

## CO-OPERATIVE BANKS ACT: MATRIX

### KEY TO CLASSIFICATION OF AMENDMENTS:

	Regulatory Gap: Shift from having two supervisors for Co-operative Banks, to having the Registrar of Banks as the sole supervisor of Co-operative Banks,	
	Regulatory Gap: Appropriately defining the role and scope of powers of supervisor, the role and scope of powers of the Agency, and the relationship between the Agency, and clarifying the related role of the South African Reserve Bank.	
	Amendments to adjust the definition of co-operative banks, and certain references to of co-operative banks , and to appropriately define other terms and entities. Consequential amendments relating to the amendments to definitions.	
	Amendments relating to governance and operations of Co-operative Banks	
	Technical Amendment	
Original Section of Co-operative Banks Act	Section Reflecting Amendment to Co-operative Banks Act	Motivation for amendment

<p><b>Section 1:</b> definition of “co-operative bank”</p> <p>(1)(a) are of similar occupation or profession or who are employed by a common employer or who are employed within the same business district; or (b) have common membership in an association or organisation, including a business, religious, social, co-operative, labour or educational group;</p> <p>New definition</p> <p><b>‘representative body’</b> means a secondary co-operative, irrespective of whether it is also a secondary co-operative bank, or other association of co-operative banks registered under section 33 that represents more than one co-operative bank in interactions with organs of state, the private sector and stakeholders;’</p> <p>Paragraph (b) of the definition of “rule”: (b) the Agency, means a rule prescribed by the supervisor Agency</p>	<p><b>Section 1</b> of the Principal Act is hereby amended:</p> <p>(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “co-operative bank” of the following paragraphs, respectively:</p> <p>“(a) <b>[are of similar occupation or profession or who]</b> are employed by a common employer or who are employed within the same business district; or (b) have common membership in an association or organisation, including a <b>[business,]</b> religious, social, co-operative, labour or educational group;”;</p> <p>(b) by the insertion in subsection (1) after the definition of “co-operative bank” of the following definition: “ <b><u>‘co-operative financial institution’ means a co-operative that chooses to identify itself by use of the name Financial Co-operative, Financial Services Co-operative, Credit Union or Savings and Credit Co-operative;</u></b>”;</p> <p>(c) by the substitution in subsection (1) for the definition of “representative body” of the following definition: “ <b><u>‘representative body’</u></b> means a secondary co-operative, irrespective of whether it is also a secondary co-operative bank, or other association of <u>co-operative financial institutions and co-operative banks registered under section 33 that represents [more than one co-operative bank] at least two co-operative banks or co-operative financial institutions</u> in interactions with organs of state, the private sector and stakeholders;”;</p> <p>(d) by the substitution in subsection (1) for paragraph (b) of the definition of “rule” of the following paragraph: “(b) the Agency, means a rule prescribed by the <b>[supervisor] Agency</b> under section 57;”</p>	<p>Amendment to appropriately refine the scope of the definition for “co-operative bank”.</p> <p>Amendment to insert a new definition</p> <p>To amend a definition in line with the amendment to the definition of “co-operative-bank” and “co-operative financial institution”.</p> <p>To provide for the Agency to make rules, instead of the Agency, in line with the amendment to section 57.</p>
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<p>under section 57;'</p> <p><b>'support organisation'</b> means a representative body accredited under section 38 that support more than one co-operative bank as contemplated in section 37;</p>	<p>(e) by the substitution in subsection (1) for the definition of "support organisation" of the following definition:          " <b>'support organisation'</b> means a <b>[representative body] support organisation</b> accredited under section 38 that <b>[support] supports more than one co-operative financial institution or</b> co-operative bank as contemplated in section 37;".</p>	<p>To amend the definition in line with the amendments other amendments to definitions.</p>
<p><b>Section 23</b>          (1) A co-operative bank may not without the approval of the supervisor make an investment with any one person or grant a loan to any one member, which investment or loan, alone or together with all previous existing investments or loans made or granted to that person or member, will exceed such percentage of its total investments or loans as may be prescribed by the Minister.          (2) The supervisor may, when approving</p>	<p><b>Section 23</b> of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:          "(1) A co-operative bank may not without the approval of the supervisor—  <u>(a) make an investment with any one person or grant a loan to any one member, which investment or loan, alone or together with all [previous] existing investments or loans made or granted to that person or member, will exceed such percentage of its total investments or loans as may be prescribed by the Minister; or</u>  <u>(b) hold a deposit from any one member or related person, which deposit, alone or together with all existing deposits received from that member or related person will exceed such percentage of its total deposits as may be prescribed by the Minister.</u>          (2) The supervisor may, when approving a <u>deposit</u>, loan or investment referred to</p>	<p>To refine the scope of the types of investments that a co-operative bank may only make and deposits that the co-operative bank may hold only with the approval of the supervisor.</p>

<p>a loan or investment referred to in subsection (1), impose prudential requirements on the co-operative bank in addition to those referred to in section 20.</p>	<p>in subsection (1), impose prudential requirements on the co-operative bank in addition to those referred to in section 20.”.</p>	
<p><b>Section 31</b> (3) The supervisor may require a representative body to furnish him or her with additional information or documents.</p>	<p><b>Section 31</b> is hereby amended by the substitution for subsection (3) of the following subsection: “(3) The <b>[supervisor]</b> <u>Agency</u> may require a representative body to furnish <b>[him or her]</b> <u>the Agency</u> with additional information or documents.”.</p>	<p>To substitute the reference to “supervisor” to “Agency”, and thereby shift the power from the supervisor to the Agency.</p>
<p><b>Section 32</b> paragraph (a): (a) represents two or more co-operative banks in interactions with organs of state, the private sector and stakeholders; and</p>	<p><b>Section 32</b> of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: “(a) represents <b>[two or more]</b> <u>more than one co-operative financial institution or co-operative [banks] bank</u> in interactions with organs of state, the private sector and stakeholders; <b>[and]</b>”.</p>	<p>To align with the amendments to the definition of “co-operative bank” and utilising the new term of “co-operative financial institution”</p>
<p><b>Section 36</b> (3) (a) The supervisor may require a support organisation to furnish him or her with—  (b) a report by an auditor or by any other knowledgeable person, approved by the supervisor on aspects relating to the application..</p>	<p><b>Section 36</b> of the principal Act is hereby amended— (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: “The <b>[supervisor]</b> <u>Agency</u> may require a support organisation to furnish <b>[him or her]</b> <u>the Agency</u> with—”; and (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: “(b) a report by an auditor or by any other knowledgeable person, approved by the <b>[supervisor]</b> <u>Agency</u>, on aspects relating to the application.”.</p>	<p>To substitute the reference to “supervisor” to “Agency”, and thereby shift the power from the supervisor to the Agency.</p>
<p><b>Section 37</b> In order to qualify for accreditation a support organisation must demonstrate, to the satisfaction of the Agency, that—  (a) it has two or more co-operative banks as members;  (b) support agreements have been entered into with at least two co-</p>	<p><b>Section 37</b> of the principal Act is hereby amended— (a) by the deletion of paragraph (a); and  (b) by the substitution in paragraph (b) for the words preceding subparagraph (i) of the following words: “support agreements have been entered into with at least two cooperative banks <u>or co-operative financial institutions</u>, which support agreements may provide for—”</p>	<p>To align with the amendments to the definition of “co-operative bank” and utilising the new term of “co-operative financial institution”</p>

<p>operative banks, which support agreements may provide for—</p>		
<p><b>Section 41</b>  (a) the heading of the section:  <b>"Supervisors of co-operative banks";</b>  (b) subsection 1:  "(1)  The South African Reserve Bank must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act in respect of—  (a) primary co-operative banks that hold deposits in excess of 20 million Rand;  (b) secondary co-operative banks;  and  (c) tertiary co-operative banks.  (2) The Agency must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act in respect of primary co-operative banks that that hold deposits of 20 million Rand or less.</p>	<p><b>Section 41</b> of the principal Act is hereby amended by—  (a) by the substitution for the heading of the following heading:  <b>"Supervisor of co-operative banks";</b>  (b) by the substitution for subsection 1 of the following subsection:  "(1) The South African Reserve Bank must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act [<b>in respect of—</b>  (a) <b>primary co-operative banks that hold deposits in excess of 20 million Rand;</b>  (b) <b>secondary co-operative banks; and</b>  (c) <b>tertiary co-operative banks</b>]."; and  (c) by the deletion of subsection (2)</p>	<p>To amend the section to delete reference to different types of co-operative banks, so as to align with the designation of a single supervisor for co-operative banks.</p> <p>To implement the shift to having a single supervisor for co-operative banks</p>

<p>(3) If a primary co-operative bank holds deposits in excess of 20 million Rand for a continuous period of three months, the Agency must inform the South African Reserve Bank within one month of the expiry of that three month period that the primary co-operative bank is subject to its authority and provide the South African Reserve Bank with the necessary information.</p> <p>(4) If a primary co-operative bank holds deposits of less than 20 million Rand for a continuous period of three months the South African Reserve Bank must inform the Agency within one month of the expiry of that three month period that the primary co-operative bank is subject to its authority and provide the Agency with the necessary information.</p>	<p>(c) by the deletion of subsections, (3) and (4).</p>	<p>To remove the provisions of subsections (2), (3) and (4), in relation to the period in which the South African Reserve Bank may be required to inform the agency of the amount of the primary co-operative bank in the account.</p>
<p>42. Co-operation and co-ordination between supervisors.—(1) The supervisors appointed under section 41 (1) and section 41 (2) must co-operate with each other and co-ordinate their approach to exercising their powers and functions in terms of the Act to ensure the consistent application of this Act. (2) The supervisors must, in addition to subsection (1)—</p>	<p><b>Section 42</b> of the principal Act is hereby repealed.</p>	<p>To delete the section (relating to co-operation and co-ordination between supervisors), as it is no longer necessary.</p>

<p>(a) engage with each other in activities of research, publication, education, staff development and training; and</p> <p>(b) engage with each other in staff exchanges or secondments; and</p> <p>(c) provide technical assistance or expertise to each other.</p> <p>(3) The supervisors must annually prepare a co-operation and co-ordination plan in respect of the matters referred to in subsections (1) and (2) and submit such co-operation and co-ordination plan to the Minister.</p>		
<p><b>Section 43</b></p> <p><b>“Deputy co-operative bank supervisors and designated employees</b></p> <p><b>43.</b> The South African Reserve Bank and Agency may, subject to the approval of the Minister —</p> <p><b>(a)</b> appoint not more than four employees in its service as deputy co-operative banks supervisors, to assist the supervisor in the performance of his or her duties; and</p> <p><b>(b)</b> from time to time designate such other employees of the Agency as may be necessary to assist the supervisor.</p>	<p><b>Section 43</b> of the principal Act is hereby amended by the substitution of the following section:</p> <p><b>“Deputy co-operative bank supervisors [and designated employees]</b></p> <p><b>43.</b> The South African Reserve Bank [and Agency] may, subject to the approval of the Minister[—</p> <p><b>(a)]</b> appoint not more than four employees in its service as deputy co-operative banks supervisors, to assist the supervisor in the performance of his or her duties[; and</p> <p><b>(b) from time to time designate such other employees of the Agency as may be necessary to assist the supervisor].”.</b></p>	<p>To implement the shift from having two supervisors for Co-operative Banks, to having the Registrar of Banks as the sole supervisor of Co-operative Banks,</p>

<p><b>Section 47(1)(b):</b></p> <p><b>Section 47</b> of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) The supervisor has for the purposes of subsection (2) the powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, 1988 (Act No. 80 of 1988), and any reference in that Act to ‘registrar’ must be construed as a reference to ‘supervisor’ and any reference to ‘financial institution’ must be construed as a reference to ‘co-operative bank’, provided that no warrant is required for search and seizure activities aimed at establishing regulatory compliance.”.</p>	<p><b>Section 47</b> of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) The supervisor has for the purposes of subsection (2) the powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, [1988 (Act No. 80 of 1988)] 1998 (Act No. 80 of 1998), and any reference in that Act to ‘registrar’ must be construed as a reference to ‘supervisor’ and any reference to ‘financial institution’ must be construed as a reference to ‘co-operative bank’, provided that no warrant is required for search and seizure activities aimed at establishing regulatory compliance.”.</p>	<p>To correct an incorrect reference</p>
<p><b>Section 48</b></p> <p>(3) A directive issued in terms of subsection (1) takes effect on the date determined by the Reserve Bank in the directive, and may take effect immediately.</p>	<p><b>Section 48</b> of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: “(3) A directive issued in terms of subsection (1) takes effect on the date determined by the [Reserve Bank] supervisor in the directive, and may take effect immediately.”.</p>	<p>To shift the authority to the supervisor from the South African Reserve Bank.</p>
<p><b>Section 55(1)</b></p> <p>(1) The Agency must, in addition to its other functions provided for in this Act—</p> <p>(b) appoint a supervisor in accordance with section 41 (2) and support the supervisor in</p>	<p><b>Section 55</b> of the principal Act is hereby amended—</p> <p>(a) by the deletion of subsection (1) of paragraph (b);</p>	<p>To delete the provisions relating to the appointment of the supervisor by the agency.</p>



<p>exercising and performing his or her powers and functions;</p>		
<p><b>Section 55(1)</b>  <i>( f )</i> provide financial support to co-operative banks through loans or grants;</p> <p><i>(g)</i> manage the Fund in accordance with section 26;</p> <p><i>(h)</i> assist co-operative banks with liquidity management;</p> <p><i>(i)</i> facilitate, promote and fund education, training and awareness in connection with, and research into, any matter affecting the effective, efficient and sustainable functioning of co-operative banks;</p> <p><i>( j)</i> consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act. 1995, in respect of co-operative banks and support organisations;</p> <p><i>(k)</i> interact with any regulatory authority to ensure appropriate regulation of co-</p>	<p><b>Section 55</b> of the principal Act is hereby amended—</p> <p><i>(b)</i> the substitution in subsection (1) for paragraph <i>(f)</i> of the following paragraph:  "<i>(f)</i> provide, <u>in consultation with the supervisor,</u> financial support to co-operative banks through loans or grants;"; and</p> <p><i>(c)</i> the substitution in subsection (1) for paragraph <i>(h)</i> of the following paragraph:  "<i>(h)</i> assist, <u>in consultation with the supervisor,</u> co-operative banks with liquidity management;".</p>	<p>To provide for the agency to consultation the supervisor, in respect of the agency's powers to provide financial support to co-operative banks through loans or grants, and powers to assist co-operative banks with liquidity management;</p>

<p>operative banking and co-operative banks; and</p> <p>(l) monitor trends and patterns in the development of co-operative banking and co-operative banks.</p>		
<p>(1) The Agency may prescribe rules with regard to—</p> <p>(a) the matters referred to in section 55 (1) (d) to (h);</p> <p>(b) any matter that is required or permitted to be prescribed in terms of this Act; and</p> <p>(c) any other matter for the better execution of this Act or a function or power provided for in this Act.</p>	<p><b>Section 57</b> of the principal Act is hereby amended by—</p> <p>(a) the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) the matters referred to in section 55(1)(d) <b>[to (h)]</b> and (e);”; and</p> <p>(b) the insertion in subsection (1) after paragraph (a) of the following paragraph: “(aA) the matters referred to in section 55(1)(f) to (h), in consultation with the supervisor.”.</p>	<p>To provide for the agency to prescribe rules, in consultation with the supervisor, in respect of the provision of financial support to co-operative banks through loans or grants, management of the fund in respect of the deposit insurance fund, and assistance of co-operative banks with liquidity management.</p>
<p><b>Section 58</b> of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: “(1) The board of the Agency consists of not less than six but not more than 10 non-executive members appointed by the Minister.</p>	<p><b>Section 58</b> of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: “(1) The board of the Agency consists of <u>the Managing Director</u> and not less than six but not more than 10 non-executive members appointed by the Minister.”</p>	<p>To amend the composition of the Board.</p>
<p><b>Section 61</b> (1) (b) The chairperson and deputy chairperson each hold office for a period of two years from the date of their appointment.</p>	<p><b>Section 61</b> of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) The chairperson and deputy chairperson each hold office for a period of <b>[two] three</b> years from the date of their appointment.”</p>	<p>To amend the term of office of the chairperson and deputy chairperson</p>
<p><b>Section 83</b> <b>Certification of documents</b> 83. Any document that must be</p>	<p>The following section is hereby substituted for section 83 of the principal Act: <b>“Certification of documents</b> 83. Any document that must be submitted to the supervisor</p>	<p>To remove the requirement that all financial information</p>

<p>submitted to the supervisor by a co-operative bank in terms of this Act must be certified as correct by the managing director and, in the case of financial information, also by the auditor of the co-operative bank.</p>	<p>by a co-operative bank in terms of this Act must be certified as correct by the managing director <b>[and, in the case of financial information, also by the auditor of the co-operative bank]</b>.”.</p>	<p>that must be submitted to the supervisor by a co-operative bank must be certified by the auditor of the co-operative bank.</p>
	<p>The Arrangement of Sections of the principal Act is hereby amended—  (a) by the substitution for item 41 of the following item:  <b>“41. [Supervisors] Supervisor of co-operative banks”;</b>  and  (b) by the deletion of item 42.</p>	<p>To incorporate the proposed amendments in the table of contents.</p>

