

# CO-OPERATIVE BANKS ACT 40 OF 2007

(English text signed by the President)

*[Assented to: 18 February 2008]*  
*[Commencement date: 1 August 2008]*  
[\[GN 818 / GG 31292 / 20080801\]](#)

**as amended by:**

Financial Services Laws General Amendment Act 22 of 2008  
[with effect from 1 November 2008 - GN 1170 / GG 31561 / 20081031]  
**Financial Services Laws General Amendment Act 45 of 2013**  
[with effect from 28 February 2014 - GN 120 / GG 37351 / 20140218]

## ACT

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 [and co-operative financial institutions](#); to establish an appropriate regulatory framework and regulatory institutions for co-operative banks [and co-operative financial institutions](#) that protect members of co-operative banks [and co-operative financial institutions](#); to provide for the registration of deposit-taking financial services co-operatives as co-operative banks [and co-operative financial institutions](#); to provide for the regulation and supervision of co-operative banks [and co-operative financial institutions](#); 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.

**BE 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**

### **1. Definitions**

- (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 -

“**Agency**” means the Development Agency for Co-operative Banks established under [section 54](#);

“**Authority**” means the Prudential Authority established in terms of [section 32 of the Financial Sector Regulation Act](#);

“**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;

“**banking services**” means the services that may be provided by a co-operative bank in accordance with [section 14](#);

“**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
- (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;

[‘conduct standard’ has the same meaning ascribed to it in terms of section 1\(1\) of the Financial Sector Regulation Act;](#)

**“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;

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

**“co-operative bank”** means a co-operative [or a co-operative financial institution](#) registered as a co-operative bank in terms of this Act whose members -

- (a) are employed by a common employer or who are employed within the same business district; or

[Para. (a) substituted by s. 240 of Act 45/2013 w.e.f. 28 February 2014]

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

[Para. (b) substituted by s. 240 of Act 45/2013 w.e.f. 28 February 2014]

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

**“co-operative financial institution”** means a co-operative that [takes Deposits and](#) chooses to identify itself by use of the name Financial Co-operative, Financial Services Co-operative, Credit Union or Savings and Credit Co-operative;

[Definition of “co-operative financial institution” inserted by s. 240 of Act 45/2013 w.e.f. 28 February 2014]

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

**“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 Sector Regulation Act’ means the Financial Sector Regulation Act, 2017;](#)

**“financial statements”** means the annual financial statements referred to in [sections 47](#) and [48](#) of the Co-operatives Act;

**“fit and proper person”** means a person contemplated in [section 9](#);

**“Fund”** means the Co-operative Banks Deposit Insurance Fund established under [section 26](#);

**‘joint standard’** has the same meaning ascribed to it in terms of [section 1\(1\) of the Financial Sector Regulation Act](#);

**“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);

**“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*;~~

~~(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](#);

**“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](#);

**‘prudential standard’** has the same meaning ascribed to it in terms of [section 1\(1\) of the Financial Sector Regulation Act](#);

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**‘Register’** means the Financial Sector Information Register referred to in [section 256 of the Financial Sector Regulation Act](#);

**“registrar”** means the Registrar of Co-operatives defined in [section 1](#) of the Co-operatives Act;

**“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 financial institutions and co-operative banks registered under [section 33](#) that represents at least two co-operative banks or co-operative financial institutions in interactions with organs of state, the private sector and stakeholders;

[Definition of “representative body” substituted by s. 240 of act 45/2013 w.e.f. 28 February 2014]

**“Reserve Bank”** means the South African Reserve Bank referred to in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

**“rule”**, in relation to-

(a) the ~~supervisor~~[Authority](#), means a rule prescribed by the ~~supervisor~~[Authority](#) under [section 46](#); and

(b) the Agency, means a rule prescribed by the Agency under [section 57](#);

[Para. (b) substituted by s. 240 of Act 45/2013 w.e.f. 28 February 2014]

**“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](#);~~

**“support organisation”** means a support organisation accredited under [section 38](#) that supports more than one co-operative financial institution or co-operative bank as contemplated in [section 37](#);

[Definition of “support organisation” substituted by s. 240 of Act 45/2013 w.e.f. 28 February 2014]

**“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;

**“this Act”** includes any regulation or rule made under this Act.

[‘Tribunal’ means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act.’](#)

(2) [Unless the context otherwise indicates, words and expressions not defined in subsection \(1\) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.’](#)

[Relationship between Act and Financial Sector Regulation Act](#)

- 1A. (1) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.
- (2) A reference in this Act to the Authority or the Agency determining or publishing a matter by notice in the *Gazette* must be read as including a reference to the Authority or the Agency determining or publishing the matter by notice published in the Register.
- (3) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in terms of section 86, or permits a matter to be prescribed by the Agency, including in a rule in terms of section 57, a reference in this Act to a matter being—  
(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, conduct standard or joint standard; or  
(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.
- (4) Matters in respect of which regulations relating to co-operative banks and co-operative financial institutions may be prescribed in terms of this Act may also be prescribed in prudential standards, conduct standards or joint standards in terms of the Financial Sector Regulation Act.
- (5) A reference to rules made by the Authority in terms of section 46 must be read as a reference to prudential standards, conduct standards or joint standards.
- (6) (a) A reference to an inspection in section 47 must be read as a reference to a supervisory on-site inspection or an investigation in terms of Chapter 9 of the Financial Sector Regulation Act.  
(b) A reference to an investigation by the Agency or the Minister in terms of section 73 must not be read as a reference to an investigation in terms of Chapter 9 of the Financial Sector Regulation Act.
- (7) (a) A reference in this Act to the Authority or the Agency announcing or publishing information or a document on a web site must be read as a reference to the Authority or the Agency publishing the information or document in the Register.  
(b) The Authority or the Agency may also publish the information or document on its web site.
- (8) (a) A reference in this Act to a prescribed fee, other than a reference to a fee prescribed by the Agency, must be read as a reference to the relevant fee determined in terms of section 237 and Chapter 16 of the Financial Sector Regulation Act.  
(b) The Agency, when determining a fee in terms of this Act, must comply with the requirements of section 237 and Chapter 16 of the Financial Sector Regulation Act.
- (9) A reference in this Act to an appeal of a decision of the Authority or the Agency must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

- (10) (a) The Authority must publish the following in the Register—
- (i) each registration of a co-operative bank in terms of section 8 and each suspension and de-registration in terms of section 11;
  - (ii) each conversion of registration in terms of section 28;
  - (iii) each registration of a co-operative financial institution in terms of section 40C, and each suspension, lapsing and de-registration in terms of section 40D.
- (b) The Agency must publish the following in the Register—
- (i) each registration of a representative body in terms of section 33, and each cancellation or suspension of registration in terms of section 35; and
  - (ii) each accreditation of a support organisation in terms of section 38, and each cancellation or suspension of accreditation in terms of section 40.

### **Regulatory instruments**

- 1B. For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, the following are regulatory instruments:
- (a) existing rules made in terms of section 46 prior to the date on which this section comes into effect; and
  - (b) prudential, conduct or joint standards made in terms of section 46 subsequent to the date on which this section comes into effect.

## **2. Purpose of Act**

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;
- (b) promote the development of sustainable and responsible co-operative banks and co-operative financial institutions; and
- (c) establish an appropriate regulatory framework and regulatory institutions for co-operative banks and co-operative financial institutions that protect the interests of members of co-operative banks, cooperative financial institutions, and the public, by providing for-
  - (i) the registration of deposit-taking financial services co-operatives as co-operative banks or cooperative financial institutions;
  - (ii) the ~~establishment of supervisors to ensure~~ appropriate and effective regulation and supervision of co-operative banks and co-operative financial institutions, and to protect members and the public interest; and
  - (iii) the establishment of a Development Agency for Co-operative Banks to develop and enhance the sustainability of co-operative banks and co-operative financial institutions.

## **3. Application of Act**

~~(1) This Act applies to all co-operative banks registered under this Act and to any [co-operative financial institution registered under this Act](#). -~~

~~(a) primary co-operative registered under the Co-operatives Act that takes deposits and~~

~~(i) has 200 or more members; and~~

~~(ii) holds deposits of members to the value of one million rand or more; and~~

~~(b) secondary or tertiary co-operative registered under the Co-operatives Act, whose members consist of at least—~~

~~(i) two or more co-operative banks;~~

~~(ii) two or more financial services co-operatives that take deposits; or~~

~~(iii) one co-operative bank and one financial services co-operative that take deposits.~~

~~(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) apply for registration as a co-operative bank in terms of this Act.~~

~~{S. 3 substituted by s. 76 of Act 22/2008}~~

#### **4. Application of Co-operatives Act**

(1) The Co-operatives Act applies to co-operative banks [and co-operative financial institutions](#) 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**

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 [whose members consist of at least—](#)

[\(i\) two or more co-operative banks;](#)

[\(ii\) two or more co-operative financial institutions; or](#)

[\(iii\) one co-operative bank and one co-operative financial institution;](#) and

- (d) a tertiary co-operative bank [whose members consist of two or more secondary co-operative banks](#).

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

### Part 1

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

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

- (1) A co-operative must apply, on the application form prescribed by the ~~supervisor~~[Authority](#), to the ~~supervisor~~[Authority](#) for registration as one of the types of co-operative banks referred to in [section 5](#).
- (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;
  - (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;
  - (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
  - (i) the application fee prescribed by the ~~supervisor~~[Authority](#).
- (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~~[Authority](#) may require a proposed co-operative bank 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~~ [Authority](#), on aspects relating to the application.

## **7. Requirements for registration**

In order to qualify for registration, a proposed co-operative bank must demonstrate to the satisfaction of the ~~supervisor~~ [Authority](#) that -

- (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;
- (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.

## **8. Registration of co-operative bank**

- (1) The ~~supervisor~~ [Authority](#) must grant an application for registration on payment of a fee prescribed by the ~~supervisor~~ [Authority](#), if the ~~supervisor~~ [Authority](#) is satisfied that-
  - (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;
  - (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~~ [Authority](#) may grant an application for registration subject to any condition he or she may determine.
- (3) The ~~supervisor~~ [Authority](#) must, on registration, issue a certificate of registration to a co-operative bank and publish a notice of the registration in the *Gazette*.

## **9. Fit and proper person**

- (1) The ~~supervisor~~ [Authority](#) 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 -
  - (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;
  - (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;
    - (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;
    - (iii) has contravened the provisions of any law the object of which is the protection of the public against financial loss;
    - (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~~ [Authority](#), were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business.
- (2) The ~~supervisor~~ [Authority](#) 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.

## 10. Name of co-operative bank

- (1) The proposed name of a co-operative bank must comply with [section 10](#)(1) 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.

- (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.
- (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~~[Authority](#).

## 11. Suspension of registration or de-registration

- (1) The ~~supervisor~~[Authority](#) may, subject to subsection (4), de-register or, where appropriate, suspend the registration of a co-operative bank where the ~~supervisor~~[Authority](#) 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;
  - (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;
  - (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
  - (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~~[Authority](#) 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.
- (3)

- (a) Where the ~~supervisor~~Authority 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~~Authority 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.
- (4)
- (a) The ~~supervisor~~Authority 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~~Authority referred to in subsection (1), the ~~supervisor~~Authority must not publish the notice referred to in paragraph (a) until the appeal has been finalised.

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

- (1) The ~~supervisor~~Authority may on the de-registration of a co-operative bank direct such co-operative bank -
  - (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~~Authority.
- (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.

### **Part 2**

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

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

- (1) The constitution of a co-operative bank must, in addition to the provisions of [section 14](#)(1) of the Co-operatives Act, provide-

- (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;
  - (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 -
    - (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
    - (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.
- (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;
  - (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.
- (3)
- (a) The ~~supervisor~~[Authority](#) 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~~[Authority](#).
  - (c) The ~~supervisor~~[Authority](#) may refuse to approve an amendment.
- (4)
- (a) The ~~supervisor~~[Authority](#) 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.
  - (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~~[Authority](#) may request the registrar to effect the required amendment to the constitution of the co-operative bank.
  - (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.

#### **14. Banking services provided by co-operative bank**

- (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;
  - (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;
  - (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;

- (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:
- (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).
- (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;
  - (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:
- (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~~[Authority](#) 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.
- (6) [Section 45](#) of the Co-operatives Act does not apply to co-operative banks.

## 15. General functions of co-operative bank

A co-operative bank may, in addition to the functions referred to in [section 19](#) of the Co-operatives Act -

- (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](#);
- (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
- (e) subject to any conditions specified by the ~~supervisor~~[Authority](#), 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**

#### **16. Duties of directors and officers of co-operative bank**

- (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.
  - (b) The ~~supervisor~~[Authority](#) 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-
  - (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;

- (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.

**17. Details of directors and officers of co-operative bank**

- (1) A co-operative bank must submit the information referred to in [section 39](#) of the Co-operatives Act to the ~~supervisor~~[Authority](#).
- (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~~[Authority](#).

**Part 4**  
**Auditor of co-operative bank**

**18. Functions of auditor in relation to ~~supervisor~~[Authority](#)**

Despite the provisions of any other law, the auditor of a co-operative bank must -

- (a) provide the ~~supervisor~~[Authority](#) 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
- (b) inform the ~~supervisor~~[Authority](#) 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 -
  - (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).

**19. Submission of documents to ~~supervisor~~[Authority](#)**

- (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~~[Authority](#) 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~~[Authority](#).

### **CHAPTER III PRUDENTIAL REQUIREMENTS AND LARGE EXPOSURES**

#### **20. Prudential requirements of co-operative bank**

- (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
  - (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
    - (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.

#### **21. Inability to meet or maintain prudential requirements**

- (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~~[Authority](#).
- (2) The ~~supervisor~~[Authority](#) may -
- (a) 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~~Authority may impose.

## 22. Reporting on prudential requirements

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

## 23. Large exposures of co-operative bank

(1) A co-operative bank may not without the approval of the ~~supervisor~~Authority-

- (a) make an investment with any one person or grant a loan to any one member, which investment or loan, alone or together with all existing 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; or
- (b) hold a deposit from any one member or related person, which deposit, alone or together with all existing deposits received from that member or related person will exceed such percentage of its total deposits as may be prescribed by the Minister.

[Subs. (1) substituted by s. 241 of Act 45/2013 w.e.f. 28 February 2014]

(2) The ~~supervisor~~Authority may, when approving a deposit, 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](#).

[Subs. (2) substituted by s. 241 of Act 45/2013 w.e.f. 28 February 2014]

- (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

## 24. Deposit insurance obligations of co-operative bank

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

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

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

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

- (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).
- (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.
- (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.
- (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
  - (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.

- (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.
  - (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.
  - (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**

### **27. Prohibited transactions**

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

### **28. Conversion of primary savings co-operative bank**

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

### **29. Amalgamation or division of or transfer by co-operative bank**

- (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~~ [Authority](#) for the approval of the amalgamation, division or transfer.
- (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 percent of the assets, rights, liabilities or obligations of a co-operative bank being transferred to another co-operative bank, the ~~supervisor~~ [Authority](#) 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.

### **30. Winding-up or judicial management of co-operative bank**

- (1) Despite the provisions of [sections 72\(1\)](#), [73\(1\)](#) and [77\(2\)](#) of the Co-operatives Act -
  - (a) the ~~supervisor~~ [Authority](#) may-
    - (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~~ [Authority](#).
- (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~~ [Authority](#).
- (3) Despite any other law, the Master of the High Court may only appoint a person recommended by the ~~supervisor~~ [Authority](#) 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.
- (4) A liquidator of a co-operative bank that is voluntarily wound-up must submit to the ~~supervisor~~ [Authority](#) any documents that the co-operative bank being wound-up would have been obliged to submit in terms of this Act.

## **CHAPTER VI REPRESENTATIVE BODIES**

### **31. Application for registration as representative body**

- (1) A representative body must apply, on the application form prescribed by the Agency, to the Agency for registration.
- (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
  - (c) the application fee prescribed by the Agency.
- (3) The Agency may require a representative body to furnish the Agency with additional information or documents.

[Subs. (3) substituted by s. 242 of Act 45/2013 w.e.f. 28 February 2014]

### **32. Requirements for registration**

In order to qualify for registration a representative body must demonstrate, to the satisfaction of the Agency, that it -

- (a) represents more than one co-operative financial institution or co-operative bank in interactions with organs of state, the private sector and stakeholders;
- [Para. (a) substituted by s. 243 of Act 45/2013 w.e.f. 28 February 2014]
- (b) has the requisite experience, knowledge, qualifications and competence to represent co-operative banks; and
  - (c) has sufficient human, financial and operational capacity to function efficiently and competently.

### **33. Registration of representative body**

- (1) The Agency must grant an application for registration 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
  - (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*.

### **34. Requirements for continued registration**

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](#).

### **35. Cancellation or suspension of registration**

- (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.
  - (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.
  - (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.
- (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**

### **36. Application for accreditation as support organisation**

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

- (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;
  - (f) a list of its members and its directors; and
  - (g) the application fee prescribed by the Agency.
- (3) The Agency may require a support organisation to furnish the Agency with -  
 [Words preceding para. (a) substituted by s. 244 of Act 45/2013 w.e.f. 28 February 2014]

- (a) additional information or documents; or
- (b) a report by an auditor or by any other knowledgeable person, approved by the Agency, on aspects relating to the application.  
 [Para. (b) substituted by s. 244 of Act 45/2013 w.e.f. 28 February 2014]

### 37. Requirements for accreditation

In order to qualify for accreditation a support organisation must demonstrate, to the satisfaction of the Agency, that -

- (a) .....  
 [Para. (a) deleted by s. 245 of Act 45/2013 w.e.f. 28 February 2014]
- (b) support agreements have been entered into with at least two co-operative banks or co-operative financial institutions, which support agreements may provide for-  
 [Para. (b) substituted by s. 245 of Act 45/2013 w.e.f. 28 February 2014]
- (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;
- (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.

### 38. Accreditation of support organisation

- (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
  - (b) the support organisation complies with the requirements for accreditation referred to in [section 37](#).
- (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*.

### **39. Requirements for continued accreditation**

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.

### **40. Cancellation or suspension of accreditation**

- (1)
- (a) The Agency may, subject to paragraph (b), 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.
  - (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.
  - (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.

- (2) A support organisation may, by written notice to the Agency, renounce its accreditation.
- (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 VIIA CO-OPERATIVE FINANCIAL INSTITUTIONS

### Application for registration as cooperative financial institution

- 40A. (1) A co-operative financial institution must apply to the Authority, or to the Agency if this function has been assigned or delegated to the Agency, for registration on the application form as prescribed.
- (2) The co-operative financial institution must submit copies of documents and any other information as prescribed, together with the application form referred to in subsection (1).

### Requirements for registration

- 40B. (1) In order to qualify for registration, or to continue to be registered, a co-operative financial institution must demonstrate, to the satisfaction of the Authority, or to the Agency if this function has been assigned or delegated to the Agency, on an ongoing basis that—
- (a) it has the requisite experience, knowledge, qualifications and competence to give effect to its obligations;
  - (b) it has sufficient human, financial, and operational capacity to function efficiently and competently;
  - (c) it meets any prescribed threshold requirements in respect of membership, membership shares and deposits held; and
  - (d) it meets any other applicable prescribed requirements.
- (2) (a) A co-operative financial institution must, once it has reached a prescribed amount of members' deposits, apply for registration as a co-operative bank in terms of this Act.
- (b) If the responsibility for the registration of a co-operative financial institution has been assigned or delegated to the Agency, the Agency must recommend to the Authority whether the application for registration as a co-operative bank should be approved or declined.
- (c) In the event that the application by a co-operative financial institution to register as a co-operative bank is declined—
- (i) the Authority may determine that the co-operative financial institution concerned may not hold members' deposits exceeding a specified amount; and
  - (ii) the co-operative financial institution concerned must re-apply for registration as a co-operative bank once the requirements to register as a cooperative bank have been met.
- (d) An amount determined by the Authority in terms of paragraph (c)(i)—

- (i) must be based on the nature and size of the co-operative financial institution; and
- (ii) may not exceed the general maximum limit for holdings of deposits by any co-operative financial institution prescribed by the Authority.
- (e) An application by a co-operative financial institution for registration as a co-operative bank must be accompanied by a letter of recommendation from the Agency, if applicable.

(3) On the date that this section comes into operation, a co-operative financial institution that qualifies to be registered in terms of this Act—

- (a) must apply for registration in terms of this Act within 12 months from the date on which this section comes into operation; and
- (b) that holds members' deposits exceeding a prescribed threshold, but which does not qualify to be registered as a co-operative bank, must not hold members' deposits exceeding an amount determined by the Authority, based on the nature and size of the co-operative financial institution.

(4) If the registration of co-operative financial institutions has been assigned or delegated to the Agency in terms of the Act, the Agency must inform the Authority of the registration of a cooperative financial institution within 14 days of the registration.

#### **Registration of co-operative financial institution**

**40C.** (1) The Authority may grant an application for registration on payment of the fee, prescribed by the Authority, if the Authority is satisfied that—

- (a) the application has been made in accordance with this Act; and
- (b) the co-operative financial institution complies with the requirements for registration referred to in section 40B.

(2) The Authority must, on registration, issue a certificate of registration to the co-operative financial institution and publish a notice of the registration in the Register.

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

**40D.** The Authority may, subject to subsection (4), de-register or, where appropriate, suspend the registration of a co-operative financial institution where the Authority is satisfied that the co-operative financial institution—

- (a) has not commenced operating as a co-operative financial institution six months after the date of its registration as a co-operative financial institution;
- (b) has ceased to operate;
- (c) obtained registration through fraudulent means;
- (d) no longer meets the requirements for registration referred to in section 40B;
- (e) is unable to meet or maintain its prudential requirements referred to in section 40B;
- (f) has failed to comply with any condition imposed under this Act;
- (g) has failed to comply with any directive issued under this Act; or
- (h) is de-registered or wound-up under the Co-operatives Act.

(2) Where a co-operative financial institution has requested its de-registration, the Authority may on submission of such a request, along with any other prescribed or requested information, deregister the co-operative financial institution.

- (3) (a) Where the Authority suspends the registration of a co-operative bank under subsection (1), the Authority may do so subject to any condition that the Authority may determine.  
(b) The Authority may revoke any suspension under subsection (1) if the Authority is satisfied that the co-operative financial institution has complied with all the conditions to which the suspension was made subject.
- (4) (a) The Authority must publish a notice of such de-registration or suspension in the Register.  
(b) The de-registration of a co-operative financial institution takes effect on the date specified in the notice referred to in paragraph (a).  
(c) Where a co-operative financial institution has applied for reconsideration of the decision of the Authority referred to in subsection (1), the Authority must not publish the notice referred to in paragraph (a) until the application for reconsideration of the decision has been finalised.

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

- 40E.** (1) The Authority may, on the de-registration of a co-operative financial institution, direct the co-operative financial institution to repay any deposits, including interest thereon, held by that co-operative financial institution as at the date of de-registration within the period specified in the directive.  
(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 financial institution that fails to comply with a directive under subsection (1) is deemed not to be able to pay its debts.

#### **Winding-up or judicial management of co-operative financial institution**

- 40F.** (1) Despite the provisions of sections 72(1), 73(1) and 77(2) of the Cooperatives Act—  
(a) the Authority may—  
(i) apply to a court that a co-operative financial institution be wound-up;  
(ii) recommend to the Minister responsible for co-operatives that a co-operative financial institution be wound-up; and  
(iii) apply to a court for a judicial management order; and  
(b) the Minister responsible for co-operatives may not order that a cooperative financial institution be wound-up without the written concurrence of the Authority, or the Agency, if functions of the Authority have been assigned or delegated to the Agency as contemplated in this Act.
- (2) Any application to a court for the winding-up, including the voluntary winding-up, of a co-operative financial institution must be served on the Authority.
- (3) Despite any other law, the Master of the High Court may only appoint a person recommended by the Authority as a provisional liquidator or liquidator of a co-operative financial institution, 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 financial institution concerned.

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

## CHAPTER VIII ADMINISTRATION OF ACT

### 41. **Supervisor of co-operative banks**

[Heading of s. 41 substituted by s. 246 of Act 45/2013 w.e.f. 28 February 2014]

(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.~~

[Subs. (1) substituted by s. 246 of Act 45/2013 w.e.f. 28 February 2014]

(2) .....

[Subs. (2) deleted by s. 246 of Act 45/2013 w.e.f. 28 February 2014]

(3) .....

[Subs. (3) deleted by s. 246 of Act 45/2013 w.e.f. 28 February 2014]

(4) .....

[Subs. (4) deleted by s. 246 of Act 45/2013 w.e.f. 28 February 2014]

42. ....

[S. 42 repealed by s. 247 of Act 45/2013 w.e.f. 28 February 2014]

### 43. **Deputy co-operative bank supervisors**

~~The South African Reserve Bank may, subject to the approval of the Minister 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.~~

[S. 43 substituted by s. 248 of Act 45/2013 w.e.f. 28 February 2014]

### 44. **Delegation and assignment**

- (1) The ~~supervisor~~ Authority may, in writing, delegate or assign any of the powers entrusted to ~~him or her~~ the Authority in terms of this Act and assign any of the duties imposed on ~~him or her~~ the Authority in terms of this Act to ~~a deputy supervisor or any other person~~ any person employed by the Authority or the South African Reserve Bank, to the Financial Sector Conduct Authority, or, with the concurrence of the Minister, to the Agency.
- (2) A delegation or assignment in terms of subsection (1) -
- (a) is subject to any limitations or conditions that the ~~supervisor~~ Authority may impose;

- (b) may authorise sub-delegation; and
  - (c) does not divest the ~~supervisor~~Authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The ~~supervisor~~Authority may confirm, vary or revoke any decision taken by a deputy supervisor or any other person, subject to any rights that may have vested as a consequence of the delegation or assignment.

(3) (a) To the extent that a power or function relating to the licensing of co-operative financial institutions has been delegated to the Agency, references in Chapter VIIA to “the Authority” must be read as a reference to “the Agency”.

(b) A reference in Chapter VIIA to “prescribed” means “prescribed in prudential, conduct or joint standards.

(c) To the extent that a power or function relating to the licensing of co-operative financial institutions has been assigned or delegated to the Agency—

(i) the Agency may make rules in relation to the performance of that power or function; and

(ii) “prescribed” must be read as referring to “rules made by the Agency.

#### 45. General powers and functions of ~~supervisor~~Authority

The ~~supervisor~~Authority, in addition to other functions conferred on the ~~supervisor~~Authority by or in terms of any other provision of this Act -

- (a) must take steps ~~he or she~~that the Authority considers necessary to protect the public in their dealings with co-operative banks and co-operative financial institutions;
- (b) may, on the written request of a co-operative bank, co-operative financial institutions, a representative body, support organisation or auditor, extend any period within which any documentation, information or report must be submitted to ~~him or her~~the Authority;
- (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, co-operative financial institution, a representative body, support organisation or auditor is required to submit to the ~~supervisor~~Authority under this Act must be submitted;
- (d) may, despite the provisions of any law, furnish information acquired by ~~him or her~~the Authority under this Act to any person charged with the performance of a function under any law;
- (e) may issue guidelines to co-operative banks, co-operative financial institution, 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 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 co-operative financial institutions; and
- (g) may take any measures that the Authority ~~he or she~~ considers necessary for the proper performance and exercise of the Authority's ~~his or her~~ functions or duties or for the implementation of this Act.

**46. Power to make rulesstandards**

- (1) ~~The supervisor may prescribe rules with regard to—~~ A prudential, conduct or joint standard for or in respect of co-operative financial institutions and co-operative banks may be made on any of the following matters:
  - (a) ~~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.
- (2) ~~Rules~~-Standards referred to in subsection (1) may-
  - (a) apply to co-operative banks or cooperative financial institutions generally; or
  - (b) be limited in application to a particular co-operative bank or co-operative financial institutions or kind of co-operative bank or co-operative financial institutions, which may be defined in relation to either a type or budgetary size of co-operative bank or co-operative financial institution or to any other matter.
- (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~~
    - ~~(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).~~

**47. Inspections**

- (1) (a) The ~~Authority supervisor~~ may at any time of ~~the Authority's~~ 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 co-operative bank or a co-operative financial institution, inspect the business of a co-operative bank or a co-operative financial institution, if the ~~Authority supervisor~~ has reason to believe that the co-operative bank or a co-operative financial institution, is not conducting its affairs in accordance with the provisions of this Act or is contravening a provision of this Act.

~~(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, 1998 (Act No. 80 of 1998), 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.~~  
[Para. (b) substituted by s. 249 of Act 45/2013 w.e.f. 28 February 2014]

- (2) The ~~supervisor~~ Authority may take any measures and make any recommendation ~~that the Authority~~ he or she considers appropriate following an inspection in terms of subsection (1), including a recommendation to-
- (a) the co-operative bank or a co-operative financial institution; and
- (b) the relevant prosecuting authority if the inspection was done on the authority of a warrant.

#### 48. Directives

- (1) The ~~supervisor~~ Authority 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 or a co-operative financial institution-
- (a) to implement specific practices, procedures or processes;
- (b) to take specific actions or measures;
- (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 or a co-operative financial institution generally;  
or

- (b) be limited in its application to a particular co-operative bank [or a co-operative financial institution](#), or kind of co-operative bank [or a co-operative financial institution](#), which may be defined either in relation to a type or budgetary size of co-operative bank [or a co-operative financial institution](#), or to any other matter.

(3) A directive issued in terms of subsection (1) takes effect on the date determined by the [supervisor Authority](#) in the directive, and may take effect immediately.

[Subs. (3) substituted by s. 250 of Act 45/2013 w.e.f. 28 February 2014]

- (4)
- (a) The [supervisor Authority](#) 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 Authority](#) may cancel or revoke any previously issued directives.
- (6) The [supervisor Authority](#) 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 Authority](#) deems appropriate.

#### 49. Administrative penalties

- (1) The [supervisor Authority](#) may, despite and in addition to taking any step [that the Authority he or she](#) may take under this Act, impose an administrative penalty on ~~the~~ [a co-operative bank or co-operative financial institution](#) for any failure to comply with a provision of this Act.
- (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 Authority](#) within the period specified by the [supervisor Authority](#).
- (4) If a co-operative bank [or co-operative financial institution](#) fails to pay an administrative penalty within the specified period the [supervisor Authority](#) may by way of civil action in a competent court recover the amount of the administrative penalty from the co-operative bank.

#### 50. Information and reports

(1)

- (a) The ~~supervisor~~ Authority may on written notice require a co-operative bank, a co-operative financial institution, a representative body or a support organisation ~~of a co-operative bank~~ to submit to ~~him or her~~ the Authority-
  - (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 ~~Authority~~ supervisor, on any matter specified in the notice.
- (b) A report required under ~~subsection (1)~~ paragraph (a) must be prepared at the expense of the co-operative bank, representative body or support organisation.

## 51. Records and register of co-operative banks

- (1)
  - (a) The ~~supervisor~~ Authority must keep records of the following documents for a period of at least 10 years:
    - (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.
  - (b) Despite paragraph (a), the ~~supervisor~~ Authority 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~~ Authority 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.
- (3) The register of co-operative banks or any extract therefrom or copy thereof signed by the ~~supervisor~~ Authority is, on the face of it, proof of the particulars contained in the register.

## 52. Reporting

- (1) The ~~supervisor~~ Authority must provide the Minister with access to any information as may be reasonably requested.
- (2)
  - (a) The ~~supervisor~~ Authority 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
  - (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.

### **53. Relationship with other regulatory authorities**

- (1) The ~~supervisor~~[Authority](#) 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;
  - (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~~[Authority](#) as anticipated in subsection (1) and may exercise its jurisdiction by way of such an agreement.
- (3) The President may assign to the ~~supervisor~~[Authority](#) 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~~[Authority](#) may-
  - (a) liaise with any foreign or international bodies and authorities having any objects similar to the functions and powers of the ~~supervisor~~[Authority](#);
  - (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.

## **CHAPTER IX CO-OPERATIVE BANKS DEVELOPMENT AGENCY**

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

#### **54. Establishment and legal status**

- (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.
- (2) The Agency is subject to the Public Finance Management Act.

## 55. General functions

- (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;
  - (b) .....  
[Para. (b) deleted by s. 251 of Act 45/2013 w.e.f. 28 February 2014]
  - (c) promote the establishment of representative bodies and support organisations;
  - (d) register and regulate representative bodies;
  - (e) accredit and regulate support organisations;
  - (f) provide, in consultation with the ~~supervisor~~ [Authority](#), financial support to co-operative banks through loans or grants;  
[Para. (f) substituted by s. 251 of Act 45/2013 w.e.f. 28 February 2014]
  - (g) manage the Fund in accordance with [section 26](#);
  - (h) assist, in consultation with the ~~supervisor~~ [Authority](#), co-operative banks with liquidity management;  
[Para. (h) substituted by s. 251 of Act 45/2013 w.e.f. 28 February 2014]
  - (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;
  - (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;
  - (k) interact with any regulatory authority to ensure appropriate regulation of co-operative banking and co-operative banks;  
[Para. (k) amended by s. 251 of Act 45/2013 w.e.f. 28 February 2014]

(l) monitor trends and patterns in the development of co-operative banking and co-operative banks; and

[Para. (l) amended by s. 251 of Act 45/2013 w.e.f. 28 February 2014]

(lA) exercise powers and perform functions in relation to co-operative financial institutions, including regulatory and supervisory functions, as specified in terms of this Act, or which the Authority may, with the concurrence of the Minister, delegate or assign to the Agency;

(m) perform any other function consistent with this Act, which the Minister may determine by notice in the *Gazette*.

[Para. (m) added by s. 251 of Act 45/2013 w.e.f. 28 February 2014]

(2) The Agency may -

- (a) participate in the activities of international bodies whose main purpose is to develop, promote and support co-operative banks;
- (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.

## 56. General powers

The Agency may -

- (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;
- (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;
- (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;
- (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.

## 57. Power to make rules

(1) The Agency may prescribe rules with regard to -

(a) the matters referred to in [section 55\(1\)\(d\) and \(e\)](#);

[Para. (a) substituted by s. 252 of Act 45/2013 w.e.f. 28 February 2014]

(aA) the matters referred to in [section 55\(1\)\(f\) to \(h\)](#) [and paragraph\(aB\) of this subsection](#), in consultation with the [supervisor Authority](#);

[Para. (aA) inserted by s. 252 of Act 45/2013 w.e.f. 28 February 2014]

[\(aB\) co-operative financial institutions, in order to perform the Agency's functions in relation to co-operative financial institutions, including regulatory and supervisory functions, as specified in terms of this Act, or which the Authority may, with the concurrence of the Minister, delegate or assign to the Agency;](#)

(b) any matter that is required or permitted to be prescribed in terms of this Act; 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 [or co-operative financial institutions](#) generally; ~~or~~

(b) be limited in application to a particular co-operative bank, representative body, ~~or~~ support organisation [or co-operative financial institutions](#), or kind of co-operative bank [or co-operative financial institutions](#), which may be defined either in relation to a type or budgetary size of co-operative bank [or co-operative financial institutions](#) or to any other matter; ~~and~~

[\(c\) only apply to co-operative financial institutions, in the case of rules referred to in subsection \(1\)\(aB\).](#)

(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.
- (aA) Before the Agency secures the written approval of the Minister in terms of paragraph (a)(i), in respect of any Rule that applies to a co-operative bank, the Agency must obtain written approval of the ~~supervisor~~ Authority.
- [Para. (aA) inserted by s. 252 of Act 45/2013 w.e.f. 28 February 2014]
- (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).

## Part 2 Governance of Agency

### 58. Appointment of board members of Agency

- (1) The board of the Agency consists of the managing Director and not less than six but not more than 10 non-executive members appointed by the Minister.
- [Subs. (1) substituted by s. 253 of Act 45/2013 w.e.f. 28 February 2014]
- (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;
    - (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.
    - (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)
  - (a) 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.
  - (b) The provisions of [sections 59](#) and [60](#) apply, with the necessary changes, to alternate members.

**59. Term of office of members of Agency**

- (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.
- (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 -
  - (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
  - (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.
- (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).

**60. Disqualification from membership and vacation of office**

- (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;
  - (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;
  - (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.
- (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;
  - (b) 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);
  - (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.
- (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.

## **61. Chairperson and deputy chairperson**

- (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 three years from the date of their appointment.

[Para. (b) substituted by s. 254 of Act 45/2013 w.e.f. 28 February 2014]

- (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.

## **62. Meetings**

- (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.
- (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.
  - (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.

## **63. Decisions**

- (1) A decision of the majority of members present at a duly constituted meeting is a decision of the Agency.
- (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.

## **64. Duties of members**

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;
- (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
- (e) at all times act in accordance with the code of conduct for members of the Agency as may be prescribed by the Minister.

**65. Managing director**

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

**66. Delegations**

- (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 -
  - (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.
- (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.
- (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).

**67. Establishment of committees**

- (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.
  - (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;
    - (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.
- (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.

### **Part 3**

#### **Funding and financial management of Agency**

#### **68. Funding**

The Agency is funded by -

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

#### **69. Annual budget and strategic plan**

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

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

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

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

**71. Executive authority**

- (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.
- (2) The Minister must -
  - (a) ensure that the Agency complies with this Act, the Public Finance Management Act and any other applicable legislation;
  - (b) ensure that the Agency is managed responsibly and transparently and meets its contractual and other obligations;
  - (c) establish and maintain clear channels of communication between him or her and the Agency; and
  - (d) monitor and annually review the performance of the Agency.

**72. Ministerial representatives**

- (1) The Minister may designate officials of the National Treasury as his or her representatives to the Agency.
- (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.
- (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.

### 73. Investigations

- (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.

### 74. Information

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

## CHAPTER X APPEALS AND APPEAL BOARD

### ~~75.—Appeal against decision of supervisor~~

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

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

#### **76. — Establishment and composition of appeal board**

- ~~(1) —
  - ~~(a) — An appeal board is hereby established.~~
  - ~~(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).~~~~
- ~~(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~~
- ~~(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).~~
- ~~(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—~~
- ~~(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.~~
- ~~(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

### 77. Unlawful use of word “co-operative bank”, co-operative financial institution or conduct of ~~banking~~ business of co-operative bank or co-operative financial institution

- (1) It is an offence for any person who is not registered as a co-operative bank or a co-operative financial institution under this Act to -
- (a) in connection with any business conducted by him, her or it -
- (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 or a co-operative financial institution registered as such under this Act; or
- (ii) in any manner purport to be a co-operative bank or a co-operative financial institution registered as such under this Act; or

- (b) use in respect of any business a name or description that includes the expression “co-operative bank”, “co-op bank”, [“co-operative financial institution”](#) or any derivative thereof.
- (2) It is an offence for any person to conduct the business of any co-operative bank [or co-operative financial institution](#) unless such person is registered as a co-operative bank [or a co-operative financial institution](#) in terms of this Act.
- (3) (a) 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.  
  
(b) [It is an offence for a co-operative financial institution to provide, participate in or undertake services other than the services that it is authorised to provide as a registered co-operative financial institution in terms of this Act.](#)

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

It is an offence for any person in connection with an application for registration as a co-operative bank [or a co-operative financial institution](#) to provide any information that to the knowledge of such person is untrue or misleading in any material respect.

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

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

## **80. General offences**

It is an offence for any co-operative bank, representative body, support organisation or other person to -

- (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.

## 81. Penalties

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

## 82. Fair administrative action

~~Where a~~ Any decision or other step of an administrative nature taken by the ~~supervisor, Authority or the~~ Agency ~~or appeal board that~~ affects the rights of another person, the ~~supervisor, Authority or the~~ 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 [or in terms of the Financial Sector Regulation Act](#).

## 83. Certification of documents

Any document that must be submitted to the ~~supervisor, Authority~~ by a co-operative bank in terms of this Act must be certified as correct by the managing director.

[S. 83 substituted by s. 255 of Act 45/2013 w.e.f. 28 February 2014]

## 84. Access to records, register and other documentation

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

## 85. Indemnity

Neither the ~~supervisor, Authority or the~~ -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.

## 86. Regulations

- (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;

- (c) the manner in which any payment in terms of this Act must be made to the ~~supervisor~~ [Authority](#);
  - (d) documents, in addition to those contemplated in any other provision of this Act that must be submitted to the ~~supervisor~~ [Authority](#);
  - (e) the manner in which the financial statements of a co-operative bank must be prepared;
  - (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.
- (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; 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.
- (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.

## **87. Powers of Minister**

The Minister may delegate any of [the Minister's](#) ~~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.

## **88. Civil liability of director or managing director**

- (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.

- (2) The ~~supervisor~~ [Authority](#) 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.
- (3) Despite the common law, any amount recovered as a result of proceedings instituted by the ~~supervisor~~ [Authority](#) in terms of subsection (1), may be utilised-
  - (a) first to reimburse all expenses reasonably incurred by the ~~supervisor~~ [Authority](#) in bringing such proceedings;
  - (b) thereafter to off-set any amount paid to depositors by the ~~supervisor~~ [Authority](#), 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  
[Para. (b) substituted by s. 77 of Act 22/2008]
  - (c) thereafter for the pro rata repayment of the losses of depositors.

## **89. Exemptions**

- (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-
  - (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 -
  - (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.

## **90. Amendment of laws**

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

## **91. Transitional provisions**

- (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.
- (2) The ~~supervisor~~[Authority](#) may initiate the winding-up of any co-operative that fails to comply with subsection (1).

## 92. Short title and commencement

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*.

### 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	1. Amendment of <a href="#">section 2</a> by insertion in paragraph (b) of the following paragraph:  <u>“(viA) a co-operative bank registered under the Co-operative Banks Act, 2007; or”</u> .
Act No. 78 of 1998	National Payment System Act, 1998	1. Amendment of <a href="#">section 1</a> by-  (a) by the insertion after the definition “company” of the following definitions:  <u>“ ‘co-operative bank’ has the meaning assigned to it in <a href="#">section 1</a> of the Co-operative Banks Act, 2007;</u>  <u>‘Co-operative Banks Act’ means the Co-operative Banks Act, 2007;”;</u>  (b) the substitution for the definition of “Reserve Bank settlement system participant” of the following definition:  <u>“ ‘Reserve Bank settlement system participant’ means-</u>  (a) the Reserve Bank;  (b) a bank, a mutual bank, <u>a co-operative bank</u> or a branch of a foreign institution; or  (c) a designated settlement system operator,

that participates in the Reserve Bank settlement system;”;

(c) the insertion after the definition of “Reserve Bank settlement system participant” of the following definition:

“ **‘secondary co-operative bank’** means a secondary co-operative bank as defined in [section 1](#) of the Co-operative Banks Act, 2007;”

(d) the insertion after the definition of “system operator” of the following definition:

**‘tertiary co-operative bank’** means a tertiary co-operative bank as defined in [section 1](#) of the Co-operative Banks Act, 2007;”.

2. Amendment of [section 3](#) by-

(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

(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”

3. Amendment of [section 4](#) by-

(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

(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-

(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

(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).”.

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).”.

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”.

6. Amendment of [section 8](#) by-

(a) the substitution for the heading of the following heading:

“**Curatorship, judicial management or liquidation**”; and

(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.”.

7. Amendment of [section 10](#) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (3), any information-

(a) obtained by the Reserve Bank in terms of subsection (1): and

(b) identifying a specific Reserve Bank settlement system participant, 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.”.
Act 89 of 1998	Competition Act, 1998	<p>1. Amendment of <a href="#">section 18</a> by-</p> <p>(a) the substitution in subsection (2)(a) for subparagraph (ii) of the following sub-paragraph:</p> <p>“(ii) a transaction for which consent is required in terms of <a href="#">section 54</a> of the Banks Act, 1990 (Act No. 94 of 1990), or <a href="#">section 29</a> of the Co-operative Banks Act, 2007; and”;</p> <p>(b) the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:</p> <p>“(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 <a href="#">section 29</a> of the Co-operative Banks Act, 2007, only.”.</p>
Act No. 37 of 2004	Financial Services Ombud Schemes Act, 2004	<p>1. Amendment of <a href="#">section 1</a> by the substitution for paragraph (a) of the definition of “financial institution” of the following paragraph:</p> <p>(a) a bank as defined in <a href="#">section 1</a>(1) of the Banks Act, 1990 (Act No. 94 of 1990) or a mutual bank as defined in <a href="#">section 1</a>(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in <a href="#">section 1</a> of the Co-operative Banks Act, 2007;”</p>
Act No. 14 of 2005	Co-operatives Act, 2005	<p>1. Insertion of <a href="#">section 5A</a>:</p> <p>The following section is hereby inserted in the Co-operatives Act after <a href="#">section 5</a>:</p> <p><b>“Application of Co-operative Banks Act</b></p> <p><u>5A. (a) 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><u>(i) has 200 or more members; and</u></p> <p><u>(ii) holds deposits of members to the value of one million Rand or more.</u></p> <p><u>(b) 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 <a href="#">section 18</a> by the addition in subsection (4) of the following paragraph:</p>

“(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.”

3. Amendment of [section 50](#) by-

(a) the insertion after subsection (3) of the following subsection:

“(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.”

(b) the insertion after subsection (4) of the following subsection:

“(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.”

4. Amendment of [section 55](#) by the insertion after subsection (1) of the following subsection:

“(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.”

5. Amendment of section 95 by the insertion after subsection (1) of the following subsection:

“(1A) Any regulations relating to the financial services co-operatives must be made in consultation with the Minister of Finance.”

6. 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:

**“Co-operative Banks Act**

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.”

7. 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, other than a co-operative bank, 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).”.

(b) the deletion of subitem (2).

8. Amendment of item 7 of part 3 of schedule 1.

(a) Item 7 of part 3 of schedule 1 is hereby amended by the substitution for subitem (1) of the following subitem:

“Regulations

(1) The Minister may, in consultation with 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, 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.

(2) The Minister must at the request of 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.”.