

REPUBLIC OF SOUTH AFRICA

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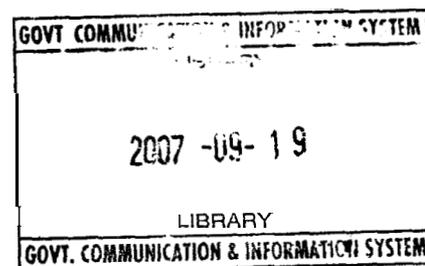
# CO-OPERATIVE BANKS BILL

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*(As amended by the Portfolio Committee on Finance (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)



[B 13B—2007]

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# BILL

To promote and advance the social and economic welfare of all South Africans by enhancing access to banking services under sustainable conditions; to promote the development of sustainable and responsible co-operative banks; to establish an appropriate regulatory framework and regulatory institutions for co-operative banks that protect members of co-operative banks; to provide for the registration of deposit-taking financial services co-operatives as co-operative banks; to provide for the regulation and supervision of co-operative banks; and to provide for the establishment of co-operative banks supervisors and a development agency for co-operative banks; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

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## CHAPTER I

## DEFINITIONS, PURPOSE AND APPLICATION OF ACT

## Definitions

1. (1) In this Act, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Co-operatives Act has the meaning assigned to it in that Act, and— 5

“**Agency**” means the Development Agency for Co-operative Banks established under section 54;

“**appeal board**” means the appeal board established under section 76;

“**banking institution**” means a bank registered under the Banks Act, a mutual bank registered under the Mutual Banks Act, 1993 (Act No. 124 of 1993), a co-operative bank registered under this Act and any other similar institution registered under subsequent banking legislation: 10

“**banking services**” means the services that may be provided by a co-operative bank in accordance with section 14: 15

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

“**business plan**” means, in respect of a specified time period, a document of a co-operative bank that sets out—

(a) its common economic and social objectives and aspirations together with a description of the short and long term strategies for achieving those needs: and 20

(b) its market strategy, the scope and nature of the business (including the types of products offered), the expected volume of deposits and the details of lending and investment objectives;

“**managing director**” means a person under the direct authority of the board of directors of the co-operative bank responsible for the day-to-day operations of the co-operative bank; 25

“**co-operative**” means a co-operative as defined in the Co-operatives Act;

“**co-operative bank**” means a co-operative registered as a co-operative bank in terms of this Act whose members—

(a) are of similar occupation or profession or who are employed by a common employer or who are employed within the same business district; or 30

(b) have common membership in an association or organisation, including a business, religious, social, co-operative, labour or educational group; or

(c) reside within the same defined community or geographical area:

“**Co-operatives Act**” means the Co-operatives Act, 2005 (Act No. 14 of 2005); 35

“**deposit**” has the meaning assigned to it in section 1(1) of the Banks Act;

“**executive officer**” means any employee of a co-operative bank that reports directly to the managing director;

“**financial statements**” means the annual financial statements referred to in sections 47 and 48 of the Co-operatives Act; 40

“**fit and proper person**” means a person contemplated in section 9;

“**Fund**” means the Co-operative Banks Deposit Insurance Fund established under section 26;

“**Minister**” means the Minister of Finance;

“**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 45

“**person**” includes any partnership or group of natural persons;

“**prescribe**”, in relation to—

(a) the Minister, means prescribe by regulation in the *Gazette*;

(b) a supervisor, means prescribe by rule in the *Gazette*; 50

(c) the Agency, means prescribe by rule in the *Gazette*; and

“**primary savings co-operative bank**” means a co-operative registered as a primary co-operative under the Co-operatives Act and as a primary savings co-operative bank under this Act that may provide the banking services and perform the functions referred to in sections 14 and 15; 55

“**primary savings and loans co-operative bank**” means a co-operative registered as a primary co-operative under the Co-operatives Act and as a primary savings and loans co-operative bank under this Act that may provide the banking services and perform the functions referred to in sections 14 and 15 of this Act:

- “**proposed co-operative bank**” means a deposit-taking financial services co-operative that applies for registration as a co-operative bank under section 6;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**registrar**” means the Registrar of Co-operatives defined in section 1 of the Co-operatives Act; 5
- “**regulatory authority**” means an entity established in terms of national legislation responsible for regulating activities or an industry, or sector of an industry;
- “**representative body**” means a secondary co-operative, irrespective of whether it is also a secondary co-operative bank, or other association of co-operative banks registered under section 33 that represents more than one co-operative bank in interactions with organs of state, the private sector and stakeholders; 10
- “**Reserve Bank**” means the South African Reserve Bank referred to in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); 15
- “**rule**”, in relation to—
- (a) the supervisor, means a rule prescribed by the supervisor under section 46; and
- (b) the Agency, means a rule prescribed by the supervisor under section 57; 20
- “**secondary co-operative bank**” means a co-operative registered as a secondary co-operative under the Co-operatives Act and as a secondary co-operative bank under this Act that may provide the banking services and perform the functions referred to in sections 14 and 15 of this Act;
- “**supervisor**” means the relevant supervisor of co-operative banks appointed in terms of section 41; 25
- “**support organisation**” means a representative body accredited under section 38 that support more than one co-operative bank as contemplated in section 37;
- “**tertiary co-operative bank**” means a co-operative registered as a secondary or tertiary co-operative under the Co-operatives Act and as a tertiary co-operative bank under this Act that may provide the banking services and perform the functions referred to in sections 14 and 15 of this Act; 30
- “**this Act**” includes any regulation or rule made under this Act.

### Purpose of Act

2. The purpose of this Act is to—
- (a) promote and advance the social and economic welfare of all South Africans by enhancing access to banking services under sustainable conditions; 35
- (b) promote the development of sustainable and responsible co-operative banks; and
- (c) establish an appropriate regulatory framework and regulatory institutions for co-operative banks that protect members of co-operative banks, 40
- by providing for—
- (i) the registration of deposit-taking financial services co-operatives as co-operative banks;
- (ii) the establishment of supervisors to ensure appropriate and effective regulation and supervision of co-operative banks, and to protect members and the public interest; and 45
- (iii) the establishment of a Development Agency for Co-operative Banks to develop and enhance the sustainability of co-operative banks.

### Application of Act

3. (1) This Act applies to all co-operative banks registered under this Act and to any co-operative registered under the Co-operatives Act that takes deposits and— 50
- (a) has 200 or more members; and
- (b) holds deposits of members to the value of one million Rand or more.
- (2) A co-operative referred to in subsection (1) must, subject to section 91, within two months of meeting the criteria referred to in subsection (1)(a) or (b) apply for registration as a co-operative bank in terms of this Act. 55

## Application of Co-operatives Act

4. (1) The Co-operatives Act applies to co-operative banks unless the application of a provision thereof has specifically been excluded or amended in this Act.
- (2) In the event of an inconsistency between any provision of this Act and any provision of the Co-operatives Act, the provision of this Act prevails. 5

## Types of co-operative banks

5. This Act provides for the registration of the following types of co-operative banks:
- (a) A primary savings co-operative bank;
  - (b) a primary savings and loans co-operative bank;
  - (c) a secondary co-operative bank; and 10
  - (d) a tertiary co-operative bank.

## CHAPTER II

### REGISTRATION, CONSTITUTION, FUNCTIONS, MANAGEMENT AND AUDITOR OF CO-OPERATIVE BANK

#### Part 1 15

#### *Application to register, name, and fit and proper requirement*

#### Application for registration as co-operative bank

6. (1) A co-operative must apply, on the application form prescribed by the supervisor, to the supervisor for registration as one of the types of co-operative banks referred to in section 5. 20
- (2) The following must be submitted together with the application form referred to in subsection (1):
- (a) Two certified copies of the constitution of the proposed co-operative bank;
  - (b) a certified copy of the registration certificate as a co-operative under the Co-operatives Act of the proposed co-operative bank; 25
  - (c) the full and abbreviated name of the proposed co-operative bank as well as any literal translation thereof;
  - (d) a lending policy, if applicable;
  - (e) a savings policy;
  - (f) a business plan; 30
  - (g) certified copies of the registers referred to in section 21(1)(e) and (f) of the Co-operatives Act;
  - (h) the postal and physical address of the proposed co-operative bank and a statement describing the suitability of the premises from which the proposed co-operative bank will operate: and 35
  - (i) the application fee prescribed by the supervisor.
- (3) The application and every document submitted in terms of subsection (2) must be signed by the chairperson of the proposed co-operative bank.
- (4) The supervisor may require a proposed co-operative bank to furnish him or her with— 40
- (a) additional information or documents; or
  - (b) a report by an auditor or by any other knowledgeable person, approved by the supervisor, on aspects relating to the application.

#### Requirements for registration

7. In order to qualify for registration, a proposed co-operative bank must demonstrate to the satisfaction of the supervisor that— 45
- (a) the business it proposes to conduct is that of a co-operative bank of the type to which the application relates;
  - (b) it has sufficient human, financial and operational capacity to function efficiently and competently as a co-operative bank; 50

- (c) every person that is to be a director, managing director or executive officer of the proposed co-operative bank has the necessary experience, knowledge and qualifications to operate the proposed co-operative bank and is a fit and proper person as contemplated in section 9; and
- (d) the composition of the board of directors of the proposed co-operative bank is appropriate having regard to the nature and scale of the business to be conducted. 5

### Registration of co-operative bank

8. (1) The supervisor must grant an application for registration on payment of a fee prescribed by the supervisor, if the supervisor is satisfied that— 10
- (a) the application has been made in accordance with this Act;
  - (b) the proposed co-operative bank complies with the requirements for registration referred to in section 7;
  - (c) the establishment of the proposed co-operative bank will be in the public interest; 15
  - (d) the constitution of the proposed co-operative bank complies with section 13; and
  - (e) the proposed name of the proposed co-operative bank complies with section 10.
- (2) The supervisor may grant an application for registration subject to any condition he or she may determine. 20
- (3) The supervisor must, on registration, issue a certificate of registration to a co-operative bank and publish a notice of the registration in the *Gazette*.

### Fit and proper person

9. (1) The supervisor may, for purposes of assessing whether a director, managing director or executive officer of a proposed co-operative bank is a fit and proper person, have regard to— 25
- (a) the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and class of co-operative bank;
  - (b) the diligence with which the person concerned is likely to fulfil those responsibilities; 30
  - (c) previous conduct and activities of the person in business or financial matters; and
  - (d) any evidence that the person—
    - (i) within the previous 10 years has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or any offence involving dishonesty; 35
    - (ii) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 40
    - (iii) has contravened the provisions of any law the object of which is the protection of the public against financial loss; 45
    - (iv) is a former director or executive officer of a co-operative bank or any other bank and that the person's actions contributed to the inability of that co-operative bank or other bank to pay its debts; or
    - (v) has taken part in any business practices that, in the opinion of the supervisor, were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business. 50
- (2) The supervisor may request any person to assist him or her in assessing if a person is fit and proper to act as a director, managing director or executive officer of a proposed co-operative bank. 55

### **Name of co-operative bank**

**10.** (1) The proposed name of a co-operative bank must comply with section 10(1j) of the Co-operatives Act.

(2) A co-operative bank must have the words “co-operative bank” or “co-op bank” as part of its name. A co-operative bank must within one month of being registered under section 8 amend its constitution to comply with the requirements of this subsection. 5

(3) (a) A co-operative bank must, in addition to the requirements of section 10(4) of the Co-operatives Act, set out its name in legible characters on any statement, notice or advertisement.

(b) A co-operative bank must indicate as which type of co-operative bank it is registered on the documents listed in paragraph (a) and in section 10(4) of the Co-operatives Act. 10

(4) A co-operative bank may not use, or refer to itself by, a name other than the name under which it is registered or any literal translation or abbreviation of such name which has been approved by the supervisor. 15

### **Suspension of registration or de-registration**

**11.** (1) The supervisor may, subject to subsection (4), de-register or, where appropriate, suspend the registration of a co-operative bank where the supervisor is satisfied that the co-operative bank—

(a) has not commenced operating as a co-operative bank six months after the date of its registration as a co-operative bank; 20

(b) has ceased to operate;

(c) has not, for a continuous period of three months, met the criteria referred to in section 3(1) and is unlikely to meet the criteria in the future;

(d) obtained registration through fraudulent means; 25

(e) no longer meets the requirements for registration referred to in section 7;

(f) is unable to meet or maintain its prudential requirements referred to in section 20 or 23(2);

(g) has failed to comply with any condition imposed under this Act;

(h) has failed to comply with any directive issued under this Act; or 30

(i) is de-registered or wound-up under the Co-operatives Act.

(2) Where a co-operative bank has taken a decision at a general meeting to de-register as a co-operative bank, the supervisor may on submission of such a decision together with a report from its auditor stating that such a co-operative bank has no debts other than deposits, de-register such a co-operative bank. 35

(3) (a) Where the supervisor suspends the registration of a co-operative bank under subsection (1), he or she may do so subject to any condition he or she may determine.

(b) The supervisor may revoke any suspension under subsection (1) if he or she is satisfied that the co-operative bank has complied with all the conditions to which the suspension was made subject. 40

(4) (a) The supervisor may publish a notice of such de-registration or suspension in the *Gazette*.

(b) The de-registration of a co-operative bank takes effect on the date specified in the notice referred to in paragraph (a).

(c) Where a co-operative bank has appealed against the decision of the supervisor referred to in subsection (1), the supervisor must not publish the notice referred to in paragraph (a) until the appeal has been finalised. 45

### **Repayment of deposits on de-registration or lapsing of registration**

**12.** (1) The supervisor may on the de-registration of a co-operative bank direct such co-operative bank— 50

(a) to repay any deposits, including interest thereon, held by that co-operative bank as at the date of de-registration within the period specified in the directive; and

(b) to change its name and its constitution within the period and in the manner required by the supervisor. 55

- (2) A directive referred to in subsection (1) may—
- (a) apply to all deposits generally; or
  - (b) differentiate between different types, kinds and amounts of deposits.
- (3) A co-operative bank that fails to comply with a directive under subsection (1) is deemed not to be able to pay its debts. 5

## *Part 2*

### *Constitution and functions of co-operative bank*

#### **Constitution of co-operative bank and amendment to constitution**

- 13.** (1) The constitution of a co-operative bank must, in addition to the provisions of section 14(1) of the Co-operatives Act, provide — 10
- (a) that none of its directors, other than the managing director, may be employees of the co-operative bank;
  - (b) that a director of a co-operative bank who is in arrears for such period and with such amount and type of debt payable to the co-operative bank as prescribed by the Minister is disqualified from continuing as a director and must vacate his or her office; 15
  - (c) for the determination of the remuneration and other benefits of directors, including the managing director, at the annual general meeting; and
  - (d) for the appointment of an audit committee consisting of members that are not directors, to— 20
    - (i) assist the board of directors in its evaluation of the adequacy and efficiency of internal control systems, accounting practices, information systems and auditing processes within that co-operative bank;
    - (ii) facilitate and promote communication regarding the matters referred to in subparagraph (i) or any other related matter between the members, board of directors, executive officers, auditor and the employee charged with the internal auditing of the transactions of the co-operative bank; and 25
    - (iii) introduce measures that in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the co-operative bank. 30
- (2) Despite sections 14(2) 15(c) and 42(1) of the Co-operatives Act, the constitution of a co-operative bank must provide —
- (a) for the establishment of a governance committee and the manner in which it must be constituted; 35
  - (b) for the appointment of a managing director of that co-operative bank;
  - (c) for the settlement of disputes between members of the co-operative bank or between a member of the co-operative bank and the co-operative bank itself;
  - (d) that any membership shares issued must be fully paid up; and
  - (e) that certificates, share statements or any other proof of shareholding must be issued to members. 40
- (3) (a) The supervisor must approve any amendment to the constitution of a co-operative bank prior to the co-operative bank submitting the amendment to the registrar for registration in accordance with section 18 of the Co-operatives Act.
- (b) A co-operative bank must apply for approval referred to in paragraph (a) on the form prescribed by the supervisor. 45
- (c) The supervisor may refuse to approve an amendment.
- (4) (a) The supervisor may at any time and in accordance with section 48 direct a co-operative bank to amend its constitution to remove anomalies or undesirable divergences in the activities of different co-operative banks. 50
- (b) Any directive referred to in paragraph (a) must be considered by the members of the co-operative bank at its next general meeting and, if approved, the amendment must be submitted to the registrar for registration in accordance with section 18 of the Co-operatives Act.
- (c) If a co-operative bank refuses or fails to amend its constitution in accordance with paragraph (a) the supervisor may request the registrar to effect the required amendment to the constitution of the co-operative bank. 55
- (d) The registrar must register the amendment to the constitution of the co-operative bank in accordance with section 18 of the Co-operatives Act.

### Banking services provided by co-operative bank

- 14.** (1) A primary savings co-operative bank may only provide, participate in or undertake the following banking services:
- (a) Solicit and accept deposits from its members;
  - (b) open savings accounts for its members, in the name of each member, into which that member may deposit or withdraw money and from which that member may instruct the co-operative bank to transfer or pay money; 5
  - (c) borrow money from the Agency and members, other than deposits referred to in paragraph (a), up to a percentage of the assets held by it as prescribed by the Minister; 10
  - (d) open a savings account or cheque account in the name of that co-operative bank with any banking institution;
  - (e) make, draw, accept, endorse, or negotiate negotiable instruments that are paid to the order of or made out and endorsed by that co-operative bank;
  - (f) provide trust or custody services to members; 15
  - (g) conduct any additional banking services as may be prescribed by the Minister; and
  - (h) invest money deposited with it in investments prescribed by the Minister.
- (2) A primary savings and loans co-operative bank may only provide the following banking services: 20
- (a) Any of the banking services referred to in subsection (1);
  - (b) grant secured and unsecured loans to members to a maximum aggregate value prescribed by the Minister; and
  - (c) conduct any additional banking services and invest money deposited with it in any investments prescribed by the Minister, in addition to those prescribed under subsection (1). 25
- (3) A secondary co-operative bank may only provide the following banking services:
- (a) Any of the banking services referred to in subsection (2);
  - (b) trading financial instruments on behalf of its members;
  - (c) open an account with a bank registered under the Banks Act to facilitate foreign currency transactions; 30
  - (d) conduct such additional banking services and invest money deposited with it in any investments prescribed by the Minister, in addition to those prescribed under subsections (1) and (2).
- (4) A tertiary co-operative bank may provide the following banking services: 35
- (a) Any of the banking services referred to in subsections (2) and (3); and
  - (b) conduct such additional banking services and invest money deposited with it in any investments prescribed by the Minister, in addition to those prescribed under subsections (1), (2) and (3).
- (5) The Minister or supervisor may prescribe the manner in which any of the banking services referred to in subsections (1), (2), (3) or (4) may be conducted, including, but not limited to, any fee, fine or charge that may be imposed on its members. 40
- (6) Section 45 of the Co-operatives Act does not apply to co-operative banks.

### General functions of co-operative bank

- 15.** A co-operative bank may, in addition to the functions referred to in section 19 of the Co-operatives Act— 45
- (a) receive grants and donations;
  - (b) in relation to a secondary or tertiary co-operative bank, apply for registration as a representative body under section 31 or accreditation as a support organisation under section 36; 50
  - (c) be a member of and enter into an agreement with a representative body or support organisation;
  - (d) together with other co-operative banks of the same type establish a dispute resolution scheme within the meaning assigned to it in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004); and 55
  - (e) subject to any conditions specified by the supervisor, act as an agent of its members or act in the interest of its members as an intermediary of a banking institution, other co-operative bank, co-operative, pension fund, provident fund, medical scheme, or insurance business as defined in the Long-term

Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

### **Part 3**

#### **Management of co-operative bank**

##### **Duties of directors and officers of co-operative bank** 5

**16.** (1) The provisions of Chapter 5 of the Co-operatives Act apply to this Part with respect to management of co-operative banks.

(2)(a) The directors, managing director and executive officer of a co-operative bank must be appointed in accordance with the conditions provided for in the constitution of such co-operative bank. 10

(b) The supervisor may object to the appointment of a director or the managing director and may, in accordance with section 48, direct the co-operative bank to remove the director within the period stated in the directive.

(3) Each director, managing director and executive officer of a co-operative bank— 15

(a) owes a fiduciary duty and a duty of care and skill to the co-operative bank of which such a person is director, managing director or executive officer;

(b) must act *bona fide* for the benefit of the co-operative bank;

(c) must avoid any conflict between the interests of the co-operative bank and the interests of such director, managing director or executive officer, as the case may be; 20

(d) must possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar position and carrying out similar functions as are carried out by the director, managing director or executive officer of that co-operative bank; and

(e) must exercise such care in the carrying out of their functions in relation to that co-operative bank as may reasonably be expected of a diligent person holding a similar position, and who possesses both the knowledge and skill mentioned in paragraph (d) and any such additional knowledge and skill as the director, managing director or executive officer may have. 25

##### **Details of directors and officers of co-operative bank** 30

**17.** (1) A co-operative bank must submit the information referred to in section 39 of the Co-operatives Act to the supervisor.

(2) A co-operative bank must submit the same information referred to in subsection (1) in respect of each executive officer that is not a director to the supervisor.

### **Part 4** 35

#### **Auditor of co-operative bank**

##### **Functions of auditor in relation to supervisor**

**18.** Despite the provisions of any other law, the auditor of a co-operative bank must—

(a) provide the supervisor with a copy of any report submitted to the Regulatory Board in terms of section 45 of the Auditing Profession Act, 2005 (Act No. 26 of 2005), that contains a statement referred to in section 45(3)(c)(i)(cc) of that Act; and 40

(b) inform the supervisor in writing of any matter relating to the affairs of a co-operative bank of which the auditor became aware in the performance of his or her functions as auditor of that co-operative bank that, in the opinion of the auditor, may— 45

(i) negatively impact on the co-operative bank's ability to continue as a going concern;

(ii) put deposits held by the co-operative bank at risk contrary to principles of sound management (including risk management). 50

### Submission of documents to supervisor

19. (1) A co-operative bank must when informing, notifying or submitting notices, reports, returns and financial statements to the registrar in accordance with the Co-operatives Act submit the same documents to the supervisor within the same periods.

(2) A co-operative bank must within 30 days after a general meeting submit a copy of the minutes to be kept in terms of section 31(1)(a) of the Co-operatives Act to the supervisor. 5

## CHAPTER III

### PRUDENTIAL REQUIREMENTS AND LARGE EXPOSURES

#### Prudential requirements of co-operative bank 10

20. (1) A co-operative bank must meet and maintain such minimum—

(a) capital requirements;

(b) asset quality;

(c) liquidity to be held in addition to any surplus reserves held in accordance with paragraph (d); and 15

(d) surplus reserves as required by section 46 of the Co-operatives Act, as may be prescribed by the Minister.

(2) Regulations prescribed in terms of subsection (1) may—

(a) specify the—

(i) type, form, components, composition, percentage and value of each matter referred to in subsection (1); and 20

(ii) method of calculating the values referred to in subparagraph (i); and

(b) apply to co-operative banks generally; or

(c) differentiate between different kinds of co-operative banks, which differentiation may be defined in relation to either a type or budgetary size of co-operative bank or to any other matter. 25

#### Inability to meet or maintain prudential requirements

21. (1) A co-operative bank that is unable to meet or maintain the prudential requirements referred to in section 20 or 23(2) must immediately report its inability and the reasons therefor to the supervisor. 30

(2) The supervisor may—

(u) de-register or suspend the registration of a co-operative bank referred to in subsection (1) in accordance with section 11; or

(b) condone the inability to meet or maintain the prudential requirements referred to in section 20 or 23(2) subject to such conditions as the supervisor may impose. 35

#### Reporting on prudential requirements

22. A co-operative bank must at the intervals prescribed by the supervisor submit a report on its prudential requirements to the supervisor in the form and manner prescribed by the supervisor. 40

#### Large exposures of co-operative bank

23. (1) A co-operative bank may not, without the approval of the supervisor—

make an investment with any one person or grant a loan to any one member, which investment or loan, alone or together with all previous investments or loans made or granted to that person or member, will exceed such percentage of its total investments or loans as may be prescribed by the Minister. 45

(2) The supervisor may, when approving a loan or investment referred to in subsection (1), impose prudential requirements on the co-operative bank in addition to those referred to in section 20.

(3) For the purposes of subsection (1) the following loans or investments must be regarded as a single loan or investment:

- (a) Loans or investments to more than one persons or members who are directly or indirectly controlled by the same person or member: and
- (b) loans or investments to more than one persons or members who are so interconnected that should one of them experience financial difficulties, another one or all of them would be likely to experience a lack of liquidity.

## CHAPTER IV

### DEPOSIT INSURANCE FUND AND SCHEMES

#### **Deposit insurance obligations of co-operative bank** 10

**24.** A co-operative bank must pay to the Fund such deposit insurance contributions as may be prescribed by the Minister.

#### **Establishment of Co-operative Banks Deposit Insurance Fund**

**25.** The Agency must establish, and must manage, a fund to be known as the Co-operative Banks Deposit Insurance Fund. 15

#### **Control of Co-operative Banks Deposit Insurance Fund**

**26.** (1) The Agency must annually report on the Fund to the Minister.

(2) The Fund shall vest in and be administered by the Agency.

(3) The Fund shall be held in trust by the Agency for the purposes mentioned in subsection (7). 20

(4) The Fund is under the control and management of the Agency, which—

(a) must utilise the money in the Fund in accordance with subsection (7) only;

(b) is responsible for accounting for money received in. and payments made from, the Fund; and

(c) must cause the necessary accounting and other related records to be kept. 25

(5) The Fund consists of—

(a) the contributions referred to in section 24;

(b) interest derived from investment made in accordance with subsection (9);

(c) funds appropriated by Parliament; and

(d) money accruing to the Fund from any other source. 30

(6) The money in the Fund must be utilised for—

(a) compensating members of co-operative banks, that paid contributions to the fund, for deposits lost as a result of a co-operative bank having been unable to repay the deposits from its members, up to a percentage or amount determined by the Minister; and 35

(b) the expenses involved in the control and management of the Fund.

(7) (a) Money in the Fund shall, before utilisation in terms of subsection (7), be paid into an account to be known as “The Risk Equalisation Fund” at a financial institution.

(b) The financial institution where the account contemplated in paragraph (a) is kept, shall not in respect of any liability of the Fund, not being a liability arising out of or in connection with any such account, have or obtain recourse or any right, whether by set-off, counter-claim, charge or otherwise, against money standing to the credit of such account. 40

(8) (a) Any money of the Fund which is not required for immediate allocation may be invested by the Agency in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and may be withdrawn when required. 45

(b) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

(9) (a) The Fund must maintain separate accounting records for the bank account referred to in subsection (8), from the transactions. including investment transactions, undertaken by the Fund and annually prepare separate annual financial statements for the Fund in accordance with generally accepted accounting practice. 50

(b) The Fund and the records referred to in paragraph (a) must be audited by the Auditor-General.

## CHAPTER V

AMALGAMATION, DIVISION, CONVERSION, TRANSFER, JUDICIAL  
MANAGEMENT AND WINDING-UP OF CO-OPERATIVE BANKS**Prohibited transactions**

**27.** (1) A co-operative bank may not convert into any other form of corporate or unincorporated body. 5

(2) A co-operative bank may only amalgamate with another co-operative bank and transfer assets, rights, liabilities and obligations to another co-operative bank in accordance with section 57 of the Co-operatives Act.

**Conversion of primary savings co-operative bank** 10

**28.** (1) A primary savings co-operative bank may convert to a primary savings and loans co-operative bank.

(2) A primary savings co-operative bank that wishes to convert to a primary savings and loans co-operative bank must—

- (a) apply to the supervisor to convert to such a primary savings and loans co-operative bank in accordance with this Act; and 15
- (b) request the supervisor to cancel its registration as a primary savings co-operative bank and to record its conversion.

**Amalgamation or division of or transfer by co-operative bank**

**29.** (1) Before an amalgamation, division or transfer of assets, rights, liabilities and obligations by a co-operative bank, such co-operative bank must apply to the supervisor for the approval of the amalgamation, division or transfer. 20

(2) Chapter 8 of the Co-operatives Act applies with regard to the amalgamation, division or transfer, by a co-operative bank, referred to in subsection (1).

(3) If an amalgamation, division of or transfer by a co-operative bank will result in more than 25% of the assets, rights, liabilities or obligations of a co-operative bank being transferred to another co-operative bank, the supervisor may not approve that amalgamation, division of or transfer or issue a certificate of registration in respect thereof without the written consent of the Minister to that amalgamation, division or transfer. 25  
30

**Winding-up or judicial management of co-operative bank**

**30.** (1) Despite the provisions of sections 72(1), 73(1) and 77(2) of the Co-operatives Act—

- (a) the supervisor may— 35
  - (i) apply to a court that a co-operative bank be wound-up;
  - (ii) recommend to the Minister of Trade and Industry that a co-operative bank be wound-up; and
  - (iii) apply to a court for a judicial management order: and
- (b) the Minister of Trade and Industry may not order that a co-operative bank be wound-up without the written concurrence of the supervisor. 40

(2) Any application to a court for the winding-up, including the voluntary winding-up, of a co-operative bank must be served on the supervisor.

(3) Despite any other law, the Master of the High Court may only appoint a person recommended by the supervisor as a provisional liquidator or liquidator of a co-operative bank, unless the Master is of the opinion that the recommended person is not fit and proper to be appointed as a provisional liquidator or liquidator of the co-operative bank concerned. 45

(4) A liquidator of a co-operative bank that is voluntarily wound-up must submit to the supervisor any documents that the co-operative bank being wound-up would have been obliged to submit in terms of this Act. 50

## CHAPTER VI

### REPRESENTATIVE BODIES

#### Application for registration as representative body

- 31.** (1) A representative body must apply, on the application form prescribed by the Agency, to the Agency for registration. 5
- (2) The representative body must submit the following together with an application form referred to in subsection (1):
- (a) A list of co-operative banks it represents;
  - (b) documentary proof that it represents the co-operative banks included in the list referred to in paragraph (a); and 10
  - (c) the application fee prescribed by the Agency.
- (3) The supervisor may require a representative body to furnish him or her with additional information or documents.

#### Requirements for registration

- 32.** In order to qualify for registration a representative body must demonstrate, to the satisfaction of the Agency, that it— 15
- (a) represents two or more co-operative banks in interactions with organs of state, the private sector and stakeholders; and
  - (h) has the requisite experience, knowledge, qualifications and competence to represent co-operative banks; and 20
  - (c) has sufficient human, financial and operational capacity to function efficiently and competently.

#### Registration of representative body

- 33.** (1) The Agency must grant an application for registration on payment of the fee, prescribed by the Agency, if the Agency is satisfied that— 25
- (a) the application has been made in accordance with this Act; and
  - (b) the representative body complies with the requirements for registration referred to in section 32.
- (2) The Agency must, on registration, issue a certificate of registration to a representative body and publish a notice to that effect in the *Gazette*. 30

#### Requirements for continued registration

- 34.** In order to retain its registration, a registered representative body must annually, within three months of the end of its financial year, satisfy the Agency that it continues to comply with the requirements for registration listed in section 32.

#### Cancellation or suspension of registration 35

- 35.** (1) (a) The Agency must, subject to paragraph (b), cancel the registration of a representative body if that body ceases to comply with any requirement for registration or continued registration referred to in sections 32 and 34.
- (b) The Agency must, prior to cancellation of registration, give notice in writing to the representative body concerned of its intention to cancel registration and the reasons on which such intention is based, and must afford the representative body a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation. 40
- (c) The Agency, pending the outcome of the process referred to in paragraph (b), may suspend the registration of a representative body if it considers it in the best interests of the public or co-operative banking, and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it may consider necessary. 45
- (d) If the Agency considers that cancellation of registration would not be in the best interests of the public, co-operative banking or the members of a representative body, it may extend the registration of the representative body concerned on such conditions as it considers appropriate. 50

(2) A representative body may, by written notice to the Agency, renounce its registration.

(3) The registration of a representative body lapses automatically if it ceases to exist or if it renounces its registration.

(4) The Agency must, on cancellation or lapsing of a registration, publish a notice to that effect in the *Gazette*.

## CHAPTER VII

### SUPPORT ORGANISATIONS

#### Application for accreditation as support organisation

**36.** (1) A support organisation must apply, on the application form prescribed by the Agency, to the Agency for accreditation. 10

(2) The support organisation must submit the following together with an application form referred to in subsection (1):

- (a) Copies of any support agreements;
- (b) documentary proof in respect of the matters referred to in section 37(c) and (d); 15
- (c) a business plan;
- (d) a certified copy of its certificate of registration as a co-operative under the Co-operatives Act;
- (e) a certified copy of its constitution: 20
- (f) a list of its members and its directors: and
- (g) the application fee prescribed by the Agency.

(3) The supervisor may require a support organisation to furnish him or her with—

- (a) additional information or documents; or
- (b) a report by an auditor or by any other knowledgeable person, approved by the supervisor, on aspects relating to the application. 25

#### Requirements for accreditation

**37.** In order to qualify for accreditation a support organisation must demonstrate, to the satisfaction of the Agency, that—

- (a) it has two or more co-operative banks as members; 30
- (b) support agreements have been entered into with at least two co-operative banks, which support agreements may provide for—
  - (i) development and support;
  - (ii) ongoing education and training of members, directors and personnel; and
  - (iii) assistance in managing and maintaining prudential requirements, establishment of risk management systems, improvement of governance arrangements and audits; 35
- (c) it has the requisite experience, knowledge, qualifications and competence to give effect to its obligations in terms of the support agreements; and
- (d) it has sufficient human, financial, and operational capacity to function efficiently and competently. 40

#### Accreditation of support organisation

**38.** (1) The Agency must grant an application for accreditation on payment of the fee, prescribed by the Agency, if the Agency is satisfied that—

- (a) the application has been made in accordance with this Act: and 45
- (b) the support organisation complies with the requirements for accreditation referred to in section 31.

(2) The Agency must, on accreditation, issue a certificate of accreditation to a support organisation and publish a notice of the accreditation in the *Gazette*.

#### Requirements for continued accreditation 50

**39.** In order to retain its accreditation, an accredited support organisation must—

- (a) at least twice a year, submit performance reports to each co-operative bank it represents: and

- (b) annually within three months of the end of its financial year—
- (i) satisfy the Agency that it continues to comply with the requirements for accreditation listed in section 37: and
  - (ii) submit a report to the Agency, in the form and with the content required by the Agency, on its performance during the relevant financial year. 5

### **Cancellation or suspension of accreditation**

40. (1) (a) The Agency may, subject to paragraph (hj), cancel the accreditation of a support organisation if that body ceases to comply with any requirement for accreditation or continued accreditation referred to in sections 37 and 39.

(b) The Agency must, prior to cancellation of accreditation, give notice in writing to the support organisation concerned of its intention to cancel accreditation and the reasons on which such intention is based, and must afford the support organisation a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation of accreditation. 10

(c) The Agency, pending the outcome of the process referred to in paragraph (b), may suspend the accreditation of a support organisation if it considers it in the best interests of the public or co-operative banking, and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it may consider necessary. 15

(d) If the Agency considers that cancellation of accreditation would not be in the best interests of the public, co-operative banking or the members of a support organisation, it may extend the accreditation of the support organisation concerned on such conditions as it considers appropriate. 20

(2) A support organisation may, by written notice to the Agency, renounce its accreditation. 25

(3) The accreditation of a support organisation lapses automatically if it ceases to exist or if it renounces its accreditation.

(4) The Agency must on cancellation or lapsing of an accreditation publish a notice to that effect in the *Gazette*.

## **CHAPTER VIII** 30

### **ADMINISTRATION OF ACT**

#### **Supervisors of co-operative banks**

41. (1) The South African Reserve Bank must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act in respect of— 35

- (a) primary co-operative banks that hold deposits in excess of 20 million Rand;
- (b) secondary co-operative banks; and
- (c) tertiary co-operative banks.

(2) The Agency must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act in respect of primary co-operative banks that that hold deposits of 20 million Rand or less. 40

(3) If a primary co-operative bank holds deposits in excess of 20 million Rand for a continuous period of three months, the Agency must inform the South African Reserve Bank within one month of the expiry of that three month period that the primary co-operative bank is subject to its authority and provide the South African Reserve Bank with the necessary information. 45

(4) If a primary co-operative bank holds deposits of less than 20 million Rand for a continuous period of three months the South African Reserve Bank must inform the Agency within one month of the expiry of that three month period that the primary co-operative bank is subject to its authority and provide the Agency with the necessary information. 50

### Co-operation and co-ordination between supervisors

- 42.** (1) The supervisors appointed under section 41(1) and section 41(2) must co-operate with each other and co-ordinate their approach to exercising their powers and functions in terms of the Act to ensure the consistent application of this Act.
- (2) The supervisors must, in addition to subsection (1)— 5
- (a) engage with each other in activities of research, publication, education, staff development and training; and
  - (b) engage with each other in staff exchanges or secondments; and
  - (c) provide technical assistance or expertise to each other.
- (3) The supervisors must annually prepare a co-operation and co-ordination plan in 10  
respect of the matters referred to in subsections (1) and (2) and submit such co-operation and co-ordination plan to the Minister.

### Deputy co-operative bank supervisors and designated employees

- 43.** The South African Reserve Bank and Agency may, subject to the approval of the 15  
Minister—
- (a) appoint not more than four employees in its service as deputy co-operative banks supervisors, to assist the supervisor in the performance of his or her duties; and
  - (b) from time to time designate such other employees of the Agency as may be 20  
necessary to assist the supervisor.

### Delegation and assignment

- 44.** (1) The supervisor may, in writing, delegate any of the powers entrusted to him or her in terms of this Act and assign any of the duties imposed on him or her in terms of this Act to a deputy supervisor or any other person.
- (2) A delegation or assignment in terms of subsection (1)— 25
- (a) is subject to any limitations or conditions that the supervisor may impose;
  - (b) may authorise subdelegation; and
  - (c) does not divest the supervisor of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The supervisor may confirm, vary or revoke any decision taken by a deputy 30  
supervisor or any other person, subject to any rights that may have vested as a consequence of the delegation or assignment.

### General powers and functions of supervisor

- 45.** The supervisor, in addition to other functions conferred on the supervisor by or in 35  
terms of any other provision of this Act—
- (a) must take steps he or she considers necessary to protect the public in their dealings with co-operative banks;
  - (b) may, on the written request of a co-operative bank, a representative body, support organisation or auditor, extend any period within which any documentation, information or report must be submitted to him or her; 40
  - (c) must determine the form, manner and period, if a period is not specified in this Act, within which any documentation, information or report that a co-operative bank, a representative body, support organisation or auditor is required to submit to the supervisor under this Act must be submitted;
  - (d) may, despite the provisions of any law, furnish information acquired by him or 45  
her under this Act to any person charged with the performance of a function under any law;
  - (e) may issue guidelines to co-operative banks, members, supporting institutions and auditors on the application and interpretation of this Act and provide them with information on market practices or market or industry developments 50  
within or outside the Republic;
  - (f) may publish a journal or any other publication, and issue newsletters and circulars containing information relating to co-operative banks; and
  - (g) may take any measures he or she considers necessary for the proper 55  
performance and exercise of his or her functions or duties or for implementation of this Act.

**Power to make rules**

- 46.** (1) The supervisor may prescribe rules with regard to—
- (a) any matter that is required or permitted to be prescribed in terms of this Act: and
  - (b) any other matter for the better implementation of this Act or a function or power provided for in this Act. 5
- (2) Rules referred to in subsection (1) may—
- (a) apply to eo-operative banks generally; or
  - (b) be limited in application to a particular co-operative bank or kind of co-operative bank, which may be defined in relation to either a type or budgetary size of co-operative bank or to any other matter. 10
- (3)(a) Before the supervisor prescribes any rule under this section, he or she must—
- (i) publish a draft of the proposed rule in the *Gazette* together with a notice calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice: and 15
  - (ii) secure the written approval of the Minister.
- (b) If the supervisor alters a draft rule because of any comment, he or she need not publish the alteration before prescribing the rule.
- (4) The supervisor may, if circumstances necessitate the immediate publication of a rule, publish that rule without the approval as contemplated in subsection (3)(a)(ii). 20

**Inspections**

- 47.** (1) (a) The supervisor may at any time of his or her own accord, on application by at least 10 per cent of the members of or at the request of the judicial manager of a eo-operative bank inspect the business of a eo-operative bank if the supervisor has reason to believe that the co-operative bank is not conducting its affairs in accordance with the provisions of this Act or is contravening a provision of this Act. 25
- (b) The supervisor has for the purposes of subsection (2) the powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, 1988 (Act No. 80 of 1988), and any reference in that Act to “registrar” must be construed as a reference to “supervisor” and any reference to “financial institution” must be construed as a reference to “co-operative bank”, provided that no warrant is required for search and seizure activities aimed at establishing regulatory compliance. 30
- (2) The supervisor may take any measures and make any recommendation he or she considers appropriate following an inspection in terms of subsection (1), including a recommendation to— 35
- (a) the eo-operative bank; and
  - (b) the relevant prosecuting authority if the inspection was done on the authority of a warrant.

**Directives**

40

- 48.** (1) The supervisor may, in order to ensure the implementation and administration of this Act or to protect members and the public in general, issue a directive to a co-operative bank—
- (a) to implement specific practices, procedures or processes;
  - (b) to take specific actions or measures; 45
  - (c) to desist from undertaking specific practices, procedures, processes, actions or measures; or
  - (d) prohibiting certain practices, procedures, processes, actions or measures.
- (2) A directive referred to in subsection (1) may—
- (a) apply to co-operative banks generally; or
  - (b) be limited in its application to a particular co-operative bank or kind of co-operative bank, which may be defined either in relation to a type or budgetary size of co-operative bank or to any other matter. 50
- (3) A directive issued in terms of subsection (1) takes effect on the date determined by the Reserve Bank in the directive. and may take effect immediately. 55
- (4)(a) The supervisor must issue a directive in terms of subsection (1), in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(b) In the event of a departure from the provisions of the Promotion of Administrative Justice Act, 2000, in accordance with sections 3(4) and 4(4) of that Act, the directive must include a statement to that effect and a motivation for *the* departure.

(5) The supervisor may cancel or revoke any previously issued directives.

(6) The supervisor must, where a directive is issued to ensure the protection of the members and the public in general, publish the directive in the *Gazette* and any other media that the supervisor deems appropriate. 5

### Administrative penalties

49. (1) The supervisor may, despite and in addition to taking any step he or she may take under this Act, impose an administrative penalty on the co-operative bank for any failure to comply with a provision of this Act. 10

(2) An administrative penalty referred to in subsection (1) may not exceed the amount prescribed by the Minister for every day during which such failure continues.

(3) An administrative penalty imposed under subsection (1) must be paid to the supervisor within the period specified by the supervisor. 15

(4) If a co-operative bank fails to pay an administrative penalty within the specified period the supervisor may by way of civil action in a competent court recover the amount of the administrative penalty from the co-operative bank.

### Information and reports

50. (1) (a) The supervisor may on written notice require a co-operative bank, a representative body or support organisation of a co-operative bank to submit to him or her— 20

(i) the information specified in the notice; or

(ii) a report by an auditor or by any other person with appropriate professional skill, designated by the supervisor, on any matter specified in the notice. 25

(6) A report required under subsection (1) must be prepared at the expense of the co-operative bank, representative body or support organisation.

### Records and register of co-operative banks

51. (1) (a) The supervisor must keep records of the following documents for a period of at least 10 years: 30

(i) Alterations to the constitution or name of a co-operative bank;

(ii) constitutions of co-operative banks;

(iii) copies of all documents submitted to him or her by a co-operative bank or its auditor; and

(iv) financial statements of co-operative banks. 35

(b) Despite paragraph (a), the supervisor is not required to keep documents relating to a co-operative bank whose registration was cancelled for a period longer than five years from the date of the cancellation.

(2) The supervisor must keep a register of co-operative banks in the manner prescribed by the Minister, in which particulars of all registered co-operative banks must be entered. 40

(3) The register of co-operative banks or any extract therefrom or copy thereof signed by the supervisor is, on the face of it, proof of the particulars contained in the register.

### Reporting

52. (1) The supervisor must provide the Minister with access to any information as may be reasonably requested. 45

(2) (a) The supervisor must annually, at the intervals prescribed by the Minister, submit to the Minister a report on—

(i) the exercise and performance of his or her powers and functions in terms of this Act; and 50

(ii) the implementation of the co-operation and co-ordination plan referred to in section 42.

(b) The Minister must table the report referred to in subsection (2) in Parliament within two months of submission thereof.

## Relationship with other regulatory authorities

- 53.** (1) The supervisor may—
- (a) liaise with any regulatory authority on matters of common interest;
  - (b) negotiate agreements with any regulatory Authority to co-ordinate and harmonise the reporting obligations of co-operative banks; 5
  - (c) participate in the proceedings of any regulatory authority; and
  - (d) advise or receive advice from any regulatory authority.
- (2) A regulatory authority may negotiate agreements with the supervisor as anticipated in subsection (1) and may exercise its jurisdiction by way of such an agreement. 10
- (3) The President may assign *to* the supervisor any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purpose of this Act.
- (4) The supervisor may—
- (a) liaise with any foreign or international bodies and authorities having any objects similar *to* the functions and powers of the supervisor: 15
  - (b) participate in the activities of international bodies and authorities whose main purpose is to develop, advance and promote the sustainability of co-operative banks: and
  - (c) may co-operate with international bodies and authorities in respect of matters relating *to* co-operative banks. 20

## CHAPTER IX

## CO-OPERATIVE BANKS DEVELOPMENT AGENCY

*Part 1**Establishment, legal status, functions and powers of Agency* 25Establishment **and** legal status

- 54.** (1) The Co-operative Banks Development Agency is hereby established, and—
- (a) is a juristic person; and
  - (b) must exercise its functions in accordance with this Act and any other relevant law. 30
- (2) The Agency is subject to the Public Finance Management Act.

## General functions

- 55.** (1) The Agency must, in addition *to* its other functions provided for in this Act—
- (a) support, promote and develop co-operative banking, including, despite section 3(1), deposit-taking co-operatives; 35
  - (b) appoint a supervisor in accordance with section 41(2) and support the supervisor in exercising and performing his or her powers and functions;
  - (c) promote the establishment of representative bodies and support organisations;
  - (d) register and regulate representative bodies;
  - (e) accredit and regulate support organisations; 40
  - (f) provide financial support *to* co-operative banks through loans or grants;
  - (g) manage the Fund in accordance with section 26;
  - (h) assist co-operative banks with liquidity management;
  - (i) facilitate, promote and fund education, training and awareness in connection with, and research into, any matter affecting the effective, efficient and sustainable functioning of co-operative banks; 45
  - (j) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, in respect of co-operative banks and support organisations; 50
  - (k) interact with any regulatory authority to ensure appropriate regulation of co-operative banking and co-operative banks; and

- (l) monitor trends and patterns in the development of co-operative banking and co-operative banks.
- (2) The Agency may—
  - (a) participate in the activities of international bodies whose main purpose is to develop, promote and support co-operative banks; 5
  - (b) assist co-operative banks in auditing their financial statements; and
  - (c) take any measures it considers necessary for the proper performance and exercise of its functions or duties or to achieve the objects of this Act.

### General powers

- 56. The Agency may— 10
  - (a) determine its own staff establishment and may appoint a managing director, subject to the approval of the Minister, and employees in posts on the staff establishment on such conditions, including the payment of remuneration and allowances, as it may determine;
  - (b) in consultation with the Minister, determine the remuneration and allowances payable to its members or the members of any committee of the Agency; 15
  - (c) collect fees and invest funds;
  - (d) finance publications;
  - (e) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties and powers; 20
  - (f) enter into and decide upon the manner in which agreements must be entered into;
  - (g) obtain the services of any person, including any organ of state or institution, to perform any specific act or function; 25
  - (h) determine where its head office must be situated;
  - (i) confer with any organ of state;
  - (j) open and operate its own bank accounts;
  - (k) perform legal acts, or institute or defend any legal action in its own name; and
  - (l) do anything that is incidental to the performance or exercise of any of its functions or powers. 30

### Power to make rules

- 57. (1) The Agency may prescribe rules with regard to—
  - (a) the matters referred to in section 55(1)(d) to (h);
  - (b) any matter that is required or permitted to be prescribed in terms of this Act; 35 and
  - (c) any other matter for the better execution of this Act or a function or power provided for in this Act.
- (2) Rules referred to in subsection (1) may—
  - (a) apply to co-operative banks, representative bodies or support organisations generally; or 40
  - (b) be limited in application to a particular co-operative bank, representative body or support organisation, or kind of co-operative bank, which may be defined either in relation to a type or budgetary size of co-operative bank or to any other matter. 45
- (3) (a) Before the Agency prescribes any rule under this section, it must—
  - (i) secure the written approval of the Minister; and
  - (ii) publish a draft of the proposed rule in the *Gazette* and such other electronic and printed media as the Agency considers appropriate together with a notice calling on the public to comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. 50
- (b) If the Agency alters a draft rule because of any comment, it need not publish the alteration before prescribing the rule.
- (4) The Agency may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (3)(a)(ii). 55

**Part 2****Governance of Agency****Appointment of board members of Agency**

- 58.** (1) The board of the Agency consists of not less than six but not more than 10 non-executive members appointed by the Minister. 5
- (2) The Minister must appoint competent persons to effectively manage and guide the activities of the Agency based on their knowledge and experience.
- (3) When making the appointments, the Minister must take into consideration, amongst other factors—
- (a) the need for transparency and representivity within the broader demographics of the South African population: 10
  - (b) any nominations received in terms of subsection (4); and
  - (c) the availability of persons to serve as members of the Agency.
- (4)(a) Before the Minister makes the appointments, the Agency must, by notice in the *Gazette* and in any national newspaper, invite nominations from members of the public. 15
- (b) The Minister must invite nominations from members of the public for the appointment of the first board of the Agency following the commencement of this Act.
- (5)(u) The Minister may appoint an alternate member for every member of the Agency, and an alternate member may attend and take part in the proceedings at any meeting of the Agency whenever the member for whom he or she has been appointed as an alternate is absent from that meeting. 20
- (b) The provisions of sections 59 and 60 apply, with the necessary changes, to alternate members.

**Term of office of members of Agency**

- 59.** (1) A member of the Agency appointed in terms of section 58 holds office for such period, but not exceeding three years, as the Minister may determine at the time of his or her appointment. 25
- (2) A member of the Agency may be reappointed but may not serve more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette* and after consultation with the Agency, terminate the period of office of a member of the Agency— 30
- (a) if the performance of the member is unsatisfactory;
  - (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively; or 35
  - (c) if the member, whilst holding office, has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.
- (4) Despite subsection (1), the Minister may, if the performance of the Agency is unsatisfactory, terminate the period of office of all the members of the Agency. 40
- (5)(a) In the event of the dismissal of all the members of the Agency, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of section 58.
- (b) The Minister must appoint new members in terms of section 58 within three months of the dismissal referred to in paragraph (a). 45

**Disqualification from membership and vacation of office**

- 60.** (1) A person may not be appointed as a member of the Agency if that person—
- (a) is not a South African citizen;
  - (b) is not resident in the Republic;
  - (c) is an unrehabilitated insolvent: 50
  - (d) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty: 55

- (e) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect. and sentenced to imprisonment without the option of a fine: or
- (f) has, as a result of improper conduct. been removed from an office of trust. 5
- (2) The membership of a member of the Agency ceases if he or she—
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Agency;
- (h) resigns by written notice addressed to the Agency;
- (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973); 10
- (d) has, without the leave of the Agency, been absent from more than two consecutive meetings of the Agency; or
- (e) ceases to be permanently resident in the Republic.
- (3) If a member of the Agency becomes disqualified on a ground mentioned in subsection (1) or (2), such member ceases to be a member of the Agency from the date of becoming disqualified. 15
- (4) (a) If a member of the Agency dies or vacates his or her office before the expiration of his or her term of office, the Minister must consider appointing a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred. 20

### **Chairperson and deputy chairperson**

- 61.** (1) (a) The Minister appoints the chairperson and deputy chairperson from among the members of the Agency appointed under section 58.
- (b) The chairperson and deputy chairperson each hold office for a period of two years from the date of their appointment. 25
- (2) If the chairperson is absent or for any reason unable to perform his or her functions as chairperson, the deputy chairperson must act as chairperson. and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson.

### **Meetings** 30

- 62.** (1) The Agency meets as often as circumstances require, but at least four times every year, at such time and place as the Agency may determine.
- (2) The chairperson may at any time convene a special meeting of the Agency at a time and place determined by the chairperson.
- (3) Upon a written request signed by not less than three members of the Agency, the chairperson must convene a special meeting of the Agency to be held within three weeks after the receipt of the request, and the meeting must take place at a time and place determined by the chairperson. 35
- (4) A majority of the members of the Agency constitutes a quorum at a meeting.
- (5) (a) Every member of the Agency, including the chairperson, has one vote. 40
- (b) In the event of an equality of votes. the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

### **Decisions**

- 63.** (1) A decision of the majority of members present at a duly constituted meeting is a decision of the Agency. 45
- (2) No decision taken by or act performed under the authority of the Agency is invalid only by reason of—
- (a) a casual vacancy on the Agency; or
- (b) the fact that any person who did not qualify to sit as a member of the Agency participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions. 50

## Duties of members

- 64.** The board of the Agency is the accounting authority of the Agency within the meaning of the Public Finance Management Act and must, in addition to the duties and responsibilities provided for in the Public Finance Management Act—
- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the Agency; 5
  - (b) comply with all applicable legislation and agreements;
  - (c) communicate openly and promptly with the Minister and any ministerial representatives;
  - (d) deal with the Minister and any ministerial representatives in good faith; and 10
  - (e) at all times act in accordance with the code of conduct for members of the Agency as may be prescribed by the Minister.

## Managing director

- 65.** (1) The managing director is responsible for the day-to-day management of the Agency and is accountable to the board of the Agency. 15
- (2) The managing director must enter into a performance agreement with the Agency on acceptance of his or her appointment.

## Delegations

- 66.** (1) The Agency must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may— 20
- (a) in writing delegate appropriate powers, excluding the power to prescribe rules, to a committee, the managing director, an employee or any member of the Agency; and
  - (b) assign any committee, the managing director, any employee or member of the Agency to perform any of its duties. 25
- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to such limitations and conditions as the Agency may impose;
  - (b) may authorise sub-delegation; and
  - (c) does not divest the Agency of the delegated power or the performance of the assigned duty. 30
- (3) The Agency may confirm, vary or revoke any decision taken by a committee, the managing director, a member of the Agency or an employee as a result of a delegation or assignment in terms of subsection (1).

## Establishment of committees 35

- 67.** (1) The Agency may establish committees to assist it in the performance of its functions and it may at any time dissolve or reconstitute any such committee.
- (2) (a) A committee consists of as many members as the Agency considers necessary.
- (b) The Agency, taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population, may appoint any person as a member of a committee, on such terms and conditions as the Agency may determine. 40
- (c) The Agency may terminate the membership of a member of a committee if—
- (i) the exercise and performance by the member of the powers and functions of that committee is unsatisfactory; 45
  - (ii) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
  - (iii) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.
- (d) If the Agency does not designate a chairperson for a committee the committee may elect a chairperson from among its members. 50
- (3) The Agency must provide funding to its committees in such a way that the committees are able to perform their functions effectively.
- (4) Sections 62 and 63 relating to meetings and decisions of the Agency, respectively, apply with the necessary changes in respect of any committee. 55

**Part 3*****Funding and financial management of Agency*****Funding**

- 68.** The Agency is funded by—
- (a) the collection of fees; 5
  - (b) all other monies which may accrue to the Agency from any other legal source; and
  - (c) moneys appropriated for that purpose by Parliament.

**Annual budget and strategic plan**

- 69.** The annual budget and strategic plan of the Agency must be submitted to the Minister in terms of the Public Finance Management Act. 10

**Financial management, financial statements and annual report**

- 70.** The financial management and the preparation and submission of financial statements and annual reports must be in accordance with the Public Finance Management Act. 15

**Part 4*****National government oversight and executive authority*****Executive authority**

- 71.** (1) The Minister is the executive authority for the Agency in terms of the Public Finance Management Act and the Agency is accountable to the Minister. 20
- (2) The Minister must—
- fa*) ensure that the Agency complies with this Act, the Public Finance Management Act and any other applicable legislation;
  - fb*) ensure that the Agency is managed responsibly and transparently and meets its contractual and other obligations; 25
  - fc*) establish and maintain clear channels of communication between him or her and the Agency; and
  - fd*) monitor and annually review the performance of the Agency.

**Ministerial representatives**

- 72.** (1) The Minister may designate officials of the National Treasury as his or her representatives to the Agency. 30
- (2) Ministerial representatives designated in terms of subsection (1) represent the Minister as participating observers at meetings of the Agency.
- (3) The Minister or his or her designated representative or representatives may at any time call or convene a meeting of the Agency in order for the Agency to give account for actions taken by it. 35
- (4)(a) A ministerial representative must represent the Minister faithfully at meetings of and with the Agency, without consideration of personal interest or gain, and must keep the Minister informed of what transpired at meetings of the Agency.
- (b) A ministerial representative must act in accordance with the instructions of the Minister and may be reimbursed by the Minister for expenses in connection with his or her duties as a ministerial representative, but may not receive any additional compensation or salary for such duties. 40

## Investigations

**73.** (1) The Minister may at any time request the Agency to investigate any matter at the Agency's own cost or against full or partial payment.

(2) The Minister may at any time investigate the affairs or financial position of the Agency and may recover from the Agency reasonable costs incurred as a result of an investigation. 5

## Information

**74.** The Agency must provide the Minister or his or her ministerial representative with access to any information as may be reasonably requested.,

## CHAPTER X

10

### APPEALS AND APPEAL BOARD

#### Appeal against decision of supervisor

**75.** (1) (a) A co-operative bank, representative body or support organisation may appeal to the appeal board against any decision of the supervisor or a decision of the Agency on the registration or accreditation or cancellation of registration or accreditation of a representative body or support organisation. 15

(b) An appeal must be lodged within 30 days of the co-operative bank, representative body or support organisation affected by the decision becoming aware thereof, in the manner and on payment of the fees prescribed by the Minister.

(2) An appeal under subsection (1) shall take place on the date and at the place and time fixed by the appeal board. 20

(3) The appeal board may for the purposes of an appeal under subsection (1)—

(a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced; 25

(b) administer an oath to or accept an affirmation from any person called as a witness at the appeal; and 30

(c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such a person shall be entitled to legal representation at his or her own expense.

(4) The procedure at the appeal shall be determined by the chairperson of the appeal board. 35

(5) The appeal board may confirm, set aside or vary the relevant decision of the supervisor.

(6) The decision of a majority of the members of the appeal board shall be the decision of that board. 40

(7) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant and the supervisor.

(8) If the appeal board sets aside any decision of the supervisor, the fees referred to in subsection (1)(b) paid by the appellant in respect of the appeal in question shall be refunded to the appellant, and if the appeal board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant. 45

(9) An appeal lodged in terms of this section does not suspend any decision of the supervisor pending the outcome of an appeal.

#### Establishment and composition of appeal board

**76.** (1) (a) An appeal board is hereby established. 50

(b) The appeal board consists of at least three members appointed by the Minister.

(2) The Minister must appoint competent persons as members of the appeal board, who must include, at least—

- (a) one person that is an advocate or attorney with at least 10 years' experience in the practice of law as the chairperson;
  - (b) one person that is a person with knowledge and experience of co-operative banks; and
  - (c) one person that is a registered auditor under the Auditing Profession Act, 2005 (Act No. 26 of 2005). 5
- (3) A member of the appeal board shall hold office for a period of three years and is on the expiration of such member's term of office eligible for reappointment.
- (4) The Minister may terminate the period of office of a member of the appeal board—
- (a) if the performance of the member is unsatisfactory; or 10
  - (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.
- (5) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board.
- (6) In the event of the termination of office of all the members of the appeal board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (1). 15
- (7) The Minister must, subject to subsection (1), appoint a temporary replacement member for an appeal, if before or during an appeal it transpires that any member of the appeal board— 20
- (a) has any direct or indirect personal interest in the outcome of that appeal; or
  - (b) will, due to illness, absence from the Republic or for any other *bona fide* reason be unable to participate or continue to participate in that appeal.
- (8) A member of the appeal board may be paid the remuneration and allowances the Minister may from time to time determine. 25
- (9) Administrative support for the appeal board must be provided by officials of the National Treasury designated by the Minister.
- (10) The National Treasury is responsible for the expenditure of the appeal board.

## CHAPTER XI

### OFFENCES AND PENALTIES 30

#### **Unlawful use of word “co-operative bank” or conduct of banking business of co-operative bank**

77. (1) It is an offence for any person who is not registered as a co-operative bank under this Act to—
- (a) in connection with any business conducted by him, her or it— 35
    - (i) use or refer to himself, herself or itself by any name, description or symbol indicating, or calculated to lead persons to infer, that such person is a co-operative bank registered as such under this Act: or
    - (ii) in any manner purport to be a co-operative bank registered as such under this Act; or 40
  - (b) use in respect of any business a name or description that includes the expression “co-operative bank”, “co-op bank” or any derivative thereof.
- (2) It is an offence for any person to conduct the business of any co-operative bank unless such person is registered as a co-operative bank in terms of this Act.
- (3) It is an offence for a co-operative bank to provide, participate in or undertake banking services other than the services authorised in respect of the type of co-operative bank it is registered as in terms of this Act. 45

#### **Untrue information in connection with applications**

78. It is an offence for any person in connection with an application for registration as a co-operative bank to provide any information that to the knowledge of such person is untrue or misleading in any material respect. 50

### **Criminal liability of director, managing director, executive officer and other persons**

**79.** (1) It is an offence for any director, managing director or executive officer of a co-operative bank to, directly or indirectly, be involved in or take part in the management of a co-operative bank while the business of the co-operative bank is carried on recklessly, with intent to defraud creditors of the co-operative bank or creditors of any other person, or for any fraudulent purpose. 5

(2) It is an offence for any person other than a director, managing director or executive officer to knowingly, directly or indirectly, benefit from, be involved in or take **part** in the management of a co-operative bank while the business of the co-operative bank is carried on recklessly, with intent to defraud creditors of the co-operative bank or creditors of any other person, or for any fraudulent purpose. 10

### **General offences**

**80.** It is an offence for any co-operative bank, representative body, support organisation or other person to— 15

- (a) fail to comply with a directive under this Act;
- (b) contravene or fail to comply with section 3(2), 10, 21(1), 23 or 25(4);
- (c) submit a document or information or make a statement under this Act that to the knowledge of such person is untrue or misleading.

### **Penalties** 20

**81.** Any person convicted of an offence in terms of this Act is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

## **CHAPTER XII**

### **GENERAL PROVISIONS**

### **Fair administrative action** 25

**82.** Any decision or other step of an administrative nature taken by the supervisor, Agency or appeal board that affects the rights of another person, the supervisor, Agency or appeal board must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless another fair administrative procedure has been provided for in this Act. 30

### **Certification of documents**

**83.** Any document that must be submitted to the supervisor by a co-operative bank in terms of this Act must be certified as correct by the managing director and, in the case of financial information, also by the auditor of the co-operative bank.

### **Access to records, register and other documentation** 35

**84.** A regulatory authority must, despite the provisions of any other law, at the request of the supervisor or Agency make information regarding a co-operative bank, representative body or support organisation available to the supervisor or Agency.

### **Indemnity**

**85.** Neither the supervisor, Agency or appeal board or any board member or employee or managing director thereof, nor a committee of the Agency or any member thereof incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent. 40

## Regulations

56. (1) The Minister may by notice in the *Gazette* make regulations regarding—
- (a) anything which must or may be prescribed in terms of this Act;
  - (b) the conduct of a member of the board of directors of a co-operative bank in the performance of his or her functions; 5
  - (c) the manner in which any payment in terms of this Act must be made to the supervisor;
  - (d) documents, in addition to those contemplated in any other provision of this Act that must be submitted to the supervisor;
  - (e) the manner in which the financial statements of a co-operative bank must be prepared; 10
  - (f) the manner in which records must be kept by a co-operative bank; and
  - (g) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 15
- (2) A regulation in terms of this section may—
- (a) apply to co-operative banks generally; or
  - (b) differentiate between co-operative banks, which may be defined either in relation to a type or budgetary size of co-operative bank or to any other matter; 20
  - or
  - (c) be limited in its application to a particular kind of co-operative bank, which may be defined either in relation to a type or budgetary size of co-operative bank or to any other matter.
- (3) A regulation made under subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe a penalty or a fine, or imprisonment for a period not exceeding five years. 25
- (4) Before regulations in terms of this Act are made, the Minister must publish the draft regulations in the *Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation. 30

## Powers of Minister

57. The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make regulations and the power to appoint the members of the Agency or appeal board to the Director-General or any other official of the National Treasury.

## Civil liability of director or managing director 35

88. (1) Any director or managing director that knew or knows that the business of a co-operative bank was or is being carried on recklessly, with intent to defraud creditors of the co-operative bank or creditors of any other person, or for any fraudulent purpose is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the co-operative bank. 40
- (2) The supervisor may institute legal action against any director or managing director (whether it be in a winding-up, judicial management or otherwise) when it appears that the business of a co-operative bank was or is being carried on recklessly, with intent to defraud creditors of the co-operative bank or creditors of any other person, or for any fraudulent purpose, for all or any of the debts or other liabilities of the co-operative bank. 45
- (3) Despite the common law, any amount recovered as a result of proceedings instituted by the supervisor in terms of subsection (1), may be utilised—
- (a) first to reimburse all expenses reasonably incurred by the supervisor in bringing such proceedings; 50
  - (b) thereafter to off-set any amount paid to depositors by the registrar, as part or full compensation for the losses suffered by depositors as a result of the co-operative bank having been unable to repay its deposits; and
  - (c) thereafter for the pro rata repayment of the losses of depositors.

### Exemptions

- 89.** (1) The Minister may, where he or she considers it necessary for the development of a co-operative bank or where compliance may be detrimental to the development of a co-operative bank, by notice in the *Gazette* exempt a co-operative bank for a specific period— 5
- (a) from any provision of this Act or any other Act administered by him or her; or
  - (b) with the concurrence of the relevant Minister, from any provision of any other Act administered by that Minister.
- (2) An exemption in terms of subsection (1) may— 10
- (a) apply to co-operative banks generally; or
  - (b) be limited in its application to a particular co-operative bank or kind of co-operative bank, which may be defined either in relation to a kind, type or budgetary size of co-operative bank or to any other matter.

### Amendment of laws

- 90.** The laws mentioned in the Schedule are hereby amended to the extent set out in the third column of that Schedule. 15

### Transitional provisions

- 91.** (1) Any co-operative that meets the criteria set out in section 3(1) and is exempted from the provisions of the Banks Act at the commencement of this Act must apply for registration under this Act within one year of the commencement of this Act. 20
- (2) The supervisor may initiate the winding-up of any co-operative that fails to comply with subsection (1).

### Short title and commencement

- 92.** This Act is called the Co-operative Banks Act, 2007, and comes into operation on a date determined by the Minister by notice in the *Gazette*. 25

## SCHEDULE

LAWS AMENDED  
(Section 90)

No. and year of Act	Short Title	Extent of repeal or amendment	
Act No. 94 of 1990	Banks Act, 1990	<p>l. Amendment of section 2 by insertion in paragraph (b) of the following paragraph:  “(viA) a co-operative bank registered under the Co-operative Banks Act, 2007:  <u>or</u>”</p>	5 10
Act No. 78 of 1998	National Payment System Act, 1998	<p>l. Amendment of section 1 by—</p> <p>(a) by the insertion after the definition “company” of the following definitions:  “<b>‘co-operative bank’</b> has the meaning assigned to it in section 1 of the Co-operative Banks Act, 2007:  <b>‘Co-operative Banks Act’</b> means the Co-operative Banks Act, 2007.”;</p> <p>(b) the substitution for the definition of “Reserve Bank settlement system participant” of the following definition:  “<b>‘Reserve Bank settlement system participant’</b>  means —  (a) the Reserve Bank;  (b) a bank, a mutual bank, a co-operative bank or a branch of a foreign institution; or  (c) a designated settlement system operator,  that participates in the Reserve Bank settlement system.”;</p> <p>(c) the insertion after the definition of “Reserve Bank settlement system participant” of the following definition:  “<b>‘secondary co-operative bank’</b> means a secondary co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007.”</p> <p>(d) the insertion after the definition of “system operator” of the following definition:  <b>‘tertiary co-operative bank’</b> means a tertiary co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007.”</p> <p>2. Amendment of section 3 by—</p> <p>(a) the substitution in subsection (3) for paragraph (a) of the following paragraph:  “(a) A bank, mutual bank, a co-operative bank or branch of a foreign institution; and</p>	15 20 25 30 35 40 45 50

No. and year of Act	Short Title	Extent of repeal or amendment	
		<p>(b) the substitution in subsection (4) for paragraph (a) of the following paragraph: “(a) such person is the Reserve Bank, a bank, a mutual bank, a co-operative bank or a branch of a foreign institution and, in the case where a payment system management body has been recognised by the Reserve Bank as contemplated in subsection (1), such person is a member of the payment system management body so recognised; or”</p>	5
		<p>3. Amendment of section 4 by—</p> <p>(a) the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) to act as a medium for communication by its members with the South African Government, the Reserve Bank, the Registrar of Banks, the Co-operative Bank Supervisors, the Registrar of Financial Institutions, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and”; and</p> <p>(b) the substitution in subsection (2) for paragraph (d) of the following paragraph: “(d) to recommend for approval by the Reserve Bank criteria subject to and in accordance with which a member that is also a Reserve Bank settlement system participant may be authorised to—</p> <p>(i) allow a bank, mutual bank, co-operative bank or branch of a foreign institution that is not a Reserve Bank settlement system participant to clear; or</p> <p>(ii) clear on behalf of a bank, a mutual bank, co-operative bank or a branch of a foreign institution that is not a Reserve Bank settlement system participant: Provided that the member shall settle payment obligations on behalf of such bank, mutual bank, co-operative bank or branch of a foreign institution referred to in subparagraphs (i) and (ii).”</p>	10
		<p>4. Amendment of section 6 by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) bank, mutual bank, co-operative bank or branch of a foreign institution that is allowed to clear in terms of section 4(2)(d)(i).”</p>	15
		<p>5. Amendment of section 7 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	20
		<p>6. Amendment of section 8 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	25
		<p>7. Amendment of section 9 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	30
		<p>8. Amendment of section 10 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	35
		<p>9. Amendment of section 11 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	40
		<p>10. Amendment of section 12 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	45
		<p>11. Amendment of section 13 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	50
		<p>12. Amendment of section 14 by the substitution for paragraph (a) of the following paragraph: “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, branch of a foreign institution, or a designated settlement system operator: or”.</p>	55

No. and year of Act	Short Title	Extent of repeal or amendment	
		<p>5. Amendment of section 8 by—</p> <p>(a) the substitution for the heading of the following heading:  <b>“Curatorship, judicial management or liquidation”</b>; and</p> <p>(b) the substitution for subsection (1) of the following subsection:  “(1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Co-operative Banks Act, the Banks Act or the Mutual Banks Act.”.</p> <p>7. Amendment of section 10 by the substitution for subsection (2) of the following subsection:  “(2) Subject to subsection (3), any information—</p> <p>(a) obtained by the Reserve Bank in terms of subsection (1); and</p> <p>(b) identifying a specific Reserve Bank settlement system participant,</p> <p>is confidential and may not be disclosed by any director or officer of the Reserve Bank to any person, except to an officer of the Reserve Bank who requires that information for purposes of the execution of his or her duties in terms of this Act, the South African Reserve Bank Act, the Co-operative Banks Act, the Banks Act or the Mutual Banks Act.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
Act 89 of 1998	Competition Act, 1998	<p>1. Amendment of section 18 by—</p> <p>(a) the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:  “(ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990), or section 29 of the Co-operative Banks Act, 2007; and”: and</p> <p>(b) the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:  “(ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990), or section 29 of the Co-operative Banks Act, 2007, only.”.</p>	<p>35</p> <p>40</p> <p>45</p> <p>50</p>
Act No. 37 of 2004	Financial Services Ombud Schemes Act, 2004	<p>1. Amendment of section 1 by the substitution for paragraph (a) of the definition of “financial institution” of the following paragraph:  (a) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990) or a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007.”</p>	<p>55</p> <p>60</p>

No. and year of Act	Short Title	Extent of repeal or amendment	
Act No. 14 of 2005	Co-operatives Act, 2005	<p>I. Insertion of section 5A: The following section is hereby inserted in the Co-operatives Act after section 5:</p> <p><b>“Application of Co-operative Banks Act</b> <b>SA.</b> (a) <u>The Co-operative Banks Act, 2007, applies to any co-operative registered under that Act or any financial services co-operative that takes deposits and—</u></p> <p>(i) <u>has 200 or more members; or</u> (ii) <u>holds deposits of members to the value of one million Rand or more.</u></p> <p>(b) <u>In the event of an inconsistency between any provision of this Act and any provision of the Co-operative Banks Act, 2007, the provision of that Act prevails.”</u></p> <p>2. Amendment of section 18 by the addition in subsection (4) of the following paragraph: <u>“(c) in relation to a co-operative registered as a co-operative bank under the Co-operative Banks Act, 2007, the supervisor of that co-operative bank has approved the amendment.”</u></p> <p>3. Amendment of section 50 by—</p> <p>(a) the insertion after subsection (3) of the following subsection: <u>“(3A) If a co-operative bank registered under the Co-operative Banks Act, 2007, fails to appoint an auditor in accordance with subsections (1) and (2), the supervisor of the co-operative bank may appoint the auditor of that co-operative bank.”</u></p> <p>(b) the insertion after subsection (4) of the following subsection: <u>“(4A) The fees payable to the auditor of a co-operative bank registered under the Co-operative Banks Act, 2007, must be approved by the registrar with the written concurrence of the supervisor of the co-operative bank.”</u></p> <p>4. Amendment of section 55 by the insertion after subsection (1) of the following subsection: <u>“(1A) The registrar may with the written concurrence of the supervisor of the co-operative bank exempt a co-operative bank registered under the Co-operative Banks Act, 2007, from compliance with any requirement of this Chapter.”</u></p> <p>5. Amendment of section 95 by the insertion after subsection (1) of the following subsection: <u>“(1A) Any regulations relating to the financial services co-operatives must be made in consultation with the Minister of Finance.”</u></p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>15</p> <p>50</p>

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>1. Insertion of Item 2A in Part 3 of Schedule 1:  (a) The following item is hereby inserted in part 3 of schedule 1 after item 2:</p> <p style="text-align: center;"><b>“Co-operative Banks Act</b></p> <p style="text-align: center;"><u>2A. Any financial services co-operative that takes deposits and has 200 or more members or holds deposits of members to the value of one million Rand or more is required to register in terms of the Co-operative Banks Act, 2007. as a co-operative bank of a specific type.”</u></p>
		<p>2. Amendment of Item 6 of Part 3 of Schedule 1 by—  (a) the substitution for subitem (1) of the following subitem:  “(1) The registrar may, in consultation with the Registrar of Banks, the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical-Schemes, as the case may be, direct that all co-operatives, to whom this part applies, or any category of co-operative to whom this part applies, <u>other than a co-operative bank</u>, 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 No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or Short-term Insurance Act, 1998 (Act No. 53 of 1998), or the Medical Schemes Act, 1998 (Act No. 131 of 1998).”.</p> <p>(b) the deletion of subitem (2).</p>
		<p>3. Amendment of item 7 of part 3 of schedule 1.  (a) Item 7 of part 3 of schedule I is hereby amended by the substitution for subitem (1) of the following subitem:</p> <p style="text-align: center;"><b>“Regulations</b></p> <p style="text-align: center;">(1) The Minister may, in consultation with <u>the Minister of Finance, the relevant supervisor for co-operative banks, the Registrar of Banks or the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes</u>, as the 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.</p> <p style="text-align: center;">(2) The Minister must at the request of <u>the Minister of Finance, make regulations regarding any matter relating to the operation or administration of financial services co-operatives or any category of financial services co-operatives.</u>”.</p>

## **MEMORANDUM ON THE OBJECTS OF THE CO-OPERATIVE BANKS BILL, 2007**

### **1. BACKGROUND OF THE BILL**

1.1 The introduction of sector-specific legislation on the development and prudential regulation of deposit-taking financial services co-operatives was one of the elements of the financial sector summit agreements signed in 2002 by the NEDLAC constituencies.

This agreement follows the collapse of two self-regulatory bodies early in 2002. These self-regulatory bodies were created by way of an Exemption Notice issued in terms of the Banks Act, 1990 (Act No. 94 of 1990) (“the Banks Act”). Such an Exemption Notice allows for financial services co-operatives to take deposits under a pre-approved self-regulatory model. The self-regulatory model is suboptimal in that it is not comprehensive in the regulation and supervision of deposit-taking co-operatives and depend entirely on the donor agencies for their existence and operation.

The introduction of the Co-operative Banks Bill seeks to create a development strategy and a regulatory environment for deposit-taking financial services co-operatives. This will ensure the sound and safe management of depositor money by financial services co-operatives and promote the development and growth of such co-operatives. This will in turn promote access to financial services for people in rural communities who have no access to formal banking services.

### **2. OBJECTS OF BILL**

The Bill seeks to—

- (a) promote and advance the social and economic welfare of all South Africans by enhancing access to banking services under sustainable market conditions;
- (b) promote the development of sustainable and responsible co-operative banks; and
- (c) establish an appropriate regulatory framework and regulatory institutions for co-operative banks that protect members of co-operative banks;

by providing for—

- (i) the registration of deposit-taking financial services co-operatives as co-operative banks;
- (ii) the establishment of co-operative bank supervisors to ensure appropriate and effective regulation and supervision of co-operative banks, and to protect members and the public interest; and
- (iii) the establishment of a Development Agency for Co-operative Banks (“the Agency”) to develop and enhance the sustainability of co-operative banks.

### **3. SUMMARY OF BILL**

The Bill has 12 chapters, which can be summarised as follows:

Chapter I contains the relevant definitions and sets out the purpose of the Act. It also indicates to whom the Act applies, how the Act aligns with the Co-operatives Act, 2005 (Act No. 14 of 2005), and identifies types of co-operative banks.

Chapter II provides for the registration, constitution, functions and management of co-operative banks.

Chapter III sets the prudential requirements for co-operative banks and provides for large exposures.

Chapter IV provides for deposit insurance and voluntary schemes.

Chapter V seeks to adequately provide for the amalgamation, division, conversion, transfer, judicial management and winding-up of co-operative banks specifically.

Chapters VI and VII provide for representative bodies and support organisations for co-operative banks.

Chapters VIII, IX and X provide for the appointment of supervisors and establish the Co-operative Banks Development Agency and an appeal board.

Chapters XI and XII provide for general provisions which include offences and penalties and matters relating to fair administrative action, the certification of documents, access to records, registers and other documentation, indemnity of supervisors, regulations, the powers of the Minister of Finance, civil liability of directors or managing directors, exemptions from the Bill and transitional provisions.

#### **4. ORGANISATIONS AND INSTITUTIONS CONSULTED**

The following institutions commented on the Bill during the public consultation process that took place from December 2004 to February 2005: ABSA Bank; Savings and Credit Co-operative League of South Africa (SACCOL); Standard Bank; NEDLAC (Labour and Community Constituencies); South African Reserve Bank (Banking Supervision & National Payment System Departments); Department of Agriculture: Community Microfinance Network; Competition Commission; Banking Association; Payment Association of South Africa (PASA); Microfinance Regulatory Council (now the National Credit Regulator); World Bank; Historical Indigent People's Co-operative; German Co-operative & Raiffeisen Confederation (DGRV-SA); Office of the Auditor General; and South African Institute of Chartered Accountants.

#### **5. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will have financial implications for the State as it will be required to fund the following entities: the Development Agency for Co-operative Banks, the Co-operative Banks Deposit Insurance Fund; the appeal board and the office of the supervisors of co-operative banks. Funding for the Co-operative Banks Deposit Insurance Fund will be undertaken in the initial stages of incorporation, after which it should operate on a self-sustaining basis.

#### **6. CONSTITUTIONAL IMPLICATIONS**

None.

#### **7. PARLIAMENTARY PROCEDURE**

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this 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 does not contain provisions pertaining to customary law or customs of traditional communities.