

MEMORANDUM ON THE OBJECTS OF THE CO-OPERATIVE BANKS BILL, 2004

In the Financial Sector Summit held in August 2002, the constituencies of the National Economic and Development Labour Council (Nedlac) agreed on the broad principles of the reform of the South African financial sector. One of the elements of the agreement signed by the principals of the Nedlac constituencies in the said Summit was the need to “Ensure Access to Basic Financial Services”.

These agreements triggered discussions within the Standing Committee for the Revision of the Banks Act (“the Standing Committee”) on ways to implement the Nedlac agreements. The Minister of Finance later instructed National Treasury to draft a policy paper on Co-operative banks, and a Co-operative Banks Bill.

The object of the Co-operative Banks Bill is to make provision for the regulation and development of existing community banks and the promotion of the establishment of new co-operative banks.

The promulgation of this Bill will create an enabling environment for Co-operative banks to be integrated into the formal banking system either as Savings or Savings and Loans Co-operative Banks. The licensing of interested Co-operative as Savings or Savings and Loans Co-operative banks and their consequent provision of financial services will assist the banking industry and the nation with improving access to financial services for a broader market.

Chapter I Definitions and interpretation of the Act

This chapter seeks to clarify the interpretation of this Bill by defining terms used throughout the Bill.

Chapter II Administration of the Act

This chapter provides for the administration of this Bill by the South African Reserve Bank (Reserve Bank). Section 2 establishes the Office for Co-operative Banks in the Reserve Bank. It also establishes the Supervisor of Co-operative Banks, who shall report to the Registrar of Banks. The Supervisor of Co-operative banks will be responsible for the daily supervision and regulatory functions assigned to him/her in terms of this Bill. The rationale for having a specific Supervisor of Co-operative Banks is to take cognisance of the differences in the business and operational models of the Co-operative banks compared to the traditional commercial banks.

This chapter also provides for the powers of inspection of the Supervisor of Co-operative Banks and obligations of the Co-operative banks to provide the prescribed information to the Supervisor.

Section 8 establishes a Board of Review. The purpose of the Board of Review is to make independent rulings on whether the Supervisor of Co-operative banks exercised his or her discretion properly and in good faith in taking decisions that may have aggrieved other people. The Minister of Finance will appoint three people to make up this Board. The Board Members shall, respectively, have competencies in the following areas: Law, Accountancy and Co-operative banking business.

Section 9 requires the Supervisor of Co-operative banks to submit to the Minister of Finance an annual report on his duties and activities. This will enable the Minister to determine the growth trends of the Co-operative Banks industry independently of the commercial banks industry. The Co-operative Banks Annual Report will also give an indication of the

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effectiveness of the proposed legislation, supervisory activities of the Supervisor and the level of compliance by the regulated institutions. This is especially necessary in the development phase of the sector.

Chapter III Support Organisation

This chapter provides for the establishment of a Support Organisation. The Support Organisation will be an independent organisation appointed by the Minister of Finance to assist potential Co-operative Banks with their application process to receive a Co-operative Bank license; support a Co-operative bank in the management of its business; train the staff of a Co-operative bank; serve as the accounting officer for Co-operative banks, and promote the creation and development of new Co-operative banks.

Chapter IV Receipt of a Co-operative bank license in order to conduct the business of a Co-operative bank

This chapter prescribes an application process for a Co-operative Bank license. It also prescribes for the annual renewal of the Co-operative Bank license. Section 21 of this chapter spells out the rights granted by two types of Co-operative banking licenses. These are the right to take deposits from members, and to do transmission services, in the case of a savings Co-operative Bank, and the rights to take deposits from members and to make secured and unsecured loans in case of savings and loans Co-operative Banks. The rights granted under both types of licenses also include investments in securities issued by virtue of the provisions of section 66 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and which securities qualify as eligible collateral for purposes of the Reserve Bank's re-financing facilities.

Chapter V Constitution and powers of Co-operative Banks

This chapter provides for the Co-operative Banks to have a constitution that spells out governance issues to be agreed by the members. This chapter also prescribes that only licensed Co-operative banks must always include the name “Co-operative bank” after the name of that bank.

Chapter VI Membership of Co-operative banks

This chapter spells out the rights and obligations of the members of Co-operative banks. It also prescribes the procedure to be followed in general meetings, annual general meetings, and in respect of Special resolutions.

CHAPTER VII Management of a Co-operative bank

This chapter spells out the fiduciary responsibilities of directors of a Co-operative bank.

CHAPTER VIII Financial records and audits

This chapter prescribes minimum accounting and auditing standards to be fulfilled by Co-operative banks.

CHAPTER IX Minimum share capital and unimpaired reserve funds

This chapter prescribes principles on the minimum capital and liquidity reserves. The actual amounts will be prescribed by regulation by the Minister. This is because these amounts may change from time to time

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depending on the circumstances in that particular financial year. Any inflexible amounts may become either prohibitive or too lax depending on the prevailing circumstances.

CHAPTER X Conversion of Co-operative banks

This chapter makes provision for savings Co-operative banks to convert to savings and loans Co-operative banks, which may also convert to Mutual banks. This is to allow for progression into the types of Cooperative banks that can pursue more activities.

CHAPTER XI Amalgamation, winding up and dissolution

This chapter prescribes the process to be followed in amalgamations, voluntary winding up, and judicial management of Co-operative banks. Section 84 prescribes the manner by which the distribution of surpluses is to be conducted.

CHAPTER XII General provisions relating to Co-operative banks

This chapter provides for the appointment of an inspector either by the Supervisor or by the Co-operative bank. Section 93 establishes an Advisory Council on Co-operative banks. The purpose of this Advisory Council will be to provide on-going strategic [policy] advise to the Minister on matters relating to the development, supervision, legislation and regulation of Co-operative banks.

PARLIAMENTARY PROCESS

The Bill should be dealt with in terms of the provisions of section 76 of the Constitution of the Republic of South Africa (Act 108 of 1996).

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