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CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
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GOVERNMENT NOTICE**National Treasury***Government Notice*

819 Co-operatives Banks Act (40/2007): Regulations made under section 86: Call for comments.....	3	31293
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GOVERNMENT NOTICE

NATIONAL TREASURY

No. 819

1 August 2008

CO-OPERATIVE BANKS ACT, 2007: REGULATIONS MADE UNDER SECTION 86 CALL FOR COMMENTS

I, Trevor A Manuel, Minister of Finance, hereby publish the draft regulations to be made under section 86 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007), as set out in the Schedule, for public comment in accordance with section 86(4) of the Act.

Interested persons may submit their comments on the draft regulations in writing on or before 31 August 2008 to: The Director-General, c/o Olotse Matshane, National Treasury, Private Bag X115, Pretoria, 0001; or per facsimile to (012) 315 5376 or email to CBA-Regulations@treasury.gov.za

The draft regulations are also available on National Treasury's website www.treasury.gov.za.



TREVOR A MANUEL, MP
MINISTER OF FINANCE

SCHEDULE
ARRANGEMENT OF REGULATIONS

PART 1

Definitions and interpretation

1. In these regulations **“the Act”** means the Co-operative Banks Act, 2007 (Act No. 40 of 2007), and any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and—

- (a) **“delinquent loan”** means any loan in respect of which a payment due and payable has not been received in accordance with the terms of a contractual arrangement, and includes —
 - (i) in respect of loans that provide for monthly payments, a loan in respect of which a payment was not received 31 calendar days after the due date for payment;
 - (ii) in respect of loans that provide for daily or weekly payments, a loan in respect of which a payment was not received one day after the due date for payment;
- (b) **“external funding”** includes any monies secured through a loan, including a loan from the Agency and a donation;
- (c) **“fixed asset”** means moveable and immovable property and includes land, buildings, furniture, fixtures and equipment;
- (d) **“membership share”** has the meaning assigned to it in section 1 of the Co-operatives Act;
- (e) **“non earning assets”** means assets other than fixed assets that earn no yield or interest such as cash, non-interest bearing accounts, members collateral due to repossessions, accounts receivable, prepaid expenses and accruals;
- (f) **“Part”** means the applicable Part of these regulations;
- (g) **“patronage proportion”** has the meaning assigned to it in section 1 of the Co-operatives Act;
- (h) **“related person”** means —
 - (i) a person or member who are directly or indirectly controlled by the same person or member; and

- (ii) a person or member who are so interconnected with another person or member that should one of them experience financial difficulties, one or all of them would be likely to experience a lack of liquidity;
- (i) **“section”** means the applicable section of the Act; and
- (j) **“total assets”** include fixed assets, non-earning assets, assets referred to in regulation 3.2.

PART 2

Constitution of co-operative bank [Section 13]

2. The constitution of a co-operative bank must provide that a director of a co-operative bank who is in arrears for more than three months with any amount or type of debt payable to the co-operative bank, is disqualified from continuing as a director and must vacate his or her office.

PART 3

Banking services provided by co-operative bank [Section 14]

3.1 A co-operative bank may borrow money from the Agency and members, and secure external funding, the aggregate of which does not exceed 30 percent of the total assets held by that co-operative bank.

3.2 (a) A co-operative bank may acquire or hold the following assets with money deposited with it –

- (i) deposits held with a bank registered in terms of the Banks Act;
- (ii) deposits held with secondary or tertiary co-operative banks of which a co-operative bank is a member;
- (iii) government co-operative retail savings bonds with 1, 2 or 3 year maturity dates, and treasury bills issued under the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (iv) financial instruments determined by the supervisor by notice on its official website issued through a bank registered under the Banks Act or a fund or

asset manager registered under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or

(v) bonds and debentures determined by the supervisor by notice on its official website issued by –

(aa) national government;

(bb) public entities listed under the Public Finance Management Act, 1999; or

(cc) the Reserve Bank.

(b) The supervisor may make any determination referred to in paragraph (a)(iv) or (v) subject to conditions.

3.3 (1) A co-operative bank, other than a savings co-operative bank, when granting loans must ensure that –

(a) all loans, including loans referred to in paragraph (b), granted are approved in accordance with its lending policy;

(b) all loans granted to employees, officials and directors of the cooperative bank or their family members or business associates, as defined in its lending policy, are declared in its annual financial statements; and

(c) in respect of a secondary or tertiary co-operative bank, all loans to other co-operative banks are secured by the session of an appropriate percentage of the loan books of those co-operative banks to the secondary or tertiary co-operative bank.

(2) (a) A cooperative bank must annually review and, if necessary amend, its lending policy and submit it to the supervisor for approval.

(b) A cooperative bank may implement an amended lending policy on the written approval thereof by the supervisor only.

3.4 (1) A cooperative bank may provide services other than banking services to its members or any other person only if –

(a) if those services are provided with the same infrastructure that is necessary to provide banking services and with the primary objective of reducing the cost associated therewith;

(b) the gross income derived from those services does not exceed 30 percent of its total gross income; and

(c) the supervisor, by notice on its official website, has determined that those services may be provided.

(2) The supervisor may make any determination referred to in subregulation (1)(c) subject to conditions.

PART 4

Prudential requirements of co-operative bank

[Section 20]

4. (1) A co-operative bank must meet and maintain the following minimum prudential requirements —

	<i>Requirements</i>
minimum capital adequacy ratio	10 percent of total assets held by co-operative bank.
loan loss provision for delinquent loans	(a)(i) 2,5 percent in respect of all loans in addition to the minimum capital adequacy ratio; plus (ii) 35 percent in respect of all loans delinquent for a period of 3 months but not longer than 6 months; plus (iii) 100 percent in respect of all loans delinquent for a period of longer 6 months. (b) The aggregate of all delinquent loans may not exceed a maximum of 7 percent of total loans granted.
liquidity	(a) a maximum of 5 percent of total assets may be held in fixed and non-earning assets; (b) a minimum of 10 percent of total deposits must be held in investments referred to in regulation 3.2 with a tenure not exceeding 32 days and convertible into

	cash at any time, without incurring any penalty or being subject to a discount rate substantially higher than the average rate that applies to liquid assets with a similar term; (c) a minimum of 2,5 percent of total deposits must be deposited with the Agency or a higher tier co-operative bank, in addition to the deposits referred to in paragraph (b); (d) the balance of deposits not held or deposited in accordance with paragraphs (b) and (c) - (i) in relation to a co-operative bank that provides saving services only, must be held in investments referred to in regulation 3.2(a)(i) to (iv); and (ii) in relation to a co-operative bank that provides saving and loan services, must be held in investments referred to in regulation 3.2(a)(i) to (iv) and may be granted as loans up to a maximum of 75 percent of total assets
deposits	Hold no deposit from any one member or related person, which deposit, alone or together with all previous deposits received, exceeds the lesser of 10 percent of the total assets held by or 25 percent of the capital of the co-operative bank

(2) For purposes of calculating the minimum capital adequacy ratio referred to in subregulation (1), only the following qualify as capital –

- (a) membership fees, membership shares or additional shares issued by the cooperative bank;
- (b) indivisible reserves as required in terms of section 3(1)(e) of the Co-operatives Act;
- (c) non-distributable reserves created or increased by appropriations of surpluses (retained earnings); and
- (d) any other non-distributable funds of a permanent nature not subject to a legal claim by any person held by a co-operative bank approved by the supervisor in writing.

PART 5**Large exposures of co-operative bank****[Section 23]**

5. A co-operative bank may not without the approval of the supervisor make an investment with any one person or related person or grant a loan to any one member or related person, which investment or loan, alone or together with all previous investments or loans made or granted to that member and related person, exceeds the lesser of 10 percent of the total assets held by or 25 percent of the capital of the co-operative bank.

PART 6**Administrative penalties****[Section 49]**

6. The supervisor, in terms of section 49(1) of the Act, may impose a maximum administrative penalty of R 100 for every calendar day that a failure to submit any documentation or reports required by the Act to be submitted to a supervisor, continues.

PART 7**Reporting****[Section 52]**

7. The supervisor must, within two months of the end of its financial year submit the report referred to in section 52(2), to the Minister.

PART 8**Register of co-operative banks****[Section 51]**

8. The supervisor must keep a register of all co-operative banks under its supervision, which register must contain the following details of each bank -

- (a) the name of the co-operative bank;
 - (b) the type of co-operative bank it is registered as;
 - (c) its registration number under the Co-operatives Act;
 - (d) the total number of members at the end of the preceding financial year of the bank;
- and

- (e) the value of deposits held at the end of the preceding financial year of the bank.

PART 9

Code of conduct

[Section 64]

9. A member of a board of directors of a co-operative bank, in the performance of his or her functions, must adhere to the following code of conduct -

- (a) a member must act in accordance with the highest standards of honesty and ethical conduct;
- (b) a member must protect and safeguard the assets and resources of the co-operative bank against loss, theft, misuse and misapplication;
- (c) a member must ensure effectively communication with and provision of accurate information relating to financial and operational matters to the members of the co-operative bank;
- (d) a member must ensure full, accurate, sensible, timely and meaningful disclosures in reports submitted to the supervisors and other regulatory authorities;
- (e) a member must treat information obtained in the performance of his or her functions with the necessary confidentiality; and
- (f) a member must ensure compliance with all applicable legislation and report any non-compliance or unlawful behaviour to the supervisors and other relevant regulatory authorities.

PART 10

Appeals

[Section 75]

10. An appeal under section 75(1) of the Act must be lodged by delivering or sending a properly completed form that substantially corresponds with Annexure A and an amount of R500,00 to the designated official of the National Treasury at his or her address, fax number or electronic mail address.

PART 11

General

11.1 A co-operative bank must keep and preserve its records and information submitted to the supervisors in a manner that prevents the loss, destruction or falsification thereof.

11.2 Each supervisor must establish and maintain an official website that reflects, banking details, contact details and other essential services.

11.3 All fees and penalties payable under the Act or these regulations may be paid by cheque or electronic transfer to the account of the relevant supervisor.

Annexure A
NOTICE OF APPEAL

(Section 75(1) of the Cooperative Banks Act, 2007 (Act No. 40 of 2007))
[Regulation 7]

To: The National Treasury

Name of appellant		
Registration number		
Address		
Contact Person		
Contact Person tel. number:	Work: ()	
	Cell: ()	
	Fax:	
	Email:	

Decision against which the appeal is lodged

Please attach a copy of the decision appealed against to this form.

With reference to decision by supervisor/agency, Reference Number (as attached).

Grounds for appeal

*If the provided space is inadequate, please continue on a separate folio and attach it to this form. **All the additional folios must be signed.***

State the grounds on which the internal appeal is based:

State any other information that may be relevant in considering the appeal:

Declaration by appellant

The appellant confirms that the information contained in this notice is accurate and complete.

Signature..... Date

For office use

Signature of representative authorised to receive appeal:

Name: Date: