
- (b) establish the CPAs Office;
- (c) empower the Minister to appoint the Registrar of CPAs;
- (d) provide for the functions of such Registrar;
- (e) provide for the protection of rights and interests in respect of movable and immovable property administered by CPAs;
- (f) provide for the formation of CPAs in respect of land restituted to labour tenants; and
- (g) further regulate on the management of CPAs placed under administration.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill seeks to propose certain amendments to section 1 of the Act, namely the section containing definitions. Due to the proposed insertion of provisions relating to the establishment of the CPA Office and the appointment of a Registrar of the CPA Office, definitions for the CPA Office, Registrar and labour tenant have been inserted.

Clause 1 also deletes definitions that are obsolete.

3.2 **Clause 2**

- 3.2.1 Clause 2 of the Bill seeks to amend section 2 of the Act which provides for the application of the Act. Section 2 of the Act currently makes provision for CPAs to be formed if so ordered by the Land Claims Court in respect of a land claim lodged in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).
- 3.2.2 Amendments to section 2 seek to extend the application of the Act to land—
- (a) also restituted by order of any other competent court and not only the Land Claims Court;
 - (b) restituted by the Minister for land reform purposes; and
 - (c) awarded to labour tenants.
- 3.2.3 The Restitution Act has been amended and makes provision in sections 42D and 42E for an administrative process in which land claims may be settled without having to approach the Land Claims Court. Clause 2 of the Bill therefore seeks to acknowledge those provisions of the Restitution Act and the proposed amendments provide clarity in this regard.
- 3.2.4 Other proposed amendments to section 2(1), (2), (4) and (5) of the Act are mostly consequential in nature. The proposed amendments to section 2(3) of the Act are necessary to enable the Minister to declare a similar entity to be an association for purposes of the Act, thereby making the provisions of the Act applicable to such an entity.

3.3 **Clause 3**

- 3.3.1 Clause 3 of the Bill seeks to insert new sections 2A, 2B, 2C, and 2D to provide for the general plans for properties, establishment of the CPA Office, the appointment of a Registrar of the CPA Office and the functions of such Registrar.
- 3.3.2 This is necessary since the administration of the Act justifies dedicated capacity, not only to perform the functions assigned to the Department but especially to provide communities and CPAs with expert and professional assistance. Provision is also made for the establishment of regional CPA offices. However, this may only be done with the consent of the Director-General.
- 3.3.3 The Registrar will perform a wide variety of functions, including assisting communities and CPAs in respect of almost any matter contained in the Act. The Registrar will also register CPAs and issue certificates of registration. Provision is also made for proper control and record-keeping. To avoid any possible misuse of the seal of CPA Office, the proposed section 2D(k) specifies in which instances the seal must be impressed on documentation. Provision is also made for the filling of a vacancy in the Registrar's office to ensure continuity of service in that office.

3.4 **Clause 4**

The proposed amendments to section 4 of the Act, as contained in clause 4 of the Bill, are of a consequential nature, replacing the Registration Officer with a Registrar.

3.5 **Clause 5**

Clause 5 of the Bill seeks to delete section 5 of the Act, which provided for the registration of provisional associations and which the Bill seeks to replace with CPAs with perpetual succession.

3.6 **Clause 6**

The proposed amendments to section 6 of the Act, as contained in Clause 6, are consequential.

3.7 **Clause 7**

The majority of proposed amendments to section 7 of the Act, as contained in Clause 7, are of a consequential nature. However, a substantive provision is added that requires a constitution of a CPA to be adopted by 60% of community members. This requirement will provide better protection in the interest of communities. A community that has adopted a constitution and has registered a CPA acquires juristic personality.

3.8 **Clause 8**

The proposed amendments to section 8 contained in Clause 8 are also mostly consequential in nature and relate to registration of associations. The clause also makes it clear that a CPA's main purpose is to administer and manage communal land on behalf of a community and not to be the owner of communal land. There have been disputes between CPAs and communities on who is the actual owner of community property, the CPA or the community. The principal Act provided that CPAs can acquire, hold and dispose of immovable property, including land in their own name. The proposed amendments seek to make it clear that the community owns the property and that a CPA transacts on behalf of the community. Other provisions relate to the replacement of a certificate of registration that is lost or destroyed and for a change of name of a CPA.

3.9 **Clause 9**

Clause 9 of the Bill seeks to amend section 9 of the Act which deals with principles to be accommodated in CPA constitutions. The proposed amendments are largely consequential. Substantive provisions are inserted relating to the opening of bank accounts by CPAs. An account can only be opened once the Registrar has issued a letter stating that a CPA has been registered. The letter must be addressed to the specific institution and shall only be valid for a specific period. These provisions seek to prevent instances where persons may fraudulently use copies of the certificate of registration or copies of the Registrar's letters to open accounts in the name of CPAs for their own benefit.

3.10 **Clause 10**

Clause 10 of the Bill seeks to amend section 10 of the Act by providing more clarity on dispute resolution and will, amongst others, allow the Registrar to appoint any person with adequate experience in or knowledge of dispute resolution for this purpose. Most of the proposed amendments are also consequential in nature.

3.11 **Clause 11**

The proposed amendments to section 11 of the Act which deals with monitoring and inspection contained in clause 11 are also of a consequential nature. However, substantive provisions are inserted relating to committees of CPAs. They include the power of the Registrar to dissolve a committee in some instances and appoint an interim committee as well as the disqualification of members of committees.

3.12 **Clause 12**

3.12.1 Section 12(1) of the Act provides for approval of transactions and currently determines that immovable property held by a CPA may be disposed of or encumbered with the consent of a majority of the

members present at a meeting of the CPA. This provision however does not provide for sufficient protection for the rights of the community.

- 3.12.2 The proposed amendments to section 12(1) seek to firstly distinguish between immovable and movable property. In the case of immovable property, such property may only be sold, donated or encumbered with the written consent of the Minister and only if at least 60% of the members of the community approve of such transaction.
- 3.12.3 Furthermore, an association must give notice to the Department of its intention to sell its immovable property and the Department shall have the first option to buy the property. Should a CPA wish to enter into a lease agreement in respect of its immovable property, the consent of the Registrar is needed, which consent should only be given if the lease agreement would benefit the community. The community must also approve such transaction.
- 3.12.4 In the case of movable property, a CPA may sell, donate or encumber it with the consent of a majority of members of the community. In cases where such movable property was purchased with the financial assistance of the Department, the CPA must first obtain the Registrar's consent before it can be sold, donated or encumbered. These proposed amendments to section 12 of the Act, including the amendments of a consequential nature, are contained in Clause 12 of the Bill.

3.13 Clause 13

- 3.13.1 Clause 13 of the Bill seeks to amend section 13 of the Act dealing with administration and liquidation of CPAs. There has been uncertainty as to what is expected of the Director-General and the Department when a CPA is placed under the administration of the Director-General. Due to the lack of capacity, this has also placed a burden on the Director-General and Department.
- 3.13.2 The proposed amendments seek to provide for a CPA to be placed under the administration of the Registrar, therefore under the administration of a dedicated officer who will have the support of the CPA Office. The Registrar may also appoint a competent person to administer and manage the affairs of the CPA and perform the functions of the association as provided for in the Act. It is further proposed that the Registrar may, for the purposes of the administration and management of the affairs of the CPA placed under administration, use the funds of such CPA. Only if such funds are insufficient, may the Director-General consider making available departmental funds.

3.14 Clauses 14, 15 and 16

The proposed amendments to sections 14, 15 and 16 of the Act dealing with offences, delegations and appeals respectively are mostly consequential in nature. However, new offences are inserted which include breaching the provisions of CPA constitutions relating to financial matters, destroying documents on the activities of CPAs and interfering with a competent person appointed to manage the affairs of a CPA that has been put under administration.

3.15 Clause 17

Section 17 of the Act requires of the Director-General to prepare an annual report in respect of CPAs. Clause 17 seeks to place this responsibility on the Registrar and further contains detailed provisions in respect of the kind of information to be reported on.

3.16 Clause 18 and 19

Clauses 18 and 19 seek to amend section 18 of the Act which deals with regulations to include fees. The amendment enables the Director-General to determine any fees which may be payable for registration including any provision which requires the payment of fees in terms of any provision of the Act.

3.17 Clause 20

3.17.1 Clause 20 of the Bill seeks to insert a new section 18A in the Act, to make provision for specific transitional arrangements. These transitional provisions are mostly necessitated by the proposed deletion of section 5 of the Act (provisional associations).

3.17.2 The proposed section 18A(2) makes provision for a period of 12 months (which may be extended with a further 12 months) within which any provisional association has to adopt a constitution and be registered as a CPA. Should a provisional association not comply with this provision, it shall cease to exist and its assets, if any, be dealt with in any manner deemed appropriate by the Registrar or as may be directed by the Minister.

3.17.3 The rights of a provisional association to occupy and use land are protected during the transitional phase in terms of Clause 18A(3). In terms of Clause 18A(6), the Director-General must appoint a competent officer of the Department to perform the functions of the Registrar from the date of commencement of the Amendment Act until the post of Registrar has been filled.

3.18 Clause 21

Clause 21 of the Bill seeks to amend items of the Schedule to the Act and the amendments are mostly consequential in nature.

3.19 Clause 22

Clause 22 of the Bill seeks to amend the long title of the Act to reflect the most important proposed amendments to the Act as contained in the Bill, the most notable being that CPAs manage and administer community property instead of acquiring and holding it.

3.20 Clause 23

Clause 23 of the Bill seeks to amend the Preamble of the Act by deleting the word “disadvantaged” since it is not always disadvantaged communities who wish to form CPAs.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 The initial implementation of the proposed amendments will be accommodated within the current budget of the Department in terms of the Medium Term Strategic and Operational Plans. Additional funds will be required in the outer years.

4.2 The SEIAS conducted on the Bill estimates that an amount of R19 847 550 (19.8m) may be required per annum in the implementation of the Act. This amount includes costs to be borne by other entities such as—

- the Commission on Restitution of Land Rights for investigating and adjudicating on conflicting land claims involving CPAs;
- the office of the Surveyor-General for surveying and related costs;

- the Deeds Office for registration costs; and
- other departments and municipalities for direct and indirect costs related to the general implementation of the Act.

4.3 To limit the costs of establishing the CPA Office, it is intended to transfer experienced officers of the Department to the CPA Office where possible. The CPA Office will make use of current office accommodation of the Department. Although the financial implications in respect of the administration and management of the affairs of communal property associations placed under administration are unknown, provision has been made in the proposed amendments to section 17 of the Act, for information in this regard to be included in future annual reports (provided for in section 17 of the Act).

5. DEPARTMENTS / BODIES / PERSONS CONSULTED

5.1 The Department has consulted with rural communities, civil society organisations, other departments (including the Department of Public Service and Administration), Treasury, spheres of government, and relevant stakeholders during provincial CPA workshops and the national CPA conference.

5.2 The Bill was published for comment. The comments received were considered and, where necessary, consolidated into the Bill.

6. CONSTITUTIONAL IMPLICATIONS

Both the Department and the State Law Advisers are of the considered opinion that the provisions of the Bill are not in conflict with the Constitution. The legal implications of a recent Constitutional Court judgement relating to the relationship between traditional authorities and CPAs with regard to the administration of communal land have also been taken into account. Hence, emphasis in the Bill that community property including land is owned by a community and that a CPA essentially transacts on behalf of a community.

7. COMMUNICATION IMPLICATIONS

Once enacted, the Department will communicate the provisions of the Amendment Act to all institutions that will be affected by the implementation of the Act.

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Rural Development and Land Reform are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it contains provisions that impact on traditional communities.

8.2 The State Law Advisers are of the opinion that it is necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions that impact on traditional communities.