



National Treasury

INVITATION FOR PUBLIC COMMENT

DRAFT CO-OPERATIVE BANKS BILL, 2004

The Minister of Finance has released the draft Co-operative Banks Bill for public comment.

The Co-operative Banks Bill aims to:

- formalise the co-operative banks industry by creating a legal framework for the regulation and supervision of their banking activities. This will afford depositors with Co-operative Banks the same level of safety and protection as enjoyed by depositors with formal commercial banks; and
- provide for the support and development of the Co-operative Banks industry to ensure the sustainability and the growth of the sector and compliance with the provisions of this Bill.

The Bill is available on National Treasury's website www.treasury.gov.za.

Written submissions on the draft Bill must be submitted by no later than the close of business on 17 January 2005 via e-mail, post or fax to -

E-Mail: Co-operativeBanksBill@treasury.gov.za

Fax No: (012) 325 1048

Post: Co-operative Banks Bill
Director: Banking Development
Office 2057
Private Bag X115
PRETORIA
0001

All submissions received will be regarded as being on public record. An acknowledgement of receipt will be sent in respect of electronic submissions received.

Queries may be directed to Mr. Nkosana Mashiya at (012) 315 5825.

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

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

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

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

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

Chapter I Definitions and interpretation of the Act

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

Chapter II Administration of the Act

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

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

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

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

CO-OPERATIVE BANKS BILL: 2004 MEMORANDUM OF OBJECTS

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

Chapter III Support Organisation

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

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

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

Chapter V Constitution and powers of Co-operative Banks

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

Chapter VI Membership of Co-operative banks

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

CHAPTER VII Management of a Co-operative bank

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

CHAPTER VIII Financial records and audits

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

CHAPTER IX Minimum share capital and unimpaired reserve funds

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

CO-OPERATIVE BANKS BILL: 2004 MEMORANDUM OF OBJECTS

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

CHAPTER X Conversion of Co-operative banks

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

CHAPTER XI Amalgamation, winding up and dissolution

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

CHAPTER XII General provisions relating to Co-operative banks

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

PARLIAMENTARY PROCESS

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

CO-OPERATIVE BANKS BILL: 2004 MEMORANDUM OF OBJECTS



CO-OPERATIVE BANKS BILL ____ OF 2004

ACT

To make provision for the regulation and development of existing community banks and the promotion of the establishment of new co-operative banks, and to provide for matters connected therewith.

PREAMBLE

RECOGNISING the right of historically disadvantaged communities and persons to have access to and to participate in financial services;

ACKNOWLEDGING the promotion of equitable access to banking services for all South Africans;

AFFIRMING the State's obligation to provide for sustainable economic and social development;

BEING COMMITTED to the expansion, better organisation, and modernisation of co-operative banks; and

EMPHASISING that the establishment of new co-operative banks must be promoted and developed.

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

ARRANGEMENT OF SECTIONS

Section

CHAPTER I INTERPRETATION OF ACT

1. Definitions

CHAPTER II ADMINISTRATION OF ACT

2. Office and functions of Supervisor
3. Delegation of powers and assignment of duties by Supervisor
4. Seal and official stamp of Supervisor
5. Supervisor to keep register of co-operative banks
6. Powers of inspection by Supervisor
7. Furnishing of information by co-operative banks
8. Review of decisions of Supervisor
9. Annual report by Supervisor

10. Form of records
11. Inspection, copies and keeping of documents

CHAPTER III SUPPORT ORGANISATIONS

12. Establishment and status of the Support Organisation
13. Mandate of the Support Organisation

CHAPTER IV RECEIPT OF A CO-OPERATIVE BANK LICENSE IN ORDER TO CONDUCT THE BUSINESS OF A CO-OPERATIVE BANK

14. Registration as a co-operative and receipt of a co-operative bank license a prerequisite for conducting the business of a co-operative bank
15. Order of processing applications
16. Consultation with interested and affected persons
17. Transferability and encumbrance of a co-operative bank license
18. Application for the receipt of a co-operative bank license
19. Granting and duration of a co-operative bank license
20. Application for renewal of a co-operative bank license
21. Effect of granting a co-operative bank license
22. Licenses and obligations of the receiver of a co-operative bank license
23. Suspension or cancellation of a co-operative bank license
24. Application to provide additional services
25. Publication of information relating to co-operative banks
26. Repayment of deposits upon the cancellation of a co-operative bank license

CHAPTER V CONSTITUTION AND POWERS OF CO-OPERATIVE BANKS

27. Matters to be set forth in constitution
28. Amendment of constitution
29. The name of a co-operative bank
30. Powers of a co-operative bank
31. Restricted activities
32. Registered office of a co-operative bank

CHAPTER VI MEMBERSHIP OF CO-OPERATIVE BANKS

33. Application for shares or for leave to make deposits
34. Membership in co-operative bank
35. Suspension or expulsion of members
36. Right of members to inspect, or make copies of, certain documents
37. Register of members
38. Annual report relating to members
39. General meetings
40. Annual general meeting
41. Notice of meetings

42. Special resolutions
43. List of persons entitled to receive notice
44. Quorum for meetings
45. Voting by show of hands or ballot
46. Minutes of meetings
47. Request for general meeting

CHAPTER VII MANAGEMENT OF A CO-OPERATIVE BANK

48. Directors of a co-operative bank
49. Vacation of office by directors and filling vacancies
50. Disqualification of directors
51. Chairperson, vice-chairperson and acting chairperson
52. Vacation of office by chairperson and vice-chairperson
53. Meetings and resolutions of the board of directors
54. Minutes of meetings of board of directors
55. Attendance register
56. Board of directors may assign functions to a director or committee
57. Liabilities of directors and officers
58. Directors to disclose interests
59. Acceptance of commission, remuneration or reward prohibited in certain circumstances
60. Returns relating to directors

CHAPTER VIII FINANCIAL RECORDS AND AUDITS

61. Record keeping by a co-operative bank
62. Annual financial statements

CHAPTER IX PRUDENTIAL REQUIREMENTS

63. Minimum share capital and unimpaired reserve funds
64. Minimum liquid assets
65. Large exposures
66. Failure or inability to comply with prudential requirements
67. Returns

CHAPTER X CONVERSION OF CO-OPERATIVE BANKS

68. Definitions
69. Conversion of co-operative banks into mutual banks
70. Application for Supervisor's approval
71. Consideration of application
72. Special general meeting to authorize conversion
73. Registration of mutual bank
74. Notice in Gazette of conversion

- 75. Effects of conversion
- 76. Issue of shares to persons who were members of former co-operative bank

CHAPTER XI
AMALGAMATION, WINDING-UP AND DISSOLUTION

- 77. Amalgamation and transfer of assets and liabilities
- 78. Judicial management
- 79. Voluntary winding-up of co-operative bank
- 80. Winding-up by court
- 81. Appointment of judicial manager and liquidator
- 82. Limitation of liability of members
- 83. Liability of borrowers in winding-up
- 84. Distribution of surplus in winding-up
- 85. Appointment of curator to co-operative bank

CHAPTER XII
GENERAL PROVISIONS RELATING TO CO-OPERATIVE BANKS

- 86. Appointment of inspector by Supervisor on application of members
- 87. Investigation by inspector appointed by co-operative bank
- 88. Information to be furnished to inspectors
- 89. Certification of returns and other documents
- 90. Minors
- 91. Limitation of liability
- 92. Furnishing of information by Supervisor
- 93. Advisory Committee on co-operative banks
- 94. Regulations
- 95. Offences and penalties
- 96. Exemptions
- 97. Repeal of laws
- 98. Transitional provisions
- 99. Short title and commencement

Schedule

CHAPTER I
INTERPRETATION OF ACT (s 1)

1 Definitions

(1) In this Act, unless the context otherwise indicates-

“**advisory committee**” means the advisory committee on Co-operative Banks contemplated in section 93;

‘**accounting officer**’ means an accountant and auditor registered as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), that is a person employed by the Support Organisation and approved of by the Supervisor for purposes of this Act;

“annual general meeting” means a general meeting of members contemplated in section 40;

‘association’ means a voluntary association of persons;

‘bank’ means a bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), the Dedicated Banks Act, 2004 (Act No. of 2004), or under the Mutual Banks Act, 1993 (Act No. 124 of 1993);

‘board’ means the board of directors, referred to in section 48(1), of a co-operative bank;

‘board of review’ means a board of review established under section 8;

‘burial scheme’ means a scheme that provides benefits to contribute towards meeting funeral expenses at the time of death;

‘conducting the business of a co-operative bank’ means the act of –

- (a) primary deposit taking;
- (b) advancing loans to members;
- (c) providing transmission services to members;
- (d) soliciting or advertising for deposits or related banking services; or
- (e) providing such associated services as may be approved or prescribed by the Supervisor.

within the Republic;

‘business plan’ means, in respect of a specified time period –

- (a) a co-operative bank’s business objectives together with a description of the short and long term strategies for achieving those objectives; and
- (b) a co-operative bank’s market strategy, including a description of the geographic area to be served by the applicant, and the scope and nature or the business contemplated such as the types of products offered, the expected volume of deposits, and the details of lending and investment objectives.

‘constitution’ means the constitution of a co-operative bank;

‘co-operative bank’ means a co-operative registered under this Act;

‘Co-operatives Act’ means the Co-operatives Act, 2004 (Act No. ? of 2004);

‘deposit’ means a deposit as defined in section 1 (1) of the Banks Act, 1990 (Act No. 94 of 1990);

‘exclusionary act’ means any act or practice which impedes or prevents any person from being a member of or participating in the co-operative bank industry,

from being a member of or participating in any market related to such industry, or from making progress within such industry or market;

'annual financial statements' means the annual financial statements of a co-operative bank as contemplated in section 62;

'financial year' means the financial year from one financial year end to the other or as otherwise determined in section 62;

"fit and proper person" in respect of a director of a co-operative bank means a person –

- (a) who is a respected person within the community that is served by the co-operative bank;
- (b) who has no previous convictions for theft, fraud or any other offence associated with dishonesty;
- (c) who has received the prescribed training to act as a director of a co-operative bank in respect of the services to be provided by the co-operative bank;
- (d) who has been duly elected as a director by the members in accordance with the constitution of the co-operative bank;

"general meeting" means a meeting of members of a co-operative bank as contemplated in section 39;

'Inspection of Financial Institutions Act' means the Inspection of Financial Institutions Act, 1988 (Act No. 80 of 1988);

'liquid assets' means liquid assets as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

'liquidator' means a person appointed to conduct the winding-up of a co-operative bank;

'manager' means a person who is responsible under the direct authority of the board of directors of a co-operative bank for the management of the business of the co-operative bank;

'management plan' means, in respect of a specified time period, a co-operative bank's explanation of the relation between the business background and the expertise of each employee, manager, or officer of a co-operative bank and the business objectives of the co-operative bank;

'member' means a member of a co-operative bank;

'Minister' means the Minister of Finance;

'mutual bank' means a bank registered as such under the Mutual Banks Act, 1993 (Act No. 124 of 1993);

'officer' means any employee of a co-operative bank;

'person' includes any partnership or group of natural persons;

'prescribed' means prescribed by regulation;

'primary deposit-taking' means the taking of deposits from members, the pooling thereof, the investment thereof in the prescribed manner and the repayment thereof to members on terms agreed with members;

'regulation' means a regulation prescribed under this Act;

'Reserve Bank' means the South African Reserve Bank;

'rotating savings scheme' means a scheme -

- (i) which is conducted by persons who have committed themselves to support to each other to meet certain objectives;
- (ii) where the persons take turns to receive the collected savings of the group;
- (iii) which is self-governing;

'share' means a share in the capital of a co-operative bank;

'shareholder' means a member that holds a share in a co-operative bank;

'special resolution' means a resolution passed in accordance with section 42;

'Supervisor' means the Supervisor of Co-operative Banks appointed in terms of section 2;

'Support Organization' means the South African Co-operative Banks Support Organisation established under section 12;

'Treasury' means the National Treasury established under the Public Finance Management Act, 1999 (Act No. 10 of 1999);

'this Act' includes the schedule, regulations and any conditions imposed under this Act.

CHAPTER II ADMINISTRATION OF ACT (ss 2-11)

2 Office and functions of Supervisor

(1) For the administration of this Act, there is, as part of the Reserve Bank, an office in the Republic called the Office for Co-operative Banks and as the head of the office is a person designated as the Supervisor of Co-operative Banks.

(2) The Reserve Bank must, subject to the approval of the Minister, appoint a person as the Supervisor of Co-operative Banks.

(3) The Supervisor of Co-operative Banks, under the authority of the Registrar of Banks, will perform all the functions assigned to such a position under this Act.

3 Delegation of powers and assignment of duties by Supervisor

(1) The Supervisor may -

- (a) delegate to any officer or employee of the Reserve Bank any power conferred upon the Supervisor by or under this Act; or
- (b) authorize any such officer or employee to perform any duty assigned to the Supervisor by or under this Act; or

(2) Any delegation under subsection (1) does not prevent the exercise of the relevant power of the Supervisor.

4 Seal and official stamp of Supervisor

(1) The Minister must determine a seal of office for the Supervisor, which must be placed on the registration certificate of co-operative banks and any other document issued by the Supervisor in terms of this Act.

(2) The impression of the seal of the office of the Supervisor will be judicially noticed in evidence.

5 Supervisor to keep a register of co-operative banks

(1) The Supervisor must keep a register to be known as the register of co-operative banks in the prescribed manner, in which particulars of all registered co-operative banks are entered.

(2) The register of co-operative banks or any extract or a copy of that register signed by the Supervisor is in the absence of proof to the contrary proof of the particulars contained therein.

6 Powers of inspection by Supervisor

(1) In addition to the powers and duties conferred or imposed upon the Supervisor by this Act, the Supervisor has, in respect of co-operative banks and Support Organisations, the powers and duties in all respects corresponding to the powers and duties conferred or imposed upon an inspector by the Inspection of Financial Institutions Act.

(2) Any reference in this Act to an inspection or investigation made under this section must be construed as a reference to an inspection made in accordance with the provisions of the Inspection of Financial Institutions Act.

7 Furnishing of information by co-operative banks

(1) The Supervisor may, where necessitated by the circumstances, by notice in writing-

- (a) direct a co-operative bank or a support organization to furnish the Supervisor, within such period as the Supervisor may determine, with such information in such form as may be specified in the notice and as the Supervisor may reasonably require to ensure compliance with this Act; or
- (b) direct such co-operative bank or support organization to furnish the Supervisor with a report by an accounting officer or other knowledgeable or professional person on any aspect of any matter in respect of which the Supervisor requires information to ensure compliance with this Act.

8 Review of decisions of Supervisor

(1) Any person aggrieved by a decision taken by the Supervisor under a provision of this act may within the prescribed period and in the prescribed manner and upon payment of the prescribed fees apply for a review of that decision by the board of review established by subsection (2).

(2) For the purpose of this Act, there is hereby established a board of review which consists of three members, appointed by the Minister and of whom -

- (a) one must be appointed on account of his or her knowledge of law and will be the chairperson;
- (b) one must be a person who in the opinion of the Minister has wide experience of, and is knowledgeable about co-operative banking; and
- (c) one must be a person who in the opinion of the Minister has wide experience of, and is knowledgeable about accounting matters in respect of co-operative banks.

(3) In any review under subsection (1), the board of review is, subject to the provisions of subsection (8), confined to establishing whether or not, in the taking of the relevant decision, the Supervisor exercised his or her discretion properly and in good faith.

(4) If before or during any review under subsection (1) it transpires that any member of the board of review has any direct or indirect personal interest in the outcome of that review, such member must recuse himself or herself and such

member shall be replaced by a person temporarily appointed, subject to the provisions of subsection (2), by the Minister for purposes of the review.

(5) If before or during any review under subsection (1), it transpires that any member of the board of review will, due to illness, absence the Republic or for any other *bona fide* reason be unable to participate or continue to participate in that review, such member must be replaced by a person temporarily appointed, subject to the provisions of subsection (2), by the Minister for the purposes of the review.

(6) A member of the board of review holds office for a period of three years and is on the expiration of such member's term of office be eligible for re-appointment.

(7) Any casual vacancy that occurs on the board of review must be filled by the appointment by the Minister, subject to the provisions of subsection (2), of another member, and any person so appointed must hold office for the unexpired portion of the period of office of the predecessor of such member.

(8) A review under subsection (1) takes place on the date and at the place and time fixed by the board of review, which must give notice in writing to the applicant as well as the Supervisor thereof.

(9) The board of review may for the purposes of a review under subsection (1)–

- (a) summon any person who, in its opinion, may be able to give material information for the purposes of the review 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 review, to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and retain for examination any document so produced;
- (b) administer an oath or to accept an affirmation for any person called as a witness at the review; and
- (c) call any person present at the review 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 is entitled to legal representation at his or her own expense.

(9) Subject to the provisions of subsection (3), the chairperson of the board of review must determine the procedures for the review.

(10) The Board of review may after the review confirm, set aside, or vary the relevant decision of the Supervisor.

(11) The decisions of a majority of the members of the board of review must be the decision of that board.

(12) The decision of the board of review must be in writing, and a copy thereof shall be furnished to the applicant as well as to the Supervisor.

(13) If the board of review sets aside any decision by the Supervisor, the prescribed fees by the applicant in respect of the review in question shall be refunded to the applicant, and if the board of review varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the applicant.

(14) A member of the board of review must in respect of his or her services as such a member be paid such remuneration, including reimbursement for transport, traveling and subsistence expenses incurred by him or her in the performance of his or her functions as such a member, as the Minister may from time to time determine.

(15) Without detracting from the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any decision taken by the Supervisor under a provision of this Act, is subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and must be exercised with due regard to the provisions thereof.

9 Annual report by Supervisor

(1) The Supervisor must annually submit to the Minister a report on his or her duties and activities under this Act during the year under review.

(2) The Minister must lay a copy of the report referred to in subsection (1) upon the Table in Parliament within 14 days after receipt of such report, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

(3) The Supervisor must, when laying a copy of the report upon the Table in Parliament, publish such report in the *Gazette*.

10 Form of records

(1) Any documentation or information that a co-operative bank is required to submit to the Supervisor under this Act must be submitted in such form and manner as may be prescribed.

(2) The Supervisor must keep records in such form, system or device as may from time to time be prescribed.

11 Inspection, copies and keeping of documents

(1) Without detracting from the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), any person may upon payment of the prescribed fee-

- (a) inspect any document specified in subsection (2) and kept by the Supervisor in terms of this Act;

(b) obtain a certificate from the Supervisor as to the contents or any part of the contents of any such document; or

(c) obtain a copy of or extract from any such document.

(2) The documents referred to in subsection (1) include-

(a) types of co-operative bank licenses;

(b) alterations to the constitution, name, or type of bank license of co-operative banks;

(c) constitutions of co-operative banks;

(d) copies of notices, reports, returns, statements or minutes lodged with the Supervisor; or

(e) financial statements of co-operative banks.

(3) The Supervisor must keep the documents specified in paragraph (d) of subsection (2) for a period of at least 10 years: Provided that the Supervisor is not required to keep the said documents which relate to a co-operative bank the registration of which has lapsed or been cancelled, for a period longer than five years as from the date of termination of such registration.

CHAPTER III SUPPORT ORGANISATIONS (ss 12 - 13)

12 Establishment and status of the Support Organisation

(1) A company called the South African Co-operative Banks Support Organisation is hereby established under this Act.

(2) The Support Organisation is a juristic person.

(3) The Support Organisation will be transformed, cease its activities, or be liquidated by regulations under this Act.

(4) For purposes of this Act, the Support Organisation's –

(a) powers;

(b) sources of funds or resources;

(c) constitution; and

(d) management,

will be determined by regulations under this Act.

13 Mandate of the Support Organisation

(1) Subject to the provisions of this Act, the mandate of the Support Organisation is to -

- (a) assist a person with the application process to receive a co-operative bank license;
- (b) support a co-operative bank in the management of its business;
- (c) train the staff of a co-operative bank;
- (c) serve as the accounting officer of co-operative banks; and
- (e) promote the creation and development of new co-operative banks.

CHAPTER IV RECEIPT OF A CO-OPERATIVE BANK LICENSE IN ORDER TO CONDUCT THE BUSINESS OF A CO-OPERATIVE BANK (ss 14-26)

14 Registration as a co-operative and receipt of co-operative bank license a prerequisite for conducting the business of a co-operative bank

(1) No person shall conduct the business of a co-operative bank unless such person is—

- (a) incorporated as a co-operative under the Co-operatives Act; and
- (b) receives a co-operative bank license under this Act.

Order of processing applications

15 (1) Applications for the receipt of a co-operative bank license will be submitted to the Supervisor.

(2) Applications received for the receipt of a co-operative bank license must be dealt with in the order of receipt.

16 Consultation with interested and affected parties

(1) Within 14 days after accepting an application for the receipt of a co-operative bank license, the Supervisor must in the prescribed manner—

(a) make known that an application for a co-operative bank license has been received; and

(b) call upon interested and affected persons to submit their comments regarding the application for the receipt of a co-operative bank license within 30 days from the date of notice.

17 Transferability and encumbrance of a co-operative bank license

(1) A co-operative bank license or an interest in any such license or approval, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister.

(2) The consent referred to in subsection (1) will be granted if the cessionary, transferee, lessee, subleasee, assignee, or the person to whom the license or approval will be alienated or disposed of—

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the license or approval in question;
- (a) for purposes of an amalgamation contemplated in Chapter XI.

18 Application for the receipt of a co-operative bank license

(1) Any person who wishes to apply for the receipt of a co-operative bank license must submit the application to the Supervisor—

- (a) in the prescribed manner; and
- (b) together with the prescribed non-refundable application fee.

(2) The Supervisor must accept the application for the receipt of a co-operative bank license if the requirements described under subsection (1) are met.

(3) If the application does not comply with the requirements of this section, the Supervisor must notify the applicant in writing of that fact within 14 business days of receipt of the application and return the application to the applicant.

(4) If the Supervisor accepts the application, the Supervisor must within 14 business days of accepting the application notify the applicant in writing to submit with the assistance of a Support Organisation—

- (a) a report reflecting –
 - (i) the activities of the applicant prior to the date of application,
 - (ii) the registration of the applicant as a co-operative under the Co-operatives Act;
 - (iii) what type of co-operative bank license as contemplated in section 22(3) is being applied for; and
 - (iv) whether the applicant is in a position to provide the services contemplated in section 22(3) as the case may be, or any part thereof;
- (b) a business plan for a co-operative bank;
- (c) a management plan for managing a co-operative bank;

- (d) a constitution for a co-operative bank;
- (c) notify in writing and consult with and any affected person;
- (e) submit the results of the consultation described in paragraph (c) within 30 days from the date of the notice; and
- (f) a list of at least 200 members of the applicant, and their prescribed details;
- (g) confirmation regarding the suitability of the premises identified for the business of a the applicant;
- (h) a report that the prescribed training in respect of the directors and manager for a co-operative bank had been completed;
- (i) signed by the chairperson of the applicant.

(6) The Supervisor may by notice in the Gazette invite applications for the incorporation and receipt of a co-operative bank license, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such incorporation and receipt of a co-operative bank license may be granted.

19 Granting and duration of a co-operative bank license

(1) The Supervisor must grant the receipt of a co-operative bank license to an applicant if that applicant—

- (a) has the support of a Support Organisation;
- (b) has access to financial resources;
- (c) has the technical ability to conduct the business of a co-operative bank;
- (d) will conduct its business in accordance with co-operative principles as contemplated under the Co-operatives Act; and
- (e) is not in contravention of any relevant provision of this Act.

(2) The Supervisor will refuse to grant the receipt of a co-operative bank license to an applicant if—

- (a) the application does not meet all of the requirements referred to under subsection (1);
- (b) the granting of such approval will result in a exclusionary act or prevent fair competition.

(3) If the Minister refuses to grant the receipt of a co-operative bank license to an applicant, the Minister must within 30 days of such decision notify that applicant in writing of the decision with reasons.

(4) The Supervisor will grant a co-operative bank license on the date on which—

- (a) the Supervisor approves of the management plan, the business plan, and the constitution of a co-operative bank; and
- (b) the applicant satisfies subsection (1).

(5) The receipt of a co-operative bank license is subject to this Act, any other relevant law, and the terms and conditions stipulated in the approval.

(6) A co-operative bank license is valid for the period specified in the approval, which period may not exceed 1 year.

20 Application for renewal of a co-operative bank license

(1) Any person that has a co-operative bank license that wishes to apply to the Supervisor for the renewal of that license must submit an application—

- (a) with the Supervisor,
- (b) in the prescribed manner, and
- (b) together with the prescribed non-refundable application fee.

(2) An application for the renewal of a co-operative bank license must—

- (a) state the reasons for which the renewal is required;
- (b) be accompanied by a detailed report reflecting for the immediate preceding year the—
 - (i) financial;
 - (ii) operational; and
 - (i) compliance,

results of the management plan and the business plan of that co-operative bank, the interpretation thereof, and the expenditure incurred; and

- (c) be accompanied by a detailed report covering for the immediate next year reflecting the way forward for the management plan and the business plan of that co-operative bank, and the estimated cost thereof.

(3) The Supervisor must grant the renewal of a co-operative bank license if the application complies with subsections (1) and (2) and if the applicant has complied with the terms and conditions of the existing co-operative bank license and is not in contravention of any relevant provision of this Act.

(4) The approval for a co-operative bank license may be renewed for further periods, each of which may not exceed 1 year at a time.

(5) The approval for a co-operative bank license in respect of which an application for renewal has been submitted shall, despite its stated expiry date, remain in force until such time as such application has been approved of or refused.

21 Effect of granting a co-operative bank license

(1) As of the date of receiving a co-operative bank license a co-operative bank will—

- (a) be a juristic person under this Act; and
- (b) be entitled to conduct the business of a co-operative bank.

(2) The Supervisor will grant two types of co-operative bank licenses.

(3) The type of co-operative bank license received by a co-operative bank will authorise it to conduct the business of either—

- (a) providing the primary services of –
 - (i) primary deposit taking;
 - (ii) transmission services; or
- (b) providing the primary services contemplated in paragraph (a) as well as any of the following additional services –
 - (i) the advancing of secured and unsecured loans to members;
 - (ii) transmission services;
 - (iii) other services prescribed or approved by the Minister.

22 Rights and obligations of the receiver of a co-operative bank license

(1) In addition to the license referred to in section 2, the receiver of a co-operative bank license has, subject to section 20, the right to apply for and be granted a renewal of a co-operative bank license.

(2) The receiver of a co-operative bank license must—

- (a) lodge such license for registration with the Supervisor within 30 days of the date on which that license—
 - (i) is granted in terms of section 19; or
 - (ii) is renewed in terms of section 20;
- (b) commence banking activities within 120 days from the date on which the co-operative bank license is granted in terms of section 19 or such an extended period as the Supervisor may authorise;
- (c) continuously and actively conduct banking operations in accordance with the management plan, business plan, and constitution of the co-operative bank;
- (d) comply with the requirements of the approved management plan, business plan, and constitution of the co-operative bank;
- (e) be aware of and manage the risks of the co-operative bank, including—
 - (i) solvency risk;
 - (ii) liquidity risk;
 - (iii) credit risk;
 - (iv) currency risk;
 - (v) market risk (position risk);
 - (vi) interest rate risk;
 - (vii) counterparty risk;
 - (viii) technological risk;
 - (ix) operational risk; or
 - (x) any other risk regarded as material by that co-operative bank; and
- (f) comply with the terms and conditions of that co-operative bank license, relevant provisions of this Act, and any other relevant law.

23 Suspension or cancellation of a co-operative bank license

- (1) The Minister may at any time suspend or cancel a co-operative bank license –

- (a) if false or misleading information was furnished in the application for such a license;
- (b) if the co-operative bank has failed to comply with a condition imposed by the Minister or Supervisor;
- (c) upon the Minister having received –
 - (i) a special resolution adopted by the co-operative bank requesting the cancellation of the co-operative bank license; and
 - (ii) confirmation by the Support Organisation that the co-operative bank does not have any debts;
- (d) is conducting the business of a co-operative bank in contravention of the Act;
- (e) is in breach of a condition imposed by the Minister or Supervisor;
- (f) has ceased to conduct the business as a co-operative bank or is no longer in operation; or
- (g) upon the granting of a provisional or final liquidation order in respect of the co-operative bank.

(2) With the exception of subsection 1(c), before cancelling or suspending a co-operative bank license in terms of subsection (1), the Minister must –

- (a) give notice to the co-operative bank of the intention to cancel or suspend its bank license;
- (b) set out the reasons why the Minister is considering canceling or suspending its co-operative bank license;
- (c) afford the co-operative bank a reasonable opportunity to make oral and written representations in respect thereof; and
- (d) give the co-operative bank direction on measures to rectify the breach, contravention or failure, to the extent that it is capable of being remedied.

(3) The Minister, after considering any representations received from the co-operative bank -

- (a) must refrain from taking any further steps where the direction has been complied with or remedial action has been taken;
- (b) may refrain from taking further steps where compelling reasons or explanations have been provided;

- (c) must in writing inform the chairperson of the co-operative bank of the Minister's decision and the reasons in respect thereof.

24 Application to provide additional services

(1) A co-operative bank that only has a co-operative bank license under section 21(3)(a) and wishes to provide additional services as described under section 21(3)(b) may apply to the Supervisor for the receipt of such a license.

(2) An application under subsection (1) must be –

- (a) made in the prescribed manner and on the prescribed form; and
- (b) accompanied by –
 - (i) a report indicating whether and the extent to which the co-operative bank is in a position to provide any of the services contemplated in section 21(3)(b);
 - (ii) proof that the prescribed training in respect of the directors and staff had been completed in order to provide any of the services contemplated in section 21(3)(b);
 - (iii) signed by the chairperson of the co-operative bank.

25 Publication of information relating to co-operative banks

(1) The Supervisor must publish a notice in the *Gazette* of every-

- (a) co-operative bank license;
- (b) issuance of a co-operative bank license, including the issue of a license pursuant to an application to provide additional services;
- (c) cancellation or suspension of a co-operative bank license;
- (e) withdrawal of any suspension;
- (f) change of the name of a co-operative bank; or
- (g) approval or withdrawal of approval of a support organization,

that is effected or that takes place in terms of this Act.

26 Repayment of deposits upon cancellation certificate to conduct the business of a co-operative bank

(1) Whenever the Minister cancels the co-operative bank license of any co-operative bank, the Minister will in writing order that co-operative bank to repay, in

accordance with such directions and within such period as may be specified in the order, all money due by it in respect of deposits accepted by it while registered as a co-operative bank, including any interest or any other amounts owing by it in respect of such money.

(2) A co-operative bank which by virtue of the provisions of subsection (1) repays a deposit before the due date agreed for the repayment thereof, is not be bound to pay any interest or any other amounts which would have been payable in respect of such deposit for the period from the date of such repayment up to such due date.

(3) A co-operative bank that fails to comply with an order under subsection (1) is deemed not to be able to pay its debts.

CHAPTER V
CONSTITUTION AND POWERS OF CO-OPERATIVE BANKS
(ss 27 – 47)

27 Matters to be set forth in constitution

(1) The constitution of a co-operative bank must contain a statement that it is conducting the business of a co-operative bank under this Act, and must specify, subject to the provisions of this Act -

- (a) the name of the co-operative bank and registered address;
- (b) how the receipts and accruals of the co-operative bank are to be invested;
- (c) in respect of shares –
 - (i) the minimum number of membership shares to be issued to each member;
 - (ii) the nominal value of the shares;
 - (iii) whether the shares are to be issued fully paid up or not fully paid up, and conditions relating to the payment of shares;
 - (iv) the maximum percentage of the share capital of a co-operative bank a member may hold;
 - (v) the circumstances under which shares may be issued to a member may be cancelled.
- (d) the requirements for membership of a co-operative bank;
- (e) the conditions of acceptance and repayment of deposits;
- (f) the fees, fines and charges that may be demanded from or imposed upon members;

- (g) how custody must be kept of any documents belonging to or held by the co-operative bank;
- (h) the power to make regulations or rules affecting its operations and forms of records;
- (i) the conditions subject to which certified copies of forms of record will be kept or issued in the event of the loss or destruction of the original records;
- (j) the power to conclude a management support agreement with a support organization in respect of all matters permitted by this Act; and
- (k) such other matters as may be required or prescribed in terms of this Act.

(3) The constitution of a co-operative bank may also state or provide for –

- (a) the extent of business allowed with non members, if any, subject to the prescribed conditions;
- (b) the appointment of proxies by members to attend and vote at a general meeting in the member's stead;
- (c) the powers that may be delegated by the board of directors and restrictions thereon, subject to the provisions of section 56;
- (d) provisions regarding the appointment of any managers;
- (e) provisions not inconsistent with this Act or the constitution.

(4) A provision in a constitution of a co-operative bank which is inconsistent with the Act and a failure to address a matter required in terms of subsection (3) does not render the constitution invalid.

(5) The constitution of a co-operative bank when registered is binding upon the co-operative bank and the members and officers thereof, and upon all persons claiming under the constitution or whose claims are derived from a member.

28 Amendment of constitution

(1) A co-operative bank may by special resolution amend or substitute its constitution.

(2) The notice convening the meeting to adopt the special resolution must set out the intent and effect of the proposed amendment.

(3) An amendment or substitution must come into effect when the Supervisor registers it unless a later date is specified in the special resolution.

(4) Within 30 days of the adoption of the special resolution, the following documentation must be lodged with the Supervisor –

- (a) two copies of the special resolution;
- (b) the notice convening the general meeting;
- (c) confirmation by the chairperson in the prescribed form that the special resolution was passed in accordance with the requirements of the Act.

(5) The Supervisor must register the amendment or substitution unless it does not comply with the requirements of the Act, in which case the Supervisor must notify the co-operative bank accordingly.

(6) No amendment or substitution affects –

- (a) an existing course of action or claim or liability to prosecution in favour of or against the co-operative bank, its directors or any civil, criminal, administrative or other action or proceeding in respect of a co-operative bank;
- (b) the rights of a creditor of the co-operative bank;
- (c) the rights of members in the winding up of a co-operative bank.

(7) If the amendment or substitution is in compliance with the provisions of this Act, the Supervisor must register the resolution and return one of the copies to the co-operative bank with the date of registration endorsed thereon.

(8) The Supervisor may by written notice require a co-operative bank to amend its constitution to comply with the provisions of this Act.

29 The name of a co-operative bank

(1) The name of a co-operative bank must include in the name of that co-operative bank the words “co-operative bank”.

(2) The name of a co-operative bank must not be the same or similar to the name of a bank, a mutual bank, or any other co-operative bank or be misleading, confusing or offensive.

(3) A co-operative bank may refer to itself as a village bank, financial services co-operative or savings and credit co-operative (sacco): Provided that the co-operative bank must reflect on all official documentation and communications that it is registered as a co-operative bank under this Act.

(4) A co-operative bank may change its name by passing a special resolution and obtaining the approval of the Supervisor.

(5) Any application to change the name of a co-operative bank name must be lodged with the Supervisor in the prescribed form before the proposed special resolution authorizing such change is laid before a general meeting of members of the co-operative bank.

(6) The Supervisor must not grant any application referred to in subsection (2) if the Supervisor is of the opinion that the proposed new name does not comply with the provisions of subsection (1) or (2).

(7) When the name of a co-operative bank is changed in terms of subsection (1) the Supervisor must record the new name and must issue a new license of registration for the co-operative bank under its new name.

(8) The change of name of a co-operative bank does not –

- (a) affect any right or obligation of the co-operative bank or any member thereof or of any other person; or
- (b) render defective any legal proceedings by or against the co-operative bank,

and any legal proceedings that may or could have been continued or commenced by or against the co-operative bank under its former name may be continued or commenced under its new name.

30 Powers of a co-operative bank

(1) Subject to the provisions of this Act, a co-operative bank may—

- (a) conduct the business of a co-operative bank as from the date of the issuing of certificate to conduct such business and do all things incidental or ancillary thereto, to the extent not inconsistent with this Act;
- (b) solicit or advertise for deposits from members of that co-operative bank;
- (c) make prescribed investments;
- (d) open cheque and savings accounts with with a bank;
- (e) make, draw, accept, endorse, or negotiate cheques that are paid to the order of or made out and endorsed by that co-operative bank;
- (f) accept donations or other forms of financial assistance subject to prescribed conditions;
- (g) conclude a management support agreement with a support organization;

- (h) appoint officers;
- (i) appoint persons representing the co-operative bank;
- (j) institute or defend legal proceedings.

31 Restricted activities

- (1) Subject to the provisions of this Act, a co-operative bank must not—
- (a) make loans to any director, employee, or agent of any co-operative bank except under the prescribed conditions;
 - (b) allow a member that is in arrears to be or remain as a director of a co-operative bank;
 - (c) borrow money other than by taking deposits from members or under the prescribed conditions;
 - (d) issue bonds or debentures to any person other than under prescribed conditions and with the approval of the Supervisor;
 - (e) purchase foreign currency;
 - (f) have equity or voting licenses in any company, juristic person, partnership, other than a secondary co-operative bank, to the extent permitted in prescribed investments;
 - (g) act as an agent except in respect of a burial scheme underwritten in accordance with applicable law;
 - (h) indemnify directors or employees of that co-operative bank against grossly negligent, reckless, or intentional acts;
 - (i) act as surety or guarantor on behalf of any person;
 - (j) provide security or collateral to any person;
 - (k) merge or amalgamate with any other person, except as described under Chapter XI;
 - (l) directly or indirectly participate in any trust other than as a beneficiary;
 - (m) effect any transaction as an undisclosed principal or in any other manner other than in the name of that co-operative bank; or conducting a burial scheme conducted under applicable law; or
 - (n) hold assets other than in the name of that co-operative bank.

32 Registered office of a co-operative bank

(1) A co-operative bank must maintain a registered office in the place set out in its constitution.

(2) A co-operative bank must, in the prescribed form, immediately notify the Supervisor of changes in respect of the physical address of its registered office, as well as any electronic address, telephone or telefax numbers.

CHAPTER VI
MEMBERSHIP OF CO-OPERATIVE BANKS
(ss 33 – 47)

33 Application for shares or for leave to make deposits

(1) No person is permitted to become a member of or a depositor with a co-operative bank unless such person has signed a form applying for membership in a co-operative bank.

(2) Upon request, a signed copy of the form described under subsection (1) will be provided to the applicant.

(3) Every form described under subsection (1) must have printed or written thereon the whole of sections 82 and 83.

34 Membership in a co-operative bank

(1) Subject to the provisions of this Act and the constitution of a co-operative bank, any person becomes a member of a co-operative bank if that member—

- (a) meets the membership requirements of that co-operative bank as set out in its constitution; and
- (b) is granted membership by that co-operative bank.

35 Suspension or expulsion of members

(1) Any member of a co-operative bank that contravenes any provision of this Act or fails to satisfy the membership requirements of that co-operative bank, or acts in contravention of the constitution may—

- (a) be suspended as a member of that co-operative bank by the board of directors of that co-operative bank for a period not longer than six months; or
- (b) by special resolution be expelled from that co-operative bank.

(2) The board of directors of a co-operative bank, through a majority vote of the directors, may at any time lift the suspension of a member described under subsection (1)(a).

(3) A member of a co-operative must not be suspended or expelled under subsection (1) unless that member has been given—

- (a) written notice of the grounds for the suspension; and
- (b) a hearing by the board of directors of that co-operative bank to dispute the merits of the suspension or expulsion.

(4) A member's suspension or expulsion from a co-operative bank commences on the date the board of directors render a decision against that member based on the hearing described under subsection (3)(b).

(5) Notwithstanding the provisions of subsections (1) to (4), a person who is in arrears in respect of any money due to a co-operative bank is automatically suspended as a member until such arrears have been paid and may not act, vote or attend and speak at meetings or as a member for any purpose while suspended.

36 Right of members to inspect, or make copies of, certain documents

(1) Subject to any reasonable limitation that may be imposed by a co-operative bank at a general meeting, any member of a co-operative bank may, free of charge, inspect at the place where the document concerned is kept—

- (a) the registered constitution of that co-operative bank or a certified copy thereof;
- (c) the register of members referred to in section 37;
- (d) the attendance register referred to in section 55;
- (e) the register of directors referred to in section 61(1)(f);
- (f) the minutes of general meetings referred to in section 46;
- (g) the minutes of bond meetings referred to in section 54.

(2) Upon the written request and payment of a reasonable fee, a co-operative bank must within 14 days of such request and payment furnish a copy of any document described in subsection (1) to any member of that co-operative bank.

37 Register of members

(1) Every co-operative bank must keep a register of its members at the registered office of that co-operative bank.

(2) The register described under subsection (1) must contain in respect of that co-operative bank —

- (a) the name and address of each member;

- (b) the date on which each member became a member;
- (c) the date on which each member ceased to be a member;
- (d) details of the shares issued to the member and amounts paid in respect thereof, and
- (e) any other particulars that may be prescribed.

38 Annual report relating to members

(1) A co-operative bank must attach to every copy of financial statements submitted to the Supervisor, a report setting out for that financial year—

- (a) the total number of members of the co-operative bank;
- (b) the number of members of a co-operative bank that become members of that co-operative bank during that financial year;
- (c) the number of members of the co-operative bank that ceased to be members of that co-operative bank during that financial year;
- (d) if the co-operative bank has issued shares, the amount paid in respect of shares for that financial year; and
- (e) any other particulars that may be prescribed.

39 General meetings

(1) General meetings must be held in the area where the registered office of the co-operative bank is situated.

(2) General meetings must be held as often as determined in the constitution.

(3) The chairperson of the board of directors, or in her or his absence the vice-chairperson, must chair all general meetings.

(5) In the absence of both the chairperson and vice-chairperson of the board of directors, the directors at the meeting may elect an acting chairperson to chair that meeting.

(6) If the constitution of a co-operative bank permits a member to appoint a proxy to attend and vote at a general meeting in his or her place, the same person may not act as a proxy on behalf of more members than the number determined in the co-operative bank's constitution.

40 Annual general meeting

(1) The first annual general meeting of a co-operative bank must be held not later than twelve months after a co-operative bank has received its license.

(2) An annual general meeting other than the first annual general meeting must be held not later than six months after the financial year-end of a co-operative bank.

(3) The annual general meeting must deal with the following matters -

- (a) the report on the affairs of the co-operative bank for the previous financial year;
- (b) the financial statements for the preceding financial year;
- (c) the election of directors.

41 Notice of meetings

(1) Members must be given at least twenty-one days notice of a general meeting, specifying the date, time and place of the meeting, and the agenda.

(2) Notice of a meeting must be in writing addressed to the member or can be by way of written notices displayed conspicuously at the registered address of a co-operative bank and one or more public places in the area.

(3) The fact that a member has not received notice of a meeting does not invalidate or cancel such meeting.

(4) If a meeting of the co-operative bank is adjourned for less than thirty days, it is not necessary, unless the constitution provide otherwise, to give notice of the adjourned meeting other than by announcement at the meeting that it is adjourned.

42 Special resolutions

(1) A resolution of a general meeting is a special resolution if –

- (a) the notice of the general meeting specified the particulars of the proposed resolution, and proposed the resolution as a special resolution;
- (b) the resolution was passed by not less than two-thirds of the members present at a meeting; and
- (c) in the event of a resolution to convert a co-operative bank into a company or mutual bank, or to wind up the co-operative bank, such a resolution must be passed by at least 75 percent of all the members of the co-operative bank.

43 List of persons entitled to receive notice

(1) The board of directors must for purposes of each general meeting prepare an alphabetical list of its members and give notice to all of them for purpose of voting at general meetings.

44 Quorum for meetings

(1) A quorum for a general meeting consists of one third of the existing members of a co-operative bank present at the time the meeting is called.

(2) For the purposes of calculating the quorum, any apologies members have submitted that are acceptable to the board of directors must be deducted from the number of those who would otherwise be required to attend the meeting, in accordance with a list prepared in terms of section 43.

(3) If a quorum is present, the members present may, unless the constitution provides otherwise, proceed with the business of the meeting even though a quorum is not present throughout the meeting.

(4) If a quorum is not present at the time the meeting is called, or within a reasonable period of time thereafter, as stipulated in the constitution, the members present may adjourn the meeting to a determined date, time and place, but may not transact any other business.

(5) At a meeting adjourned in terms of subsection (4), the persons present at the date, time and place determined in accordance with the constitution constitutes a quorum and may transact business on the initial notice.

45 Voting by show of hands or ballot

(1) Voting at a general meeting may take place by show of hands, unless the constitution provides otherwise, and is subject to the provisions of subsections (2) and (3).

(2) Any person who is entitled to vote at a meeting may demand a ballot either before or after a vote by show of hands.

(3) Voting must be by ballot in the event that somebody acts as proxy for more than one person.

46 Minutes of meetings

(1) The board of directors must cause minutes of general meetings to be kept in one of the official languages of the Republic and to be entered in a minute book with permanently bound pages to be kept at the registered office of a co-operative bank.

(2) Minutes in respect of any general meeting must be circulated to the members as soon as possible after meeting and presented for approval at the next general meeting.

(3) The minutes of any general meeting, signed by the chairperson of the board or a person acting as chairperson, is in the absence of evidence to the contrary, proof of the outcome of a vote or a resolution for a co-operative bank.

47 Request for general meeting

(1) Members constituting not less than five percent of the members of a co-operative bank may submit a written request calling on the directors to convene a general meeting for the purpose stated in the request.

(2) On receipt of the request, the board of directors must call a general meeting to transact the business stated in the request, unless –

- (a) the board of directors have called a general meeting and given notice thereof; and
- (b) the business of the meeting as stated in the request includes a matter which it is not within the powers of the members to determine.

(3) If the board of directors do not call a meeting within 21 days after receiving the request, any person who signed the request may call the meeting.

(4) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the constitution and this Act.

(5) Unless the persons that are present and entitled to vote at a meeting called under subsection (4) resolve otherwise, the co-operative bank must reimburse the persons who signed the request for the expenses reasonably incurred by them in requisitioning, calling, and holding the meeting.

CHAPTER VII MANAGEMENT OF A CO-OPERATIVE BANK (ss 48 – 68)

48 Directors of co-operative bank

(1) The business of a co-operative bank is managed by a board of directors, that subject to the provisions of this Act and the constitution of a co-operative bank, exercise and perform the powers and duties of the co-operative bank.

(2) Each director of a co-operative bank stands in a fiduciary relationship to the co-operative bank of which he or she is a director and must act honestly and in good faith and, in particular, must exercise such powers as he or she may have to manage or represent the co-operative bank, exclusively in the best interests and for the benefit of the co-operative bank, its members and its depositors.

(3) The board of directors is elected by the members at a general meeting in such manner and for such term as may be set out in the constitution.

(4) Only members of the co-operative bank may serve as directors of the co-operative bank.

(6) The constitution must determine the term of office for directors and whether they could be re-elected or not.

49 Vacation of office by directors and filling of vacancies

(1) A director of a co-operative bank ceases to hold office as a director on the board of directors if –

- (a) he or she becomes disqualified in terms of section 50 to hold such office;
- (b) he or she has been absent for more than the number of director meetings in any financial year stipulated in the constitution;
- (c) if he resigns or dies;
- (d) he or she is removed from office by an ordinary resolution at a general meeting.

(2) Any vacancy arising in terms of subsection (1) is filled by a director –

- (a) by election by ordinary resolution at a general meeting;
- (b) which will hold the office for the unexpired portion of the period of office.

50 Disqualifications of directors

(1) The following persons may not be directors –

- (a) a minor;
- (b) a person of unsound mind;
- (c) an unrehabilitated insolvent;
- (d) a person who has been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury or any offence involving dishonesty, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), a contravention of this act or any other law relating to the management of a co-operative bank, company or other juristic person;
- (e) a non-member;
- (f) a person that is in arrears in respect of any monies owing to the co-operative bank.

51 Chairperson, vice-chairperson and acting chairperson

(1) The board of directors of a co-operative bank must at its first meeting after registration of the co-operative bank and thereafter as often as it may become necessary, elect a director as the chairperson and another director as the vice-chairperson of the board.

(2) If both the chairperson and the vice-chairperson are absent or unable to perform the functions of the chairperson, the board may elect any other director to act as chairperson during such absence or incapacity.

(3) The chairperson and vice-chairperson hold office until the first meeting of the board of directors subsequent to an annual general meeting, and subject to the constitution, they are eligible for re-election.

52 Vacation of office by chairperson and vice-chairperson

(1) The chairperson and vice-chairperson of the board of directors of a co-operative, respectively, vacate his or her office –

- (a) if he or she ceases to be a director of the co-operative bank;
- (b) if he or she resigns or dies; or
- (c) if he or she is removed from office under subsection (2).

(2) The chairperson or vice-chairperson of a board of directors may at any time be removed from office by the board.

53 Meetings and resolutions of the board of directors

(1) A meeting of the board of directors of a co-operative bank is held at a time and place determined by the board or the chairperson of the board or any two directors of the board, as the case may be.

(2) A majority of all the directors constitutes a quorum for any meeting of a board of directors.

(3) The decision of the majority of the directors present at a meeting of the board of directors constitutes a resolution of such board.

(4) In the event of an equality of votes, the chairperson of the board or the person acting as chairperson, as the case may be, has a casting vote in addition to his or her deliberative vote.

(5) No resolution passed by a board of directors or act performed under the authority of a board of directors is invalid by reason only of a vacancy on the board or of the fact that a person who is not entitled to sit as a director sat as a director at the time when the resolution was passed or the act was authorized: Provided that the resolution was passed or the act was authorized by the requisite majority of the directors who were present at the time and entitled to sit as directors.

(6) A resolution in writing signed by all the persons who are entitled to vote on the resolution at a meeting of the board of directors is as valid as if it had been passed at a meeting.

(7) Upon the written request of the Supervisor, a co-operative bank must submit to the Supervisor the agenda and relevant documents relating to a meeting of the board of directors of the co-operative bank.

(8) Upon seven days notice to the chairperson of a co-operative bank, the Supervisor may attend and speak at the meeting of the board of directors.

54 Minutes of meetings of board of directors

(1) The board of directors must cause minutes of the board meetings to be kept in one of the official languages of the Republic and to be entered into a minute book with permanently bound pages to be kept at the registered office of the co-operative bank.

(2) Minutes in respect of any meeting of a board of directors must be circulated to the directors as soon as possible after the meeting, and presented for approval at the next board meeting.

(3) A resolution of a board of directors in the form of a written resolution signed by all the directors constitutes a decision of the board and must be entered in the minute book referred to in subsection (1).

(4) The minutes of any meeting of a board of directors purporting to be signed by the chairperson of the board or a person who acted as chairperson, as the case may be, in the absence of proof to the contrary, is proof of the happening of anything which according to such minutes happened at the meeting.

55 Attendance Register

(1) Every director present at any meeting of the board of directors must at the meeting sign his or her name under the date of the meeting in an attendance register with permanently bound pages to be kept for such purposes by the co-operative bank.

(2) The attendance register must be kept at the registered office of the co-operative bank.

56 Board of Directors may assign functions to a director or committee

(1) The board of directors may subject to such limitations and qualifications as may be set out in the constitution of the co-operative bank delegate any of its powers to a director or a committee of directors, or authorize a director or any such committee to perform any of the board's duties or to act as the co-operative bank's representative or agent; Provided that audit committee functions, the approval of the loans and the investment of funds may not be delegated to a single director but only to a committee.

(2) A delegation under subsection (1) does not prevent the exercise of the relevant power by the board itself.

(3) Any committee or director remains subject to the control and authority of the board and must regularly report to the board on its activities.

57 Liabilities of directors and officers

(1) A director or officer of a co-operative bank is not liable to any person in his or her personal capacity for any loss or damage which may occur in or in connection with the performance of his or her duties, unless the loss or damage is due to –

- (a) his or her willful misconduct, reckless conduct, gross negligence, dishonesty or fraudulent actions;
- (b) the fact that he or she willfully contravened or refused to comply with a provision of this Act or the constitution of the co-operative bank.

(2) Where any business of a co-operative bank is carried on in any manner contemplated in subsection (1), every director or officer who is knowingly a party to the carrying on of the business in any such manner is guilty of an offence.

58 Directors to disclose interests

(1) A director or an employee of a co-operative bank, whether under suspension or not, must not enter any contract with any co-operative bank other than in the case of an employee on employment contract with the co-operative bank.

(2) A director is not entitled to vote in respect of any matter contemplated in subsection (1)

(3) A director must immediately disclose to the board of directors when he or she is approached to conclude a contract with the co-operative bank or when he or she has a conflict of interest for whatever reasons.

(4) All contracts concluded with a director of the co-operative bank must be recorded in a register kept for that purpose.

59 Acceptance of commission, remuneration or reward prohibited in certain circumstances

(1) A director or an employee of a co-operative bank may not accept any commission, remuneration or reward from any person for or in connection with any transaction, including an advance made to any person, to which the co-operative bank is a party.

60 Returns relating to directors

(1) A co-operative bank must notify the Supervisor in the prescribed manner within 30 days of –

- (a) the full name and address of each person elected to hold office as a director at an annual general meeting;
- (b) any change of address of director upon being informed of such change by a director;
- (c) any director vacating his or her office;
- (d) a person being appointed as a director, together with the full name and address of the person so appointed.

(2) A director who changes his or her address must within 30 days after such change inform the co-operative bank in writing of his or her new address.

CHAPTER VIII

FINANCIAL RECORDS AND AUDITS

(ss 61 – 62)

61 Record keeping by a co-operative bank

- (1) A co-operative bank, at its registered office, must keep the following:
- (a) the co-operative bank's constitution and by-laws, if any, including any amendments;
 - (b) the minutes of general meetings in a minute books, as contemplated in section 46;
 - (c) the minutes of meetings of the board of directors in a minute book as contemplated in section 54;
 - (d) an attendance register recording the attendance of directors at meetings of the board, as contemplated in section 55;
 - (e) a list of its members, setting out their names and addresses, any amounts paid and deposited, the number of any shares owned, and the details of any member loans.
 - (f) a register of its directors, setting out the names and addresses of the individuals who are or who have been directors and the dates on which they became or ceased to be directors, as well as the name and address of any other co-operative bank or legal entity of which they are or were a director of member, as the case may be;
 - (g) adequate accounting records, including records –

- (i) reflecting the transactions between each member and the co-operative bank;
- (ii) to fairly present the state of affairs and business of the co-operative bank;
- (iii) to explain the transactions and financial position of the business of the co-operative bank; and
- (iv) to enable the Support Organisation and the Supervisor to determine whether the co-operative bank has complied with the provisions of this Act.

(2) A co-operative bank must retain its accounting records for a period of six years after the financial year-end to which they relate.

(3) Members of a co-operative bank may examine the records referred to in paragraphs (a) to (g) of subsection (1), but excluding details relating to individual members' accounts, during the normal business hours of the co-operative bank and may take extracts from the records free of charge or have copies of them made after payment of a reasonable fee.

62 Annual financial statements

(1) The board directors of a co-operative bank must after each financial year-end prepare in respect of that financial year the prescribed annual financial statements in the prescribed form.

(2) The first financial year for a co-operative bank is the period from registration until its financial year end: Provided that if twelve months have not elapsed since registration the first set of financial statements must be for the period ending at the next financial year end.

(3) If a co-operative bank wishes to change its financial year-end, such change must be effected by way of an amendment of its constitution in accordance with the provisions of section 28.

(4) Each financial statement prepared in terms of subsection (3) must be certified as correct by two directors of the co-operative bank.

(5) The accounting officer of a co-operative bank must make a report to the members of the co-operative bank on the annual financial statements.

(7) A copy of the annual financial statements and a copy of the accounting officer's report must be sent by the co-operative bank to the Supervisor within 14 days after the annual general meeting at which they are presented or within four months after the expiration of the financial year to which they relate, whichever period expires first.

CHAPTER IX
PRUDENTIAL REQUIREMENTS
(ss 63 - 67)

63 Minimum share capital and unimpaired reserve funds

(1) For the purposes of this Act-

'primary share capital' means such percentage as the Supervisor may determine from time to time, by notice in the *Gazette*, the amount of capital obtained through the issue of shares or other redeemable debt instruments issued with the prior written approval of the Supervisor;

'primary unimpaired reserve funds' means funds obtained-

- (a) from actual earnings;
- (b) by way of recoveries;

and which have been set aside as a general or special reserve, are disclosed as such a reserve in the financial statements of the co-operative bank and are available for the purpose of meeting liabilities of or losses suffered by the co-operative bank, but does not include any fund required to be maintained in terms of any other law;

'secondary share capital' means loan capital obtained by way of the issue, with the prior written approval of the Supervisor, of debt instruments issued subject to-

- (i) the condition that the debt instruments are issued for a minimum period of five years;
- (ii) the condition that the debt instruments may be redeemed before maturity only at the option of the co-operative bank and with the prior written approval of the Supervisor;
- (iii) the condition that, notwithstanding the provisions of any other law, in the event of the winding-up of the co-operative bank, the capital amount of the debt instruments must not be repaid until the claims of other creditors have been fully satisfied; and
- (iv) such further conditions, if any, as may be prescribed;

'secondary unimpaired reserve funds' means funds obtained and set aside as contemplated in the definition of 'primary unimpaired reserve funds' in this subsection and which are available for the purpose contemplated in that definition, but which are not disclosed as a general or special reserve in the financial statements of the co-operative bank, and include-

- (a) 50 per cent of the amount of any surplus resulting from a revaluation of assets and determined as prescribed in subsection (4);
- (b) general provisions held against unidentified and unforeseen losses;

but does not include any fund required to be maintained in terms of any other law.

(2) Subject to the provisions of subsections (3), (5)(a) and (6), a co-operative bank must manage its affairs in such a way that the sum of its issued primary and secondary share capital and its primary and secondary unimpaired reserve funds does not at any time amount to less than an amount which represents a prescribed percentage of the sum of amounts calculated by multiplying the average of the amounts (as shown in the returns furnished to the Supervisor in terms of section 67) of such different categories of-

- (i) assets; and
- (ii) other risk exposures in the conduct of its business, as may be prescribed, by the risk weights, expressed as percentages, prescribed in respect of such different categories of assets and other risk exposures.

(4) The determination of any surplus referred to in paragraph (a) of the definition of 'secondary unimpaired reserve funds' in subsection (1) must be effected-

- (a) at such times as may be prescribed; and
- (b) by comparing the book value of assets with their market value as at the time of such determination.

(5) (a) The sum of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of a co-operative bank must for the purposes of subsection (2) be calculated by deducting from the amount thereof-

- (i) depreciation of assets and bad or doubtful debts;
 - (ii) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;
 - (iii) establishment costs, costs in respect of organization and extension of business or goodwill.
- (b) A co-operative bank must, in conformity with generally accepted accounting practice, make provision in its accounting records for the items specified in paragraph (a).

(6) Notwithstanding the provisions of subsection (2), the Supervisor may, on the written application of a co-operative bank, in writing exempt such co-operative bank from the provisions of that subsection, subject to such conditions, including conditions relating to-

- (a) the expiration of the exemption;
- (b) the manner in which and sources from which capital or other funds may be obtained by the co-operative bank; and
- (c) the utilization by the co-operative bank of the funds under its control,

as the Supervisor may determine: Provided that an exemption under this subsection may not be granted for a period exceeding two years.

64 Minimum liquid assets

(1) A co-operative bank must hold liquid assets to a value which does not amount to less than the sum of amounts, calculated as prescribed percentages, of such different categories of its liabilities with reference to the time when such liabilities fall due or with reference to any other feature pertaining to such liabilities.

(2) The amounts of the liquid assets and of the liabilities referred to in subsection (1) must be calculated in such manner and must be determined at such times as may be prescribed.

(3) A co-operative bank may not pledge or otherwise encumber any portion of the liquid assets held by it in compliance with the provisions of subsection (1).

65 Large exposures

(1) A co-operative bank may not make investments with, or grant loans or advances or other credit to, any person, to an aggregate amount exceeding an amount representing a prescribed percentage of such co-operative bank's capital and reserves, without first having obtained the permission of its board of directors.

(2) A co-operative bank must in such manner and on such a form as may be prescribed, report to the Supervisor whenever it makes an investment with or grants a loan or advance or other credit to any person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that person, results in the co-operative bank being exposed to that person up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.

66 Failure or inability to comply with prudential requirements

(1) If a co-operative bank fails to comply with a provision of section 63 or 64, or is unable to comply with any such provision, it must immediately in writing report its failure or inability to the Supervisor, stating the reasons for such failure or inability.

67 Returns

(1) A co-operative bank must, in order to enable the Supervisor to determine-

- (a) whether a co-operative bank is complying with the provisions of sections 63 and 64 of this Act; or
- (b) the nature and amounts of the co-operative bank's assets, liabilities and contingent liabilities,

furnish the Supervisor, subject to the provisions of subsection (4), with returns.

(3) A co-operative bank must, in addition to the returns referred to in subsection (1), furnish the Supervisor, subject to subsection (4), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.

(4) The returns referred to in subsections (1) and (3) must be prepared in conformity with generally accepted accounting practice and must be furnished to the Supervisor in respect of such period, at such times and on such a form as may be prescribed.

(5) The Supervisor may require of a co-operative bank to provide it with confirmation by the accounting officer of the co-operative bank that any return fairly represents the affairs of the co-operative bank.

CHAPTER X CONVERSION OF CO-OPERATIVE BANKS (ss 68 - 76)

68 Definitions

(1) In this Chapter, unless the context otherwise indicates-

'applicable date', in relation to a conversion of a co-operative bank into a mutual bank, means the date of such conversion or, if any other date is specified in the conversion scheme relating to such conversion as the applicable date for purposes of such conversion, that other date;

'conversion into a mutual bank' means a conversion into a mutual bank to be registered as such;

'conversion scheme' means a scheme regulating the conversion of a co-operative bank into a mutual bank and governing the reciprocal rights and obligations of the parties to the conversion, and in particular specifying the basis, terms and conditions on which the conversion is effected;

‘Registrar’ means the Registrar contemplated in the Mutual Banks Act, 1993 (Act No. 124 of 1993) acting in consultation with the Supervisor appointed under section 3 of this Act.

69 Conversion of co-operative banks into mutual banks

(1) A co-operative bank that is registered as such in terms of this Act and that desires to carry on business as a mutual bank may with the approval of the Registrar and under the authority of a special resolution adopted at a special general meeting of members of the co-operative bank be converted into such a mutual bank in accordance with the provisions of this Chapter.

(2) A special resolution referred to in subsection (1) may be adopted by a co-operative bank notwithstanding the provisions of its constitution.

(3) The Registrar may, where the liabilities of a co-operative bank exceeds the prescribed amount, direct such co-operative bank to make an application to convert a co-operative bank into a mutual bank.

70 Application for Registrar's approval

(1) A co-operative bank contemplating to hold a general meeting of members for the purpose of adopting a special resolution referred to in section 69, must before it convenes such a meeting apply to the Registrar on the prescribed form for the Registrar's approval contemplated in that section.

(2) An application referred to in subsection (1) must be accompanied by the following documents in duplicate, namely-

- (a) an exposition of the reasons for the proposed conversion and of the manner in which it is proposed to effect the conversion;
- (b) a proposed conversion scheme;
- (c) the proposed articles of association;
- (e) a proposed special resolution-
 - (i) authorising in accordance with the conversion scheme the conversion of the co-operative bank into a mutual bank;
 - (ii) approving the provisions of the proposed conversion scheme;
 - (iii) adopting the proposed articles of association referred to in paragraph (c);
 - (v) designating persons to act as the first directors of the proposed mutual bank; and

- (vi) providing for any such other matters in connection with the conversion as may be regarded necessary.

(3) A co-operative bank that applied in terms of subsection (1) for the Registrar's approval must furnish such additional particulars in connection with its application as the Registrar may require.

71 Consideration of application

(1) The Registrar may not grant approval for the conversion of a co-operative bank into a mutual bank if the Registrar is of the opinion-

- (a) that any of the documents mentioned in section 70 (2) are inconsistent with a provision of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or contains a provision that is undesirable;
- (c) that the application does not comply with a requirement of the Mutual Banks Act, 1993.

(2) For the purposes of considering the basis and conditions on which it is contemplated to offer shares, the Registrar may, after consultation with the co-operative bank, designate a person to investigate and advise the Registrar, independently of the co-operative bank, on the reasonableness and fairness of the proposed basis and conditions.

(3) The costs of an investigation in terms of paragraph (a) must be paid by the co-operative bank.

(4) The Registrar may not refuse any application on the ground of subsection (1) (a) or (b) without having afforded the co-operative bank a reasonable opportunity to adjust the relevant document in accordance with the Registrar's requirements.

72 Special general meeting to authorise conversion

(1) As soon as the Registrar has granted approval for the conversion of a co-operative bank into a mutual bank, the co-operative bank may convene a special general meeting of members in accordance with this Act and its constitution for the purpose of adopting the special resolution referred to in section 69.

(2) The documents laid before any such meeting must consist of-

- (a) the documents mentioned in section 70 (2) or, if the Registrar has refused to grant approval for the conversion unless any of such documents are adjusted in accordance with the Registrar's requirements, the said documents as so adjusted; and
- (b) any additional documents that the board of directors of the co-operative bank may find necessary.

(3) If such meeting adopts the proposed special resolution submitted to it by virtue of subsection (2) (a), the Registrar must, at the request of the co-operative bank, issue a certificate to it to the effect that the Registrar has granted approval for the proposed conversion.

73 Registration of mutual bank

(1) A co-operative bank is converted into a mutual bank upon registration by the Registrar of the mutual bank.

74 Notice in Gazette of conversion

(1) Within 14 days of any conversion in terms of section 72, the mutual bank established by the conversion must forward two certified copies of its certificate of incorporation and its articles of association to the Registrar, and upon receipt of such documents the Registrar must, against payment of the prescribed registration fee, issue to it a certificate of registration as a mutual bank.

(2) The Registrar shall give notice in the *Gazette* of any conversion in terms of this Chapter.

75 Effects of conversion

(1) The co-operative that existed as a co-operative bank before the conversion continue to exist as a juristic person, but in the form of a mutual bank registered as such in terms of the Mutual Banks Act, 1993, and as from such conversion-

- (a) the provisions of the Mutual Banks Act, 1993, applies to it;
- (b) the provisions of this Act cease to apply to it;
- (c) a reference in any document to the former co-operative bank , unless inconsistent with the context or otherwise clearly inappropriate, is construed as a reference to the mutual bank;
- (d) the persons who immediately before the conversion were directors of the former co-operative bank must vacate their offices as such directors and the persons referred to in section 70 (2)(e)(v) become the directors of the mutual bank;
- (e) the persons who immediately before the conversion were shareholders or members of the former co-operative bank ceases to be such shareholders or members;
- (g) all shares in the former co-operative bank are deemed to be permanent interest bearing shares;

- (h) any deposits made with the former co-operative bank are deemed to be deposits with the mutual bank on the same terms and conditions.

(3) A conversion of a co-operative bank into a mutual bank does not affect anything lawfully done by the co-operative bank before its conversion.

76 Issue of shares to persons who were members of a former co-operative bank

(1) An offer to persons to take up permanent interest bearing shares in a mutual bank established by a conversion in terms of this Chapter must be made in writing to each individual person, and any such offer must be accompanied by a statement issued by the co-operative bank and containing such particulars in connection with the offer, the conversion, the mutual bank's profit and business prospects and general state of affairs and the other affairs of the mutual bank as the Registrar may require.

(2) No stamp duty in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), is payable in respect of the issue of permanent interest bearing shares in the mutual bank established by such conversion.

CHAPTER XI AMALGAMATION, WINDING-UP AND DISSOLUTION (ss 77 - 85)

77 Amalgamation and transfer of assets and liabilities

(1) Two or more co-operative banks may with the written approval of the Supervisor amalgamate and become one co-operative bank, and a co-operative bank may with like approval transfer all or part of its assets and liabilities to another co-operative bank.

(2) The proposed terms and conditions of an amalgamation or transfer in terms of subsection (1) must, in advance, be submitted to the Supervisor, who must, subject to paragraphs (a) and (b) of subsection (3), approve the proposal as drafted or with such modifications as the Supervisor may deem necessary.

(3) No transaction involving the amalgamation of co-operative banks or the transfer of assets and liabilities from one co-operative bank to another co-operative bank is of any force or effect unless-

- (a) the Supervisor is satisfied that -
 - (i) the co-operative banks have complied with the provisions of their constitutions;
 - (ii) the new constitution complies with the provisions of this Act;

- (iii) such transaction will not be detrimental to the public interest or cause undue hardship to the members of any of the co-operative banks;
- (b) in the case of an amalgamation of two or more co-operative banks or the transfer of assets and liabilities from one co-operative bank to another co-operative bank, the agreement specifically provides that there is no division of the profits or of any of the reserves of the co-operative banks among their members, but nothing in this paragraph prevents the making of reasonable provision out of the profits of a co-operative bank for compensation to its officers for any resulting loss of office or for payment in recognition of past services rendered by such officers;
- (c) the provisions of the agreement for the contemplated amalgamation or transfer are confirmed by special resolution by each of the co-operative banks.

(4) An agreement to amalgamate between two co-operative banks must set out the terms of the amalgamation, and the means by which it will be effected, including the following –

- (a) the provisions of the constitution of the amalgamated co-operative bank;
- (b) the name and address of each proposed director of the amalgamated co-operative bank;
- (c) the manner in which the shares of each amalgamating co-operative bank are to be converted into membership shares of the amalgamated co-operative bank;
- (d) if any share of an amalgamating co-operative bank is not to be converted into shares of the amalgamated co-operative bank, the amount of money that the holders of those shares are to receive in addition to or instead of shares of the amalgamated co-operative bank;
- (e) the application of any surplus which may have resulted from the operations of the amalgamating co-operative banks; and
- (f) a provision that at least three month's notice of the intended amalgamation is given to the creditors of the co-operative banks concerned.

(5) The notice convening a special general meeting for the confirmation of any such amalgamation or transfer must contain or have attached to it the complete terms and conditions of the relevant agreement.

(6) Notice of the passing of the special resolution concerning such amalgamation or transfer, together with a copy of such resolution and the full terms and conditions of the proposed amalgamation or transfer duly certified by two directors and the chairperson of each of the parties, must be sent by each of the parties affected to the Supervisor and must be registered by the Supervisor.

(7) The amalgamation or transfer must take place upon the terms and conditions set forth in such resolution.

(8) Upon registration by the Supervisor of the appropriate notices-

- (a) the amalgamation of the amalgamating co-operative banks and their continuance as one co-operative bank becomes effective and the registration of the amalgamating co-operative banks is cancelled;
- (b) the property of the amalgamating co-operative bank becomes the property of the amalgamated co-operative bank;
- (c) the amalgamated co-operative bank continues to be liable for the obligations of each amalgamating co-operative bank;
- (d) an existing cause of action, claim or liability to prosecute is unaffected;
- (e) a civil, criminal, administrative, investigative or other action or proceeding pending by or against an amalgamating co-operative bank may be continued to be prosecuted by or against the amalgamated co-operative bank;
- (f) a conviction against or ruling, order, or judgment in favour of or against an amalgamating co-operative bank may be enforced by or against the amalgamated co-operative bank.

(9) The liquidator of a co-operative bank that is being wound up voluntarily or by the court, or the judicial manager of a co-operative bank, may transfer members deposits of the co-operative bank being wound up or under judicial management or curatorship to another co-operative bank in the vicinity of the co-operative bank with a view to providing an ongoing service to members and may with the consent of such co-operative bank transfer to it such other liabilities as may be agreed with the co-operative bank.

(10) The Supervisor, where impractical, may exempt a co-operative bank from any provision of this section under the circumstances contemplated in subsection (9).

(11) The Supervisor of deeds upon submission to him or her of a certificate of amalgamation or conversion or order of court or its certified copy must endorse and make entries in any relevant register, title deed or other document in his or her office or laid before him or her to register the property in the name of the amalgamated or co-operative bank.

(12) No transfer duty, stamp duty or other fees are payable in respect of the registration contemplated in subsection (1).

78 Judicial management

(1) The provisions of the Co-operatives Act relating to judicial management apply with the necessary changes required by the context to a co-operative bank.

(2) A judicial management order may also be granted in respect of a co-operative bank by the court on the application of the Supervisor.

79 Voluntary winding-up of co-operative bank

(1) A co-operative bank may be wound up voluntarily if the members so decide by special resolution.

(2) A resolution for the voluntary winding up of a co-operative bank must also be submitted to the Supervisor.

(3) The provisions of the Co-operatives Act relating to the voluntary winding-up of co-operatives apply with the necessary changes required by the context to any co-operative bank

(4) During the voluntary winding-up of any co-operative bank, the liquidator must furnish the Supervisor with every return or statement that the co-operative bank would have been obliged to furnish to the Supervisor in terms of this Act if such co-operative bank not being wound up.

(5) The liquidator of the co-operative bank must forward to the Supervisor a copy of every notice or account that, in terms of the provisions of the Co-operatives Act as applied by subsection (2), he or she is required to furnish to the Master of the Supreme Court.

80 Winding-up by court

(1) The provisions of the Co-operatives Act relating to the winding-up of co-operatives by the court apply with the necessary changes required by the context, to every co-operative bank.

(2) An order for the winding-up of a co-operative bank may be granted by the court on the application of any creditor or of the Supervisor or of the judicial manager of the co-operative bank: Provided that the Supervisor has the license to oppose any such application made by any other person.

(3) The court may give the liquidator any directions that may appear suitable in the circumstances, due regard being had to the interests of members and creditors of the co-operative bank.

(4) An order for the winding-up of a co-operative bank by the court must not be made unless the court is satisfied that it is not desirable that the co-operative bank be placed under judicial management.

(5) The provisions of subsections (3), (5) and (6) of section 77 apply with the necessary changes required by the context, in the case of the winding-up of a co-operative bank by the court.

(6) Before an application for the winding-up of a co-operative bank is presented to the Court, a copy of the application and of every affidavit confirming the facts stated therein must be lodged with the Supervisor and with the Master.

(7) The Supervisor may report to the court any facts ascertained by him or her which appear to him or her to justify the Court in postponing the hearing or dismissing the application, and must transmit a copy of that report to the applicant or his or her agent and to the co-operative bank.

(8) The provisions of section 182 of the [old] Co-operatives Act pertaining to a winding up of a co-operative by the Minister does not apply to a co-operative bank.

81 Appointment of judicial manager and liquidator

Notwithstanding the provisions of the Co-operatives Act, no person other than a person recommended by the Supervisor may be appointed as judicial manager, provisional judicial manager, liquidator or provisional liquidator of a co-operative bank.

82 Limitation of liability of members

(1) When a co-operative bank is being wound up -

- (a) no member is entitled to claim repayment of any amount actually paid on any share unless the claims of all creditors of the co-operative bank have been paid in full;
- (b) if a member has received any advance or loan from the co-operative bank, that member is liable to repay the full amount owing by him or her in respect of such advance or loan.

83 Liability of borrowers in winding-up

When a co-operative bank is being wound up, a member or other person to whom an advance or a loan has been made is liable to pay the amount payable at the time or times agreed upon with the co-operative bank and subject to the conditions expressed in the constitution.

84 Distribution of surplus in winding-up

Any surplus remaining after all claims have been satisfied in the winding-up of a co-operative bank, whether voluntary or by the court, must be distributed to the

holders of shares in accordance with the provisions of the constitution of the co-operative bank.

85 Appointment of curator to co-operative bank

(1) Subject to subsection (2), the provisions of section 69 of the Banks Act, 1990 (Act No. 94 of 1990), relating to the appointment of a curator to a bank, apply with the necessary changes required by the context, to any co-operative bank that in the opinion of the Supervisor is in financial difficulties.

(2) In the application, in terms of subsection (1), of the provisions of section 69 of the Banks Act, 1990, the reference in-

- (a) subsection (3) (f) of the said section 69 to a special resolution in terms of the Companies Act; and
- (b) subsection (3) (h) (ii) of the said section 69 to an approval required in terms of section 228 of the Companies Act,

must be construed as a reference to, respectively, a special resolution in terms of or an approval required in terms of the constitution.

CHAPTER XII GENERAL PROVISIONS RELATING TO CO-OPERATIVE BANKS (ss 86 – 99)

86 Appointment of inspector by Supervisor on application of members

(1) The Supervisor may on application by not fewer than one-tenth of all the members or such other number as may be specified in the constitution, or on application by the judicial manager of the co-operative bank, appoint an inspector to enquire into and report on the affairs of the co-operative bank in general or upon such part of its affairs as the Supervisor may direct.

(2) An application under this section must be supported by such evidence as the Supervisor may direct for the purpose of showing that the applicants have good reason for requiring the investigation to be made, and that the application is made in good faith.

(3) Such notice of the application must be given to the co-operative bank as the Supervisor may direct.

(4) The applicant must give security for the costs of the proposed investigation before the inspector is appointed.

(5) All expenses of and incidental to the investigation must be recovered by the Supervisor from the applicant or from the co-operative bank or from the members or officers or former members or officers of the co-operative bank, in such proportions as the Supervisor may direct.

(6) An inspector appointed under this section may require the production of all or any of the books, accounts, securities and documents of the co-operative bank, and may examine on oath or affirmation any person who is or formerly was an officer, accounting officer, member or agent in relation to its business and may administer an oath or accept an affirmation accordingly.

(7) The court may, whenever application is made to it for the winding-up of a co-operative bank or for the placing of a co-operative bank under judicial management or when a curator is appointed, direct the Supervisor to exercise the powers conferred upon the Supervisor by this section.

(8) An inspector appointed under this section reports to the Supervisor and the Supervisor must transmit copies of the report to the applicants (if any) and to the co-operative bank.

87 Investigation by inspector appointed by co-operative bank

(1) The members of a co-operative bank may by special resolution appoint an inspector to investigate the affairs of the co-operative bank.

(2) The inspector so appointed has the same powers and is subject to the same duties as an inspector appointed under section 87nd must report in such manner and to such persons as the co-operative bank has by its resolution directed and must send a copy of the report to the Supervisor.

88 Information to be furnished to inspectors

(1) Any person who is or formerly was an officer, accounting officer, member or agent of a co-operative bank whose affairs are being investigated under section 86 or 87 must produce to the inspector all the securities, accounts, books and documents in his or her custody and give all information relating to the co-operative bank that may be available to him or her and that the inspector may require.

89 Certification of returns and other documents

Any return or other document to be furnished to the Supervisor by a co-operative bank in terms of a requirement of this Act, must be certified as correct by the chairperson or manager of that co-operative bank.

90 Minors

(1) A minor over the age of 16 years may without the consent or assistance of his or her guardian execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with his or her share in or deposit with the co-operative bank as he or she thinks fit, and enjoys all the privileges (except that a minor may not hold office) and is liable to all the obligations attaching to members or depositors.

91 Limitation of liability

No liability attaches to the South African Reserve Bank, or, either in his or her official or personal capacity, any member of the board of directors of the said Bank, the Supervisor or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Supervisor or such other officer or employee in the performance in good faith of any function or duty under this Act.

92 Furnishing of information by Supervisor

(1) Notwithstanding the provisions of section 33 (1) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Supervisor may furnish information acquired by him or her as contemplated in that section to any person charged with the performance of a function under any law: Provided the Supervisor is satisfied that possession of such information by that person is essential for the proper performance of such function by that person.

93 Advisory Committee on Co-operative Banks

(1) The Minister may appoint an advisory committee on co-operative banks comprising of not more than 5 persons with expertise relating to co-operative banks to advise the Minister on matters concerning the development and regulation of co-operative banks and amendments required to this Act.

(2) The appointment of persons to the advisory committee on such terms as the Minister may determine.

(3) The Supervisor will determine the meetings and proceedings of the advisory committee.

94 Regulations

(1) The Minister, after consultation with the Supervisor and the Advisory Committee, may make regulations-

- (a) as to any matter which is required or permitted to be prescribed by regulation under this Act;
- (b) providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a co-operative bank in the performance of his functions as such a director;
- (c) prescribing matters, in addition to those contemplated in any other provision of this Act, in respect of which fees are payable, and the fee payable in respect of each such matter;
- (d) prescribing the manner in which any payment in terms of this Act must be made to the Supervisor;

- (e) prescribing such further returns as the Minister may deem expedient, in addition to those contemplated in any other provision of this Act, to be furnished by co-operative banks to the Supervisor;
- (f) prescribing how the financial statements of a co-operative bank must be prepared;
- (g) the basis, if any, on which a support organization may be entitled to funding;
- (h) prescribing, generally, any matter, whether or not connected with any matter specified in paragraphs (a) to (g), inclusive, which he may deem it necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved.

(2) A person that is obliged in terms of any provision of this Act to render a return or statement in a prescribed form, is deemed not to have rendered that return or statement unless he has provided all the required particulars.

(3) A regulation made under subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe a penalty of a fine, or imprisonment for a period not exceeding six months.

95 Offences and penalties

(1) Any person that -

- (a) fails to comply with a directive under section 7(1);
- (b) contravenes or fails to comply with a provision of sections - 14, 26(1), 31(1), 32(2), 36, 37(1), 38, 46, 54, 58, 59, 61, 62, 63, 64, 65, 66, 67, or 88;
- (c) in any return, statement, questionnaire or other document under this Act furnishes information or makes a statement that to the knowledge of such person is untrue or misleading in any material respect,

is guilty of an offence.

(2) Any person convicted of an offence in terms of this Act is liable to a fine, or to imprisonment for a period not exceeding 5 years.

(3) If any person fails to submit to the Supervisor or to furnish the Supervisor with any return, statement, report or other document or information in accordance with a requirement of this Act within the period determined by or under this Act or and extended period, the Supervisor may impose upon him or her by way of a notice in writing a fine not exceeding the prescribed amount for every day during which such failure continues.

(4) A fine imposed under subsection (5) must be paid to the Supervisor within such period as may be specified in the notice, and if the person fails to pay the fine within the specified period the Supervisor may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof.

96 Exemptions

The Minister may on such conditions as he or she may consider appropriate exempt a co-operative bank from any provision of this Act for such period as he or she may determine, where he or she considers such exemption to be necessary for the interest of the public.

97 Repeal of laws

The laws specified in Schedule 1 are hereby repealed to the extent set out in the third column of the Schedule.

98 Transitional provisions

A person who was previously exempted from the provisions of the Banks Act, 1990 (Act No. 94 of 1990) by virtue of the provisions of any law repealed by section 96 must apply for registration under this Act within one year of the commencement of this Act.

99 Short title and commencement

This Act is called the Co-operative Banks Act, 2004, and comes into operation on a date fixed by the State President by proclamation in the *Gazette*.

**SCHEDULE 1
LAWS REPEALED OR AMENDED**

No and year of Law	Short Title	Extent of Repeal or Amendment
GN2173 of 14 December 1994	Common Bond Designation	Repeal of the whole.
GNR422 of 28 December 2000	Village Financial Service Co- operative Designation	Repeal of the whole.

SCHEDULE 2

Provisions applicable to burial schemes and rotating savings schemes

- (1) An association conducting a rotating savings scheme or burial scheme must
 - (a) keep, in one of the official languages such accounting records as are necessary to fairly reflect the state of affairs and business of the association and to explain the transactions and financial position of the association;
 - (b) fix a date, in each year, when its financial year will end, and such financial year is the association's annual accounting period;
 - (c) within 120 days after the end of each financial year cause annual financial statements, pertaining to its affairs and business in respect of that financial year, to be made out in one of the official languages;
 - (d) where the aggregate deposits held by the association exceeds the prescribed amount, submit its financial statements to an accounting officer for purposes of the drawing up and presentation of a report;
 - (e) in the event of the accounting officer being unable to make such report or to make it without qualification, he or she must include in the report a statement to that effect and set forth the facts or circumstances that prevent him or her from making his or her report or from making it without qualification;
 - (f) submit copies of such audit report within 60 days after completion thereof to the members of the association; and
 - (g) comply with such regulations as may be prescribed.

- (2) An association conducting a rotating savings scheme must apply for registration under this Act when -
 - (i) the aggregate value of deposits held by it from members exceeds the prescribed amount;
 - (ii) the association advances loans to members where the loan amount advanced to the member exceeds the amount deposited by that member; or
 - (iii) the association ceases to be *bona fide* member-managed.

- (3) An association conducting a burial scheme must apply for registration under the Friendly Societies Act, 1956, or any other applicable legislation upon the aggregate value of deposits held by it or if its liabilities to members exceeds the prescribed amount.