



## **RE-DRAFTED RULES FOR CO-OPERATIVE FINANCIAL INSTITUTIONS (CFI) APPLYING FOR REGISTRATION AND REGISTERED WITH THE CBDA**

The re-drafted rules for CFIs are hereby circulated for public comment, for institutions applying to be registered and those already registered with the CBDA as per Government Gazette No. 37903, Notice 620 of the 15 August 2014, point 3(a) Conditions. Two documents are provided.

1. A clean draft of the re-drafted rules, which highlights the amended areas to the rules
2. **Matrix of the proposed changes from the current to the redrafted rules, providing a brief discussion on each change.**
3. **Responses from CFIs highlighted in Grey. If proposal not submitted consolidated under brief discussion**
4. **Responses and outcome of the workshop (attended by 15 out of the 24 registered CFIs, and taking into account the consolidated responses) are conveyed in column 5**

31 March 2015

## Proposed amendments to the CBDA rules as per amended Government Notice No, 620 of 2014

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:
Entire document	All reference to Government Notice 35368, No 404 of May 2012 be replaced with <u>Government Notice 37903, No 620 of August 2014</u>	An amendment has been made to the Banks Act exemption notice and needs to be acknowledged accordingly	[to Government Notice 35368, No 404 of May 2012] <u>Government Notice 37903, No 620 of August 2014</u>	
	Numbering of the document	Currently the document only numbers key headings. For ease of reference going forward, a document numbering format will be adopted	1. 1.1 1.1.1 1.1.1.1 1.1.1.1.1	
	References to the Regulator	The CBDA board, in its Exemption notice program opted to use the term "Supervisor" as opposed to Regulator	All reference to [regulator] be deleted and replaced with <u>Supervisor</u>	
Section 1	Introduction	Has been re-worked to take into account the revised regulatory environment subsequent to the 2014 amendments to the Co-operative Banks Act and Banks Act amendment notice 606		
The regulatory framework	<b>Zimele</b>	<ul style="list-style-type: none"> <li>• in the explanation of what these proposed regulations will achieve, it is stated that:               <ul style="list-style-type: none"> <li>a) <u>Minimise supervisory arbitrage</u></li> </ul> <i>The term supervisory arbitrage is used to refer to the shifting of certain activities or positions within an entity, either to avoid a situation or relatively more strict prudential supervision by one set of supervisors compared to another, or to avoid supervision altogether (by transferring the activities or positions to a non-regulated entity)</i> </li> </ul> <p>Is this the intended meaning as defined? If it is, what is the evidence that CFIs are or may present this risk?</p>		<b>It was agreed potential and existing management, staff and members of CFIs must be trained to understand the</b>

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		<ul style="list-style-type: none"> <li>In d) you refer to “alleviate confusion in the sector”. This treatment is too broad and too general to be easily understood. What is this “Confusion” that is sought to be clarified/cleared by these regulations because one could argue to the contrary that in fact confusion is introduced by these proposed regulations. The confusion is mainly because of use of undefined terms, use of too many terms in similar context thereby clouding what it is that is being addressed. In the introduction the use of terms like “contributions” and “deposits” is not clear whether these mean the same thing. It is also not clear whether these mean savings or assets as defined in the sector.</li> <li>If the Supervisor is going to propose regulatory changes and is going to use technical jargon, definitions must be provided to enable readers to decipher the proposed regulations.</li> </ul>		<p><b>technical jargon and definitions but it was beyond the scope of these rules to incorporate definitions for all this.</b></p>
Section 3	Registration process <b>Zimele</b>	<ul style="list-style-type: none"> <li>The biggest weakness in these suggested steps is their inability to demonstrate administrative/procedural fairness.</li> <li>There are two parts to the idea of procedural fairness: <ul style="list-style-type: none"> <li>The first part is that it is usually thought to be unfair for an administrator to make a decision that adversely affects someone without consulting them first. As we know, a judge is not allowed to convict someone of a crime unless they have been given an opportunity to tell their side of the story. Similarly, an administrator should not make a decision affecting someone without first hearing what they have to say. This idea is covered by the Latin phrase 'audi alteram partem' - which means one should hear what the person who will be affected by the decision has to say before deciding.</li> <li>The second part is that the decision-making process must be free from any real or apparent partiality, bias or prejudice. When making a decision, administrators must be seen by everyone to be making the decision fairly and impartially because they have or appear to have a private or personal interest in the matter. As is often said, "justice must both be done and must be seen to be done"</li> </ul> </li> </ul> <p>The registration process has continued to have these elements that are of grave concern. This in part is driven by lack of clarity from the Supervisor about criterion or minimum requirements and whether meeting minimum requirements means a prospective CFI can in fact be registered.</p>		<p><b>This is the third time the rules, in various forms, have been provided for public comment.i.e. 2009 Roodevallei workshop, 2013 Provincial workshops, 2015 Protea Hotel, Pretoria Also refer to 2012 and 2013 annual reports</b></p> <p><b>The supervisors primary responsibility is to ensure members funds are protected.</b></p>

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	<b>Step 2 Zimele</b>	<ul style="list-style-type: none"> <li>What will the Supervisor be looking for in this pre-registration review? Is this part of minimum requirements and if it is, where is it prescribed? If it is not, why is done? Why are the pre-registration requirements not published for all to know? If they are published, where are they published?</li> <li>Again here is an issue of lack of administrative fairness and the apparent lack of objective measurement/criteria by the Supervisor</li> <li>If this pre-registration review has a bearing on the decision to grant or not grant a license, then the applicants are entitled to ALL the requirements.</li> </ul> <p>The Supervisor must take note not to exceed his powers with regards to minimum requirements</p>		<b>Pre-registration review is a verification process and this is communicated to applicants on application</b>
Section 4	Application to register a CFI with CBDA	The CBDA is a small entity with limited administrative capacity. It does not have the staffing to translate all documents from Vernacular. It is further noted that register with the SARB requires all documentation to be in English.	<u>All applications for registration, including supporting documents should be in English</u>	
4.1	Applications <b>NACFISA consolidated comments</b>	<ul style="list-style-type: none"> <li>South Africa's constitution promotes 11 languages and government department by law have to have their documents in different languages</li> </ul>	<ul style="list-style-type: none"> <li>English and any other official language must be used</li> </ul>	<b>CBDA to establish a language policy to assist CFIs and CBDA staff</b>
Section 4	Note; existing CFIs will also need to provide statements of compliance from the registrar of Co-ops	The Registrar of Co-operatives is reluctant to issues "compliance" letters as it goes beyond returns and they do not do examination of all co-ops. The registrar will issue letters acknowledging that a CFI is up to date with its returns. This will now be replace with acknowledgement letters	Existing CFIs will also need to provide <u>acknowledgement statement</u> from the Registrar of Co-operatives <u>that the CFI complies to the Co-operatives Act and its regulations.</u>	
	<b>4.4 Zimele</b>	<ul style="list-style-type: none"> <li>If the Registrar delays for whatever reasons, what will be the status of the re-registering CFI? What is the interest of the CBDA in this process? Is this not imposing an unnecessary administrative burden on CFIs that should otherwise be performed by the Supervisor? Why does the Supervisor, when registering for the first time, want the registration of a CFI to go via his office and when the CFI is registered it is the CFI that must provide proof of compliance with the Registrar?</li> </ul>		<b>CFIs are registered as co-operatives (form of business) under the Co-op Act and CBDA (under a Banks Act</b>

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				Exemption, with conditions) for the activities/functions of it business. Separate legislation. Both regulators are ensuring compliance.
	4.5 <i>Zimele</i>	What are the deadlines for compliance?		Refer to section 6 regarding returns and section 13 regarding infringement notices
	4.7 <i>Zimele</i>	Does this refer to first registrants or also for re-registration?		All existing CFIs are meant to have applied for registration.
	4.9 <i>Zimele</i>	Please provide FULL information and criteria/standards/requirements. Are these part of minimum requirements		Included as appendix 1A and 1B2.
	4.12 <i>NACFISA consolidated comments</i>	<ul style="list-style-type: none"> <li>For the sake of immediate Intervention.</li> </ul>	<ul style="list-style-type: none"> <li>NACFISA should also be informed if the application is rejected.</li> </ul>	Agreed: a support organisation will be provided with feedback on all applications received through it. If it is a direct application (i.e. from applicant

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				itself) feedback will only be provided to the applicant.
Section 5	Form columns refer to “New Applicants” and “Existing CFIs”.	The distinction between “new applications” and “Existing CFIs” was required when the first call for applications was made. This process has been completed, and the CBDA now only processes new applications.	The column “Existing CFIs (registered with samaf/SACCOL)” be deleted in its entirety	
Section 5 CIPC	Form CR1: Application form	CIPC requirements have changed and they now require certified copies of all Directors listed on the CR1 Form as well as the person who is lodging the application if it is on behalf of an applicant. A note should be added relating this requirement	Note be inserted in the Notes column stating: <u>Certified copies of all directors listed on form CR1 must be included in the application, including the person lodging the application</u>	
		CIPC requires that applicants have a customer code before they will be registered. Need to add this requirement of the CIPC	<u>CIPC customer code number</u> be inserted under the CIPC column	
CBDA rules	CBDA 002: Membership Share register confirming 200 fully paid up members	<p>According the CBDAs financial modelling, a CFI requires a minimum of 800 members to be sustainable. It is recommended that a CFI applying for registration have a minimum of 300 members growing to 800 over three years, or provide a convincing case of how it intends to be sustainable within 3 years with a lower membership base.</p> <p>The CBDA has limited capacity and faces budget cuts to regulate and supervise “small entities” that don’t show an upfront sustainability and viability plan.</p> <p>CFI not having reached the 800 member threshold and not being self-sufficient and sustainable after three years will be deregistered.</p>	Membership share register confirming [200] <u>800</u> fully paid up active members (a minimum of 300 on registration and build up to 800 by year three)	



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		<p>would there be if CFIs won't be able to comply by reaching this amount of 800? KSK has been operating for more than 10 years with a current membership of 367. Thus, the CBDA will be expecting KSK to grow at least 29% annually (ceteris paribus) in membership alone to reach a total of 800. We believe that this growth rate is unrealistic for CFIs, especially being bound by a specific common bond. Although KSK's membership is less than half the expected membership total (of 800), our Share Capital exceeds the minimum requirements greatly. Currently at R1,176,300.</p> <ul style="list-style-type: none"> <li>• CFIs need to present a Membership Share Register confirming 800 fully paid up active members? "Active Members" need to be defined in more detail. Due to the limited banking services that we can provide to our members, many of them do not make use of the day-to-day services. They might make a fixed deposit for 12 to 60 months, but with no transactions in between on a monthly basis. Does this make them inactive? OR, some members make use of their accounts only every 5 to 6 months; will this member be classified as inactive?</li> <li>• Although we encourage and promote a culture of saving to our members, KSK cannot force its members to save a minimum amount on a monthly basis. Alternatively, we do provide members with a "Target Saving" product with competitive interest rates for monthly deposits over a fixed term. For this</li> </ul>	<p>and potential members. <b>OR</b> Alternatively, provide CFIs with more economically feasible benchmarks for growth on either Membership or Share Capital</p>	<p><b>registration.</b></p>

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		product, the minimum monthly contribution is R50.		
		As stated above, minimum shares to register should be increased to R400,000. Each member to save a compulsory minimum of R50 per month when registered	At least [R100,000] R400,000 in shares by year 3 and R150,000 on registration. Each member to save a compulsory minimum of R50 per month once registered	
CBDA Rules	Fee	Currently CBDA only applies a once off fee for application. It is proposed that due to the high administrative cost of processing applications, rejected or re-applications incur and additional cost. All fees will now be reflected in a fee schedule at the end of the rules.	Proof of payment into CBDA bank account (deposit slip) of the application, <u>or repeat application fee as per the fee schedule</u>	
Section 5, Note 1.	Either the model Financial Co-op (FC), FSC or SACCO constitutions must be presented for approval.	Applying CFIs should use the model constitution as the basis for their co-operatives and “present/highlight any deviations from the model they are presenting”. This needs to be more prominent as it is currently ignored	Highlight: present/highlight any deviations from the model they are presenting. Should a CFI fail to do so, and deviations are noted after registration, may result in withdrawal of certificate	
Section 5, Note 1	NB: Registered Stokvels FSCs must	The distinction between “new applications” and “Existing CFIs” was required when the first call for applications was made. This process has been completed, and the CBDA	Delete <u>NB: Registered Stokvels FSCs must meet the minimum requirements for a new CFI to be considered for registration</u>	
	<b>Note 1: Constitution</b>  <b>Zimele</b>	<ul style="list-style-type: none"> <li>Can the Supervisor confirm that the model constitution is sufficient to meet all the governance matters of a CFI and that all CFIs must use it as a standard document? Also why he needs deviations from the model highlighted?</li> </ul>	<ul style="list-style-type: none"> <li>The Supervisor must be careful not to mete out draconian penalties for matters do not need it. He cannot also impose requirements that are patently unreasonable and unjust to suit his needs. A constitution may be drafted in any way or format as the drafters may see fit. If it is the intention of the Supervisor to impose his model, then he must accept complicity should the model prove to be inadequate. All</li> </ul>	<b>Draft Constitution takes into account Co-op Act, FSC, FSA and SACCO model as well as Co-op Bank Act requirements. CBDA regulates</b>

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			this however serves to diminish the appearance of fairness being served.	those models. This clause allows approved deviations from those models
	<b>NOTE 2</b>	<ul style="list-style-type: none"> <li>The Supervisor must ensure he does not make registration requirements of CFIs to comply with the NCR that create a bottleneck since an applicant CFI is technically non-existence at the time of application to meet NCR requirements</li> </ul>		CBDA must ensure compliance to legislation.
Notes 3	Paragraph stating "Existing CFIs will be given six (6) months to comply with the application requirements.	The distinction between "new applications" and "Existing CFIs" was required when the first call for applications was made. This process has been completed, and the CBDA now only entertains new applications.	Delete [existing CFIs will be given six (6) months to comply with the application requirements].	
	A SACCO or FSC currently registered with the SACCOL or samaf that meets all the requirements of the Gazette, but does not meet the minimum requirements as specified in these rules, may apply for a one (1) year conditional registration to meet all outstanding	As above	Delete [a SACCO or FSC currently registered with the SACCOL or samaf that meets all the requirements of the Gazette, but does not meet the minimum requirements as specified in these rules, may apply for a one (1) year conditional registration to meet all outstanding requirements. Such conditional registration may be approved at the discretion of the Regulator]	

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	requirements. Such conditional registration may be approved at the discretion of the Regulator			
	<b>NOTE 3</b> <b>5.1</b> <b>Zimele</b>	<ul style="list-style-type: none"> <li>The Supervisor must provide objective criteria for what constitutes “sufficient”. Also clarify what prospective CFIs must comply with in that respect before it is registered. If that is not a prerequisite, then within how much time a newly registered CFI must comply with those criteria</li> </ul>		<b>As per the Co-op Banks Act. Not one fits all as we take into account the nature and scale of the business to be conducted.</b>
Section 6	Reporting on Financial Performance	<p>Currently CFIs are only required to report for the following periods:</p> <ul style="list-style-type: none"> <li>28 Feb</li> <li>31 May</li> <li>31 August</li> <li>31 November</li> </ul> <p>The Co-operative Bank Act requires monthly reports, with the Supervisor being empowered to reduce the number of reports</p> <p>Circumstances might exist where reporting is required more frequently by the Supervisor of CFIs. A clause should be added giving the Supervisor of CFIs the authority to requirement more regular reports on a case by case basis</p>	Add clause stating : <u>The supervisor may require a CFI to submit reports on a more frequent basis should circumstances so dictate</u>	
	All returns submitted to the CBDA must be signed by the Chairperson and	The CBDA is hoping to automate the process of returns through an online portal In such circumstances, the covering page of the returns needs to be signed by the Chairperson and the Treasurer or manager of a CFI	If a CFI submits a return through the online portal, only the cover page of the return needs to be signed by the Chairperson and the Treasurer or Manager of that CFI. Electronic signatures are permissible	

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	the Treasurer or Manager of a CFI			
Section 7 Renewals	All registered CFIs will have to apply for renewal of their licenses with the CBDA within three months of expiration of the annual licence	<p>The current renewals dates, does not take into account the “co-operative cycle” of completing its annual report and holding its AGM. The co-operative Act states that this must happen within 6 months of the end of the financial year.</p> <p>The proposal is that the renewal cycle must happen by the end of August every year, with the CFI furthermore submitting to the CBDA, its audited accounts and minutes of the AGM held.</p>	All registered CFIs will have to apply for renewal of their licenses with the <u>CBDA within six months of the end of their financial reporting period</u> [the CBDA within three months of expiration of the annual licence]	
	<p>To renew licenses, CFIs must submit the following documents:</p> <ul style="list-style-type: none"> <li>• <b>CBDA Form 012</b></li> <li>• Compliance letter from the Registrar of Co-operatives</li> <li>• Letter of good standing from representative body</li> <li>• Latest annual financial statements</li> <li>• Proof of payment of renewal fee of R200</li> </ul>	<p>The CIPC is reluctant to issues “compliance letters” but rather acknowledgement letters that the CFI is meeting its requirements.</p> <p>As per the discussion above, on renewals, a CFI required by the co-operatives act to have held an AGM, and tabled its financial report at such meeting within 6 months of the end of its financial year.</p> <p>Proof this has been done should be provided to the supervisor through submission of the Annual report and Minutes of the AGM</p> <p>Renewal fees will fall under the fees schedule</p>	<p>To add to the document to be submitted</p> <ul style="list-style-type: none"> <li>• <u>Minutes of AGM held</u></li> <li>• <u>Acknowledgement letter from the CIPC that financials have been submitted to it.</u></li> <li>• Proof of payment of renewal fee [of R200 ] R300 <u>as per the fees schedule</u></li> </ul>	

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	<ul style="list-style-type: none"> <li>• <b>CBDA Form 014</b>, which is a the current Directors Schedule</li> </ul>			
	<p><b>7.25</b> <i>Kleinfontein</i></p>	<ul style="list-style-type: none"> <li>• <b>NOTE THAT:</b> Minutes of the AGM only get signed during the next AGM after members' approval. Thus, AGM minutes that will be submitted to the CBDA will be that of the previous year. <u>Example:</u> When KSK submits its application to renew its licence in August 2015 (at the latest), minutes submitted will be that of the 2014 AGM. KSK's AGMs are held in June or July annually.</li> </ul>		<p><b>Noted. To submit minutes and resolutions as approved/noted by the board.</b></p>
	<p><b>7.1</b> <i>Ziphakamise</i></p>	<p>Old rule said renew licence 3 months from expiration. New rule says 6 months of financial year end. Old rule makes sense since our current certificates were not issued according to financial year end. If you have a certificate expiring August 2015, it creates confusion whether you should submit for renewal end of May 2015 or August/September 2015. The licence would have expired already.</p>		<p><b>Agreed. All new registrations renewals will be end of August</b></p>
	<p><b>RENEWALS</b>  <b>Zimele</b></p>	<p>For how long is the licence valid?</p>		<p><b>Reviewed on an annual basis</b></p>
<p>New section added</p>	<p><b>Falsified information</b></p>	<p>Applications have been received with falsified information.</p>	<p><u>8.2 The CBDA may revoke the registration granted to a CFI if found that false or misleading information was furnished in the application</u></p>	
	<p><b>8</b> <b>Zimele</b></p>	<p>What is the administrative process? ADMINISTRATIVE FAIRNESS????</p>		<p><b>Pre-registration assessment or examination. Infringement notice. Right to appeal</b></p>

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New section added	<b>Constitutional amendments</b>	Amendments to the constitution of a CFI must be approved by the members and registrar of co-operative. The registrar of co-operatives requires the supervisor of CFIs to approve such amendments. To expedite the process, the Supervisor approves such amendments prior to them being tabled to members and the CIPC.	<b><u>9. Changes to the Constitution</u></b>  <u>Any special resolution to change the constitution must be noted by the supervisor, prior to CIPC approval</u>	
	<b>9.1 Ziphakamise</b>	<ul style="list-style-type: none"> <li>• Sending constitution first to CBDA will cause more delays as we are already experiencing problems with CIPC. That constitution will still be pending come following AGM</li> </ul>	<ul style="list-style-type: none"> <li>• CBDA is to advise CIPC of model constitution and what to decline if added in constitution.</li> </ul>	<b>CIPC will only process once CBDA has approved. This is a shortcut</b>
New section added	<b>Alternative capital</b>	A peculiar characteristic of the CFI sector in SA is support from government through grants and on-lending financial assistance. While noting the intentions of government to provide social interventions through CFIs, the detrimental effect on the CFI of current funding programs cannot be overemphasized. However, the Supervisors see a possible opportunity for government and other parties to contribute towards strengthening the capital structure of CFIs. A key feature of such capital interventions should be that they are of a long term nature and rank only just above member share capital in terms of ranking.	<b><u>10. Alternative Capital Instruments</u></b>  <u>10.1 CFIs are permitted to introduce innovative alternative capital instruments to enhance their balance sheets. Alternative capital is non-standard forms of capital, i.e. outside member share capital and retained earnings. Such capital, <b>MUST</b> at a minimum:</u> <ul style="list-style-type: none"> <li>• <u>Be of a long term nature.</u></li> <li>• <u>Rank only just above member share capital in terms of ranking.</u></li> <li>• <u>Preserve the cooperative philosophy of CFI's, and the safety / soundness of their system.</u></li> </ul> <u>10.2 CFIs <b>MUST</b> obtain approval from the CBDA Supervisor prior to introducing such alternative capital. Failure to do so may result in supervisory sanctions, including the withdrawal of the licence.</u>	

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New section added	Fit and proper directors and management  Directors are required to complete Form 003: Directors commitment	At the CFI Indaba, a commission on fitness of directors resolved to take steps necessary ensure directors are fit and proper to take up their positions on the board. The changes below begin to address the CFIs concern in this regard  On registration CFIs. board members all complete the Directors commitment form. It will now be a requirement that CBDA003 be completed by all directors on an annual basis as a requirement for renewal	<b>12. <u>Fit and Proper Directors</u></b>  <b>12.1 ALL directors must complete Form 003: Directors Commitment on an annual basis. Failure to submit the Director Commitment Form may result in the Supervisor declaring such a director unfit and removing his/her directorship.</b>	13.
	12.1 <i>Zimele</i>	<ul style="list-style-type: none"> <li>The Supervisor again must provide a definition and criteria for assessing “fit and proper”. Surely the remedy of declaring a director “unfit” must be done with great care and not frivolously done. To make that declaration over and administrative matter appears drastic and unfair. The Supervisor must comply with administrative fairness and not use threats and fear-factor language. It is unsavoury. This is a very important aspect of ensuring probity, but it must address all question about all persons in the financial services and their histories of conduct.</li> </ul>		As per the Co-op Banks Act. Not one fits all as we take into account the nature and scale of the business to be conducted.
	Directors are required to complete Form 003: Directors commitment	It will now be a requirement that a progress report on the fitness of each director and management be submitted to the Supervisor. This includes <ul style="list-style-type: none"> <li>information on courses attended,</li> <li>employment of capable persons to run the CFI</li> <li>informing the supervisor of any changes of leadership</li> <li>disclosure of related party relationships within the CFI</li> <li>what training has been provided to members at an AGM</li> </ul>	<b>12.2</b> The board chair, must submit, on an annual basis, confirmation that the following has been done, failure of which an infringement notice may be issued: <ul style="list-style-type: none"> <li>Board member have attended training/courses</li> <li>Employment of capable persons to run the CFI</li> <li>Educated members at the AGM</li> <li>Informing the Supervisor of any board changes that take place in the CFI <ul style="list-style-type: none"> <li>The CFI must disclose, in writing to the supervisor, any family or related party relationships that occur within the CFI at a board, management and staffing</li> </ul> </li> </ul>	<b><u>Whilst there were no comments on this area there was discussion and agreement to amend as follows:</u></b>  <b><u>The CFI, must make an annual return on the following:</u></b> <ul style="list-style-type: none"> <li>Board member have attended training/courses</li> </ul>

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			<u>level.</u>	<ul style="list-style-type: none"> <li>• <u>Persons adequacy to run the CFI</u></li> <li>• <u>Members education having taken place during the year</u></li> <li>• <u>Any board changes that have taken during the year</u></li> <li>* <u>Any changes with regards to family or related party relationships that occur within the CFI at a board, management and staffing level.</u></li> </ul>
	12.2.2 <i>Kleinfontein</i>	There is no 12.7 in this document.		Noted
	12.2.3 <i>Kleinfontein</i>	Please explain what is meant with “Educated members at the AGM”?		Wording to be amended to: What member’s education has taken place during the year.
	12.2.3 <i>Ziphakamise</i>	Clarity is needed on ‘Educated members at AGM’. Does this refer to individuals attending the AGM or there must be a member education done at AGM besides the constituted agenda.		
	Page (10) 12.2.3 <i>NACFISA consolidated comments</i>	<ul style="list-style-type: none"> <li>• Educated members during the year not on AGM’s</li> </ul>	<ul style="list-style-type: none"> <li>• Training of members is on-going and cannot be limited to AGM</li> </ul>	

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:
New section added	Fit and proper directors and management	<p>The integrity of any financial institution is based on the confidence members have in its board and management. Should any board, manager or staff member be implicated in any impropriety, he/she should be suspended until the issue is fully resolved.</p> <p>A replacement board members should be co-opted to main a quorum and odd number of directors</p>	<p><u>12.3 If any criminal charges and allegations are brought against a board, manager or staff member (not only CFI related) the CFI must suspend the affected board member, manager or staff member, until the matter is resolved. Confirmation of the suspension should be forwarded to the Supervisor within 30 days of such. The CFI must nominate an alternative board member until the matter is resolved.</u></p>	
	<p><b>12.3</b> <b>Ziphakamise</b></p>	<ul style="list-style-type: none"> <li>Suspending directors for allegations is unconstitutional, what happened to innocent until proven guilty. We get it that this is aimed at professionalising the sector, but it's obvious that it was proposed by people that are either not part of the sector, do not understand it and have no intention of growing the sector.</li> </ul>	<ul style="list-style-type: none"> <li>Members must be trialed and found guilty before we have reason to suspend or expel from board.</li> </ul>	<p>The workshop endorsed the sentiment of this clause but was not sure about its enforce-ability. Therefore the clause is to be amended to read:</p>
	<p><b>12.3</b> <b>Zimele</b></p>	<ul style="list-style-type: none"> <li>“if any <b>criminal charges</b> and <b>allegations</b> are brought.....”. Everyone who is charged is presumed innocent unless/until proven otherwise. There is no room anywhere in the republic to circumvent that principle.</li> </ul>	<ul style="list-style-type: none"> <li>This suggestion must be rejected with the contempt in deserves.</li> </ul>	<p>It would be good governance practice that should any board member be implicated in any impropriety, he/she voluntarily suspends their involvement in th CFI until the issue is fully resolved Action against staff members will follow the CFIs internal</p>

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:
				<b>disciplinary processes.</b>
New section added	Fit and proper directors and management	This section also seeks to hold directors and management accountable for mismanagement of a CFI.	<u>12.4 Any board member or manager of a CFI which is de-registered and wound up due to mismanagement will be “blacklisted” by the CBDA for a period of not less than 10 years and will not be allowed to hold any position in a CFI during that period.</u>	
	<b>12.4</b> <b>Zimele</b>	What is the process to determine culpability? What are the manager’s/stakeholders’ rights in the process? How retrospective is this to cover current de-registrations?		<b>Agreed to delete clause. Will be part of conditions of Deposit Insurance and/or stabilisation conditions.</b>
	<b>12. 4</b> <b>NACFISA consolidated comments.</b>	<ul style="list-style-type: none"> <li>Blacklisting of anybody shall apply to members who have been convicted of any criminal activity and sentenced to not less than 12 months without an option of a fine shall not be eligible to hold any position within CFI board or as managers for a period of 5 years.</li> </ul>	Only a court of law shall be able to pronounce guilt or non-guilt of a member	
New section added	Fit and proper directors and management	This inclusion seeks to ensure the person appointed to manage the CFI has the appropriate qualification to do so. It also proposes a time frame for CFI to address the issue	<u>12.5 The manager or person to be appointed to the position of manager has a minimum of a B.Comm or equivalent. Existing CFIs to be given three years to ensure they up skill</u>	
	<b>12.5</b> <b>Ziphakamise</b>	Most CFIs cannot afford to remunerate B Com graduates. Current managers will not be able to attain B Com degree in 3 years because it will be done part time and affordability issue. How can you afford UNISA fees earning R5000?		<b>Clarified that in most cases BankSeta is willing cover cost for CFI staff, if the CFI is registered and paying its training levies.</b>
	<b>12.5</b> <b>King Grange</b>	<ul style="list-style-type: none"> <li>We do agree that the manager must have a B Com degree but the problem is that we won’t afford to pay. NOTE: It is not easy to run CFIs in rural areas. Educated people leave rural areas and settle in urban areas. The rest of the</li> </ul>	<ul style="list-style-type: none"> <li>We feel that the Supervisor and his committee must find a way of funding both the manager and board member tuition.</li> </ul>	<b>Agreed that</b>

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:
		rules are okay.		existing staff be give 5 years to attain degree.
	12.5 <i>Zimele</i>	I do not think the standard that is proposed is relevant to the sector at this juncture. The standard is way too lofty and impractical		
	12.5. <i>NACFISA consolidated comments</i>	<ul style="list-style-type: none"> <li>Not all CFIs would be able to afford to pay salaries. A 3 year relevant Diploma or equivalent. We agree with that if they will pay their B,Comm people no one stays at home with his/her degree doing nothing cause CFI are not making money even the Managers are sacrificing with their time sometimes.</li> </ul>		
		<ul style="list-style-type: none"> <li>The requirements are not realistic/ practical even on medium to long term basis. Most CFIs are rural or semi urban and such qualifications may not be found or might be expensive for most CFIs.</li> </ul>	NACFISA advocates for a National Diploma for Managers and NQF Level 4 or equivalent for Board members	
New section added	Fit and proper directors and management	This inclusion seeks to ensure that the board members, who have a fiduciary responsibility, have the appropriate qualifications to do so.	<u>12.6 Board member mix must have experience, knowledge and qualifications, with at least five (5) board members having the equivalent of a 3 year National Diploma</u>	
	12.6 <i>Zimele</i>	I do not think the standard that is proposed is relevant to the sector at this juncture. The standard is way too lofty and impractical		.Agreed to amend this clause to read:  <u>Board member mix must have experience and knowledge to run a CFI or qualifications, with at least five (5) board members having</u>
	12.6 <i>Ziphakamise</i>	CFIs in rural areas, even in urban areas can be made of skilled labourers and uneducated people. The few educated people don't want commitment that comes with being a board member. Are they supposed to close down?		
	12.6 <i>NACFISA consolidated comments</i>	<ul style="list-style-type: none"> <li>Board Members are coming from the Community Members not all people are well educated</li> </ul>	<ul style="list-style-type: none"> <li>The board members must have matric / equivalent and submit proof that after 6 months being appointed on the board have attended and successfully completed board training</li> </ul>	

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [ ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:								
				<b><u>the equivalent of a 3 year National Diploma</u></b>								
Section 9. Inspections of CFIs	added	The examination team requires access to information. Providing access to any information must be an agreed pre-requisition to registration and cause for deregistering if not provided to the CBDA.	<u>13.3 The CBDA supervisory unit will be provided with full access to any information as required to conduct their examinations. Failure to provide such access, can result in deregistration as a CFI</u>									
	added	The CFI should be in a position to apply to the supervisor to condone non-compliance or for an exemption to a particular rule, prudential or operating standard.	<u>13.4 The onus lies on the CFI to request/report to the supervisor any noncompliance to these rules, prudential or operational requirements to condone exceptional requests.</u>									
Section 9. Inspection of CFIs	Registered CFIs may face fines and be issued with a non-compliance notice (CBDA 004), or be deregistered, if in the opinion of the EMPC, having taking into consideration sufficient evidence fails to: <ul style="list-style-type: none"> <li>Maintain the minimum prudential and operational standards</li> <li>Comply</li> </ul>	The current supervision regime is considered weak with regard to sanctions and enforcement. This proposal strengthens the existing infringements and provides a tolerance level of the number of infringements that may be received within which period by which it must be addressed.  Examples are given in a forth column. However it must be noted that infringements issued will be risk rated and the rating will be issued accordingly.	<u>13.5 The following infringement regime is applicable:</u> <table border="1" data-bbox="1121 781 1709 1089"> <thead> <tr> <th data-bbox="1121 781 1545 813"><u>Infringement Type</u></th> <th data-bbox="1549 781 1709 813"><u>Rating</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="1121 816 1545 902"><u>1</u></td> <td data-bbox="1549 816 1709 902"><u>Requires Att</u></td> </tr> <tr> <td data-bbox="1121 906 1545 992"><u>2 (orange)</u></td> <td data-bbox="1549 906 1709 992"><u>Serious</u></td> </tr> <tr> <td data-bbox="1121 995 1545 1081"><u>3 (red)</u></td> <td data-bbox="1549 995 1709 1081"><u>Urgent</u></td> </tr> </tbody> </table>	<u>Infringement Type</u>	<u>Rating</u>	<u>1</u>	<u>Requires Att</u>	<u>2 (orange)</u>	<u>Serious</u>	<u>3 (red)</u>	<u>Urgent</u>	
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Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:																		
	with the conditions of registration as per the Exemption notice Comply with any directive issued by the ENP and/or register of co-operatives																					
		The infringement regime also imposes fines for non-compliance. As it is the members who will be bearing the burden of these fines, it will be a requirement that infringements penalties be reported to members in their AGM report.	<p><u>13.5 The following penalties are applicable:</u></p> <table border="1"> <thead> <tr> <th><u>Infringement</u></th> <th><u>Penalty</u></th> </tr> </thead> <tbody> <tr> <td><u>Failure to comply with infringement notice deadlines</u></td> <td><u>R50/day</u></td> </tr> <tr> <td><u>Late Submission of Return</u></td> <td><u>R100/day</u></td> </tr> <tr> <td><u>Late Submission of Renewal Application</u></td> <td><u>R100/day</u></td> </tr> <tr> <td><u>Failure to hold AGM within stipulated period</u></td> <td><u>R1,000</u></td> </tr> <tr> <td><u>Failure to report changes in directors</u></td> <td><u>R500</u></td> </tr> <tr> <td><u>Failure to notify Supervisor of Change in Premises</u></td> <td><u>R1,000</u></td> </tr> <tr> <td><u>Failure to comply with conditions of registration after stipulated deadline</u></td> <td><u>R1000</u></td> </tr> <tr> <td><u>Failure to report supervisory requirements timely</u></td> <td><u>R1000</u></td> </tr> </tbody> </table>	<u>Infringement</u>	<u>Penalty</u>	<u>Failure to comply with infringement notice deadlines</u>	<u>R50/day</u>	<u>Late Submission of Return</u>	<u>R100/day</u>	<u>Late Submission of Renewal Application</u>	<u>R100/day</u>	<u>Failure to hold AGM within stipulated period</u>	<u>R1,000</u>	<u>Failure to report changes in directors</u>	<u>R500</u>	<u>Failure to notify Supervisor of Change in Premises</u>	<u>R1,000</u>	<u>Failure to comply with conditions of registration after stipulated deadline</u>	<u>R1000</u>	<u>Failure to report supervisory requirements timely</u>	<u>R1000</u>	
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Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [        ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:
			<p><u>Failure to disclose in its annual report to the Annual General Meeting any penalties incurred and infringement notices received during the year</u></p> <p>R 1,000 per infringement not disclosed</p> <p><b><u>13. 6 Failure to pay the penalty may result in de-registration of the CFI.</u></b></p> <p><b><u>13.7 The CFI must disclose in its annual report to the Annual General Meeting any penalties incurred and infringement notices received during the year.</u></b></p>	
	<b>13.6</b> <i>Ziphakamise</i>	As for the penalties, it's not a positive way of instilling discipline. CBDA will now be making money off CFIs, if they can't pay they are de-registered		<b>No alternative positive ways to in-still discipline were offered (short of de-registration).</b>
	<b>13.6</b> <i>K Ladies</i>	We don't need penalties at all because we are building the sector.		
	<b>13.5.4</b>  <i>CFIs' consolidated comments.</i>	<ul style="list-style-type: none"> <li>CFIs are financially struggling with operational expenses funds. Where are they going to get the money from? If there was an injection of funds by the government to make CFIs sustainable then the penalties could be charged. This is going to kill most CFIs. We suggest that other measures be put in place instead of penalties</li> </ul>	<ul style="list-style-type: none"> <li>Needs to be reviewed. We feel that it will be very much unfair to implement the penalties on CFIs.</li> </ul>	
	<b>13.6</b> <b>NACFISA consolidated comments</b>	<ul style="list-style-type: none"> <li>This may result in de-registration of many CFIs. We are busy building the sector, this will discourage us.</li> </ul>	<ul style="list-style-type: none"> <li>Needs to be reviewed. We are not in favour of penalties.</li> </ul>	<b>Agreed to adjust all proposed penalties by 50%.</b>
	15.			
New	16. Fee Schedule	For easier reference, a fee schedule has been	14. Fees schedule	<b>Agreed to adjust</b>

Section of the Rules	Reference and description Raised by	Brief discussion	Proposed amendments [ ] indicate omissions from Act _____ indicate insertions in Act.	Responses from workshop:								
section added		added to the rules. The annual renewal fee has increased from R250 to R300 to factor in inflation.	<table border="1"> <tr> <td>Application fee</td> <td>R 500</td> </tr> <tr> <td>Repeat application fee</td> <td>R1,000</td> </tr> <tr> <td>Annual renewal fee</td> <td>R 300</td> </tr> <tr> <td>Appeal fee</td> <td>R 1,000</td> </tr> </table>	Application fee	R 500	Repeat application fee	R1,000	Annual renewal fee	R 300	Appeal fee	R 1,000	repeat applications to R500
Application fee	R 500											
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17.	18. <b>K Ladies</b>	Appeals: 15 fee schedule. We don't support it at all.		Agreed to adjust all the proposed penalties								
19. Forms	16. Forms	<p>This section has been split into Forms and Returns for easier reference.</p> <p>Return 055 is a new return. The purpose of this return is to assist the CBDA with social indicators as to the contribution of the sector to developmental goals</p>	<p><u>FORMS</u></p> <p><u>Form 001: CFI application for registration</u>  <u>Form 002: CFI member share register</u>  <u>Form 003: CFI board of director commitments</u>  <u>Form 004: CFI non-compliance notice</u>  <u>Form 006: CFI appeals notification form</u>  <u>Form 012: CFI application for annual licence renewal</u>  <u>Form 014: CFI board of directors schedule</u></p> <p><u>RETURNS</u></p> <p><u>Return 051: Balance sheet</u>  <u>Return 052: Year to date Income statement</u>  <u>Return 053: Delinquency loan report</u>  <u>Return 054: Report on board an staff related loans</u>  <u>Return 055: Report on social indicators</u></p>									

**GENERAL COMMENTS**

	<p><b>Coop Banks Act No.40, 2007 (Pre-amble)</b></p> <p><b>Zimele</b></p>	<ul style="list-style-type: none"> <li>Whatever regulation or prudential standard that is proposed or established, it must imbide these objectives and always maintain a healthy balance of all of them. This must also be done in accordance with the foundational provisions of the</li> </ul>	<ul style="list-style-type: none"> <li>The Supervisor must openly and clearly table to IAPs his reasons and basis for proposing regulation so that the sector can meaningfully engage with him. The current</li> </ul>	<p><b>Bank Act, Government Gazette No. 37903, Notice 620 of the 15 August 2014, point 3(a) Conditions: "a CFI shall at all times subject itself to the requirement os the Co-</b></p>
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		<p>constitution. This is particularly instructive when a state or government institution has to interact with private citizens, corporeal or incorporeal.</p> <ul style="list-style-type: none"> <li>It is not clear from the reading of the entire document, why the current regulations need changing. If there are any benefits to changing regulations to a new regime, it is not clear what these benefits are.</li> </ul>	<p>proposal has no such information and very difficult to understand what the underlying rationale for them is.</p>	<p><b>operative Act and the supervision and regulation of the CBDA.</b>  <b>The underlying premise is that institutions who are registered with the CBDA can have the confidence to know that their funds are being regulated and prudentially managed.</b></p>
	<p><b>Coop Banks Act No.40, 2007 (Purpose of the Act)</b>   <b>Ziphakamise</b></p>	<ul style="list-style-type: none"> <li>The new changes to the rules do not promote the development of sustainable Cooperative Banks, it is instead going to diminish their existence. CFIs are still adapting to the heavy regulation that came with CBDA. It's been hardly three years and many CFIs have been de-registered.</li> </ul>	<ul style="list-style-type: none"> <li>It would be appropriate if changes were communicated with CFIs instead of being imposed.</li> </ul>	<p><b>The CBDA is under no obligation to get sectorial consensus on how it should regulate. However we have always adopted a consultative approach</b></p> <p><b>Five CFI have been deregistered due to insolvency. It is considered reckless trading to continue trading when insolvent. CBDA has no option in this regard, however continues to provide capacity building support to such CFIs on a request basis.</b></p> <p><b>The rules were circulated to get comments</b></p>
	<p><b>Zimele</b></p>	<ul style="list-style-type: none"> <li>we are under the impression that CBDA is here to build CFIs and ensure they grow and get to a stage where they understand and comply with all these compliance issues. All we seem to hear is 'de-register' as a solution to all problems. What the Supervisor is saying is there is no future for this sector and they are here they are here to make sure of that.</li> </ul> <p>We expected changes around the common bond and delinquency measures, which is what affects CFIs the most</p>		<p><b>The CBDA has two units. Supervision and capacity building. They have two separate functions. One is to supervise and regulate, whilst capacity building assists with training and other programs.</b></p>
	<p><b>Zimele</b></p>	<ul style="list-style-type: none"> <li>As a basis to establishing effective engagement with stakeholder(s) and Interested and Affected Parties (IAPS), a re-draft of regulation(s) should be prefaced by a reason(s)</li> </ul>		<p><b>Since CBDA has begun to</b></p>

		why the current regulations need adjusting. This basis for changing regulations must be properly expressed with empirical proof and sound reasons so that IAPs can engage meaningfully		<p><b>supervise and regulate CFIs the overall financial position and overall governance of CFIs has improved markedly.</b></p>
	<b>Zimele</b>	<ul style="list-style-type: none"> <li>Any proposed regulations' must <ul style="list-style-type: none"> <li>i. be utilised to implement the law as was intended by the statute.</li> <li>ii. address each area the statute requires the regulation to specify.</li> <li>iii. not exceed the scope of authority delegated in the statute.</li> </ul> </li> </ul>		
	<b>Zimele</b>	<ul style="list-style-type: none"> <li>Therefore when drafting regulations, the Supervisor must <ul style="list-style-type: none"> <li>o Use clear and unambiguous language.</li> <li>o Properly define technical terms and words used in a sense other than their ordinary meaning.</li> <li>o Check that defined terms appear in the regulation.</li> <li>o Use terms consistently throughout the regulation.</li> </ul> </li> </ul> <p>Observe administrative fairness</p>		
		<ul style="list-style-type: none"> <li>Having regard to the totality of the proposed changes, the Supervisor still has two key challenges to overcome vis-à-vis</li> <li>Providing a sound basis for why the proposed regulatory changes are desirable and how the changes will help grow the sector or contribute positively to the sector in a way that fulfils the objectives of act as stated.</li> <li>Creating certainty and stability in the sector. This can be achieved by providing forward-looking yet developmental frameworks that assist CFIs and prospective ones know what is required of them. Regulation must reflect administrative fairness, objectivity, and consistency of application which is lacking at the moment.</li> </ul>		
New Proposed Rule	Loan provision <b>NACFISA consolidated comments</b>	<ul style="list-style-type: none"> <li>35; 50; 100 and 2% overall is double provisioning which diminishes the capital and increases CFI expenses.</li> </ul> <p>Currently the double provision in terms of loans.</p>		<p><b>Agreed. The 2% will be removed from our prudential requirements. It should be noted though that this is a prudential requirement to register as a Co-op Bank and will need to be factored into your provisioning before application as a co-op bank.</b></p>
Extras	Mergers and Amalgamations	<ul style="list-style-type: none"> <li>CBDA should provide NACFISA with the Guidelines for Mergers and Amalgamation of CFIs.</li> </ul>	<ul style="list-style-type: none"> <li>Mergers and amalgamations can be a way of addressing compliance of weak CFIs.</li> </ul>	<p><b>CFI constitutions provide framework for mergers and amalgamations.</b></p> <p><b>Will consider doing a "guideline" in this regard. Would encourage representative and support</b></p>

				organisations to develop for their members.
New Proposed Rule	common bond <b>NACFISA consolidated comments</b>	<ul style="list-style-type: none"> <li>Definition to be discretion of each individual CFI but not beyond the borders of South Africa</li> </ul>	Should not be at the discretion of the supervisor	<b>Beyond the scope of the rules as the common bond is the basis for the Exemption to the Banks Act. Banking institutions wanting a national footprint can register as Mutual Banks (which are co-operative in nature) or Corporate entities</b>
	<b>NACFISA consolidated comments</b>	It seems that the reasoning behind these rules is about CBDA supervision and its capacity rather than developing the sector. Some of the aspects are not constitutional and are not in support of the co-operative principles.		<b>CBDAs supervisory responsibility is to ensure the sector is safe and sound. One of the principles of financial co-operatives is FINANCIAL STABILITY.</b>
	<b>NACFISA consolidated comments</b>	<ul style="list-style-type: none"> <li>The draft rules are not developmental, it seems as if the intention is to deregister CFIs and make it difficult for new CFIs. These new rules will make it even more difficult for NACFISA or any developing CFI movement to maintain itself or to effectively grow.</li> <li>Instead of growth and sustainable measure more restrictive and punitive measures are put in place.</li> <li>This is a sad state of affairs. We are actually astounded by these new measures and wondering how this would be beneficial at this critical juncture of our movement.</li> <li>It would seem that the focus is primarily on regulation and not development of the movement</li> </ul> <p>The above provisional comments also serve as a formal request for an extension of 21 days for further legal consultation.</p>		<p><b>The intention, in line with financial co-operative principles is to build financial stability in CFIs so that they can graduate to register as Co-operative Banks.</b></p> <p><b>The supervision unit furthermore utilises the Basel core principles for the effective supervision of Microfinance deposit taking institutions as a guideline to its ensuring it rules meet international scrutiny.</b></p>