

No. R. 58

27 January 2006

**DESIGNATION OF INSTITUTION OF WHICH THE ACTIVITIES DO NOT
FALL WITHIN THE MEANING OF "THE BUSINESS OF A BANK
("FINANCIAL SERVICE CO-OPERATIVE")**

Under paragraph (dd)(i) of the definition of "the business of a bank", in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), I, Trevor Andrew Manuel, Minister of Finance, hereby designate, for the period commencing on 1 January 2006 and expiring on 31 December 2006, and subject to the conditions set out in paragraph 3 of the Schedule, an institution specified in paragraph 2 of the Schedule as an institution of which the activities do not fall within the meaning of "the business of a bank".

T A MANUEL, MP
Minister of Finance

SCHEDULE

1. Definitions

In this **Schedule**, "the Banks Act" means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Banks Act or the Regulations relating to Banks shall bear the meaning so assigned thereto and, unless the context otherwise indicates -

"bank" includes a mutual bank;

"business arrangement" means a legally enforceable agreement, arrangement or understanding between a bank and a financial service co-operative. in terms of which -

- (a) the financial service co-operative, for purposes of conducting its business, maintains an account with the bank;
- (b) a bank/client relationship exists between the bank and the financial service co-operative; and
- (c) the bank provides support, training services and advice to the financial service co-operative;

"dosed co-operative" means a co-operative that does not conclude transactions with persons who are not members thereof to a greater extent than is essential to the proper carrying out of the co-operative's objects;

"co-operative" means a trading co-operative incorporated in terms of the Cooperatives Act;

"Co-operatives Act" means the Co-operatives Act, 1981 (Act No. 91 of 1981);

"defined geographical area" means a geographical area as defined in the statute of a financial service co-operative;

"link bank" means a bank that has entered into a business arrangement with a financial service cooperative;

"member of a financial service co-operative" means a person to whom, in compliance with the requirements determined in the statute of a financial service co-operative, a share in that financial service cooperative has been issued or transferred;

"Regulations relating to Banks" means the Regulations relating to Banks published under Government Notice No. R.628 of 26 April 1996 and amended from time to time;

"financial service co-operative" means a closed co-operative, the members of which are not serviced by banks and who are members of a community within a defined geographical area, which -

- (a) with the objective of providing banking-related financial services to its members -
 - (i) accepts funds from such members against the issue of shares;
 - (ii) accepts deposits from members;
 - (iii) advances loans to members; and/or
 - (iv) provides for members to share in profits of the co-operative and to nominate management;
- (b) has entered into, and maintains, a business arrangement with a link bank; and
- (c) subject to the prior written consent of the Registrar of Banks, has been incorporated as a cooperative, as contemplated in this notice.

2. **Institution**

Any financial service co-operative.

3. **Conditions**

- 3.1 The activities of a financial service co-operative, in so far as they correspond to the activities contemplated in paragraphs (a), (b), (c) and (d) of the definition of "the business of a bank" in section 1(1) of the Banks Act, shall be performed solely -

- 3.1.1 in respect of its members;
 - 3.1.2 in pursuit of ~~such~~ financial **service co-operative's** objective of providing banking-related financial services to its members, which are not serviced by banks and are members of a community within a defined geographical area: and
 - 3.1.3 within the geographical area defined in respect of ~~such financial service co-operative~~.
- 3.2 A financial **service** co-operative ~~shall~~ not -
- 3.2.1 conduct any business unless there is a business arrangement in force ~~between such~~ co-operative and a link bank.
 - 3.2.2 in the performance of its activities, use, or refer to itself ~~by~~, any name, description ~~or~~ symbol indicating, ~~or~~ calculated to **lead** persons to infer, that it is a bank.
 - 3.2.3 in respect of itself or any of its undertakings use a name ~~or~~ description that **includes** the word "bank", ~~or~~ any **derivative thereof**, **unless** such name ~~or~~ description is composed of words that include the word "bank" as part of a place-name ~~or~~ a personal name;
 - 3.2.4 notwithstanding any provision to the contrary
 - 3.2.4.1 **perform any** of the acts provided for in paragraphs (d), (f), (g), (k), (o) and (sA) of subsection (1) of section 49 of the Co-operatives Act;
 - 3.2.4.2 advance any money as **envisaged** in section 52 of the Co-operatives Act;
 - 3.2.4.3 overdraw a banking account as envisaged in section 53 of the Co-operatives Act;
 - 3.2.4.4 issue **shares** not fully paid up;
 - 3.2.4.5 without **the prior written approval** of the Registrar of Banks, register its statute ~~With the Registrar of Co-operatives~~, or register an amendment or replacement of its statute with the Registrar of Co-operatives;
 - 3.2.5 pursue any objective or perform any function not authorised by ~~its~~ statute: or
 - 3.2.6 at any time, hold deposits from members amounting in the aggregate to more than R10 million.
- 3.3 A financial **service** co-operative shall strictly comply with

3.3.1 ~~the provisions~~ relating to-

3.3.1.1 ~~■~~ the management of ~~co-operatives~~ contained in Chapter VI of the Cooperatives Act; and

3.3.1.2 accounting records, accounting and auditing of ~~co-operatives~~ contained in Chapter ~~VII~~ of the Co-operatives Act;

3.3.2 any additional prescriptions ~~of or~~ conditions imposed by the Registrar of Cooperatives.

3.4 A financial service ~~co-operative~~ shall ~~for~~ purposes ~~of self-regulation~~ be a member of a regulatory body approved by the Registrar of Banks in writing.

4. Exemption

A ~~financial service~~ cooperative shall ~~be~~ exempt from the provisions of regulation 66 of the Regulations relating to Banks.

This notice substitutes Government Notice No, 1846 as published in Government Gazette No. 25881 dated ~~22~~ December 2003.