

DRAFT FOR CONSULTATION – NOVEMBER 2023

Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

Prudential Standard CBA-01

Registration and operational requirements for co-operative financial institutions and co-operative banks

Objective and Key Requirements of this Prudential Standard

This Standard is made in terms of sections 105 and 108 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (Financial Sector Regulation Act) read with section 46 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007) (Co-operative Banks Act).

This Standard sets out the principles and requirements for registration and operation of a co-operative financial institution (CFI) or co-operative bank registered in terms of the Co-operative Banks Act.

This Standard covers matters concerning the registration of CFIs and co-operative banks, certificates of registration, tiering of CFIs and co-operative banks, application for conversion, application for approval of amalgamation, division of or transfer, governance structures and documentation, constitution of a CFI or co-operative bank, board composition, business plans, audit committee, policies and procedures, auditors, financial management, information submitted to the Prudential Authority and regulatory reporting.

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1 Commencement

- 1.1 This Standard commences on 1 July 2024 (proposed).

Version Number	Commencement Date
1	1 July 2024 (proposed)

2 Legislative authority

- 2.1 This Standard is made in terms of sections 105 and 108 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) read with section 46 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007).

3 Definitions and interpretation

- 3.1 In this Standard, “the Act” means the Co-operative Banks Act, and any word or expression to which a meaning has been assigned in the Act or the Financial Sector Regulation Act, bears the meaning so assigned to it, unless the context indicates otherwise.

- 3.2 For purposes of this Standard –

‘audit committee’ means the audit committee for a CFI¹ and a co-operative bank;
‘auditor’ means a registered auditor as defined in the Auditing Profession Act, 2005 (Act No. 26 of 2005);

‘Authority’ means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

‘board’ means the board of directors of the CFI or co-operative bank as appointed by the members in accordance with the constitution of the CFI or co-operative bank;

‘business plan’ has the meaning assigned to it in section 1 of the Act;

‘CFI’ means a co-operative financial institution as defined in the Act;

‘CIPC’ means Companies and Intellectual Property Commission;

‘competence’ includes experience, qualifications and continuous professional development;

‘constitution’ means a governance document adopted by all members or prospective members of a co-operative, which sets out the objectives, policies and management of that particular CFI or co-operative bank;

‘co-operative bank’ means co-operative bank as defined in the Act;

‘Co-operatives Act’ means the Co-operatives Act, 2005 (Act No. 14 of 2005);

‘management’ means the managing director and executive officers of the CFI or co-operative bank;

‘members’ means the members of the CFI or co-operative bank; and

‘Registrar of Co-operatives’ means the Registrar of Co-operatives as defined in the Co-operatives Act.

- 3.3 The ‘Objectives and key requirements of this Prudential Standard’ in the preamble of this Standard must not be used in the interpretation of any paragraph of this Standard.

¹ In some instances, CFIs refer to the audit committee as the supervisory committee. It is advised that this audit committee should not be confused with audit committees that are appointed for companies.

4 Application

- 4.1 This Standard applies to all CFIs and co-operative banks registered under the Act, irrespective of its categorisation under a specific tier, unless explicitly provided for in this Standard.
- 4.2 This Standard applies in addition to the requirements of the Co-operatives Act and the Principles of Good Governance for Co-operatives issued under the Co-operatives Act.

5 Roles and responsibilities

- 5.1 The board of a CFI or co-operative bank is ultimately responsible for ensuring that the CFI or co-operative bank complies with the requirements and principles of this Standard, including establishing the relevant policies and procedures to ensure adequate day-to-day management of the CFI or co-operative bank.
- 5.2 The CFI's or co-operative bank's management is responsible for operationalising this Standard and keeping the board abreast of operational developments on a regular basis.
- 5.3 The board and the audit committee must, without delay, inform the Authority in writing of any matter they become aware of in the performance of their functions that has or may contravene the principles and requirements of this Standard.

6 Registration of CFIs and co-operative banks

- 6.1 An applicant CFI or co-operative bank must comply with all the relevant requirements to be registered as a co-operative in terms of the Co-operatives Act, or co-operative bank in terms of the Act.
- 6.2 To be considered for registration as a CFI, the applicant must have a minimum of 200 voting members and a share capital of at least R100 000.
- 6.3 To be considered for registration as a co-operative bank, the applicant must have a minimum of 200 voting members and total deposits of at least R5 million for a period of at least six consecutive months.
- 6.4 In terms of section 40(B)(2)(a) of the Act, a CFI must, once it has maintained at least R30 million in members' deposits for a period of at least six consecutive months, apply for registration as a co-operative bank in terms of the Act.
- 6.5 In terms of section 40(B)(2)(d)(ii) of the Act, the general maximum limit for holdings of deposits by any CFI is prescribed at R60 million.
- 6.6 The form and manner of the application for registration and supporting documentation for a CFI and co-operative bank will be determined by the Authority and published on its website.
- 6.7 The CFI and co-operative bank applicant must provide to the Authority all documentation to be submitted to the CIPC as part of its application.

- 6.8 Upon confirmation from the Authority that an application has been approved, the applicant will apply to the CIPC for registration and furnish them with the relevant confirmation of approval.
- 6.9 The form and manner of the application for registration and supporting documentation to the CIPC is published on its website.
- 6.10 The PA will only issue a certificate of registration once the applicant has provided it with the CIPC registration certificate.
- 6.11 The PA will publish the name of the registered CFI or co-operative bank on its website.

7 Certificate of registration

- 7.1 Once the Authority is satisfied that the applicant qualifies for registration as a CFI or co-operative bank, a certificate of registration will be issued with a unique registration number, in the form and manner determined by the Authority.
- 7.2 The certificate must where possible, be displayed in the main business area of the CFI or co-operative bank. The certificate or certified copies of the certificate must, at all times, be available to members and prospective members.
- 7.3 The registration certificate is not valid, unless it bears the signature of the Chief Executive Officer of the Authority and the seal or stamp of the Authority.

8 Tiering of CFI and co-operative banks

- 8.1 On registration, the Authority will categorise the CFI or co-operative bank as a Tier 1, 2 or 3 CFI or co-operative bank.
- 8.2 The tiering is based on the nature, size, complexity and risk profile of the CFI or co-operative bank and will dictate which proportional risk-based regulatory and supervisory approach will be applicable to the CFI or co-operative bank.
- 8.3 The CFI or co-operative bank must comply with the regulatory and supervisory requirements applicable to the tier in which it is categorised.
- 8.4 For CFIs or co-operative banks that have been registered prior to the commencement of this Standard, the Authority will provide notification to the CFI or co-operative bank on the proposed tiered categorisation. CFIs and co-operative banks will be invited to make submissions on the proposed categorisation and will be provided a period of 30 days within which to make such submissions. Thereafter, the Authority, after taking into consideration the submission, will finalise the categorisation of the respective CFI or co-operative bank. The categorisation may result in changes to the registration conditions of the CFI or co-operative bank.
- 8.5 The Authority may through supervisory observations based on the nature, size, complexity and risk profile of a CFI or co-operative bank re-categorise the CFI or co-operative bank into a different tier. The notification and submission process outlined in paragraph 8.4 above will also apply to re-categorisation of a CFI or co-operative bank.

9 Application for conversion

- 9.1 In terms of section 28(2)(a) of the Act, a primary savings co-operative bank that wishes to convert to a primary savings and loans co-operative bank must provide full details of the proposed conversion in the form and manner determined by the Authority.
- 9.2 A CFI that is registered to conduct savings only may apply for conversion to a CFI that conducts savings and loans, in the form and manner determined by the Authority.

10 Application for approval of amalgamation, division of or transfer

- 10.1 A co-operative bank that wishes to amalgamate with another co-operative bank and transfer assets, rights, liabilities and obligations to another co-operative bank in accordance with section 27 and 29 of the Act as well as section 57 of the Cooperatives Act, must apply for approval for the amalgamation, division of or transfer by a co-operative bank in the form and manner determined by the Authority providing therewith full details of the proposed scheme of arrangement(s).
- 10.2 A CFI that wishes to amalgamate with another CFI and transfer assets, rights, liabilities and obligations to another CFI in accordance with section 57 of the Co-operatives Act, must apply for approval for the amalgamation, division of or transfer by a CFI in the form and manner determined by the Authority providing therewith full details of the proposed scheme of arrangement(s).

11 Governance structures and documentation

- 11.1 At a minimum, a CFI or co-operative bank must maintain the following governance structures and documentation:
- 11.1.1 a constitution;
 - 11.1.2 an active board;
 - 11.1.3 appropriate board sub-committees;
 - 11.1.4 business plan;
 - 11.1.5 elected audit committee; and
 - 11.1.6 annual general meetings.
- 11.2 The Authority may, based on the nature, size, complexity and risk profile of a CFI or co-operative bank, specify to the relevant CFI or co-operative bank additional governance requirements that need to be established.

12 Constitution of a CFI or co-operative bank

- 12.1 The requirements for a constitution of a CFI or co-operative bank are provided for in the Act and Co-operatives Act.
- 12.2 In addition to paragraph 12.1, the following requirements apply to the constitution of a CFI or co-operative bank:
- 12.2.1 the constitution of a CFI or co-operative bank may only be amended by the members (subject to meeting the relevant quorum) at the annual general meeting or special members meetings;

- 12.2.2 any amendments to the constitution, prior to being tabled to the members for final ratification is subject to the approval of the Registrar of Co-operatives and the Authority. The amended constitution must be submitted to the Authority for approval in the form and manner determined by the Authority;
- 12.2.3 an amendment of a constitution of a CFI or co-operative bank may only come into operation on the date such amendment is registered by the Registrar of Co-operatives; and
- 12.2.4 the constitution of a CFI or co-operative bank must provide that a director of a CFI or 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 in accordance with the procedures provided for in the constitution.

13 Board composition

- 13.1 All directors of the board must be members of the CFI or co-operative bank.
- 13.2 The managing director serves in an ex-officio capacity with no voting rights.
- 13.3 No director on the board, other than the managing directors, can be an employee of the CFI or the co-operative bank. The number of board members must be commensurate to the nature, size, complexity and risk profile of the business of the CFI or co-operative bank concerned.
- 13.4 The number of board members must at any given time be as stated in the constitution, and:
 - 13.4.1 at a minimum be at least nine (9) members (excluding the managing director);
 - 13.4.2 at a maximum of fifteen (15) members (excluding the managing director); and
 - 13.4.3 an odd number.
- 13.5 The composition of the board of the CFI or co-operative bank must be appropriate with regard to competence of the board members having regard to the nature, scale and complexity of the business conducted.
- 13.6 Board members must reflect the general membership of the CFI or co-operative bank in terms of gender and age profiles.
- 13.7 Board members are limited to three consecutive board terms. Board terms will be as stated in the constitution but may not exceed three years a term.
- 13.8 In consideration of paragraph 13.7 above, the Authority may on application consider the extension of the maximum term for board members.
- 13.9 The board must stagger the terms of individual board members to ensure continuity.
- 13.10 The board must maintain a board charter, inclusive of terms of reference, and code of ethics for the board.
- 13.11 Elected and appointed board members must undertake to implement the provisions of the constitution, comply with the relevant legislative frameworks and protect the interest of the members.

- 13.12 An appointment of a board member, member of the audit committee or management will only take effect after the appointment has been approved by the Authority. The application for the approval must be made in the form and manner determined by the Authority after ensuring that the candidate meets the fit and propriety requirements of the Act and Prudential Standards made thereunder.

14 Business plan

- 14.1 A CFI or co-operative bank must maintain a written plan for the institution that sets out its approach for the implementation of its strategic objectives (business plan).
- 14.2 The board of the CFI or co-operative bank must therefore have adequate processes, structures and mechanisms to satisfy itself that appropriate systems are in place to identify, evaluate and manage the strategic objectives with respect to profitability and sustainability as set out in the business plan.
- 14.3 The business plan must also contain specific details regarding actual outcomes, key milestones to be reached and persons responsible for implementation.
- 14.4 A CFI or co-operative bank must identify and consider the material risks associated with the CFI or co-operative bank's strategic objectives and business plan and must explicitly manage these risks through the risk management framework, including how changing these plans affects the CFI or co-operative bank's risk profile.
- 14.5 The business plan must be updated regularly based on the developments affecting the CFI or co-operative bank and must be reviewed at least annually.
- 14.6 All updates made to the business plan must be submitted to the Authority within 14 days of the effective date of the business plan.

15 Audit committee

- 15.1 Each CFI or co-operative bank must establish an audit committee whose membership is elected at the annual general meeting.
- 15.2 The roles and responsibilities of the audit committee are stated in the constitution of the CFI and co-operative bank and as prescribed in the Act as well as the *Prudential Standard CBA02 – Governance requirements for CFIs or co-operative banks*.

16 Policies and procedures

- 16.1 A CFI or a co-operative bank must maintain documented policies and procedures to govern the management of day-to-day operations.
- 16.2 Each policy must contain the policy objectives, responsibility and authority levels, frequency of review and responsibility for review, as well as exceptions from the policy.
- 16.3 The requirements for policies are provided for in the Prudential Standard CBA03-Risk management and internal controls for CFIs and co-operative banks.

17 Auditors

- 17.1 A CFI or co-operative bank must apply to the Authority for approval of its auditors. The Authority will consider among others, the fitness and propriety of the auditor. The appointment of the auditor is not finalised unless prior approval has been received from the Authority.
- 17.2 CFIs and co-operative banks must ensure that there are policies and procedures in place to rotate auditors every five years.

18 Financial management

- 18.1 CFIs and co-operative banks must prepare financial statements and ensure these are audited on an annual basis in terms of the applicable requirements set out in the Act or Prudential Standards made thereunder. This includes regular bank reconciliation and member statement reconciliations.
- 18.2 CFIs and co-operative banks must have means to communicate to members on a regular basis or as requested, the details of members' transactions with the CFI or co-operative bank, including member savings, member loans, and member share capital. This must be in a format that members can understand.
- 18.3 CFIs and co-operative banks must maintain a detailed record of all its assets, including investments.
- 18.4 CFIs and co-operative banks must report on an annual basis to the Authority on their annual financial performance in a manner determined or prescribed.
- 18.5 The reports on annual financial performance must be made available to the general members at the annual general meeting, and as and when the members may require.

19 Information submitted to the Authority

- 19.1 General
 - 19.1.1 The Authority may require any additional information or documents or a report from an auditor or from any other knowledgeable person on aspects relating to the forms or regulatory reporting returns submitted to the Authority.
 - 19.1.2 All of the required regulatory reporting returns shall be based on and be reconcilable with the management accounts as presented to the management and board of the CFI and the co-operative bank.
 - 19.1.3 The Authority may approve in writing any deviation in the manner in which the forms or regulatory returns of a CFI or co-operative bank are completed.
 - 19.1.4 Depending on the nature, size complexity and risk profile of the CFI or co-operative bank, the Authority may exempt the financial institution from submitting certain returns on the basis indicated, but the Authority may not exempt a CFI or a co-operative bank from submitting its annual financial statements.

- 19.1.5 A CFI or co-operative bank must keep and preserve its records and information submitted to the Authority in a manner that prevents the loss, destruction or falsification thereof.
- 19.2 Information on directors, managers, members of the audit committee and members
- 19.2.1 The CFI and co-operative bank must submit to the Authority regulatory reporting returns in the form and manner determined by the CIPC and the Authority on any changes on directors, managers, members of the audit committee.
- 19.3 Minutes of general meeting
- 19.3.1 A CFI or co-operative bank must, within 30 days after a general meeting, submit a copy of the draft minutes to be kept in terms of section 31(1)(a) of the Co-operatives Act to the Authority including adopted resolutions and the adopted minutes of the previous general meeting.
- 19.3.2 The CFI or co-operative bank must submit the information referred to in sub-paragraph 19.3.1 above in the form and manner determined by the Authority.

20 Regulatory reporting

- 20.1 The form, manner and period of regulatory reporting on this Standard will be determined by the Authority and published on its website.
- 20.2 The Authority may specify with the relevant CFI or co-operate bank, other areas of reporting when it becomes necessary based on the nature, size, complexity and risk profile of the CFI or co-operative bank.

21 Short title

- 21.1 This Standard shall be called 'Prudential Standard CBA-01 – Registration and operational requirements for CFIs and co-operative banks.'