



CO-OPERATIVE FINANCIAL INSTITUTIONS MODEL LAW, 2023

A Model Law to provide for the harmonisation of licensing, regulation and supervision of co-operative financial institutions in Southern Africa Development Community member states; and to provide for matters connected with or incidental to the foregoing.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Definitions.
3. Application of the Model Law.
4. Objective of the Model Law.
5. Objectives, responsibilities and powers of the regulatory authority.

PART II

LICENCING REQUIREMENTS

6. Licensing of co-operative financial institutions.
7. Application for licence.
8. Authorisation for taking savings from non-members.
9. Criteria for licensing.
10. Issue of a licence.
11. Conditions of licensing.
12. Prohibition against transfer of licence.
13. Cancellation and suspension of licence.

- 14. Cancellation or suspension of licence without relief from obligations.
- 15. Validity.

PART III

CONDUCT OF BUSINESS IN CERTIFIED PREMISES

- 16. Inspection of premises.
- 17. Relocating from place of business.

PART IV

REGISTER OF CO-OPERATIVE FINANCIAL INSTITUTIONS

- 18. Register.
- 19. Publication of licensed co-operative financial institutions.
- 20. Evidence of register.

PART V

AUTHORISED SERVICES

- 21. Authorised services for co-operative financial institutions.
- 22. Agency Banking
- 23. Authorised services for Apex Body.

PART VI

GOVERNANCE OF CO-OPERATIVE FINANCIAL INSTITUTIONS

- 24. Board of directors.
- 25. Duties of management.
- 26. Executive director of licensed co-operative financial institutions.
- 27. Disclosure of fees paid to director.
- 28. Annual General Meetings
- 29. Internal controls.

PART VII

REGULATION AND SUPERVISION OF CO-OPERATIVE FINANCIAL INSTITUTIONS

- 30. Capital requirements.
- 31. Minimum liquid assets.
- 32. Regulation and supervision of co-operative financial institutions.
- 33. Inspection of co-operative financial institutions.
- 34. Investment of funds.
- 35. Insider lending.
- 36. Charge against shares and savings.

- 37. Treatment of dormant accounts.
- 38. Limits on loans and credit facilities.
- 39. Ownership shares.
- 40. Voluntary membership withdrawal from co-operative financial institution.
- 41. Conduct of business.
- 42. Disclosure of cost of borrowing.
- 43. Display of financial and other information.
- 44. Actions requiring approval.
- 45. Amendment of bye-laws.

PART VIII

ACCOUNTS AND AUDIT

- 46. Financial year.
- 47. Accounting records and retention.
- 48. Appointment of an auditor.
- 49. Qualification and powers of an auditor.
- 50. Rectification of audited accounts.

PART IX

REMEDIAL MEASURES AND WINDING UP OF CO-OPERATIVE FINANCIAL INSTITUTIONS

- 51. Remedial measures.
- 52. Insolvency, dissolution and liquidation of co-operative financial institutions.

PART X

GENERAL

- 53. Default by officers.
- 54. Falsification of books.
- 55. Amalgamation and transfer.
- 56. Savings guaranteed fund.
- 57. Confidentiality.
- 58. Reporting obligations.
- 59. Directives and guidelines.
- 60. Exemptions.
- 61. Preventive measures, corrective measures and sanctions.
- 62. General offences and penalties.
- 63. Appeals.

PART 1
PRELIMINARY

1. Short title

This Model Law may be cited as the Co-operative Financial Institutions Model Law, 2023.

2. Definitions

In this Model Law—

“Agency Banking”: refers to the provision of financial services through agents or third-party intermediaries by registered cooperative financial institutions

“annual general meeting” means the general meeting held once in every financial year where members exercise their rights;

“Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing” shall have the meaning as defined in the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing matters and Financial Action Task Force standards;

“Apex Body” means an umbrella body of member of co-operative financial institutions;

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“auditor” means a person registered and certified to practise as an auditor in terms of the domestic law;

“bank” has the meaning ascribed to it in the domestic banking laws;

“body corporate” has the meaning ascribed to it in the domestic companies laws;

“board” means the board of directors of a co-operative society;

“bonus” means a portion of the surplus given to members;

“Bye-Laws” mean bye-laws as defined in the domestic cooperatives societies laws;

“capital” includes unimpaired reserves, retained earnings, donations to a co-operative financial institution and permanent and non-withdrawable shares;

“close relative” in relation to an individual, and subject to the domestic law, means any of the following persons—

- (a) the individual’s grandparent, parent, brother, sister, child or grandchild, whether such relationship arises through blood or adoption;
- (b) the individual’s step-grandparent, step-parent, step-brother, step-sister, step-child or step-grandchild;
- (c) where the individual is married, his spouse or his spouse’s grandparent, parent, brother, sister, child or grandchild, whether such relationship arises through blood or adoption;
- (d) next of kin, or any other person as may be defined in the relevant domestic law;

“Committee of Insurance, Securities, and Non-Banking Financial Authorities” means a committee of authorities responsible for the supervision of insurance, securities, and

non- banking financial institutions in Southern African Development Community member states, which was established under the Protocol on Finance and Investment of the Southern African Development Community;

“compulsory or collateral savings” means a sum of money that is paid to a co-operative financial institution as—

- (a) security;
- (b) partial guarantee of a loan; or
- (c) a precondition for a loan granted or promised to be granted at a future date to a member making the payment;

“confederation” means the union of two or more federations of co-operative financial institutions.

“co-operative” means any enterprise or organization owned collectively by its members and managed for their joint socio-economic benefit and whose activities are not prohibited by law;

“co-operative financial institution”—

- (a) is an umbrella term for deposit taking financial co-operatives that are owned and controlled by its members;
- (b) includes credit unions, savings and credit cooperatives, financial services cooperatives, and financial cooperatives, cooperative banks, which terms are often used interchangeable;
- (c) is created to serve the financial needs of all the members; and
- (d) offers a variety of financial services to their members, including savings and fixed deposit accounts, loans, and investment products;

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“core capital” means the fully paid up members’ shares, capital issued, disclosed reserves, retained earnings, grants and donations all of which are not meant to be expended unless on liquidation of the co-operative financial institution;

“delegate” means—

- (a) a representative of a financial co-operative society, who is a member of a co-operative financial institution, federation or confederation, who has been elected to attend the meetings of the co-operative financial institution, federation or confederation and who is entitled to vote at meetings of the co-operative financial institution, federation or confederation as provided under the bye-laws of the co-operative financial institution, federation or confederation; and
- (b) a representative of members residing in a particular district or a representative of a particular group or class of members, and who has received a mandate from such members or group or class of members to represent them at meetings of their co-operative financial institution, federation or confederation in accordance with the bye-laws.

“director” means a member of the board of directors of a co-operative financial institution;

“dividends” means a portion of the net surplus of the co-operative financial institution divided among its members in proportion to the paid-up shares held by them;

“domestic law” means a law prevailing in a respective member state;

“financial co-operative” means a co-operative financial institution registered under the cooperative societies legislation in a member state whose principal object includes accepting savings, advancing of loans, and providing other financial services to, or of, its members;

“first general meeting” means the first meeting of members held after the licensing of a co-operative financial institution;

“insider lending” means lending to an employee, board member, and their close relatives;

“inspector” means a public officer employed to inspect co-operative financial institutions;

“key responsible person” means—

- (a) any person that manages, controls, formulates the policy and strategy, directs the affairs of a co-operative financial institutions or has the authority to exercise the powers and perform such functions;
- (b) any person other than a person referred in (a) who makes or participates in making decisions that affects the whole or substantial part of the business of the co-operative financial institutions or has the capacity to affect significantly the financial standing of the co-operative financial institutions; and
- (c) any person in charge of a control function including compliance, internal audit or risk management;

“member” means an individual or a body corporate that has been admitted to the co-operative financial institution, federation or confederation as a member in accordance with the bye-laws;

“non-member patron” means a person, not being a member, who uses the services of a co-operative financial institution to such an extent as may be provided for in the bye-laws;

“officer” means an employee or other person, empowered under the domestic law to direct or supervise the business of a co-operative financial institution;

“ownership share” means an amount held by a member and established by the co-operative financial institution as the member's ownership interest in the assets of the co-operative financial institution and are liabilities of the co-operative financial institution.

“patronage bonus” has the meaning assigned to it as in the relevant domestic law for the regulation of a co-operative financial institutions;

“permanent and non-withdrawable share” means a share of a co-operative financial institution that may not be redeemable or repurchased by the co-operative financial institution;

“person” includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

“primary co-operative financial institution” means a co-operative financial institution whose membership consists of individual persons and approved in terms of the domestic law for the regulation of co-operative financial institution;

“register” means the co-operative financial institution register established and maintained in terms of the domestic law;

“regulatory authority” means a body responsible for the licensing, regulation and supervision of co-operative financial institutions;

“savings” means money entrusted to a co-operative financial institution by a member and accepted by the co-operative financial institution for credit to a member’s account, without putting up any security for the savings;

“secondary co-operative financial institution” means a co-operative financial institution, the membership of which is restricted to primary co-operative financial institutions;

“supervisory committee” means a supervisory committee elected by a co-operative financial institution under section 23.

3. Application of the Model Law

Southern African Development Community member states are required to benchmark their domestic laws governing the regulation and supervision of non-banking financial intermediaries to meet the minimum requirements as set out in this Model Law.

4. Objective of the Model Law

The objective of this Model law is to—

- (a) promote harmonisation of co-operative financial institution laws across Southern Africa Development Community members states;
- (b) promote a fair, safe and stable market for co-operative financial institutions;
- (c) promote prudent management of funds of members and non-members of co-operative financial institution;
- (d) provide for the licensing and winding up of co-operative financial institutions; and
- (e) to provide for matters connected therein inclusive of consumer protection principles, as prescribed in the relevant domestic law.

5. Objectives, responsibilities and powers of regulatory authority

(1) The objective of a regulatory authority shall be—

- (a) to promote the maintenance of a fair, safe and stable market for co-operative financial institutions;
- (b) to promote and enhance the safety and soundness of co-operative financial institutions;
- (c) to contribute to financial stability;
- (d) to protect rights and interests of co-operative financial institution members.

(2) The regulatory authority shall have the responsibility for the following—

- (a) licensing;
- (b) market conduct supervision;
- (c) prudential supervision;

- (d) Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing supervision.
- (e) respect differences in national financial markets where these do not unduly impinge on the coherence of the regional harmonisation.
- (3) The regulatory authority shall have powers to—
 - (a) issue rules, standards and guidelines by administrative means;
 - (b) enforce rules, standards and guidelines by administrative means;
 - (c) take immediate and/or adequate actions;
 - (d) subject to domestic law, regulate and supervise for Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing purposes.

PART II

LICENCING REQUIREMENTS

6. Licensing of co-operative financial institutions

(1) No person shall operate the business of receiving savings, extending credit and providing other financial services to its members as a co-operative financial institution unless that person is licensed as such.

(2) The regulatory authority shall prescribe the licensing requirements and procedures for licensing, and such shall be clear, objective and public, and consistently applied.

(3) No person shall engage in the business of receiving savings, extending credit and providing other financial services to its members as a co-operative financial institution unless such person is—

- (a) incorporated under the provisions of the domestic law governing co-operative financial institutions; and
- (b) licensed under the provisions of domestic law as—
 - (i) primary co-operative financial institution;
 - (ii) secondary co-operative financial institution;
 - (iii) federation of co-operative financial institutions or Apex.

(4) The regulatory authority shall have the discretion to prescribe criteria for entities that would not constitute a co-operative financial institution, in terms of the domestic law.

7. Application for licence

(1) An applicant for a licence shall submit an application in writing in a form and manner, and containing such information, as shall be prescribed in the domestic law.

- (2) The licensing requirements and procedures must include the following—
 - (a) a certified copy of the certificate of registration and the bye-laws of the co-operative financial institution;
 - (b) evidence that the intended type of co-operative financial institution meets the minimum capital requirements as set by the regulatory authority;
 - (c) information relating to the place of business, indicating that of the head office, and branches, if any;
 - (d) the prescribed fees;

- (e) proof of source of funds;
- (f) fitness and probity of the board of directors and key responsible persons that shall include a police clearance and any other relevant document as may be prescribed by the regulatory authority;
- (g) a report by the co-operative financial institution, covering the following—
 - (i) objectives of the co-operative financial institution business;
 - (ii) sound business plan;
 - (iii) membership and share capital;
 - (iv) economic and financial environment;
 - (v) organisational structure and management;
 - (vi) documented internal control policies and processes that are commensurate with its size, complexity and risk profile;
 - (vii) financial and risk analysis; and
 - (viii) an appropriate operational infrastructure and financial management system commensurate with its operations and size.

8. Authorisation for taking savings from non-members

(1) A co-operative financial institution intending to take savings from non-members shall, before commencing such business, apply in writing, to the regulatory authority for authorisation to operate as a deposit-taking co-operative financial institution, in the prescribed form and manner and together with payment of a prescribed fee as prescribed by the regulatory authority.

(2) A co-operative financial institution submitting an application under subsection (1), shall be required to meet a prescribed minimum threshold in capital requirements and be regulated in line with principles similar to those of other deposit taking financial institutions including the requirements for Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing measures.

9. Criteria for licensing

(1) In considering an application for a licence, the regulatory authority shall take into account the following factors—

- (a) that the applicant is incorporated under the domestic laws governing co-operative financial institutions;
- (b) level of risk associated with the co-operative financial institution's business model of the applicant;
- (c) prudential and market conduct requirements of the co-operative financial institution's business model;
- (d) financial condition and history of the co-operative financial institution where there is a change from one registered category to another category;
- (e) that the applicant shall be governed by a board of directors, of a high integrity, competency and expertise, comprising of a minimum number prescribed by the regulatory authority from within its members and also allowing for the inclusion of directors from outside the co-operative financial institution; ;
- (f) that the bye-laws of the licensed co-operative financial institution provide for prudent governance in accordance with co-operative principles;
- (g) assets as prescribed by the regulatory authority in the domestic law; and
- (h) any other matter that the regulatory authority may consider necessary.

(2) The regulatory authority may grant a licence to a primary or secondary co-operative financial institution upon being satisfied that all the licensing requirements are met.

10. Issue of a licence

(1) The regulatory authority shall prescribe the timelines upon which an application for a licence must be processed and finalised.

(2) The regulatory authority may—

- (a) grant a licence with or without conditions; or
- (b) refuse to license.

(3) Where a regulatory authority rejects an application for a licence, it shall, within a prescribed period communicate its decision in writing to the applicant and the reasons for such rejection.

(4) A person aggrieved by the decision of the regulatory authority may appeal to the relevant authority within a time prescribed in the domestic law after being notified of the decision.

11. Conditions of licensing

(1) The regulatory authority may issue a licence with such conditions as it considers necessary and may, from time to time, add, amend or substitute such conditions as it deems appropriate.

(2) A co-operative financial institution shall comply with conditions made in terms of subsection (1).

12. Prohibition against transfer of licence

A licence shall not be transferred, assigned or encumbered in any way.

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13. Cancellation and suspension of licence

(1) Subject to the relevant domestic law, the regulatory authority may, by notice in writing to a co-operative financial institution, cancel the licence if the co-operative financial institution—

- (a) obtained the licence by fraud or submitted false information or statements;
- (b) contravenes the domestic law or any other relevant law;
- (c) fails to comply with domestic law, or any rules, regulations, orders or directions issued by the regulatory authority or any condition of the licence enforced through amongst others, any administrative sanction;
- (d) enters into receivership or liquidation or takes any action for voluntary winding-up or dissolution;
- (e) is the subject of an order made by the court or cooperatives tribunal for its compulsory winding-up or dissolution;
- (f) engages in unsafe and unsound practices;
- (g) has knowingly engaged in serious criminal or fraudulent actions that are likely to cause insolvency, substantial dissipation of assets or earnings or may otherwise weaken the co-operative financial institution's condition or seriously prejudice the interests of the co-operative financial institution's members; and
- (h) the number of members of the co-operative financial institution has fallen below the minimum number prescribed under the domestic law.

(2) Subject to the domestic law, a licence shall be cancelled where the applicant fails to commence its business within a prescribed period following the granting of the licence.

(3) Where a licence is cancelled, the regulatory authority shall cancel the licence from the licence register.

(4) Where the applicant whose licence has been cancelled in terms of subsection (2) still intends to operate a licensed co-operative financial institution, he must submit a fresh application to the regulatory authority in terms of section 7.

(5) The regulatory authority may, by notice in writing to a co-operative financial institution, suspend the licence if the co-operative financial institution—

- (a) breaches any term or condition of the licence;
- (b) ceases to conduct business authorised by the licence;
- (c) engages in unsafe and unsound practices;
- (d) fails to comply with domestic law or any rules, regulations, orders or directions issued under the Model Law as shall be specified in the domestic law or any condition of the licence; and
- (e) fails to pay the licence fee as required in terms of the domestic law.

(6) The regulatory authority shall, before cancelling or suspending a licence, give the co-operative financial institution notice in writing of its intention to cancel or suspend the licence, and shall give the co-operative financial institution a right to make representations to the regulatory authority within a timeline prescribed by the regulatory authority.

(7) Upon receipt of the representations referred to in subsection (6), the regulatory authority shall consider the said representations and make its determination on cancellation or suspension of licence within a timeline set by the regulatory authority.

(8) The regulatory authority shall cause the name of every co-operative financial institution whose licence is cancelled or suspended to be published forthwith in the media with a wide circulation as prescribed by the regulatory authority.

(9) The regulatory authority shall, within a prescribed time period, inform the Registrar responsible for co-operative financial institution of its decision to suspend or cancel a licence.

(10) Where applicable, the Registrar responsible of co-operative financial institution may deregister the co-operative financial institution under the applicable law.

(11) A co-operative financial institution whose licence is cancelled or suspended shall immediately cease to provide, directly or indirectly, any financial service, including as an agent of any financial institution.

14. Cancellation or suspension of licence without relief from obligations

The cancellation or suspension of a licence shall not relieve the co-operative financial institution of any obligation incurred or assumed during the period of validity of the licence.

15. Validity

A licence shall remain valid unless surrendered by a co-operative financial institution, or cancelled by the regulatory authority.

PART III

CONDUCT OF BUSINESS IN CERTIFIED PREMISES

16. Inspection of premises

- (1) The regulatory authority, subject to the relevant domestic law, shall—
- (a) prescribe minimum requirements for premises of co-operative financial institutions;
 - (b) carry out an inspection of the premises of a co-operative financial institution to determine compliance with minimum requirements prescribed in terms of paragraph (a);
 - (c) upon inspection of the premises, notify the co-operative financial institution of the suitability of the premises.

(2) Where, after an inspection, the regulatory authority is of the opinion that the premises are not suitable and not in compliance with the prescribed minimum standards set out in terms of subsection (1), the regulatory authority shall—

- (a) cause the co-operative financial institution to remedy the non-compliance within a prescribed time; and
- (b) impose any other remedial action justifiable to the situation.

17. Relocating from place of business

(1) The domestic law shall prescribe the requirements to be satisfied by a co-operative financial institution if it intends to relocate from its place of business.

(2) Where the regulatory authority is satisfied with reasons for the relocation of the place of business of a co-operative financial institution, it shall conduct a site inspection of the new premises within a prescribed period.

(3) Upon approval to relocate by the regulatory authority, the co-operative financial institution shall publish a notice about its new location in a media with wide circulation or any media approved by the regulatory authority.

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PART IV

REGISTER OF CO-OPERATIVE FINANCIAL INSTITUTIONS

18. Register

(1) The regulatory authority shall maintain a co-operative financial institution register where it shall enter particulars of all co-operative financial institutions.

(2) The particulars of co-operative financial institutions referred to in subsection (1) shall relate to the following—

- (a) name of the co-operative financial institution;
- (b) physical address of the principal office of the co-operative financial institution including its branch network;
- (c) name and contact details of the principal officers;
- (d) particulars of members as well as beneficial owners;

- (e) terms and conditions of licensing; and
- (f) such other information as may be prescribed in the domestic law.

(3) Subject to domestic law, a copy of the register shall be available for inspection by the public at the offices of the regulatory authority during working hours under such terms and conditions as may be prescribed by the regulatory authority.

19. Publication of licensed co-operative financial institutions

The regulatory authority shall publish a list of all licensed co-operative financial institutions within periods and in a manner prescribed in the domestic law.

20. Evidence of register

(1) For ascertaining the facts concerning the licensing status of any person, entries made in the register shall be prima facie evidence as to those facts.

(2) A document certified by the regulatory authority as a true copy or extract of the register shall be admissible in any proceedings including in any court as prima facie evidence of the contents of the register.

PART V

AUTHORISED SERVICES

21. Authorised services for co-operative financial institutions

(1) Subject to relevant domestic law and in a manner as may be prescribed by the relevant authorities, a co-operative financial institution may offer any of the following services to its members—

- (a) credit facilities;
- (b) shared branches among co-operative financial institutions;
- (c) payment and remittance services;
- (d) take savings;
- (e) insurance services subject to the approval of the insurance regulatory authority;
- (f) automated teller machines and debit cards;
- (g) syndicated loans with other co-operative financial institutions; and
- (h) any other financial services as the regulatory authority may approve, from time to time.

(2) A co-operative financial institution may invest its funds as permitted in its domestic law, within the thresholds as may be approved by the regulatory authority, from time to time.

(3) A co-operative financial institution may offer transactional services such as money transfers and automated teller machine services to non-members.

(4) An individual or body corporate may become a member of a co-operative financial institution subject to the same one-member one-vote restrictions, savings and loan concentration limits.

(5) A co-operative financial institution shall periodically and as prescribed in the domestic law report to credit reporting agencies and other third parties such information as shall be prescribed in the domestic law.

22. Agency Banking

- (1) A co-operative financial institution, may upon prior authorisation from a regulatory authority, contract with an agent for the provision of branchless services on behalf of the institution.

23. Authorised services for Apex Body

The Apex body may offer savings and credit services to member co-operative financial institutions.

PART VI

GOVERNANCE OF CO-OPERATIVE FINANCIAL INSTITUTIONS

23. Board of directors

The domestic law shall provide for—

- (a) the board compositions, and appointment and disqualification of directors;
- (b) fit and probity requirements for board members, chairperson and the treasurer;
- (c) the term of office of any director;
- (d) matters relating to the number of co-operative financial institution boards a director can sit;
- (e) the number of positions a director can hold in a co-operative financial institution, across co-operative financial institutions including in the Apex Body;
- (f) matters of conflict of interest in relation to board appointments of co-operative financial institutions;
- (g) frequency of meetings of the board and the procedures for conducting such meetings;
- (h) Committees of the board, which shall include a supervisory committee and a credit committee, which shall be elected by its members at the annual general meeting.

24. Duties of management

(1) Management of a co-operative financial institution shall oversee the operations of the co-operative financial institution, in accordance with the domestic law and any other policies established by the board of directors of the co-operative financial institution.

(2) The regulatory authority shall approve the appointment of key responsible persons.

(3) The domestic law shall prescribe the minimum fit and proper criteria for key responsible persons.

25. Executive director of licensed co-operative financial institutions

Subject to the domestic law, no employee of a co-operative financial institution, other than the chief executive officer or their representative, shall serve as a director of the co-operative financial institution.

26. Disclosure of fees paid to director

Any compensation, fee and travel or meeting expense or reimbursement paid to a director of a co-operative financial institution shall be disclosed to the members of the co-operative financial institution at the Annual General Meeting.

28. Annual General Meeting

- (1) A cooperative financial institution shall hold an annual general meeting of its members conveyed by the board and held no later than six months after the end of the financial year.
- (2) The domestic law must provide for the conduct of annual general meeting.
- (3) In addition to the annual general meeting a cooperative financial institution may convene an extra ordinary general meeting.

29. Internal Controls

- (1) A co-operative financial institution shall, at all times—
 - (a) maintain effective internal controls;
 - (b) put measures on Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, market conduct and prudential requirements;
 as shall be prescribed in the domestic law and any applicable international best practice.
- (2) Subject to the domestic law, a co-operative financial institution shall have a framework to provide for cybersecurity and data protection matters;

PART VII

REGULATION AND SUPERVISION OF CO-OPERATIVE FINANCIAL INSTITUTIONS

28. Capital requirements

(1) The minimum capital requirements for licensed co-operative financial institutions shall be as prescribed in the domestic law.

(2) The regulatory authority may, from time to time, determine on-going capital requirements for individual co-operative financial institutions where supervisory review process reveals risks warranting additional capital.

(3) Notwithstanding subsection (1) and (2), a co-operative financial institution shall maintain a capital requirement that is commensurate with its risk profile as may be prescribed from time to time by the regulatory authority.

29. Minimum liquid assets

(1) A co-operative financial institution shall maintain such minimum holding of liquid assets of savings and borrowings of its members as may be prescribed, from time to time, in the domestic law.

(2) A co-operative financial institution shall maintain a reserve to meet withdrawals from share and savings accounts, consisting of cash on hand, or in a bank or other organisation authorised by law to accept savings, and such reserve shall not, at the end of any calendar month,

be less than a prescribed percentage of the liabilities of the co-operative financial institution to its members in respect of shares and savings at that time.

(3) A co-operative financial institution shall calculate the average monthly balance of its savings and borrowings at the close of business on such day as may be prescribed by the regulatory authority.

30. Regulation and supervision of co-operative financial institutions

(1) The regulatory authority shall be responsible for the regulation and supervision of co-operative financial institutions licensed under the domestic law.

(2) Without prejudice to the generality of subsection (1), the regulatory authority shall—

- (a) prescribe prudential, market conduct and Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing standards to be adhered to by co-operative financial institutions;
- (b) prescribe corporate governance standards to be complied with by a co-operative financial institution, which shall include matters relating to—
 - (i) disclosures and matters relating to conflict of interest;
 - (ii) number of boards a board member of a co-operative financial institution may sit and matters relating to cross directorship;
 - (iii) fit and probity requirements for board members;
- (c) undertake on-site and off-site inspections or require a co-operative financial institution to submit information and reports on—
 - (i) its financial affairs to enable the regulatory authority to evaluate its financial condition;
 - (ii) its market conduct issues;
- (d) require or oversee the co-operative financial institution's workout plan to avert or alleviate financial difficulties;
- (e) prescribe the maximum number of years an external auditor may serve the same co-operative financial institution;
- (f) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under the domestic law.
- (g) subject to the domestic law and any applicable international standards, adopt a risk-based approach to Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, and prudential and market conduct supervision,

(3) The regulatory authority shall take appropriate supervisory action against a co-operative financial institution which contravenes any of the provisions of the domestic law.

31. Inspection and investigation of co-operative financial institutions

(1) The regulatory authority shall—

- (a) be responsible for continuously monitoring and supervising a co-operative financial institution to ensure that they comply with the domestic law;
- (b) as part of its supervisory approach, have the power to conduct on-site and off-site inspections into the affairs of a co-operative financial institution;
- (c) have the power to conduct investigations into the affairs of any particular co-operative financial institution, where the regulatory authority considers such an investigation

necessary for the purpose of preventing, investigating or detecting a contravention of the relevant law;

(d) have the power to appoint inspectors who may assist the regulatory authority to conduct inspections or investigations and to ensure compliance with the law.

(2) Subject to the domestic law, the regulatory authority or any person authorised or appointed by the regulatory authority, may at any time, inspect a co-operative financial institution's documents and accounts at any place where the co-operative financial institution conducts its business or any other place where the books and accounts may be placed.

(3) A co-operative financial institution shall cause its books and accounts to be produced to an inspector and shall ensure that its employees furnish such information as the inspector may reasonably require for the purposes of the inspection or investigation.

(4) No person must obstruct or hinder an inspection or investigation of a co-operative financial institution or inspection of books and accounts.

(5) The powers of an inspector shall be as prescribed in the domestic law.

(6) The regulatory authority may, where it determines that an inspection undertaken in accordance with this section shows that the business of a co-operative financial institution is conducted in a manner detrimental to the interests of the co-operative financial institution, its members, and non-members—

(a) require the co-operative financial institution to take such remedial measures as the regulatory authority may direct; or

(b) appoint a person who is competent to advise the co-operative financial institution on the necessary remedial measures to be taken in accordance with paragraph (a).

(7) A person who, in good faith, provides information or facilitates an inspection of a co-operative financial institution, in compliance with this section, shall be indemnified against any claim or sanction as a consequence of such action.

(8) The regulatory authority may recover the costs of the investigation from the co-operative financial institution.

32. Investment of funds

(1) The domestic law shall provide on how the funds of a co-operative financial institution may be invested.

(2) An investment made under this section shall not in the aggregate exceed a prescribed threshold of the total core capital and savings of a co-operative financial institution.

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(3) A bank or financial institution at which a co-operative financial institution keeps an account, shall, whenever so required by the regulatory authority, furnish to the regulatory authority a signed certificate of account statement or balance certifying the amount(s), if any, standing to the credit or debit of that account as at such dates as may be specified by the regulatory authority.

Provided that the regulatory authority may directly request the information from the bank or financial institution or the authority responsible for the regulation of the bank or financial institution in question.

33. Insider lending

(1) A co-operative financial institution may make loans to its employees and members of its board of directors in an amount in the aggregate not exceeding a prescribed maximum threshold of its paid up capital.

(2) No director or employee of a co-operative financial institution shall receive any product or service from the co-operative financial institution on terms that are any more or less favourable than any other member of the co-operative financial institution with a similar credit history and capacity to repay.

(3) All loans to the board and employees shall be disclosed to the annual general meeting and the regulatory authority.

(4) No director or employee of a co-operative financial institution shall act as a guarantor of any person with respect to a loan advance or credit facility granted to a person by the co-operative financial institution.

(5) No employee, director or agent of a co-operative financial institution shall participate or be present in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any related party and in that event such person shall disclose any related parties or conflicts of interest within a prescribed period to the board of directors.

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34. Charge against shares and savings

(1) A co-operative financial institution shall hold a first charge against share capital, savings and upon any dividends or interest payable to a member for any debt due to the co-operative financial institution from a member, as a guarantor or endorser of a loan, credit facility or any other obligation.

(2) A co-operative financial institution may refuse to allow withdrawals from any savings account operated by a member where such member is in arrears on a debt owed to the co-operative financial institution.

35. Treatment of dormant accounts

(1) After a prescribed period, an account with funds being held in a co-operative financial institution member's account without activity shall be deemed dormant.

(2) The treatment of dormant funds shall be prescribed in the domestic law.

(3) An account may be deemed dormant, after a prescribed period, as may be determined in the domestic law.

36. Limits on loans and credit facilities

A loan by a co-operative financial institution to any one member shall not exceed a prescribed maximum threshold of regulatory capital of the co-operative financial institution.

37. Ownership shares

(1) No member of a co-operative financial institution shall hold more than a prescribed threshold of the ownership shares in a co-operative financial institution.

(2) Any member who intends to hold more than the prescribed threshold of the ownership shares in a co-operative financial institution shall seek approval from the regulatory authority prior to acquiring such share ownership.

(3) Ownership shares shall be the equity of the co-operative financial institution if the co-operative financial institution's bye-laws provide for the shares to be permanent and non-withdrawable.

(4) Ownership shares that are redeemable may, subject to compliance with domestic law, be purchased at their issue price and in the event of insolvency, such ownership shares shall be redeemable at their discounted value.

(5) A co-operative financial institution shall, through bye-laws, determine the value of ownership share in the co-operative financial institution.

38. Voluntary membership withdrawal from co-operative financial institution

Subject to the domestic law, a co-operative financial institution shall pay out, within timeframes prescribed under the domestic law, share deposits to a member who voluntarily decides to withdraw from a co-operative financial institution upon sale of the member's shares to existing co-operative financial institution members.

39. Conduct of business

(1) A co-operative financial institution shall—

- (a) conduct business with integrity, prudence and professionalism;
- (b) focus on the institutional sustainability of the co-operative financial institution; and
- (c) engage only in permissible transactions.

(2) A co-operative financial institution shall, in the interest of its members and the public—

- (a) at all times act honestly, fairly, with due skill, care and diligence;
- (b) avoid conflict of interest, and where this is not possible, mitigate any conflict and set up operational safeguards;
- (c) not disclose any confidential information unless the written consent has been obtained or disclosure of information is required under any domestic law;
- (d) have systems and documented processes to preserve and safeguard the security, integrity and confidentiality of information;
- (e) render financial services in accordance with the contractual relationship and reasonable request or instructions of the member.

40. Disclosure of cost of borrowing

A co-operative financial institution shall at all times disclose, in writing, to the borrower, the cost of borrowing at or before the loan is made including the interest rate and related fees.

41. Display of financial and other information

A co-operative financial institution shall display, throughout the year, in a clear position in every place of business—

- (a) a valid operating licence;

- (b) a copy of its last audited financial statements in the prescribed format;
- (c) code of conduct;
- (d) information on members and non-member depositors' rights and responsibilities;
- (e) financial products and services it offers;
- (f) complaints handling procedures;
- (g) terms under which products and services are offered;
- (h) any other information as may be prescribed in the domestic law.

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42. Actions requiring approval

In addition to provisions that require approval of the regulatory authority in terms of the domestic law, a co-operative financial institution shall not, without the prior written approval of the regulatory authority—

- (a) open or close a place of business;
- (b) purchase, acquire or hold immovable property other than for the purpose of conducting its business unless acquired in default of repayment in which case the immovable property shall be availed for resale as soon as possible thereafter;
- (c) undertake amalgamation, transfer, or similar corporate restructuring transaction.

43. Amendment of bye-laws

(1) A co-operative financial institution shall notify the regulatory authority and the Registrar of any amendments to its bye-laws within a prescribed time period of the adoption of such amendments by the annual general meeting.

(2) A co-operative financial institution shall submit the proposed amendments to the Registrar of cooperatives who shall approve in consultation with the regulatory authority.

(3) The Registrar shall communicate the decision under subsection (2) within a prescribed period of receipt of the application.

PART VIII

ACCOUNTS AND AUDIT

44. Financial year

The financial year for a co-operative financial institution shall be as prescribed in the domestic law.

45. Accounting records and retention

(1) A co-operative financial institution shall maintain books, records, accounting systems and procedures in accordance with internationally accepted accounting standards.

(2) A co-operative financial institution shall keep accounts and records which—

- (a) shall show a true and fair state of affairs of the co-operative financial institution; and
- (b) shall explain all transactions, and the financial position of the co-operative financial institution to enable the regulatory authority to determine whether the co-operative financial institution has complied with the provisions of the domestic law.

(3) Subject to the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, a co-operative financial institution shall maintain

accounting records for a period of at least 5 years and in line with any other applicable international best practice.

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46. Appointment of an auditor

(1) Every co-operative financial institution shall appoint its auditor in a manner as shall be prescribed in the domestic law.

(2) The auditor shall be approved by the regulatory authority.

(3) The auditor shall report to the members of the co-operative financial institution at an annual general meeting and to the regulatory authority on—

- (a) statement of comprehensive income;
- (b) assets and liabilities of the co-operative financial institution;
- (c) cash balances, securities and accounts;
- (d) delinquent loans and loans to directors and employees and their close relatives;
- (e) adequacy and effectiveness of Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing controls;
- (f) any violation of prudential and conduct standards or a condition of the licence;
- (g) any other contravention of the domestic law; and
- (h) any other matter as may be prescribed in the domestic law

(4) Where for any reason a vacancy occurs in the appointment of the auditor in the course of the year of the appointment, the board of directors of the co-operative financial institution shall, with the approval of the regulatory authority, and subject to subsection (1), appoint another auditor.

47. Qualification and powers of auditor

(1) No person shall be qualified for appointment as an auditor of a co-operative financial institution unless that person—

- (a) is registered and certified by a body regulating the practice of auditors;
- (b) is not—
 - (i) an officer of a co-operative financial institution;
 - (ii) a partner of a director of a co-operative financial institution;
 - (iii) an employer or employee of an officer of a co-operative financial institution;
 - (iv) an officer or employee of an associate of a co-operative financial institution;
 - (v) a partner or an employer of a person who regularly performs the duties of secretary or record keeping for a co-operative financial institution; or
 - (vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories specified this paragraph.

(2) Subject to the domestic law, every auditor of a cooperative financial institution shall—

- (a) have a right of access at all reasonable times to the cooperative financial institution's books/documents, records, accounts, vouchers and financial products; and
- (b) be entitled to require such information and explanations from any key responsible person or representative of the cooperative financial institution; as is, in his or her opinion, necessary to perform his duties as an auditor.

(3) Notwithstanding subsection (2) the domestic law may prescribe more powers that may be conferred on an auditor.

- (4) No person shall without just cause—
- (a) refuse an auditor access to the required information or documents; or
 - (b) refuses to comply with a requirement in terms of subsection (2) (b).
- (5) An auditor of a cooperative financial institution shall be responsible for—
- (a) auditing the financial statements of the cooperative financial institution and reporting on the same;
 - (b) planning and carrying out audit procedures designed to detect non-compliance, irregularities and illegal activities in the conduct of the business of the cooperative financial institution ;
 - (c) where possible, communicating to the audit committee any evidence he may have relating to non-compliance or that irregularities or illegal activities have been committed in the course of the business of the cooperative financial institution, whether or not they may have led to material misstatements in the accounts or records for the cooperative financial institution; and
 - (d) communicating to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—
 - (i) any director of the cooperative financial institution; or
 - (ii) any person;
 if there is a reasonable possibility that they may cause prejudice to members or significant damage to the financial stability of the cooperative financial institution.
- (6) The regulatory authority may prescribe on the nature of reports an auditor shall produce.

48. Audited Financial Statements

- (1) Within a period prescribed in the domestic law after the end of each financial year, every co-operative financial institution shall submit to the regulatory authority, in such form as may be prescribed—
- (a) the audited financial statements for that financial year; and
 - (b) such certificates, reports and other documents and information relating to the financial statements referred to in paragraph (a) as may be prescribed by the regulatory authority.
- (2) The financial statements referred to in subsection (1) shall—
- (a) be prepared in accordance with such requirements and standards as may be prescribed in the domestic law so as to present, in conformity with generally accepted international accounting standards, a true and fair view of the state of affairs of such co-operative financial institution and its business as at the end of the financial year concerned;
 - (b) be tabled at an annual general meeting of the co-operative financial institution.
- (3) Where the regulatory authority is satisfied that the audited accounts of a co-operative financial institution do not comply with the requirements of the domestic law or that the audited accounts contain information that may be misleading, the regulatory authority may require the co-operative financial institution to—
- (a) amend the audited accounts to comply with the requirements of domestic law;
 - (b) correct the misleading information; or

(c) submit to the regulatory authority further documents or information relating to the accounts as the regulatory authority may deem appropriate.

(4) A licensed co-operative financial institution that fails to comply with a notice referred to in subsection (2) shall be regarded, for the purposes of this section, as having failed to submit the account, document or information concerned in terms of subsection (1).

(5) Where the regulatory authority is satisfied that the non-compliance with the requirements of the domestic law was deliberate and was in bad faith, it may revoke the license of the co-operative financial institution or impose sanctions or penalties as prescribed in the domestic law.

(6) An auditor shall be liable for any damage caused to the co-operative financial institution or to its members due to negligent auditing despite the liabilities of the co-operative financial institution.

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PART IX

REMEDIAL MEASURES AND WINDING UP OF CO-OPERATIVE FINANCIAL INSTITUTIONS

49. Remedial measures

(1) The regulatory authority may issue an order directing a merger of a co-operative financial institution with any other co-operative financial institution that voluntarily agrees to the merger upon the regulatory authority being satisfied or where the regulatory authority has reasonable cause to believe that in respect of a distressed co-operative financial institution—

- (a) its capital is seriously impaired and does not meet the prescribed requirements;
- (b) the continuation of its activities is not in the best interest of its members or creditors;
- (c) its assets are insufficient to cover its liabilities;
- (d) a co-operative financial institution cannot reasonably be expected to operate as a viable stand-alone organisation;
- (e) other alternatives are not reasonably available;
- (f) interest of members would be best served by the merger;
- (g) a merger is acceptable to the receiving co-operative financial institution;
- (h) the merger would not severely impact the financial condition of the receiving co-operative financial institution.

(2) If no suitable merger partner can be identified, the regulatory authority may—

- (a) identify a compromise or arrangement between the co-operative financial institution and its creditors; and
- (b) wind-up a co-operative financial institution and appoint a liquidator in line with the provisions of the domestic law governing co-operatives societies.

(3) Upon liquidation, the regulatory authority shall inform the registrar of co-operatives of the liquidation.

50. Insolvency, dissolution and liquidation of co-operative financial institutions

Every co-operative financial institution shall comply with the law governing co-operative societies and any other written law in terms of insolvency, dissolution and liquidation.

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PART X
GENERAL

51. Default by officers

Any officer of a co-operative financial institution commits an offence upon failure to—

- (a) take all reasonable steps to secure the compliance of the co-operative financial institution with the domestic law;
- (b) take all reasonable steps to secure the accuracy and correctness of any statement or information submitted in terms of the domestic law; or
- (c) supply any information required under the domestic law to the regulatory authority or their agent;
- (d) to ensure compliance with Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing obligations.

52. Falsification of books

No officer of a co-operative financial institution shall—

- (a) with intent to deceive, falsify any books of account, reports, statements, records or other documents of the co-operative financial institution;
- (b) sign, issue, publish or transmit to any official, any book of accounts, reports, statements, records or other documents which they know, or have reason to believe, to be false;
- (c) with intent to deceive, knowingly facilitates the forgery of a document;
- (d) with intent to deceive, destroys any book of account, report, statement, record, or other document of the co-operative financial institution; and
- (e) engage in a transaction or takes part in a deliberation in which there is a conflict of interest prohibited under the domestic law.

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53. Amalgamation and transfer

(1) No co-operative financial institution shall, without the approval of the regulatory authority—

- (a) amalgamate with one or more other financial institutions;
- (b) transfer its assets or any part thereof to another financial institution; or
- (c) take transfer from a co-operative financial institution or other financial institution of the whole or part of any of its assets.

(2) The amalgamation or transfer must be approved by the majority of the members.

(3) The application procedure to be complied with the applicant for an amalgamation or transfer shall be as prescribed in the domestic law.

(4) The application procedure referred to in subsection (3) shall include matters relating to—

- (a) publication of a notice of the proposed amalgamation or transfer using a media with wide circulation;
- (b) lodging of objections or representations regarding the application within such period as may be specified in the notice.

(5) If the regulatory authority is of the opinion that the amalgamation or transfer will not prejudice the interests of members concerned or to the public interest, it shall approve it subject to such conditions as regulatory authority thinks fit:

Provided that the regulatory authority shall ensure that objections raised are addressed before approving the amalgamation.

(6) Where an amalgamation or transfer has been approved by the regulatory authority, it shall cause a notice to be published in a media with wide circulation stating that the amalgamation or transfer has been approved.

(7) Subject to the domestic law, where an amalgamation is approved by the regulatory authority, all property, property rights and members' interests of the merging co-operative financial institutions shall vest in the continuing co-operative financial institution without any instrument of transfer.

(8) All debts, obligations and liabilities of the merging or transferred co-operative financial institutions shall be deemed to have been assumed by the continuing co-operative financial institution.

(9) The rights and privileges of members of the merging or the transferred co-operative financial institution shall not be affected by the merger or transfer.

(10) The merging co-operative financial institution or transferee and transferor co-operative financial institution shall ensure member data is transferred to the co-operative financial institution or transferee co-operative financial institution after an amalgamation and that data is not lost during the transfer or merging process.

54. Savings guaranteed fund

Subject to domestic law, a cooperative financial institution may establish or subscribe to a fund or guaranteed fund to protect the interest of the members' funds or deposits.

55. Confidentiality

Subject to the domestic law, a co-operative financial institution and its staff shall ensure that all transactions are conducted in strict confidence and that the confidentiality of members is maintained.

56. Reporting obligations

Every co-operative financial institution shall comply with Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing laws.

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57. Directives and guidelines

(1) Subject to the domestic law and section 5(3), the regulatory authority shall have powers to issue directives and guidelines that may prohibit, restrict or subject to conditions—

- (a) certain classes of credit facilities, investments, and risk-bearing commitments; or
- (b) any other transactions affecting the solvency or liquidity of a co-operative financial institution.

(3) The directives may vary for different categories of co-operative financial institutions as determined by the regulatory authority.

(4) The directives may include provisions on any corrective action or administrative sanctions which the regulatory authority considers appropriate.

58. Exemptions

(1) Subject to domestic law the regulatory authority may exempt certain co-operative financial institutions from complying with certain sections of this model law as shall be specified in the domestic law.

(2) The exemptions referred to in subsection (1) shall be exercised depending on the nature, size and complexity of the co-operative financial institutions.

59. Preventive measures, corrective measures and sanctions

(1) The regulatory authority shall—

- (a) take prompt and effective action to deal with cases of non-compliance with measures designed to prevent a breach of the legislation from occurring, where such non-compliance could put members at risk or impinge on any other regulatory objectives;
- (b) quickly enforce corrective action where problems involving co-operative financial institutions are identified;
- (c) issue formal directions to co-operative financial institutions to take particular actions or to desist from taking particular actions to address problems identified;
- (d) impose restrictions on the business activities of a co-operative financial institution;
- (e) take measures, or to require others to take measures, to reinforce the financial position of a co-operative financial institution;
- (f) have mechanisms in place to check compliance by the co-operative financial institution once corrective action has been taken or remedial measures, directions or sanctions have been imposed;
- (g) have mechanisms in place to assess effectiveness of the corrective action taken or remedial measures, directions or sanctions imposed on a co-operative financial institution.

(2) The regulatory authority may replace or restrict the power of the following persons as a means of addressing management and governance problems—

- (a) board members;
- (b) auditor;
- (c) other key responsible persons in control functions;

(3) The regulatory authority may, in extreme cases where a co-operative financial institution is failing to meet prudential or other requirements, take the following actions—

- (a) put the co-operative financial institution under curatorship;
- (b) take control of co-operative financial institution;
- (c) appoint other specified officials or receivers to take control of the co-operative financial institution;
- (d) make other arrangements for the benefit of the members.

(4) The regulatory authority shall have the power to enforce preventive and corrective measures and impose sanctions which are timely, necessary to achieve the objectives of co-

operative financial institutions supervision, and based on clear, objective, consistent, and publicly disclosed general criteria.

(5) The regulatory authority shall ensure that there is a progressive escalation in actions or remedial measures that are to be taken if the problems become worse or a co-operative financial institution ignores requests from the regulatory authority to take preventive and corrective action.

(6) The regulatory authority shall—

- (a) require the co-operative financial institution to take actions that address the regulatory authority's identified concerns;
- (b) have the power to require a co-operative financial institution to develop an acceptable plan for prevention and correction of problems;
- (c) periodically check that the co-operative financial institution is taking action and assesses the effectiveness of the co-operative financial institution's actions.

60. General offences and penalties

(1) The regulatory authority shall have the power to impose penalties and sanctions on a co-operative financial institution and individuals proportionate to the breach of regulatory requirements or other misconduct.

(2) The sanctions and penalties the regulatory authority may impose on a society co-operative financial institution and individuals and the circumstances under which the sanctions may be imposed shall be clearly defined in the domestic law.

(3) The domestic law shall set out the procedures to be followed by the regulatory authority in imposing sanctions and penalties.

(4) The procedures set out in subsection (3) shall take into account the right of the alleged defaulting person to be heard before a penalty or sanction is imposed against such person.

61. Appeals

(1) Any person aggrieved by the regulatory authority's decision may appeal to the relevant authority as set out in the domestic law.

(2) The appeal authority referred to in subsection (1) must be independent.

(3) The procedures an aggrieved person may follow to lodge an appeal against a regulatory authority's decisions shall be as set out in the domestic law.

(4) The procedures referred to in subsection (3) shall—

- (a) be specific and balanced to preserve supervisory independence and effectiveness;
- (b) not unduly impede the ability of the regulatory authority to make timely interventions in order to protect members' interests.

