

Formalising the Informal: The ‘fate’ of Village Banks



By

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This dissertation is submitted for the fulfilment of the partial requirement for the degree of Masters of Laws in Commercial Law

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University of Cape Town
February 2018

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DECLARATION

I declare that this dissertation for the degree of Master of Laws at the University of Cape Town, hereby submitted, has not been previously submitted for a degree at this or any other university, that it is my own work in design and execution, and that all the materials contained herein have been duly acknowledged.

Signed by candidate

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19 February 2018

ACKNOWLEDGEMENTS

First and foremost, I would like to thank my parents, James and Hilary. Without you, none of this would have been possible. Thank you for never saying no to education and for allowing me to choose my own path – your sacrifice has never gone unnoticed. Your support is a source of great strength for me and knowing that I have both of you in my corner, has gotten me through many a tough time.

Secondly, I would like to thank my supervisor, Andrew Hutchison. Thank you for your encouragement throughout this entire process – from its inception to its end. Your enthusiasm for this project has made it a pleasure to pursue. I hope to work again with you at some point in the future.

Lastly, great thanks must be given to my siblings; extended family; friends and my grandfather, Neville. Thank you all for taking an interest in my dissertation and keeping up-to-date with its development, your words of support saw me through!

LIST OF ABBREVIATIONS

Co-operative Bank Development Agency	CBDA
Co-operative Financial Institutions	CFI
Co-operatives Development Agency	CDA
Companies and Intellectual Properties Commission	CIPC
Department of Trade and Industry	DTI
Financial Service Association	FSA
Financial Service Co-operative	FSC
First National Bank	FNB
Foundation for International Community Assistance	FINCA
International Fund for Agricultural Development	IFAD
National Apex Co-operative	NAC
National Department of Agriculture	NDA
National Stokvel Association of South Africa	NASASA
Non-government Organisation	NGO
Payments Association of South Africa	PASA
Rotating Savings and Credit Association	ROSCA
South African Apex Co-operatives	SANCO
South African Reserve Bank	SARB
United States Agency for International Development	USAID

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CHAPTER ONE: INTRODUCTION

I. INTRODUCTION

As our lives become more and more regulated by the powers that be, it is pertinent that there be acknowledgement of the people that are subject to these rules. When government attempts to regulate aspects of human lives, these regulations exist alongside the embedded *mores* of communities and the resulting social constructs.¹ For this reason, one cannot dismiss the relevance of informal practices when discussing the formal sector and the prospect of regulation of such.

With the gradual ‘financialising’ of those previously thought of as ‘unbanked’, there is a steady move toward increased interaction with credit, savings and financial transactions in general.² Elizabeth Hull notes that as this trajectory continues, there has been a shift in efforts to provide financial services to those who fall outside of the formal sector.³ The enthusiasm of such efforts has however differed between the informal and formal sector.

Formal financial service provision for the poor is still severely lacking, due to the systemic flaws in financial institutions, which include high transaction costs, the need for collateral and stringent regulations.⁴ As a result of these inadequacies, informal financial services have flourished as they aim to mitigate the flaws associated with the formal sectors, in the hopes of fostering inclusion and pursuing economic sustainability.⁵

The Village Bank is one such informal financial service. The term ‘Village Bank’ is one widely used in the economic and anthropological literature to describe a member-based bank, usually operating at the intersection of the formal and informal sectors. I will use this terminology throughout my dissertation to reflect the concept as framed in the social science literature. In part 1.4 below, I give further details as to a possible definition of the Village Banks concept.

¹ S Falke Moore ‘The legislative dismantling of a colonial and an apartheid state’ (2011) 7 *Annual Review of law and social science*.

² D James ‘Women use their strength in the house: savings clubs in an Mpumalanga Village’ (2015) 41 *Journal of Southern African Studies* 5.

³ E Hull ‘Banking in the Bush: waiting for credit in South Africa’s rural economy’ (2012) 82 *Africa: Journal of the International African Institute* 169.

⁴ P Mashigo & K Humayun ‘Village Banks: a financial strategy for developing the South African poor household’ (2016) 11 *Banks and Bank systems* 8.

⁵ *Ibid* at 10.

In practice, unlike formal institutions, Village Banks tend to build on the notions of solidarity, community and trust. Village Banks are organised and owned by members who aim to provide financial services at village level, bridging the gap between the formal and informal banking sector.⁶ Ultimately Village Banks present opportunities to raise capital, accumulate savings and keep cash secure.⁷

There have been haphazard attempts by government to intervene and regulate this sector. One such attempt has been dubbed as ‘regulation by exemption’,⁸ which is what was foreseen by the ‘common bond’ exemption of these institutions from the Banks Act No.94, 1990.⁹ Additionally, the regulating bodies initially set up to serve Village Banks have either collapsed or have been rendered inoperative.¹⁰

Provisions in the Mutual Banks Act,¹¹ Cooperative Act,¹² Cooperative Banks Act¹³ and bodies like the Registrar of Cooperatives have attempted to bring Village Banks under their sphere of influence. These attempts have however fallen on deaf ears and for the most part have been unsuccessful as Village Banks continue to run according to their own *modus operandi*.

Such failures can be attributed to government’s lack of cognisance of the fact that these organisations are heterogeneous, which means that a one-size-fits-all approach to oversight and regulation will not suffice.¹⁴ Because these entities are by their very nature informal, so some argue that it is impossible to regulate them without damaging this intrinsic characteristic.¹⁵ It is however, necessary for these institutions to be given statutory recognition to ensure legitimacy, sustainability and foster accountability.¹⁶

⁶ Coetzee & Cross ‘The role of community banks in South Africa: Can it contribute to improve access to financial services for the poor?’ (2002) Working paper: Department of Agricultural Economics, Extension and Rural Development. University of Pretoria, South Africa.

⁷ GA Jones & A Dallimore ‘Wither participatory banking? Experiences with village banks in South Africa’ (2009) 21 *European Journal of Development Research* 347.

⁸ FinMark Trust ‘Third Tier Banking Report: A review of the capacity, lessons learned and way forward for member-based financial institutions in South Africa’ (2003) available at <http://www.finmark.org.za/wp-content/uploads/2016/01/ThirdTierBanking.pdf>, accessed on 25 April 2017. Page 31.

⁹ Government Notice 367, published in the Government Gazette 18741 of 10 March 1998.

¹⁰ Jones & Dallimore (2009) op cit note 7.

¹¹ 124 of 1993.

¹² 14 of 2005.

¹³ 40 of 2007.

¹⁴ FinMark Trust (2003) op cit note 8 at 31.

¹⁵ Ibid at 40.

¹⁶ Ibid.

Regulation thus must be done while ensuring the fabric of Village Banks is upheld. The regulation of Village Banks can only be done with community ‘buy in’ as it is unlikely that any sort of regulation will succeed when imposed on a community.¹⁷ The lived reality of these institutions must be a guiding factor and one cannot focus wholly on the banking aspect of these institutions, as this has resulted in the regulation of Village Banks has being ill-applied, therefore, they basically remain unregulated.¹⁸

II. RESEARCH QUESTION

The main question that this dissertation will to investigate and answer is: ‘With respect to Village Banks, is there a need to move from informal self-regulated arrangements to more formal and regulated institutions via increased government intervention in the sector?’

In making this determination, the following sub-questions will be asked: “What is the role of community in contracting?”, “To what extent has the formal banking sector reached the ‘unbanked’?” and “What is the role of informal sector practices in the regulating of Village Banks?”.

By reviewing extensive sources, this dissertation seeks to use desktop study to examine secondary data to deduce both the theory and common practice regarding Village Banks. Furthermore, by drawing on ethnographic accounts, this dissertation will provide more nuanced research that considers the lived experiences of those who are embedded in the communities that utilise these structures.

III. RESEARCH METHODOLOGY

Research for this dissertation is entirely desktop and library based. By reviewing extensive sources, this dissertation will examine secondary data to deduce both the theory and common practice regarding Village Banks. In doing this, an extensive range of sources has been used, which include, but are not limited to books, policy papers, journal articles, statutes, annual reports as well as newspaper articles and internet sources where they are relevant.

¹⁷ FinMark Trust (2003) op cit note 8 at 17.

¹⁸ Ibid at 18.

For the purposes of this dissertation qualitative research is imperative to comprehend what happens ‘on the ground’. Research in the field of Village Banks is somewhat limited and the qualitative studies that do exist, are few and far between. Currently available ethnographic accounts, to provide more nuanced research that considers the lived experiences of those who are embedded in the communities that utilise these structures.

IV. DEFINITIONS

a) Microfinance Financial Services

In South Africa, the waters are further muddied by the fact that there are varying institutions, both formal and informal, that mimic certain functions of the Village Bank. Rotating Savings and Credit Associations (ROSCA’s), Stokvels, Burial Societies, Mutual Banks, Accumulating Savings and Credit Associations (ASCRA’s) and Financial Service Co-operatives are all methods invoked by South Africans to engage in informal banking practices that serve a similar (but not always the same) purpose.¹⁹

These institutions can be described as having a ‘savings first’ function in that they are member owned, capitalised and driven.²⁰ Members raise the start-up and development capital, and because the members own these institutions, they are, legitimised, offering decentralised bank-like services, which are organised around local community structures.²¹

For the purposes of this dissertation it may be helpful to briefly distinguish between these entities to fully conceptualise the notion of a Village Bank. Because there is often overlap in the function and organisation of these entities because it is easy to group them under one metaphorical microfinance banner. However, one must realise that there is a disjuncture between academic definitions and what exists in reality because these practices are far more nuanced than one can put on paper.

b) ROSCA

A ROSCA, although differing in size, nature and purpose, has the basic element that members agree to pool money from which funds are distributed to members allocating one

¹⁹ FinMark Trust (2003) op cit note 8 at 1.

²⁰ A Dallimore “Banking on the Poor: Savings, Poverty and Access to Financial Services in Rural South Africa.” (PhD, London School of Economics 2013) at 59.

²¹ Ibid.

member per meeting at to receive the entire pool.²² These are local institutions, which are formed by family members, friends or neighbours resulting in community ties and personal relationships that are used to ensure compliance with the rules of the ROSCA.²³

One such ROSCA that is local to South Africa, is dubbed a Stokvel.²⁴ This is an informal solidarity self-help group that offers numerous financial and support services to its members, such as opportunity for credit and saving.²⁵ These groups are voluntary and are managed locally by their members, with an oversight body, the National Stokvel Association of South Africa (NASASA), that represents their interests on a national level.²⁶

A burial society has been described as a Stokvel, which has evolved into a more dignified institution that operates at both an informal and commercial level.²⁷ Those with relational ties can establish these entities informally in order to provide for the costs of a honourable burial by pooling resources and making monthly contributions in order to save for the high costs associated with these ceremonies.²⁸

These entities also have an insurance function, given that it ensures that upon the death of oneself or a family member, there are funds that will become available to pay specifically for funeral costs.²⁹ A burial society can also operate at a formal level where members do not know each other and the funds are managed by an oversight body. Members pay a joining fee in order to sign up as well as their monthly contributions.³⁰ Whether formal or informal, this allows one to save for the occurrence of a certain future event upon which a pay-out will occur.

c) Mutual Bank

Mutual Banks, as regulated by the Mutual Banks Act,³¹ are *sui generis* entities that are constituted by interest-bearing shares.³² These banks require R10 million as start-up capital³³

²² B Armendariz & J Morduch *The Economics of Microfinance* (2007) 59.

²³ *Ibid* at 60.

²⁴ FinMark Trust (2003) *op cit* note 8 at 4.

²⁵ *Ibid*.

²⁶ *Ibid* at 5.

²⁷ *Ibid* at 9.

²⁸ *Ibid* at 9.

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ *Op cit* note 11.

and aim to bridge the divide between formal and informal banks, providing more regulation than an informal bank but allowing protection afforded by mutual membership.³⁴ It must however be noted that due to the high start-up capital required, they are very unpopular and at present only two are operative in South Africa.³⁵

d) Financial Service Co-operatives (FSC's)

An FSC is an entity, created and regulated in terms of the Co-operatives Act.³⁶ The act, in Schedule 1, defines a FSC as an entity with the main objective of providing financial services to its members.³⁷ This definition is an overarching one which is said to include several financial service institutions such as credit unions, co-operative banks, savings and credit co-operatives or any other financial services.³⁸

In terms of FSC's, further confusion is created because initially Village Banks were registered as one of these entities in terms of the Co-operatives Act and as a result were subjected to its legislation.³⁹ This meant that these banks fell under the auspices of the Financial Service Association (FSA), which was established to develop a regulatory framework for the operating of these institutions.⁴⁰

e) Village Banks

Village Banks, as they are colloquially known, because they differ in organisation, structure and size have proven to be difficult to define methodically. Instead academics have tended to attribute over-arching characteristics to these institutions. Words such as self-regulating,⁴¹ community banks,⁴² semi-formal⁴³ and democratic⁴⁴ have been frequently invoked to describe Village Banks and their underlying tenet. Although there has been much academic chatter around the topic, it remains that most authors have failed to define these entities with

³² FinMark Trust (2003) op cit note 8 at 19.

³³ Op cit note 11 at s48.

³⁴ FinMark Trust (2003) op cit note 8 at 20.

³⁵ Ibid at 20.

³⁶ Op cit note 12.

³⁷ Ibid at Sched 1 Part 3.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Mashigo & Humayun (2016) op cit note 4 at 9.

⁴¹ Hatch 'A Brief Primer on FINCA' available at http://www.haas.berkeley.edu/haasglobal/events_microfinanceos.html, accessed on 20 April 2017.

⁴² Coetzee & Cross (2002) op cit note 6 at at 347.

⁴³ Ibid.

⁴⁴ Hatch op cit note 41.

any sort of precision. This failure has resulted in much confusion as to what these banks encompass and how they are run.

In other jurisdictions, these banks tend to be influenced by both the Grameen Bank and FINCA models.⁴⁵ The Grameen Bank, established in Bangladesh, is a commercial bank that is based on the notion of social capital and group lending. Individuals are divided into groups of five people who are said to provide both peer support and peer pressure in their dealings with microfinance, introducing a whole new dynamic to the banking structure.⁴⁶

The FINCA Village Banks, identified by Johan Hatch,⁴⁷ relies on a solidarity lending business model.⁴⁸ The banks described loosely mirror the entities that tend to exist in South Africa today. Solidarity lending means that each member undertakes to serve as a guarantor for their cohorts and so social pressures are used to ensure that loans and memberships are paid.⁴⁹ The essence of this is that the bank is funded and managed by its members.

The Village Bank Model, which was recognised by the International Fund for Agriculture (IFAD) in 1994, has been termed as institutions that are self-sustaining in that they are financed, managed and owned by their members.⁵⁰ Legally speaking, these banks have been described as falling on a spectrum between a shareholding company and a co-operative however it is submitted that the route of a co-operative is preferred as it is more flexible in its voting rights and has a simple framework whereby members are only expected to buy one share at a nominal fee.⁵¹

Ultimately, these banks, as they exist in South Africa, may be defined as institutions that encapsulate group lending by relying on group responsibility as an innovation to secure the

⁴⁵ Armendariz & Morduch (2007) op cit note 22 at 12.

⁴⁶ Grameen Research Inc 'Grameen Methodology' available at <http://grameenresearch.org/grameen-methodology-2>, accessed on 20 May 2017.

⁴⁷ Hatch op cit note 41.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ M Nigrini 'Empowering Poor rural villages through the provision of financial services by means of financial service cooperatives: A preliminary investigation into financial service cooperatives in South Africa.' Paper read at International Jubilee Conference of the Economic Society of South Africa, 13-14 September 2001. Glenburn Lodge. Available at http://s3.amazonaws.com/academia.edu.documents/11646415/007.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1496306799&Signature=KLXXPN7g1S%2F9EgnYV37pNlrq3%2B4%3D&response-contentdisposition=inline%3B%20filename%3DEMPowering_POOR_RURAL_VILLAGES_THROUGH_T.p df, accessed on 29 May 2017.

⁵¹ Ibid.

repayments of loans.⁵² They are mutually owned, democratically governed and linked to a nearby formal bank where deposits are kept.⁵³ The thinking behind these institutions is that they reduce transaction costs, which are borne by all the members rather than the individual and the savings are protected.⁵⁴

The above are however overarching descriptions that could be attributed to all the entities that have been outlined previously. A more precise definition would be that this is a vehicle to provide financial services to both the rural and urban poor, who, without these banks, would not have access to such services. These Banks provide that their members, aside from holding savings accounts, buy one share in these entities which is used to capitalise these entities. In turn, they are given a vote that can be used to hold those in charge accountable.

By requiring a 'buy-in' members feel as if they have a stake in the bank, over and above that which they hold in a savings account. This feeling of ownership is integral to the operations of the bank, because it is this ownership that ensures the sustainability of these entities as members are quick to safeguard the functioning and oversight of these banks

What one must keep in mind is the fact that the definition posed by academics, policy papers and oversight bodies, most definitely does not translate into the picture of the Village Bank one sees at community level. For this reason, it must be noted that the definition posed above is a purely academic one and it will become increasingly clear throughout this dissertation, that what is practiced on a day-to-day level is quite different.

f) The 'banked' and 'unbanked'

The South African banking landscape is said to be advanced and up to standard in comparison to the rest of the developing world.⁵⁵ With legislation such as the National Credit

⁵² R Cull et al 'Microfinance Meets the Market' available at <https://siteresourcesqa.worldbank.org/INTFR/Resources/MicrofinanceMeetsTheMarketwps4630.pdf>, accessed on 25 May 2017.

25 May 2017.

⁵³ D Porteus & E Hazelhurst *Banking on Change* (2004) 96.

⁵⁴ Ibid.

⁵⁵ 'Underbanked versus Banked: an insight into the South African Retail Banking sector and reasons for high percentage of the unbanked population' available at http://traderoot.weebly.com/uploads/3/1/3/8/31384375/thought_leadership_unbanked_vs_underbanked_v1.0.pdf, accessed on 20 May 2017.

Act⁵⁶ protecting consumers, as well as wide ranging banking services provided not only by the ‘Big 4’ banks⁵⁷ but also numerous up and coming financial institutions, it seems that the banking sector is trying to adapt to the highly tumultuous South African economic climate.

Despite this purported progressive outlook on banking in South Africa, an estimated 23.5 per cent of the population tend to remain out of reach of formal banks; or rather the banks remain out of their reach.⁵⁸ This is relevant because a projected R12 billion circulates outside of the formal banking realm due to its inadequacies and failure to provide more inclusive alternatives.⁵⁹ People who move within these circles are referred to as the ‘unbanked’ whereby they do not utilise the services that are provided for by the formal banking sector.

According to Porteous and Hazelhurst,⁶⁰ those who form a part of the ‘banked’ population include anyone with any sort of transaction account, which can range from a sophisticated interest bearing loan account to a simple deposits account.⁶¹ This means you are considered ‘banked’ even if you have an account that has been inoperative for years. According to *research conducted by FinMark Trust, 67 per cent of the South African population (16 years and older) are considered ‘banked’.*⁶²

It must however be noted that the majority of those dubbed as ‘banked’, generally withdraw all the money in their accounts as soon as it has been deposited. On a similar note, those who have a South Africa Social Security Agency (SASSA) card⁶³ have been included in the statistics as those who are ‘banked’ even though this is just a method via which they may receive their social grants. Arguably one may question to what extent they are engaging in formal banking practices and are instead using a bank account as a mere conduit to obtain their salaries and social grants.

⁵⁶ 34 of 2005.

⁵⁷ ABSA, First National Bank, Standard Bank.

⁵⁸ Oxford Business Group ‘South African banks making efforts to reach and integrate the unbanked population’ available at <https://www.oxfordbusinessgroup.com/analysis/final-20-reaching-unbanked-population-complex-task>, accessed on 22 May 2017.

⁵⁹ Ibid.

⁶⁰ Porteous & Hazelhurst (2004) op cit note 53.

⁶¹ Ibid at 21.

⁶² FinMark Trust (2016) <http://www.finmark.org.za/wp-content/uploads/2016/11/finscope-south-africa-2016-leave-behind.pdf>, accessed on 22 May 2017.

⁶³ SASSA is the institution through which social grants in South Africa are administered.

In order to provide a more nuanced approach, one may look at a third category of persons: the ‘underbanked’ a term, that has been coined by American academics.⁶⁴ This means that the individual has a bank account however the amount of funds that pass through this account remains nominal and there is limited interaction with other financial services due to inadequate security, high interest rates and limited access.⁶⁵

It is for this reason that the ‘underbanked’ often straddle the formal and informal financial sectors, making use of formal institutions only when utterly necessary.⁶⁶ It is submitted that although categorised as ‘banked’ those persons using their SASSA cards or withdrawing all funds as soon as deposited, may be better categorised as ‘underbanked’ in order to reflect their relationship with formal banking more accurately.

g) Social Capital

Unlike financial capital, social capital is defined as the connections and social networks among individuals that gives rise to reciprocity and trustworthiness between members of a group or community.⁶⁷ This cannot be described as a single entity but rather a myriad of interpersonal connections that enable community members to trust each other and in turn predict the behaviour of their counterparts.⁶⁸

The World Bank has gone on to define social capital as ‘informal social networks and formal organisations used by individuals and households to produce goods and services for their own consumption, exchange or sale’.⁶⁹ This presupposes a network of informal social relationships, that involve mutual co-operation in an attempt to fill the gaps left by governments in fulfilling public services.⁷⁰

In informal economies, social capital is the engine that drives economic and social well-being because it gives individuals the opportunity to engage in their own development without

⁶⁴ J Buckland & W Simpson ‘Analysis of credit constraint and financial exclusion with Canadian microdata’ (2008) 7 *Presentation to Canadian Economics Association, Congress of the Humanities and Social Sciences*.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ RD Putnam *Bowling Alone: The Collapse and revival of American Community* (2000) 19.

⁶⁸ Jones & Dallimore (2009) op cit note 7.

⁶⁹ R, Rose ‘Measures of social capital in African surveys’ available at <http://www.socialcapital.strath.ac.uk>, accessed on 27 May 2017.

⁷⁰ K Meagher ‘Social Capital or Analytical liability? Social Networks and African Informal Economies’ (2005) 5 *Global Networks* 3 at 220.

having to rely on formal structures.⁷¹ It is nestled comfortably in the functioning of ordinary everyday life and for this reason has been very effective in realising developmental ends.⁷²

Social networks; composed of a group of individuals, whose increased economic interaction and social relationships reduce the risks associated with dealing with strangers.⁷³ A social network necessarily implies solidarity and so by interacting with one member, one is in turn interacting with the entire group.⁷⁴ By having a social network, information circulates quickly and reputations of the group's members are built swiftly, allowing one to differentiate the honest from the dishonest.⁷⁵

A result of social capital is social sanctions which are invoked by members of the group or community when an individual transgresses the informal arrangement which are often a result of these networks.⁷⁶ These sanctions are used as a cooperation mechanism, to prevent defection and, in turn, are a risk mitigating mechanism as the threats of sanctions often inhibit members from breaking their arrangements.⁷⁷

V. SCOPE OF DISSERTATION

This dissertation will examine the juncture between the formal and informal sectors in the realm of banking, with focus on the phenomenon of Village Banks. To achieve this, I will examine the government attempts at regulation and the informal sector practice, juxtaposing them to determine which is more effective in providing financial services to the poor.

Although these Banks remain inherently informal, government has made numerous attempts to regulate them and bring these institutions into the formal financial sphere. This paper aims to consider whether there is need for regulation and survey the government's attempts to do so, considering both successes and failures.

⁷¹ EB Geleta 'Social Capital as Collateral: Banking on the Poor' (2014) 73 *American Journal of Economics and Sociology* 1 at 109.

⁷² Ibid.

⁷³ M Ferray 'Trust and Social Capital in the Regulation of Lending Activities' (2003) 31 *Journal of Socioeconomics* 6 at 679.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ J Baland, R Somanathan & Z Wahhaj 'Social sanctions and repayment incentives in group lending', working paper No 192 from Centre for Development Economics, Delhi School of Economics (2011).

⁷⁷ Ibid.

Despite attempts at regulation, there is recognition of the need for the informal sector. For this reason, this paper aims to outline the informal sector practice and how they are able to regulate themselves without government intervention.

Finally, a determination will be made as to whether there is a need for further regulation, taking into consideration the continual interface between the formal and informal sectors. Concluding whether the current disposition of these institutions as they operate on the ground serves the needs of those excluded from the formal financial sector.

CHAPTER TWO: HISTORY OF THE REGULATION OF VILLAGE BANKS

I. INTRODUCTION

As microfinance in South Africa becomes more prevalent, there are increasing attempts by the government to intervene in and regulate this sector. These attempts do however, often fall on deaf ears as we see that most of them have been unsuccessful. Village Banks, with a diverse history of oversight mechanisms and attempted regulation, remain for the most part regulated in an indiscriminate manner.

This Chapter will outline the history of the regulation and oversight of Village Banks in South Africa. By examining the history of these entities, it is hoped that one will take heed of the failures that followed and aim to remedy them in future proposals. Looking at earlier attempts at regulation is imperative to the fate of the formalisation of Village Banks.

In giving a background and build up to the current regulation, the trends that exist that exist in the regulation of not only Village Banks but also most other informal entities will be identified. An overview of the regulation mechanisms that currently exist will be provided, giving an opinion on the achievements and failures in the attempted formalisation of these banks.

II. BACKGROUND

In the late 90's Village Banks gained traction in international jurisdictions. The Grameen Bank in India can be pinpointed as the first of its kind, its history tracing to Bangladeshi independence in 1970.⁷⁸ Here, the innovation of group lending was introduced to alleviate all the issues associated with modern banking by taking advantage of community relationships and kinship.⁷⁹

From here, we have seen the infiltration of these institutions across the world in differing forms such as Bolivia's BancoSol or the Village Bank Model affiliated with Foundation for International Community Assistance (FINCA),⁸⁰ Pro Mujer⁸¹ and Freedom from Hunger.⁸²

⁷⁸Grameen Research Inc op cit note 46 at 11.

⁷⁹ Ibid at 12.

⁸⁰ this is a network that operates globally in order to provide secure and sustainable microfinance in order to facilitate job creation, improve standards of living and accumulation of assets. Finca.org

Although all different in their approach to the formulation and regulation of Village Banks, they all seem to share a common goal, the alleviation of poverty and bringing about development by garnering access to banking facilities via group lending and responsibility.⁸³

According to the above models, Village Banks are to be made up of between 30 and 50 members who are joint owners of the banks and responsible for its day-to-day governance.⁸⁴ These banks provide financial services in the form of savings and credit facilities - credit being dependent on the amount that members could save.⁸⁵ Funds were also provided by various Non-Government Organisations (NGOs), which allowed the bank's credit facilities to increase without having members mobilising more funds.⁸⁶

The Village Bank formulation in South Africa has undergone a myriad of changes since its inception as initiated by IFAD, the initial funder of the first Village Banks in South Africa.⁸⁷ Under this pilot project, three Village Banks were formed in the North-West Province.⁸⁸ After the preliminary set-up period and implementation of these three projects, the endeavour was handed over to the National Department of Agriculture (NDA) who was to play an oversight, advisory role.⁸⁹

At this point, there was debate as to the legal construction of a Village Bank, as overseen by the NDA. Some commentators argued that these banks should register as companies in terms of the old Companies Act,⁹⁰ while others made the argument for the more favoured Co-

⁸¹ A Bolivian non-profit organization that provides women with microfinance and other services to alleviate poverty. The communal banking methodology aims to use group lending to curb the risks associated with modern banking while providing integrated services to the women of Latin America. J Luce 'Pro Mujer: Journey Towards Women's Empowerment in Latin America' available at http://www.huffingtonpost.com/jim-luce/pro-mujer-journey-towards_b_292239.html, accessed on 10 June 2017.

⁸² This organization aims to offer integrated health and education services via the introduction of micro-finance. Available at <https://www.freedomfromhunger.org>, accessed on 10 June 2017.

⁸³ Grameen Research Inc op cit note 46.

⁸⁴ M Nigrini *Analysis of Financial Service Cooperatives* (unpublished Master of Commerce Thesis, Stellenbosch University, 2005) at 87.

⁸⁵ Ibid.

⁸⁶ Ibid at 88.

⁸⁷ FinMark Trust (2003) op cit note 8 at 11.

⁸⁸ Ibid at 12.

⁸⁹ IFAD (1997). *Financial Services Associations Assessment Mission*. Rome, International Fund for Agricultural Development.

⁹⁰ No. 61 of 1973.

operative structure.⁹¹ It was up to these two camps to make submissions to the Registrar of Banks for a decision to be made.

One such submission was made to the Registrar by EFK Tucker Inc (1996), stating that these entities would be better suited registered in terms of the Co-operatives Act.⁹² The reasons for this, it was submitted, was lower registration costs, greater flexibility, a simpler management framework and a less complicated capital structure was in essence better suited for Village banks, which for the most part are situated in rural areas.⁹³

This submission was accepted and Village Banks were subsequently registered as FSCs with the Registrar of Co-operatives, falling under the centralised support structure of the Financial Services Association (FSA), established in terms of the Co-operatives Act.⁹⁴ Because FSC's provide financial services, including the taking of deposits, they were further to be registered under the Banks Act.⁹⁵ This Act provides that the FSC must be registered either as a bank under the Banks Act⁹⁶ or a mutual bank under the Mutual Banks Act.⁹⁷

The registration fees applicable, which are R250 million for a bank and R50 million for a mutual bank, were clearly beyond the capabilities of FSC's and thus it was clear that they would need to be exempt from this requirement.⁹⁸ The FSA was mandated to make submissions to the Minister as to why FSC's should be exempt from the Banks Act.⁹⁹ Upon the success of these submissions, an exemption was issued which made provision for these institutions to take deposits from their members so long as an oversight body was created.¹⁰⁰

Furthermore, this exemption mandated that Village Banks be linked to a formal banking institution.¹⁰¹ This was to be done so that Village Banks could provide greater financial services to their members via the link bank as well as receive training and support from these

⁹¹ Nigrini (2001) op cit note 50 at 4.

⁹² Op cit note 12.

⁹³ Nigrini (2005) op cit note 84 at 91.

⁹⁴ Op cit note 12.

⁹⁵ Op cit note 9.

⁹⁶ Ibid.

⁹⁷ Op cit note 11.

⁹⁸ Nigrini (2001) op cit note 50 at 6.

⁹⁹ Op cit note 9.

¹⁰⁰ Op cit note 9.

¹⁰¹ Nigrini (2001) op cit note 50 at 6.

formal institutions.¹⁰² Under this exemption FSCs could accept deposits to a maximum of R10 million, advance loans and provide their members with a share in profits.¹⁰³

Over and above this, the exemption required that the FSC be a member of a self-regulatory body to be approved by the Registrar of Banks or by the Registrar of Co-operatives.¹⁰⁴ The result of this was the formal acknowledgement that the FSA was the self-regulating body for all Village Banks and all other FSC's.¹⁰⁵ The FSA was further mandated to act with the Registrar of Banks to institute a development plan to provide representation for these institutions on a macro-level.¹⁰⁶

After being granted funding to the tune of R7 million from the Department of Social Welfare, the FSA was directed to establish 70 Village Banks over a period of 30 months.¹⁰⁷ In doing this, the FSA was to provide pre-launch support and finance, register new FSCs, give technical assistance; as well as develop and market these entities.¹⁰⁸ Training, consolidation of financial statements, auditing and arbitration of disputes were also tasks of this umbrella organisation.¹⁰⁹

This was however short-lived because once the funding ran dry, the FSA ceased to exist.¹¹⁰ The FSA's demise could be attributed to the various restructuring initiatives of the entity over its tenure; breakdowns in communication; lack of expertise; reporting failures; evidence of mismanagement of funds, and poor service provision.¹¹¹ This was further exacerbated by the fact that over the period of 30 months, the FSA was only able to establish 29 Village Banks nationwide, confidence in the organisation dwindled.¹¹²

Following the collapse of FSA, FinaSol, a registered non-profit organisation, was instructed by the Registrar of Banks to integrate Village Banks into its operations.¹¹³ FinaSol was

¹⁰² Nigrini (2001) op cit note 50 at 6.

¹⁰³ Op cit note 9.

¹⁰⁴ Ibid.

¹⁰⁵ FinMark Trust (2003) op cit note 8 at 13.

¹⁰⁶ Ibid.

¹⁰⁷ Porteus & Hazelhurst (2004) op cit note 53 at 196.

¹⁰⁸ Nigrini (2005) op cit note 84 at 108.

¹⁰⁹ Ibid.

¹¹⁰ FinMark Trust (2003) op cit note 8 at 14.

¹¹¹ Ibid at 25.

¹¹² Dallimore (2013) op cit note 20 at 122.

¹¹³ FinMark Trust (2003) op cit note 8 at 14.

funded by the United States Agency for International Development (USAID) and was registered in terms of s21 of the Companies Act of 1975, based on a franchising business model.¹¹⁴ FinaSol (the franchisor) was to provide start-up support to these institutions, while the Village Bank (the franchisee), who was not expected to purchase the franchise, had to register as a FSC in terms of the Co-operatives act.¹¹⁵

After the approval of a business plan by FinaSol, the Village Banks was given start up assistance in the form of a loan to the tune of R40 000 and a grant of R8 000 for the purchase of a safe.¹¹⁶ The Bank was responsible for the setting up of the institution and its day-to-day running, procuring FinaSol's assistance for only training and funding when need be.¹¹⁷ Once the system was operating, FinaSol and the Village Bank would share any income received from transaction charges.¹¹⁸

The franchise agreement required the Bank to acquire suitable premises and regulated the relationship between the Village Bank and a formal bank, proving an important component of the provision of financial services to the members.¹¹⁹ Recognised by the Registrar of Banks, FinaSol was said to conduct the same basic services that were provided for by FSA.¹²⁰ By providing training, financial services, audit and risk management assistance, it was hoped that these banks would have greater transparency and management.¹²¹

Being afforded a multitude of funding by international donors, FinaSol's initial success was vast, even garnering support from big banks such as First National Bank (FNB).¹²² This support however diminished as operations became increasingly expensive and funding scarcer, which meant that in 2001 FinaSol ceased to operate.¹²³ This instigated a process

¹¹⁴ FinMark Trust (2003) op cit note 8 at 15.

¹¹⁵ Porteus & Hazelhurst (2004) op cit note 53 at 197.

¹¹⁶ FinMark Trust (2003) op cit note 8 at 15.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

where infeasible FSC's and FinaSol Village Banks were closed down and R5.3 million was made available to refund savings of those members who had lost funds.¹²⁴

Despite the failure of these umbrella institutions, it must be noted that many Village Banks established under both FSA and FinaSol continue to operate in their individual capacities, at community level, without any external assistance.¹²⁵ Many of these institutions tend to operate outside of the hand of the law and are able to regulate themselves with varying degrees of success.

An example of such self-regulation is one of the first Village Banks, Motswedi, which continues to operate with 1552 members and a portfolio of R1.8 million.¹²⁶ This is an indication that regardless of whether there is regulation or an oversight body, these banks still have the propensity to operate at an effective level.

III. CURRENT REGULATION

a) Introduction

Currently, there are roughly 62 Village Banks that are registered with the Registrar of Co-operatives in terms of the Co-operatives Act¹²⁷ or Co-operative Banks Act.¹²⁸ Out of these Village Banks, 32 were a result of the FSA and 30 were a result of FinaSol while several Village Banks remain unregistered and operate within local community structures.¹²⁹ It is estimated that in terms of those registered banks, there are between 60 000 and 80 000 members encompassing a total portfolio of R40 million.¹³⁰

The current regulation and oversight of Village Banks is haphazard and inconsistent, being far from satisfactory. This can be attributed to the numerous failed oversight bodies and attempts by government to bring Village Banks into their sphere of influence. As a result of this, there are numerous institutes, although none solely dedicated to Village Banks, that purport to oversee these entities. These bodies will be outlined in the proceeding section.

¹²⁴ FinMark Trust 'Understanding Financial Co-operatives : South Africa, Malawi and Swaziland' (2014) available at http://www.finmark.org.za/sites/wp-content/uploads/pubs/Rep_Financial-Co-operatives_20142.pdf, accessed on 18 June 2017 at 6.

¹²⁵ Porteus & Hazelhurst (2004) op cit note 53 at 196.

¹²⁶ Jones & Dallimore (2009) op cit note 7 at 11.

¹²⁷ Op cit note 12.

¹²⁸ Op cit note 13.

¹²⁹ Porteus & Hazelhurst (2004) op cit note 53 at 197.

¹³⁰ Ibid.

b) The Registrar of co-operatives

Prior to the Co-operative Banks Act,¹³¹ all co-operatives were regulated by the Co-operatives Act.¹³² With the promulgation of the Co-operative Banks Act,¹³³ all Co-operatives registered under the previous Act with a membership of over 200 people and a deposit holding of over R1 million were to fall under the Co-operative Banks Act.¹³⁴ The purpose of this legislation was to provide a framework for registration and regulation of CFIs which are said to include (although this is not made clear by the legislation) FSCs, village banks, credit unions, saving and credit co-operatives.¹³⁵

This legislation formalises and places importance on the role of the Registrar of Co-operatives as well as the significance of registering the entity as a CFI. Under the Co-operatives Amendment Act,¹³⁶ co-operatives are divided into three categories: primary, secondary and tertiary.¹³⁷ The divisions mean that co-operatives are regulated differently depending on the number of members, services provided for and sector in which it operates.¹³⁸ The role of the Registrar also differs accordingly.

Furthermore, the amendment essentially introduces a fourth level of co-operative by creating an apex body, the South African Apex Co-operative (SANACO) which has been given R3.5 million to professionalise its operations.¹³⁹ There is also provision for the creation of three super-structures that aim to garner support for the co-operative institution: the Co-operatives Development Agency (CDA) has been created to provide both financial and non-financial assistance to all co-operatives; a Co-operatives Tribunal for the settlement of disputes; and a Co-operatives Advisory Council responsible for research, development and an advisor to the Minister on the sector.¹⁴⁰

¹³¹ Op cit note 13.

¹³² Op cit note 12.

¹³³ Op cit note 13.

¹³⁴ FinMark Trust 'Understanding Financial Co-operatives: South Africa, Malawi and Swaziland' (2014) op cit note 124 at 6.

¹³⁵ National Treasury, Republic of South Africa 'A Safer Financial Sector to serve South Africa better' (2011) available at

<http://www.treasury.gov.za/documents/national%20budget/2011/A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf>, accessed on 5 June 2017 at 62.

¹³⁶ 14 of 2015.

¹³⁷ CIPC 'Registering you Co-operative' available at <http://www.cipc.co.za/index.php/register-your-business/co-operatives/types-co-operatives>, accessed on 15 June 2017.

¹³⁸ Ibid

¹³⁹ FinMark Trust (2014) op cit note 124 at 6.

¹⁴⁰ Ibid at 8.

Although CFI's remain under the auspices of the Co-operatives Act and are registered with the Registrar of Co-operatives, it must be noted that currently none of these institutions are receiving any support services and are operating according to their community's social and economic structures.¹⁴¹ It is submitted that the Registrar does not have the necessary expertise, capacity, finances or human resources to act as an oversight mechanism for Village Banks.¹⁴²

c) National Department of Agriculture (NDA)

The NDA has again stepped up to the plate and is presently trying to support the activities of Village Banks through their recognition of CFI's in the agricultural industry. The NDA set up a strategy to upheave the regulation, create growth and address issues associated with these entities as well as assess the viability of Village Banks.¹⁴³

In attempts to garner support the NDA created a Co-operative Development Fund, setting up a task team consisting of members of Village Banks, the NDA and the Registrar of Co-operatives to devise a strategy that could be developed and implemented in order to create structures that will support Village Banks.¹⁴⁴ Furthermore, this team developed a business model devoted to integrating the cooperative system, emphasising the economic participation of Village Bank members as sustainable institutions that are cost effective and sufficient.¹⁴⁵

More recently the Co-operative and Enterprise development branch of the NDA has taken this initiative under its wing.¹⁴⁶ The aims of this sector are development of co-operatives on a national scale as well as creating frameworks and strategies in relation to the co-operative movement.¹⁴⁷ It is hoped that by providing guidelines as to the setting up of a co-operative and giving start-up support, these institutions will grow and further access in rural areas.¹⁴⁸

¹⁴¹ Porteus & Hazelhurst (2004) op cit note 53 at 197.

¹⁴² Dallimore (2013) op cit note 20 at 68.

¹⁴³ FinMark Trust (2003) op cit note 8 at 22.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid at 23.

¹⁴⁶ Department of Agriculture, forestry and fisheries 'Co-operative and Enterprise Development' available at <http://www.daff.gov.za/daffweb3/Branches/Economic-Development-Trade-Marketing/Co-operatives-and-Enterprise-Development>, accessed on 18 June 2017.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

d) Companies and Intellectual Properties Commission (CIPC)

The Co-operatives Act gives the responsibility of co-operative development and support to all national departments under the leadership of the Department of Trade and Industry (DTI).¹⁴⁹ The DTI has also been saddled with the functions of registration and de-registration of co-operatives, in the hopes that it is able to provide for a more decentralised and efficient procedure.¹⁵⁰

The Registrar of Co-operatives offices are located within CIPC as it is hoped that this will streamline, co-ordinate and promote the establishment of these institutions.¹⁵¹ It is anticipated that by aligning CIPC and the Registrar of Co-operatives in providing legal supervision and oversight, compliance by the entities will improve.¹⁵²

Subsequently, the DTI has implemented a ten-year strategy referred to as the Integrated Strategy on the Development and Promotion of Co-operatives, which sets out a framework that ensures government participation and cooperation at all levels of development.¹⁵³ The strategy envisions providing for conditions to enable co-operatives to evolve into self-sustainable and self-regulating authorities that are supported by all stakeholders, contributing to economic growth and bringing about transformation in South Africa.¹⁵⁴

The main objectives of the strategy are to strengthen the sustainability of co-operatives as well as promoting these institutions as saving and investment opportunities, that are viable alternatives to formal banking institutions. Furthermore, through education, the strategy hopes to emphasise the advantages of co-operatives, such as economies of scale and community development and participation, to encourage mass instigation of these projects nationwide.¹⁵⁵

¹⁴⁹ Op cit note 12.

¹⁵⁰ FinMark Trust (2003) op cit note 8 at 24.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ The Department of Trade and Industry ‘The DTI Integrated Strategy on the Development and promotion of Co-operatives 2012-2020’ available at

http://www.dti.gov.za/economic_empowerment/docs/coops/legis_policy/coop-strategy.pdf, accessed on 10 June 2017 at 11.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid at 14.

IV. FINDINGS

It is evident from the above that there is no legislation that is dedicated solely to regulating Village Banks. These banks, along with many other informal financial institutions have either been grouped together and dealt with in terms of the Co-operatives Act,¹⁵⁶ are registered with CIPC and are overseen by the NDA, or continue to operate outside the scope of any of these bodies.

With the collapse of dedicated oversight bodies and the ineffectiveness of current ones, Village Banks remain self-regulated with little formal regulation or support. One must note that because Village Banks continue to operate, the demise of these umbrella institutions has not led to the decrease in Village Banks, who manage to achieve some success and growth as evidenced by the Motswedi Village Bank.¹⁵⁷

There is essentially a duplication of regulatory responsibility as one sees the Registrar of Banks, the Registrar of Co-operatives, the NDA and CIPC all having to play a role in the regulation, registration and oversight of these institutions.¹⁵⁸ This creates confusion and leads to incomprehensive strategies, with policies overlapping and a lack of cohesiveness in a national approach to these institutions and their governance.¹⁵⁹

A further issue that must be addressed is the haphazard creation of oversight bodies who have the inability to be effective and achieve their objectives. Most of these bodies are plagued by mediocre management, poor communication, a lack of national cohesion and little government support, as evidenced by the need for international funding. It is submitted that if the government were to take the project of microfinance and access to financial institutions by the poor seriously, it would invest further time, money and resources in ensuring these bodies succeed.

Commentators have argued that regulation of these institutions via exemptions is not the appropriate way to deal with their governance.¹⁶⁰ By being granted an exemption to the

¹⁵⁶ Op cit note 12.

¹⁵⁷ FinMark Trust (2003) op cit note 8 at 30.

¹⁵⁸ Ibid at 31.

¹⁵⁹ Ibid.

¹⁶⁰ FinMark Trust (2003) op cit note 8 at 31.

Banks Act,¹⁶¹ the purpose was that the legislation in question was not supposed to deal with the situation which gave rise to the exemption but, rather, what should follow, is further legislation that is specific enough to cover that which is the subject of the exemption.¹⁶²

Confusion is created by terminology, with lawmakers failing to define the institutions, for example, FSCs and CFIs, which they purport to regulate. With little precision, there remains uncertainty as to which legislation regulates which institution. By drawing inadequate parameters of these institutions and the laws that govern them, those who operate within these structures do not know or understand the law, which further exacerbates the issue of oversight.

Lastly there seems to be a general disregard by law and policy makers for the communities that these institutions tend to operate in. By enforcing bureaucratic structures and using a top-down approach, one may argue that this has led to the demise of many of the projects that have been undertaken to regulate and oversee Village Banks. In failing to integrate the voice of those impacted by the regulation, there is often little regard taken for the law and these institutions tend to continue per their own *modus operandi*.

V. CONCLUSION

It is evident that Village Banks do not have the capacity nor the resources to represent themselves at a national level and thus there is still need for an overarching structure to fill this void. As current regulation of this sector stands, it is evident that there is no cohesive nor comprehensive approach to Village Banks, who have tended to be lodged together with FSCs and CFIs.

One can thus argue that there is a lacuna in the law with regards to Village Banks and other micro-finance practices. This is because there is neither dedicated nor effective regulation and oversight mechanisms that are in place to ensure the success and wellbeing of these institutions. Those institutions that do exist remain ineffective either due to lack of funding or government initiative to get them off the ground.

¹⁶¹ Op cit note 13.

¹⁶² FinMark Trust (2003) op cit note 8 at 31.

CHAPTER THREE: OVERVIEW OF THE APPLICABLE LEGISLATION

I. INTRODUCTION

Both the Co-operatives Act and the Co-operative Banks Act were enacted to ‘level the playing field’ for those who previously could not participate in the South African economy. These structures have been identified as suitable vessels that can be used to foster opportunities for growth and development for rural and urban communities who require a hand-up in the process of economic transformation.

This Chapter will delve deeper into these pieces of legislation in order to determine their suitability to the Village Bank structure. In outlining the law, looking at the administration, organisation and institutions set out in these acts, I hope to draw attention to both their aptness and flaws in order to gain a clearer picture as to the legal status of these institutions in South Africa.

II. CO-OPERATIVES ACT¹⁶³

In 2007, the Co-operatives Act (later amended)¹⁶⁴ came into operation and it was hoped that this piece of progressive legislation would catapult these entities into the spotlight in the South African financial sector. Its aim was to set out how co-operatives should be registered, developed and what part the government would play in this.¹⁶⁵

a) Administration of the Act

A co-operative, as per the Act, is defined as “an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise, organised and operated on co-operative principles.”¹⁶⁶ This is a broad definition that could be used to describe a multitude of microfinance entities however, this may be the point as the Act is said to have been created with the purpose of covering an umbrella of institutions.

¹⁶³ Op cit note 12.

¹⁶⁴ Op cit note 136.

¹⁶⁵ J Sarkin ‘The Reshaping of the co-operatives legal architecture as a result of the 2013 amendments to the 2005 Co-operatives Act: Promoting democratic governance and economic sustainability or control and overregulation?’ (2015) 27 *South African Mercantile Law Journal* 284.

¹⁶⁶ Op cit note 12 at s1.

These entities were recognised, as per the Act, as ones that are self-reliant, self-sustaining and self-governing, which are to play a role in the economic growth of the South African economy.¹⁶⁷ The Act¹⁶⁸ goes as far as to incorporate the seven principles outlined by the International Co-operative Alliance, these being:¹⁶⁹

1. Voluntary and open membership
2. Democratic member control
3. Members' economic participation
4. Autonomy and independence
5. Education, information and training
6. Co-operation between co-operatives
7. Concern for community

Essentially, this Act gives a range of entities a legal identity, which is separate to that of their members by providing for registration, operational and oversight requirements. The Co-operative Act is a very thorough piece of legislation that goes to great lengths to set out the application process,¹⁷⁰ the drafting of the so-operatives' constitutions,¹⁷¹ record keeping requirements,¹⁷² composition of the boards¹⁷³ and capital structures.¹⁷⁴

It provides for the application and registration of three types of co-operatives: a primary co-operative, a secondary co-operative and a tertiary co-operative.¹⁷⁵ A primary co-operative is defined as one which is formed by a minimum of five natural persons whose objective is to provide employment or services to its members as well as facilitate development in their communities.¹⁷⁶ A secondary co-operative is formed by two or more primary co-operatives with the purpose of providing sectoral services to members, which may include juristic persons.¹⁷⁷

¹⁶⁷ Preamble of the Co-operatives Act 14 of 2005.

¹⁶⁸ Op cit note 12 at s1.

¹⁶⁹ International Co-operatives Alliance 'Co-operative identity, values and principles' available at <https://ica.coop/en/whats-co-op/co-operative-identity-values-principles>, accessed on 5 February 2018.

¹⁷⁰ Op cit note 12 at s6.

¹⁷¹ Including provisions which are compulsory, in s14(1), and those which are not compulsory but which are suggested, in s14(2).

¹⁷² Op cit note 12 at s21.

¹⁷³ Ibid at Chapter 5.

¹⁷⁴ Ibid at Chapter 6.

¹⁷⁵ Ibid at s4.

¹⁷⁶ Ibid at s1.

¹⁷⁷ Op cit note 12 at s1.

A tertiary co-operative consists of members of secondary co-operatives whose objective is to advocate and engage organs of state, the private sector and stakeholders on behalf of its members.¹⁷⁸ A fourth layer of co-operative is also created by the Act in the form of the National Apex Co-operative which is said to unite all co-operatives across South Africa so as to act on behalf of the co-operative movement at national and international level.¹⁷⁹

It is hoped that in creating a super-structure, there will be co-ordination at all levels of government, an aspiration that runs as a gold thread throughout the Act.¹⁸⁰ By fostering a spirit of co-operation, organisation and unification, it is anticipated that there will be greater coherence in policies surrounding support, training, monitoring and planning.¹⁸¹

In the spirit of co-operation and coherence, the Act has established an Inter-Provincial Coordination Committee, which is a welcome step in the project of harmonisation.¹⁸² As it stands every province is operating according to its own interpretation of the legislation, there is no national database of the entities that exist and in general there is very little leadership.¹⁸³

b) Oversight bodies

Chapter 11 and 12 set out the support structures for co-operatives in South Africa. In terms of Chapter 11, the Minister of Finance is to appoint a Registrar of Co-operatives who is given broad powers to oversee the registration and running process of co-operatives as set out in the Act.¹⁸⁴ The Registrar has exclusive powers to investigate co-operatives which she or he suspects have contravened the Act or the Co-operatives Principles and give recommendations to the Minister in this regard.¹⁸⁵

Chapter 12A is a welcome improvement brought about by the 2013 amendment which establishes the CDA.¹⁸⁶ This agency is answerable to the Minister of Finance, who is mandated to direct its work and ensure accountability of the body's actions.¹⁸⁷ The Act

¹⁷⁸ Op cit note 12 at s1.

¹⁷⁹ Op cit note 136 at s16A.

¹⁸⁰ Ibid at s12C.

¹⁸¹ Sarkin (2015) op cit note 165 at 293.

¹⁸² Theron (2012) Perspectives for Co-Operatives in Southern Africa Symposium 20-21 August 2012.

¹⁸³ Ibid.

¹⁸⁴ Op cit note 12 at s78.

¹⁸⁵ Ibid at s84.

¹⁸⁶ Op cit note 136.

¹⁸⁷ Ibid at s91J (2).

mandates the Agency to enter into agreements and memorandums of understandings, with the councils responsible for economic development in provinces and municipalities, again an attempt to streamline co-operative operations.¹⁸⁸

This body is responsible for providing custom-made support and guidance services to co-operatives across the country.¹⁸⁹ It is hoped, that unlike previous structures, it will be an entity that is closer to co-operatives geographically because satellite branches will be established where it is deemed necessary.¹⁹⁰ The Agency is mandated to assist with training, evaluation, provide support of all kinds, education and implement development strategies.¹⁹¹

This is a commendable project in theory, with a number of aspirational goals, however there is no evidence that such an agency exists, with the Department of Trade and Industry making no mention of it.¹⁹² One hopes that in the future it will come to fruition with the requisite resources, trained staff and finances to provide greater support for co-operatives.

Chapter 12 creates a Co-operatives Advisory Board (now Council) that is composed of 10 members who are said to appropriately represent the interests of co-operatives in South Africa, incorporating trade unions, academics and support organisations.¹⁹³ Their purpose is to advise the Minister of Finance about policy development, the application of the Act, the creation and publication of any necessary regulations, provide guidelines about audits as well as regarding any support programmes aimed at co-operatives.¹⁹⁴

The problem with this section is that no provision is made for input from already existing co-operatives, which brings into question the democratic process.¹⁹⁵ The Minister is not obliged to consult with co-operatives or their members when appointing such individuals.¹⁹⁶ Furthermore, there seems to be no requirement that a percentage of the members of the Co-

¹⁸⁸ Op cit note 136 at s91D.

¹⁸⁹ Sarkin (2015) op cit note 165 at 297.

¹⁹⁰ Ibid.

¹⁹¹ Op cit note 136 at s91C.

¹⁹² The Department of Trade and Industry website available at <http://www.thedti.gov.za/default.jsp>, accessed on 5 February 2018.

¹⁹³ Op cit note 12 at s87.

¹⁹⁴ Op cit note 12 at s86.

¹⁹⁵ Sarkin (2015) op cit note 165 at 286.

¹⁹⁶ Ibid.

operatives Advisory Board be members of actual co-operatives, it is submitted that this is a failure on the legislature's behalf.¹⁹⁷

It is clear that a board that is not composed of at least a percentage of co-operative members would be of little use to the Minister when called on to provide advice on the development and support of these entities. It is certain that those on the ground - people who are part of the co-operative movement - would be best equipped to provide information as to what is and what is not working in terms of policy and legislation.

c) FSC's

Schedule 1 is where the provisions pertaining to specialised Co-operatives can be found. These specialised Co-operatives include: worker's co-operatives, housing co-operatives, FSC's and agricultural co-operatives.¹⁹⁸ For the purposes of this dissertation, I will look more closely at part 3 of Schedule 1, which relates to FSCs.

A FSC is defined as one whose main objective is to provide financial services to its members and this definition includes credit unions, co-operative banks, savings and credit co-operatives along with any other financial services.¹⁹⁹ This part of the schedule also sets out added requirements for such a co-operative's constitution, for instance it must state the exact nature of the services the FSCs will provide.²⁰⁰

It further provides that the constitution of an FSC may include provisions on the receiving of deposits from members, loaning of money to members, the investing of members' money, the provision of insurance to members as well as the rendering of any other banking and financial services.²⁰¹ Provisions relating to long and short-term insurance cover for members, medical insurance and the provision of funeral cover to members may also be contained in the constitution if provided by the co-operative.²⁰²

The provision of any of the above services is, of course, subject to the legislation that pertains to it, for example, the Long-term Insurance Act 52 of 1998 would apply to co-operatives

¹⁹⁷ Sarkin (2015) op cit note 165 at 286

¹⁹⁸ Op cit note 12 at Sched 1.

¹⁹⁹ Ibid at Sched 12 Part 3(1).

²⁰⁰ Ibid 1 at Sched 1 Part 3(2)(1).

²⁰¹ Op cit note 12.

²⁰² Ibid.

whose purpose is to provide long-term insurance to its members.²⁰³ As per this Part, the Registrar is entitled to create a regulatory body, that oversees the functioning of FSCs and ensures compliance with the requisite Acts.²⁰⁴

It is evident that a FSC could take myriad forms and perform numerous functions. The definition is broad enough that one would be able to incorporate Village Banks into this part of Schedule 1 and both the Co-operatives Act and the relevant Schedule may apply. Furthermore, if one looks at the definition of co-operative in s1 of the Co-operatives Act, this too is broad enough to incorporate Village Banks and their provision of financial services.

d) Analysis of the Co-operatives Act

The Act is however, not free of faults. Although the registration rate is impressive, it seems that many of these co-operatives cease to operate within their first year, an example of which is shown by the decline of 52 per cent in the 2008/2009 financial year.²⁰⁵ Among those who remain registered, many co-operatives are inactive and it has been found that there is a 12 per cent survival rate of these entities.²⁰⁶ This low rate is attributed to a number of factors, both internal and external, that hinder the co-operative process.

Issues inherent in the Act, include very onerous auditing standards. The Act states that an audit must be conducted annually to ensure that all accounting records are kept as per the requirements set out in the co-operatives constitution and by the law.²⁰⁷ The auditor's report must be approved at the annual general meeting of the co-operative and submitted to the Registrar within 15 days of it being finalised.²⁰⁸

Arguably this is a very burdensome requirement, considering the little amount of governmental support that co-operatives are given. Co-operatives are expected to navigate this landscape with very little guidance as to how this process plays out to ensure compliance with the Act. This could however be resolved by increased training and education for those

²⁰³ Op cit note 12 at Sched 1 Part 3(3).

²⁰⁴ Ibid at Sched 1 Part 3(6).

²⁰⁵ The Department of Trade and Industry 'The DTI Integrated Strategy on the Development and promotion of Co-operatives 2012-2020' op cit note 153.

²⁰⁶ Ibid.

²⁰⁷ Op cit note 12 at s47(1).

²⁰⁸ Ibid at s48.

who are running the co-operatives, to foster development rather than hinder it by imposing sanctions for non-compliance.

A saving grace is that the law provides that a primary co-operative is to be divided into three categories so as to afford differentiation in compliance regarding auditing.²⁰⁹ The first of these, category A co-operatives, are only expected to comply with the bare minimum, still needing to produce a report, but the report is not required to be audited.²¹⁰ The second category, B, is expected to produce an independently reviewed financial report, while category C, along with secondary and tertiary co-operatives, need to provide fully audited financial statements to the Registrar.²¹¹

This is a step in the right direction as it affords a degree of flexibility in regulation and oversight, rather than a one size fits all approach. This does make the co-operative more in reach to those who cannot access these services elsewhere and takes cognisance of the fact that there will be entities of different sizes performing different functions.

The division of primary co-operatives into sub-categories only provides some relief to co-operatives that are starting out, as s46 contains another hurdle that needs to be overcome in order to adhere to the Act. This section prescribes that the co-operative must hold 5 per cent of its surplus in a fund as a reserve, which is indivisible amongst its members.²¹² Arguably this is a deterrent to the development of the co-operative movement, as it requires members not only to raise the start-up capital but also raise additional amounts, which may not be possible.

A further criticism leveraged against the Act is its arduous record-keeping requirements. The co-operative is required to keep records of every meeting held; lists of all members' details and deposits; keep a register of its directors along with all their interests and undertakings, as well as all accounting records for a period of five years.²¹³ Failure to adhere to any of these

²⁰⁹ Op cit note 12 at s16.

²¹⁰ CIPC 'Registering your co-operative' op cit note 137.

²¹¹ Ibid.

²¹² Op cit note 12 at s46(1).

²¹³ Ibid at s21.

requirements is an offense and the co-operative will be liable for punishment of a fine up to R1 million and its directors may both be fined and imprisoned.²¹⁴

Arguably, these are quite harsh penalties for non-compliance considering the fact that the ethos of the Act is growth, development and to foster inclusion in the South African economy. In terms of this section and many others, there is little leniency towards co-operatives who are in their infancy stage, nor to those who cannot afford to adhere strictly to these sections because they are smaller in size and function.

Ultimately the low survival rate of co-operatives can be attributed to the poor support systems that are currently in place and the amount of red tape that one must overcome in order to register a co-operative.²¹⁵ The government and private sector need to create an environment where co-operatives are provided with technical and financial resources to prosper.²¹⁶ Co-operatives need the most support in administration, auditing, management and tax - areas that require a certain skill set.

At present, support is uncoordinated and haphazard which brings the sustainability of these entities into question.²¹⁷ As stated already, education and training are integral to the success of co-operatives, as, generally, members are not well-versed in how to run such a body. There is a need for members and those governing these institutions to have great understanding of the Act as non-compliance can have fatal consequences.

It is clear that this legislation has not been prioritised enough at government level, as co-operatives do not receive the requisite support at national level. Some of the oversight bodies set out in the Act have yet to be created, while those that do exist are poorly managed and financed, having little impact on the running of co-operatives.²¹⁸

In terms of its applicability to the Village Banks, which may fall under the category of a FSC, one needs to reflect on the fact that, as it stands, the support structures provided for in the Act remain, for the most part, ineffective. This means that even if one accepts that a Village Bank

²¹⁴ Op cit note 12 at s21(4).

²¹⁵ Sarkin (2015) op cit note 165 at 299.

²¹⁶ Ibid.

²¹⁷ The Department of Trade and Industry 'The DTI Integrated Strategy on the Development and promotion of Co-operatives 2012-2020' op cit note 153.

²¹⁸ Sarkin (2015) op cit note 165 at 306.

is a FSC, the Co-operatives Act has little impact on the oversight, regulation and running of these banks.

III. CO-OPERATIVE BANKS ACT²¹⁹

The first co-operative bank in South Africa was registered in 2011. The South African Reserve Bank (SARB) is responsible for the supervision of all registered co-operative banks, whilst the Co-operative Bank Development Agency (CBDA) is responsible for the supervision of CFIs, the development of and training needs of the sector.²²⁰

The Co-operative Banks Act, 2007 seeks to redress this divide between the so-called 'banked' and 'un-banked' by providing a sound legislative framework within which co-operative banks can provide financial services.²²¹ By enacting this legislation it was hoped that those entities that tended to operate under the Banks Act exemption, would fall under the Co-operative Banks Act.

a) Administration of the Act

Section 1 of the Act defines a co-operative bank as a co-operative²²² that is registered as per the stipulations of the Co-operative Banks Act, whose members are (a) of similar occupation or profession or who are employed by a common employer or who are employed within the same business district; or, (b) have common membership in an association or organisation, including a business, religious, social, co-operative, labour or educational group; or (c) reside within the same defined community or geographical area.²²³

The Act applies not only in the scenarios above but it also applies automatically to those Co-operatives that are registered in terms of the Co-operatives Act, that take deposits, have more than 200 members and hold deposits of more than R1 million.²²⁴ Although they automatically become co-operative banks, these entities need to comply with the provisions of s3 (2), which

²¹⁹ Op cit note 12.

²²⁰ South African Reserve Banks 'Co-operative Banks' available at <https://www.resbank.co.za/RegulationAndSupervision/BankSupervision/BankingLegislation/COPBanksact/Pages/default.aspx>, accessed on 6 February 2018.

²²¹ Ibid.

²²² A Co-operative is defined in the Co-operative Act as: an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles.

²²³ Op cit note 13 at s1.

²²⁴ Ibid at s3(1).

compels the co-operative to apply to register within 1 year of the commencement of the Act.²²⁵

Chapter IX provides for the creation of the CBDA which is responsible for providing support, promoting and developing co-operative banking.²²⁶ This agency is mandated to appoint, register, regulation and accredit a representative body that is to facilitate training and awareness.²²⁷ The CBDA is to monitor trends and patterns to better advise legislators about co-operative banks and their operations.

The Act goes to great lengths to pronounce the functions, composition, operational requirements and authority of the agency; however, very little information is given as to how this will all be achieved. The Minister is given extensive powers with regard to the CBDA, having the power to appoint the board of the CBDA, who must be selected based on their knowledge and experience.²²⁸ Furthermore, the Minister is given executive power to monitor the agency and ensure compliance.²²⁹

The Act provides for the registration of four categories of co-operative banks, differing in size and function.²³⁰ The first is the primary savings co-operative bank, which may only solicit and accept deposits; invest such deposits; open accounts for its members, and make withdrawals.²³¹ This bank may also open savings or cheque accounts in its own name, to provide trust and custody services to members.²³²

The second type of co-operative bank is the primary savings and loans co-operative bank, which provides the same services as the above bank but also has the power to grant secured and unsecured loans up to an aggregate value.²³³ These banks may also be endorsed, by the Minister of Finance when he deems fit, to perform other financial services that are not currently listed.²³⁴

²²⁵Op cit note 13 at s3(1).

²²⁶Ibid at s55(1)(a).

²²⁷Ibid at s55(1)(b)-(d).

²²⁸Ibid at s58(2).

²²⁹Ibid at s71.

²³⁰Ibid at s5.

²³¹Op cit note 13 at s14(1).

²³²Ibid.

²³³Ibid at s14(2).

²³⁴Ibid at s14(2)(c).

A secondary co-operative bank, the third type, can provide all the services listed in ss14 (1) and (2) as well as trade in financial instruments on behalf of its members.²³⁵ The Act further mandates such banks to open an account with a bank registered under the Banks Act²³⁶ for the facilitation of foreign currency transactions.²³⁷ Again, the Minister of Finance is given discretionary power to prescribe additional functions to these banks.²³⁸

The final bank, a tertiary co-operative bank, which can again provide all the functions listed above, may also conduct services and invest money deposited with it in any investments, that are prescribed by the Minister of Finance.²³⁹ It is clear that although the powers of each bank are listed in the Act, the Minister has inherent power to prescribe further functions to each category of banks, as she or he deems fit.

Aside from these specific functions, attributed to each bank, the Act also sets out a number of general functions, that are to be performed by every registered co-operative bank.²⁴⁰ According to this section, co-operative banks may receive grants and donations,²⁴¹ be a member of a representative body or support organisation, and enter into agreements with such,²⁴² establish a dispute resolution scheme with other co-operative banks of the same type²⁴³ and these banks may act as agents for their members or in the interest of their members as an intermediary of a banking or other institution as listed.²⁴⁴

S15 (b) refers specifically to secondary and tertiary co-operative banks and in relation to these entities, states that they may apply for registration as a representative body as per s31 or accreditation as a support organisation as per s36.²⁴⁵ These sections, s31 and s36, spell out the procedures for registration but do little to inform these entities of what is required of them in order to fulfil such duties. These sections state that the body has the requisite experience, knowledge and qualifications- which is vague statement that gives little guidance as to what these requirements entail.

²³⁵ Op cit note 13 at s14 (3)(b).

²³⁶ 94 of 1990.

²³⁷ Op cit note 13 at s14 (3)(c).

²³⁸ Ibid at s14(3)(d).

²³⁹ Ibid at s14(4).

²⁴⁰ Ibid at s15.

²⁴¹ Ibid at s15(a).

²⁴² Ibid at s15(c).

²⁴³ Ibid at s15(d).

²⁴⁴ Op cit note 13 at s15(e).

²⁴⁵ Ibid at s15(b).

Chapter II of the Act sets out laborious registration requirements that must be met before a co-operative bank will be registered.²⁴⁶ One such requirement is, in the opinion of this dissertation, particularly onerous. Every person who is to be a director, managing director or executive officer of the bank must have the ‘necessary knowledge, experience and qualifications’.²⁴⁷ Again, this is extremely ambiguous, with no yardstick to ensure compliance

b) Analysis of Co-operative Banks Act

This Act provides for the idyllic situation. In terms of the credentials required for those in charge, it is unlikely that every person in a management position will be able to meet this standard. Again, there is a double standard in that these banks are supposed to be member run and owned for communities that have limited access to financial services, but at the same time, those in charge must have experience in co-operative banks.

The prudential and reporting standards required by the Act also necessitate a degree of knowledge and skill, one that far surpasses the lay-person.²⁴⁸ Failure to comply with such standards will lead to the co-operative bank being wound up in terms of the Act.²⁴⁹ A further requirement is that the co-operative bank must pay an insurance fund, which is to be overseen by the CBDA, who is mandated to oversee and account for all monies.²⁵⁰

The advantages of co-operative banks are that they can lend money at a much lower interest rate, compared to commercial banks.²⁵¹ These banks are able to set their own rules via the creation of constitutions and bring about conditions for economic development by creating access to savings and credit.²⁵² Because these banks are member owned, the money made is sown back into the communities within which they operate.²⁵³

²⁴⁶ Op cit note 13 at Chapter II.

²⁴⁷ Ibid at s7(c).

²⁴⁸ Ibid at Chapter III.

²⁴⁹ Ibid at s21(2)(a).

²⁵⁰ Op cit note 13.

²⁵¹ ‘Notes from the house: What happened to the roll-out of co-operative banks in SA?’ available at <https://www.dailymaverick.co.za/article/2017-08-24-notes-from-the-house-what-happened-to-the-roll-out-of-co-operative-banks-in-sa/#.Wnr9xGW9iFI>, accessed on 6 February 2018.

²⁵² Ibid.

²⁵³ Ibid.

It is important to note, that after more than 10 years of this legislation being enacted, there exist only three registered co-operative banks.²⁵⁴ This speaks to the success and viability of these banks in South Africa, as it is evident that these laws have not been well received. The amount of capital and skill required to set up these banks is a hindrance from the outset which creates a cyclical effect – these banks are supposed to be set up for those who cannot afford commercial banking, however it is often too expensive to set up.

Ideally the government should be roped in to fund this process to level the playing field with the major commercial banks in South Africa. Even the Competition Commission has weighed in on the issue of monopoly of the banking sector, stating that it is up to government to intervene, by assisting with the formation and subsistence of these banks as well as compelling commercial banks to create a sector that is inclusionary.²⁵⁵

This dissertation submits that this piece of legislation would not be suitable to govern a Village Bank in its infancy stages because of the capitalisation requirements. A well-established bank may be able to raise the requisite amount with the correct number of members, but for the most part this would be out of reach for the majority of Village Banks.

IV CONCLUSION

There are currently about 60 FSC's with a total membership of 36 000 operating with assets totalling R137 million and savings to the tune of R125 million.²⁵⁶ To date 18 FSC's have applied to be registered as co-operative banks but to no avail.²⁵⁷ Although the Act provides for the creation of various structures to support and regulate these banks, to date none of these have been implemented and support for co-operatives remains minimal in this regard.

Both of these pieces of legislation are aspirational in nature, a goal to pursue and an ideal to achieve. They essentially outline the ideal position that one would hope to achieve should there be sufficient resources, support and oversight. This is however not the case and the reality is, that both sectors are under-financed which in turn means that the support structures designed by the Acts do not exist.

²⁵⁴ South African Reserve Bank op cit note 220.

²⁵⁵ L Ensor 'Stringent regulation 'hampers entry of new banks'' available at <https://www.businesslive.co.za/bd/business-and-economy/2017-05-05-stringent-regulation-hampers-entry-of-new-banks/>, accessed on 6 February 2018.

²⁵⁶ National Treasury (2011) op cit note 135 at 62.

²⁵⁷ South African Reserve Bank op cit note 220.

There is more that needs to be done for co-operatives and co-operative banks to prosper so as to further the project of economic development in South Africa. This can only be done if there is buy-in from all sectors of business at both a public and private level. Incentives should be given to motivate businesses to trade and interact with these entities.

Although the Village Bank model could be adapted to a FSC, the requirements set out in the Act would place undue burden on these entities. The reporting, surplus and management requirements often far surpass the means that are available to Village Banks, which are generally located in rural areas. These banks are also far removed from the support structures where training and resources would be available, providing services in some of the most vulnerable areas of South Africa.

As previously stated, there can be no one size approach and instead, the government needs to take cognisance of the communities in which these entities operate when enacting legislation. The legislation and bodies created as a result are far removed from the members of the organisations who are often laypersons that do not have the required skills to ensure compliance with these Acts. Training and education are thus high priorities to ensure sustainability.

CHAPTER FOUR: VILLAGE BANKS, SUBSTANCE OVER FORM

I. INTRODUCTION

This thesis has called for an analysis of the practices that exist in society rather than merely attributing normative ideals to what the participation in these entities entails.²⁵⁸ As stated before, Village Banks, are in principle democratic member owned and run institutions with their roots in the communities that they operate in.²⁵⁹ The aim is to build on local community based institutions, so as to facilitate participation in both membership and leadership.²⁶⁰

Of course, this is the definition posed by academics and so it is imperative that one look to empirical research to gauge the veracity of these claims. Furthermore, one also needs to consider to what extent the regulations and legislation, as outlined in Chapter two and three, reach these entities and whether the policies have any real bearing on the day-to-day running of these institutions.

In examining ethnographic accounts, one hopes to gain critical insight into the lived experiences of those who participate in the Village Bank process. One of the challenges in this regard is the availability of empirical research pertaining to Village Banks in South Africa and so this Chapter aims to set out an exposé of those accounts that exist.

What has become clear is that there is a need for people who are unable to open bank accounts, for a multitude of reasons, to access financial services to keep money safe and to save.²⁶¹ Bureaucracy and the cost of banking transactions are but some of the barriers faced when deciding to open an account with a financial institution, and considering the low literacy and education rates in South Africa, it is no surprise that this is a daunting task.

II. OVERVIEW OF THE FINANCIAL SECTOR

As already stated, the lack of available data on informal banking institutions poses a serious problem for researchers who hope to gain insight into the practices of Village Banks. In

²⁵⁸ Jones & Dallimore (2009) op cit note 7 at 348.

²⁵⁹ Ibid at 349.

²⁶⁰ Ibid.

²⁶¹ Ibid at 348.

South Africa, the major research initiative, which has aimed to give insight into this sector, is FinScope's annual survey that is managed by FinMark Trust.

This project was first undertaken in 2003 and aims to provide an overview of the entire financial services sector in South Africa. One of its objectives is to deliver data and guidelines for pro-poor financial development.²⁶² The purpose is to contribute to the provision of access to financial services for low income sectors and cater to the distinct needs of the poor.²⁶³

The latest release of the FinScope survey, 2016, was based on a nationally representative sample of 4 992 adults who are 16 years or older and looked not only at the provision of financial services but also quality of these services.²⁶⁴ The main findings of the survey were that 89 per cent of all adults in South Africa, about 38.2 million people, have some sort of bank account – this being either formal or informal.²⁶⁵

A further finding is that around 11 per cent of adults, some 4.3 million people are completely financially excluded, meaning that, they have neither a financial service provider nor product in their name.²⁶⁶ The survey found that in terms of savings and investments, there is an increasing trend towards adults saving for funeral and related expenses via informal institutions such as stokvels.²⁶⁷

This trend is linked to increasing transaction costs as well as the desire of individuals to diversify their saving strategies. A key finding of the project is that around 51 per cent of adults who interact with the South Africa financial services sector, are doing so by making use of several saving and credit mechanisms, both formal and informal.²⁶⁸

These findings segment the South African population into three generic categories (low, middle and high) and the number of adults attributed to each.²⁶⁹ The low income sector, the

²⁶² Dallimore (2013) op cit note 20 at 2.

²⁶³ Ibid at 3.

²⁶⁴ FinMark Trust (2016) op cit note 62.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ FinMark Trust (2016) op cit note 62.

largest of the three, represents 31 million people in South Africa whereas the high income sector amounts to only 1.2 million.²⁷⁰ The middle-income bracket, a growing sector in South Africa, accounts for 6 million people.²⁷¹

With most of South Africa's population in the low-income sector, it is evident that there is an incredible need for financial services that are cheap, user-friendly and cater specifically to the needs of the poor.²⁷² Along with addressing issues of red tape, the answer to this lack of integration must include strategies that are long-lived and transformative.²⁷³

One must note that although, as stated above, 89 per cent of all South African adults are said to be 'financially included' this has not translated into the improvement of the lives of those who remain impoverished. Most of the financial products that are sold to the low income sector - the majority of the South African population - are not appropriate, as much of our population remain illiterate, indebted and are often taken advantage of by those purporting to offer financial services.

It is hoped that by facilitating and nurturing member-based financial institutions, the financial sector will become more integrated. Along with the provision of support, government needs to spearhead the project of transformation in this sector to develop and ensure actual inclusion of all South Africans in reality.

There is a clear need for transformation of this sector, whereby a ground-up approach should be utilised to ensure that those on the bottom rung are as well 'financialised' as those at the top. These institutions need to come to the realisation that the majority of South Africans are poor and there is a social responsibility to foster transformation for everyone.

III. ETHNOGRAPHIC ACCOUNTS

Village Banks are most prominent in KwaZulu Natal, the North West Province, Mpumalanga, Limpopo and the Eastern Cape, with many of them located in the most

²⁷⁰ FinMark Trust (2016) op cit note 62.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ National Treasury, Republic of South Africa 'Budget Review: 2017' available at <http://www.treasury.gov.za/documents/national%20budget/2017/review/Annexure%20F.pdf>, accessed on 15 December 2017.

vulnerable areas in South Africa.²⁷⁴ For this reason, most ethnographic accounts have taken place in rural areas where there is little to no access to financial services and researchers have observed how people interact with money.

It has been stated that people in these areas require institutions that are able to safeguard cash; provide for saving mechanisms; give short-term credit as well as enable people to transmit money.²⁷⁵ However due to the inadequacy of major financial institutions in South Africa, people have created informal institutions for themselves in order to facilitate the above. These have become part of what is known as the informal economy.

One of the most recent and useful sources on the lived experiences of those participating in Village Banks is an extensive ethnographic study conducted by Dallimore.²⁷⁶ This research was undertaken in 2002 with the participation of 16 focus groups and its purpose was to determine whether these institutions presented a viable alternative to formal financial institutions.²⁷⁷ With the ultimate findings being that these banks have the possibility of facilitating economic development in these communities.²⁷⁸

Each branch is owned and managed by its members, who were also shareholders. Each branch was capitalised by the purchase of one share by each member and anyone was able to purchase a share in the Village Bank, as there were no gate-keeping tactics used.²⁷⁹ In holding a share, which generally cost R10, each member has the right to elect the board of management who, in turn, is held accountable by the shareholders at an annual general meeting.²⁸⁰

In theory, this is a good model, however in practice it seems not to have been so easily translated. What was found among the cross-section examined by Dallimore was that there seemed to always be a discrepancy between the number of members and shareholders.²⁸¹ At

²⁷⁴ Jones & Dallimore (2009) op cit note 7 at 350.

²⁷⁵ J Yaron 'What makes rural finance institutions successful?' (1994) 9 *The World Bank Research Observer* 65.

²⁷⁶ Dallimore (2013) op cit note 20 at 260.

²⁷⁷ Ibid at 179.

²⁷⁸ Ibid.

²⁷⁹ Ibid at 349.

²⁸⁰ Dallimore (2013) op cit note 20.

²⁸¹ Jones & Dallimore (2009) op cit note 7 at 353.

most banks this discrepancy was minor, however at the Motswedi bank, arguably the most successful Village Bank, there were 237 shareholders and 1451 account holders.²⁸²

The reason most cited for this is that when members sign up, they are not given an opportunity to understand the legal structure of the entity and are rather instructed to buy or not to buy shares in the Village Bank.²⁸³ One is able to hold more than one share in the Village Bank. These additional shares do not however hold any voting rights nor do they require one to open another account. It is thus impossible, as per the Village Bank Model, to have more account holders than shareholders but not vice versa.²⁸⁴

Banks ranged in size and deposits with one bank, having a membership of 3 060 holding R290 000 to another with a membership of 1 451 holding R1.8 million.²⁸⁵ Charges on withdrawals and deposits ranged from R0 to R6 depending on the amount involved - some members opting for their pensions or salaries to be deposited directly into the bank.²⁸⁶ Some banks went so far as to provide their reliable clients small loans that were to be repaid monthly at a small rate of interest.²⁸⁷

The tenet of the Banks, which were the focus of Dallimore's study, was that they were developed by members of the community, for the community.²⁸⁸ Transparency and participation are key buzzwords that those interviewed used when trying to describe the Village Bank with which they were associated.²⁸⁹ Furthermore, it was evident that these banks had given their members a sense of ownership and pride, as they were said to be contributing to their communities.²⁹⁰

Although the banks had evolved at different rates, there are some advantages and disadvantages that can be attributed to all of them.²⁹¹ For instance, community members seem to show high levels of interest in these institutions and thus there has been incredible support

²⁸² Jones & Dallimore (2009) op cit note 7 at 353.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid at 350.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Dallimore (2013) op cit note 20 at 130.

²⁸⁹ Ibid at 180.

²⁹⁰ Ibid.

²⁹¹ Ibid.

by local people in the establishment of Village Banks.²⁹² With low operation costs and proximity to members, these services are competitive and serve as a great alternative to mainstream banking.²⁹³

Furthermore, there is community buy-in of the institutions that, as mentioned, instills a sense of ownership and responsibility towards these banks.²⁹⁴ Because members of the bank are also members of the community, there is a sense of trust and personal accountability between members and the Village Bank staff – this is because the staff live in and amongst the community, with strong ties of kinship which, in turn, means a degree of responsibility.²⁹⁵

Membership is selected on the basis of known dependability and affiliation with already existing members of the Village Bank.²⁹⁶ Many state that deals are often sealed with a handshake and the understanding that one is able to rely on one's friends.²⁹⁷ Membership may be restricted by demographic or religious affiliation, both of these being used as a way to ensure that there are shared values amongst members.²⁹⁸

On the downside, there is said to be a lack of training and institutional support whereby these banks tend to operate largely by themselves, held accountable only by their members.²⁹⁹ Because of this, what often arises is that those in charge are free to make decisions liberally, without recourse to members – thus although in theory there is recourse, in practice it is difficult to enforce.³⁰⁰ Local power structures and authorities are often intertwined in these institutions, making it difficult to discern where one ends and the other begins.

An example of this was seen at one of the longest standing Village Banks, the Motswedi Village Bank.³⁰¹ It was found that there had been no election since the board was first established; the reason cited was that it would be counterproductive to assign new board

²⁹²Dallimore (2013) op cit note 20 at 130.

²⁹³ Ibid.

²⁹⁴ Ibid at 180.

²⁹⁵ Ibid.

²⁹⁶ M Irving "Informal Savings Groups in South Africa: Investing in Social Capital " (2005), available at https://open.uct.ac.za/bitstream/item/22133/Irving_Informal_Savings_Groups_in_2005.pdf?sequence=1, accessed on 20 December 2017 at 36.

²⁹⁷ Ibid.

²⁹⁸ Ibid at 39.

²⁹⁹ Dallimore (2013) op cit note 20 at 122.

³⁰⁰ Ibid at 181.

³⁰¹ Ibid at 181.

members annually.³⁰² It was however admitted that the elders of the community have chosen board members and that there were indeed four tribal authorities represented on the board.³⁰³

A further issue that has in the past been raised by members was the fear of interference by outside actors such as formal banks, NGO's and government authorities.³⁰⁴ The reason for this angst is that members fear that outside influences may disrupt the ownership of these institutions as well as their ability to engage in the day-to-day running of the Village Bank.³⁰⁵ Members, local authorities and the community, were observed as being highly protective of their control of the bank.³⁰⁶

What is clear is that the communities want the bank to be kept local; these institutions must be run and owned by the communities within which they operate.³⁰⁷ Members and staff are neighbours, cousins, siblings and friends who all speak the same language and generally adhere to the same cultural practices.³⁰⁸ With a sense of mutual understanding, community members feel more at ease to deposit their money with the employees of the Village Bank.³⁰⁹

As stated previously, a major finding of Dallimore was the possibility of these institutions to be economic catalysts for development.³¹⁰ This was felt by members of Village Banks from across the board, who felt that part of the purpose of the bank was to bring money back to the community. The savings generated often lead to greater education for the local students in areas of money management and systems.³¹¹ Furthermore, these banks have promoted entrepreneurship whereby shop owners are able to access greater stock supplies and increase their income.³¹²

What was evident was the enthusiasm the Village Banks have generated. Communities are grateful for the opportunity to save their money in a safe and efficient way, having few

³⁰² Dallimore (2013) op cit note 20 at 181

³⁰³ Ibid.

³⁰⁴ Ibid at 122.

³⁰⁵ Ibid.

³⁰⁶ Ibid at 182.

³⁰⁷ Ibid.

³⁰⁸ Ibid at 189.

³⁰⁹ Ibid.

³¹⁰ Ibid at 194.

³¹¹ Ibid at 193.

³¹² Ibid.

complaints regarding the overall running of the banks.³¹³ In essence, these banks function effectively, with little outside support or intervention, propped up merely by the community and its members.

IV. CONCLUSION

What is evident, is that these banks do not neatly fit into the definitions that have been posed by government policies, initiatives and legislation. Essentially, these banks operate at community level, with little to no outside intervention whether it be from government or other actors. Community members, community structures and local authorities are responsible for the running and capitalisation of the banks as well as their oversight and regulation.

No one bank is the same and each community, as evidenced by the above, adapts the model to suit them and the needs of their members. The fluid and disparate nature of these entities means that it is hard to attribute a catch-all definition as well as standard requirements in order to identify what a Village Bank is.

³¹³ Dallimore (2013) op cit note 20 at 196.

CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS

I. INTRODUCTION

The purpose of this thesis has been to examine the development and current regulation of Village Banks versus how these banks operate in practice. It is hoped that the preceding Chapters have shed light not only on government policy, but also on the lived experiences of people in the Village Bank system while trying to provide some theory as to how these banks operate.

It is submitted that the current regime is not sufficient, as the numerous attempts to regulate by government have had little impact on the day-to-day running of Village Banks. These banks tend to operate according to their own rules, with little regard for any overarching regulation. The following Chapter will set out some of the findings that have been made and pose recommendations to be considered when there is an attempt at further regulation and oversight of Village Banks.

This Chapter aims to set out the possible routes that could be used to regulate Village Banks which include: the use of the Mutual Banks Act, the use of agents, Co-operatives legislation, a dedicated body as well as a hybrid approach. Recommendations will then be given as to how such regulation should play out in reality, followed by concluding comments.

II. FINDINGS

Most Village Banks operate in the dark. They are given little to no government support and are unable to provide clear documentation of transactions that are undertaken.³¹⁴ There is a clear lack of training, support, accountability and oversight of these institutions, which tends to lead to instances of mismanagement of funds.³¹⁵ It is thus imperative that there be mechanisms in place to safeguard the integrity of these institutions.

Regardless of dwindling government support and oversight, these banks seem to tick over on a day-to-day basis, providing services to the communities within which they operate.³¹⁶ Although they do not operate on a large scale, strong relationships between members mean

³¹⁴ Dallimore (2013) op cit note 20 at 260.

³¹⁵ Ibid.

³¹⁶ Ibid.

that there is a sense of ownership and trust, which is essential to the continuation and smooth operation of these institutions.³¹⁷

III. POSSIBLE REGULATION

It is submitted that creating a single economic framework that incorporates those who are unable to participate in the formal banking sector, is not viable. The reason for this is that there must be different, less stringent standards to which informal financial institutions are held.³¹⁸ The *modus operandi* is to enable and promote participation in the financial sectors of those previously marginalised.

Hull & James state that the formal and informal operate alongside each other and are continually interacting with each other.³¹⁹ The formal and informal sectors operate alongside each other supplementing one another's deficiencies, for instance, Village Banks operate to cater for the insufficient services provided for the poor by formal banks.³²⁰

The South African government has attempted to converge the two sectors, resulting in the so-called 'partial institutionalisation' of the economy.³²¹ Arguably, formalisation in the Village Banks context was done piecemeal rather than in a uniform and congruent manner.³²² It is evident that the formal structures that exist do not adequately address the distinct needs of the informal sector, instead, they are heavily reliant on bureaucratic power structures and red tape.

a) Mutual Banks Act

Coetzee and Cross³²³ have argued that, although not ideal, Village Banks could be subsumed by the Mutual Banks Act.³²⁴ As explained in Chapter two, these banks have a less stringent capital requirement but are subject to the same oversight as formal banks.³²⁵ The Act allows

³¹⁷ Dallimore (2013) op cit note 20 at 261.

³¹⁸ Hull (2012) op cit note 3 at 2.

³¹⁹ Ibid.

³²⁰ Irving (2005) op cit note 296 at 36.

³²¹ Hull (2012) op cit note 3 at 4.

³²² Ibid at 2.

³²³ Coetzee & Cross (2002) op cit note 6.

³²⁴ Op cit note 11.

³²⁵ Coetzee & Cross (2002) op cit note 6 at 14.

for the inclusion of communities by making provision for boards of local branches as well as requiring share capital being mutually based,³²⁶ rather than equity based.³²⁷

They argue that because this is a membership based approach that focuses on community, it will be more successfully applied and adapted to the informal sector.³²⁸ Furthermore, the Registrar may require that a mutual bank establish a relationship with a formal bank (referred to as a guardian bank) to provide for assistance and mitigate the downfalls associated with informal banking such as lack of finance and oversight.³²⁹

The authors do however admit that the capital requirement of R10 million or 8 per cent of risk exposure effectively insures that very few of these informal organisations register as a mutual bank.³³⁰ The skills required to comply with the Act and reporting standards required are often beyond the capabilities of the Mutual Bank board members, let alone Village Bank members.³³¹ With little government support at community level, it is unlikely that any such legislation will be strictly adhered to.

What is crucial is that the benefits of formalisation should exceed the costs associated with adhering to legislation.³³² One needs to look at the interests of all parties responsible for the governance and oversight of Village Banks: the members of the bank, the community, the Registrar and those on the board.³³³ It is important that no one is alienated in the process as this will hinder the workings of the bank, slowing down the project of oversight and accountability.

b) Use of agents

It must be noted that the South African banking sector is highly regulated and hugely complex.³³⁴ The Banks Act³³⁵ lays out strict measures that are costly to execute.³³⁶ This

³²⁶ Coetzee & Cross (2002) op cit note 6 at 14.

³²⁷ Ibid.

³²⁸ Ibid at 15.

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Consultative Group to Assist the Poor (CGAP) 'Updates on Regulation of Branchless Banking in South Africa' (2010) available at <https://www.cgap.org/sites/default/files/CGAP-Regulation-of-Branchless-Banking-in-South-Africa-Jan-2010.pdf> page 3, accessed on 16 November 2017.

³³⁵ Op cit note 236.

sector is essentially controlled by the Big Four Banks who control the Payments Association of South Africa (PASA), which is a self-regulatory body for payments as appointed by the SARB.³³⁷

The Banks Act does however provide wide discretion to banks, allowing them to use third parties to offer banking services beyond their branch via an agent.³³⁸ The Act defines an agent as a person who contracts with a bank to receive, on behalf of the bank, any deposits, money due to it or applications for loans or to make payments to clients on its behalf.³³⁹

The bank agent is an entity that has been authorised by the bank to enter into legally binding agreements on its behalf.³⁴⁰ The bank, the principal, is thus bound by the actions of the agent and must ensure compliance with the Act - this is not the job of the agent.³⁴¹ For the agency relationship to exist, the Bank is obliged to certify that:³⁴²

- The agreement concluded by the agent is legal
- The services of the agent are performed adequately, in accordance with the banks policies and the agreement concluded between the agent and client
- Identify and deal with weaknesses that may arise in its supply of its service to the client
- Provide SARB with any information on the activities of the agent

This wide discretion afforded to banks allows for the provision of financial services outside of the traditional banking structure. Clients are given banking services that are subject to certain checks and balances, addressing the issue of accountability that often exists in informal structures. Furthermore, entities that have limited resources can use the agency agreement to leverage the benefits of infrastructure, compliance and skill.³⁴³

It is submitted that in the context of Village Banks, the use of an agency agreement may be highly beneficial. Agents are permitted to act outside of the branch network, they can access

³³⁶ CGAP (2010) op cit note 334.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Op cit note 236 at s1(1).

³⁴⁰ CGAP (2010) op cit note 334.

³⁴¹ Ibid at 9.

³⁴² Banks Act Circular 14/2004 on Outsourcing of Functions within Banks.

³⁴³ CGAP (2010) op cit note 334.

remote areas and provide financial services where they are lacking, which is where we often find Village Banks. One of the great advantages of this construct is the access to infrastructure, a huge issue present in the Village Bank system, where there is little support or guidance at local level.

Furthermore, one of the issues associated with Village Banks is that there is little oversight of these institutions to ensure accountability. An argument for the use of an agency agreement is that the principal bank is required to ensure compliance, not only with its own policies but also with that of the SARB. The Bank is also supposed to provide support and remedy any weaknesses that it identifies in the process.³⁴⁴

One can thus argue, that if Village Banks were to use this agency construct, they would be provided with far greater support and oversight than what is currently in place at government level. There are however drawbacks to this arrangement, such as the fact that the banks internal policies may be too stringent for compliance by a Village Bank or the fact that detailed records may be required by the SARB.

As with most arguments for regulation of the informal economy, one must also keep in mind that there can be no easy fit that easily translates from informal to formal. This is a continuous project that requires cognisance to be taken of the diversity of these informal structures that are infused with local customs, habits and norms.

c) Co-operatives legislation

As stated in Chapter two, there is extensive legislation regulating the co-operatives sector comprising of both the Co-operatives Act³⁴⁵ and the Co-operative Banks Act.³⁴⁶ This legislation has been passed with several financial services in mind, including Village banks. It is mandated to provide oversight, regulation and support for this sector by creating the CDA.³⁴⁷

It must be noted that, although good on paper, the current legislation has done little in reality to provide for assistance and support. These financial institutions remain largely unregistered

³⁴⁴ CGAP (2010) op cit note 334.

³⁴⁵ Op cit note 12.

³⁴⁶ Op cit note 13.

³⁴⁷ CIPC 'Registering your co-operative' op cit note 137.

and are left to their own devices, with little to no government backing.³⁴⁸ If this legislation were to be effective and the oversight bodies mandated by it were established, it is submitted that this would be a step in the right direction for the regulation of Village Banks.

One of the main issues faced is the inadequacy of the registration system, which is said to be haphazard and highly convoluted.³⁴⁹ Registration is administered by CIPC, who lacks the resources and manpower to support the vast range of financial institutions.³⁵⁰ Furthermore, the Registrar has its only office in Pretoria, which means that those conducting financial institutions in different provinces face the additional hurdle of gaining access.³⁵¹

With pockets of success, the overall impact of this legislation has had little to no bearing on the status quo.³⁵² It is submitted that there be a call for a more integrated approach to co-operatives and all financial institutions that are regulated by it. There cannot be one office, in one province that is responsible for all the administrative services required by the co-operatives legislation. Thus, more resources need to be provided, either at national or provincial level, so that an administrative centre can be set up in each province.

d) A dedicated body

Schoombee³⁵³ has suggested, among other things, that a bank exclusively dedicated to serve the low income market be set up.³⁵⁴ He submits that the low profit expectations from this sector, inhibit big banks from taking on the project and instead there should be a move toward creating a bank dedicated to servicing the poor.³⁵⁵ This will, it is proposed, enable communities to save as well as have access to credit - which are services greatly required by the poor.

³⁴⁸ CGAP (2010) op cit note 344.

³⁴⁹ The Department of Trade and Industry 'The DTI Integrated Strategy on the Development and promotion of Co-operatives 2012-2020' op cit note 153.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Schoombee. 'South African Banks and the Unbanked: Progress and Prospects' in *Biennial Conference of the Economic Society of South Africa* 16. Somerset West: University of Stellenbosch, 2004 at 12.

³⁵⁴ Ibid.

³⁵⁵ Schoombee (2004) op cit note 353 at 12.

One way in which to do this is via the conduit of NGO's, which should be upgraded by putting regulations in place in order to facilitate this process.³⁵⁶ A further, more preferred, method is the establishment of public-private sector partnerships whereby there is a commercially oriented NGO with a private investment company that specialises in microfinance.³⁵⁷

By creating such a partnership, the extensive experience and resources of the private company can be utilised by the new bank in order to foster progress in the microfinance sector. Because big banks have been unsuccessful in incorporating informal, financial institutions as part of their services, there is scope for the aforementioned partnership to address the deficiencies posed by the formal banking system ie the stringent regulations.³⁵⁸

Because the private sector firm should have microfinance knowledge, this will remedy the knowledge gaps faced both by the big banks as well as those who provide services at an informal level.³⁵⁹ The specialised private firm will provide the resources that are so inherently lacking in the development of the microfinance sector by approaching investors to fund the projects and train employees with their extensive knowledge of the sector.³⁶⁰

Although a useful conduit to aid in the regulation of Village Banks, it is a vastly different model to that which is currently used. By using this method of regulation, one would essentially change the structure of the Village Bank, taking it away from the community and placing it in the hands of larger, more complex organisations. This takes away from the inherently informal and societal nature of these banks, which is, in fact, their very essence of them.

It is submitted that there is a need for an injection of finance and knowledge into this sector in order for there to be development that is integrated and beneficial for the sector as a whole. By creating a dedicated body for the microfinance sector, it is submitted that the infrastructure and resources needed to further this sector will be gained.

³⁵⁶ Schoombee (2004) op cit note 353 at 13.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

Having an overarching support structure consisting of both public and private sector actors will benefit all these microfinance service providers. The government will however need to be complicit in this project, providing for incentives for private and public firms to get involved.³⁶¹ Whatever regulations are put in place, they need to encourage the functioning of these institutions rather than place heavy compliance burdens on them - again an issue which is to be addressed by government.

e) A hybrid approach

This has been the popular rhetoric among microfinance authors in that supervising authorities are to function as private limited companies.³⁶² Institutions that are registered with the requisite oversight body and conform to the regulations of the said body shall be granted exemptions under the Banks Act.³⁶³ It has been submitted that these exemptions should impose further limitations on these institutions such as that of the size and type of transactions.³⁶⁴

The governing body of the supervising authority will be chosen by the members of the company ie the financial institutions that are registered with the company and a core staff complement will be appointed to run the daily functions of the company.³⁶⁵ The governing body will be responsible for registering, de-registering, imposing fines and general oversight of these financial institutions.³⁶⁶

The proposal is that the supervising body will run at a total cost of R1.5 million to be financed by an application fee imposed on applying financial institutions.³⁶⁷ It is hoped that membership and accreditation fees, decreasing the reliance on government funding, will provide further funding.³⁶⁸ It is hoped that reliance on government resources will become less and less as more financial institutions register with the company, bringing in more application fees and thus diversifying their services.

³⁶¹ Schoombee (2004) op cit note 353 at 15.

³⁶² G Coetzee 'Regulation and supervision of Microfinance Institutions: The experience in South Africa' available at <http://www.up.ac.za/media/shared/Legacy/sitefiles/file/48/2052/coetzee1.pdf>, accessed on 15 November 2017.

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ CGAP (2010) op cit note 344.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

³⁶⁸ Ibid.

This has been termed a hybrid approach because there is both an oversight body and membership participation. Although this may not be done at a community level, like in the case of most informal microfinance institutions, there is more participation compared to other modes of regulation whereby members are able to choose the governing body of the oversight authority. Thus, one can argue that although this is an oversight body which is under a Banks Act exemption, there is a degree of self-regulation in that members are able to elect those who oversee them.³⁶⁹

IV. RECOMMENDATIONS

Although Village Banks are in theory not wholly informal and there have been attempts by government to bring them into its sphere of control, they do for the most part remain self-regulated.³⁷⁰ As stated in Chapter four, Village Banks operate at community level, using social structures, kinship and trust to manage these entities. At grassroots level, there is little to no government support or intervention and Village Banks are thus left to their own devices.

While it is crucial that there be a degree of separation of the different financial services that operate at community level as they have different objectives. There is merit in the argument that duplication of regulatory authorities and oversight bodies are not warranted, as it requires a duplication of resources, which the government does not have.

Oversight bodies serve a particularly important purpose in monitoring and providing support to microfinance institutions and if these oversight bodies are competent with the requisite credentials, it is submitted that they should be able to oversee numerous microfinance institutions to differing degrees.

Of course, this presupposes an oversight body that is sufficiently financed and well resourced, having employees that are trained in the workings of an array of microfinance institutions. As it stands, we see a number of oversight bodies have been developed over the years, which although having pockets of success, have on the whole failed to address the needs of the different microfinance institutions in South Africa.

³⁶⁹ CGAP (2010) op cit note 344.

³⁷⁰ Schoombie (2014) op cit note 353 at 15.

If legislation is the preferred method of regulation, it must be kept in mind that Village Banks and other similar entities are not homogenous and require some regulatory differentiation.³⁷¹ There can be no one size-fits-all solution and thus when rules are being made, the diverse nature of these entities needs to be kept in mind and catered for in the process. This is evident by the current conglomeration of financial entities covered by co-operative legislation, which has generally been unsuccessful in regulating or aiding these institutions.

In order for regulation of these entities to hold any weight, proposed legislation must create the conditions for growth and confidence in these entities, in order to increase the prospects of investment as well as create legitimacy.³⁷² Factors which need to be considered include: the number of members, the nature of transactions, the amount of risk, management control, the legal personality of the entity as well as the conditions within which these institutions operate.³⁷³

Legislation and regulation cannot be divorced from the societal nature of these entities. It is thus imperative that traditional authorities and dispute resolution methods be observed as they form a crucial part of not only the community's identity but also that of the Village Bank identity.

It is evident that for these entities to expand and succeed, an effective oversight body is crucial. It is submitted that instead of reverting to extensive regulation and legislation, oversight bodies would be more effective in monitoring informal financial institutions in that they serve a more facilitative capacity. This, in turn, allows for these entities to function largely as they have been but with additional support and resources.

Areas of support should include training in financial management, effective leadership and administration as well as assistance to establish new entities.³⁷⁴ It is also submitted that an oversight body would be able to lobby for these institutions at a national level with a collective voice in policy decisions that affect these entities. Furthermore, the oversight body would be tasked with simplifying and disseminating information received from government about these institutions and their development.

³⁷¹ FinMark Trust (2003) op cit note 8 at 40.

³⁷² Ibid at 41.

³⁷³ Ibid.

³⁷⁴ Ibid at 45.

The focus is thus on support rather than regulation.³⁷⁵ The responsibility is more a developmental one, focused on capacity building and creating structures that will provide for the longevity of these institutions.³⁷⁶ The imposition of far-reaching legislation, which requires these membership-based institutions to jump through numerous hoops, is counterproductive and fails to provide for the interests that are served by these financial institutions.

V. CONCLUSION

As has already been stated, it is not preferred that Village Banks be extensively regulated by legislation and, rather, there should be an oversight body to provide assistance where needed. However, as it stands, there is no competent body that exists to regulate the governance and functioning of Village Banks. Those entities that do exist are under-resourced in terms of personnel, finances and training.

It is submitted that there should be such an oversight body created to ensure the longevity and success of Village Banks as well as to preserve the integrity of their informal structure. This is however good in theory and it is evident that the government has neither the funds nor the resources to provide for such a body. In this instance, the costs of regulation and compliance far outweigh any benefits, which may be associated with it, and thus these entities remain self-sustainable.³⁷⁷ I will set out my thoughts on how to improve upon the current regulatory status quo in the conclusion, which follows this chapter.

³⁷⁵ FinMark Trust (2003) op cit note 8 at 45.

³⁷⁶ Ibid.

³⁷⁷ Ibid at 40.

CHAPTER SIX: CONCLUSION

This dissertation has asked the question of whether the current regulation of Village Banks is sufficient. In doing this, insight into the operation of Village Banks and how they mediate with the formal financial sector has been provided. By juxtaposing the formal sector legislation and informal sector practice, one can consider which is more effective in regulating and providing oversight of these entities.

Formal financial institutions have failed to provide appropriate and adequate financial services to the poor.³⁷⁸ The stringent requirements set out by these banks and the high transaction costs associated with these institutions are barriers to access for the poor.³⁷⁹ Even those entities which have been created to mitigate these costs, are not as effective as one would hope because they suffer from institutional deficiencies, overregulation and lack of funding.

For this reason, one sees the flourishing of the informal financial services sector is seen, which has been created to alleviate the flaws of formal banks. The Village Bank is one such institution that hopes to provide access to savings and, in some instances, credit, to those who cannot access it from the formal sector.³⁸⁰ We know that these entities have the capability to provide financial services, the question is whether they should be incorporated into the formal sector via legislation and regulation.

One of the key challenges facing regulation and supervision is finding the appropriate level to match the size and sophistication of these entities. Regulation that is too arduous, could hinder the functioning and development of Village Banks, while a more lenient approach may result in maladministration of these entities. It is important to ensure that these banks can assimilate to the communities within which they operate and so a one-size-fits-all approach is not appropriate.

As previously stated, the benefits of regulating Village Banks needs to far surpass the drawbacks in order for it to be viable. There cannot be formalisation, for formalisation's sake. There needs to be introspection as to why the argument to regulate these entities exists as

³⁷⁸ Mashigo & Humayun (2016) op cit note 4 at 8.

³⁷⁹ Ibid.

³⁸⁰ Ibid at 10.

opposed to leaving them to their own devices, which, at present, is working for them and their clients.

What is severely lacking is a body that provides support for the development and sustainability of Village Banks. Although funding would be ideal, this is not always possible and it is submitted that these banks require greater support in all areas. This means support in terms of training, information provision and representation at government level so that decisions about these entities are being made with input from those who experience them.

As it stands, the oversight body³⁸¹ currently tasked with overseeing several financial institutions, which is said to incorporate Village Banks, has done just about nothing to further the prospects of any of these institutions let alone Village Banks.³⁸² Lack of funding, coherence and management means that CDA is plagued with mediocrity and this coupled with its geographical inaccessibility to rural areas, has led to its ineptness.

The ineffectiveness of this body is evident from the ethnographic accounts set out in Chapter four. In the reports set out, there is never a mention made of co-operative legislation nor the CDA, which is most probably due to the fact that the oversight bodies do not reach these vulnerable areas, where most Village Banks are situated.

As was outlined in Chapter two, the history of regulation and the current attempts at bringing these entities into the formal sphere, have been unsuccessful. There has been a haphazard attempt by government to bring these entities into the formal sphere with the result being that Village Banks essentially operate regulation free, functioning at community level. With a lack of funding and training, it seems that the status quo will prevail and these banks will continue to operate as they always have, as quite successful, self-regulated entities that require no government intervention in their day-to-day running.

What is required is a *via media* approach whereby Village Banks are able keep a degree of self-regulation on a day-to-day level, with an overarching organisation to provide support and represent these entities at a national level. As it stands, these banks manage to fend for

³⁸¹ Co-operatives Development Agency (CDA).

³⁸² CGAP (2010) op cit note 334.

themselves at community level where they make use of local structures and authorities to carry out their day-to-day functions.

A supervising authority will provide guidelines; provide training and support to Village Banks at a micro-level. As previously stated, the emphasis should be on support, education and development, rather than regulation and compliance. By taking a more developmental approach, the focus should be on building up these institutions rather than requiring them to jump through hoops as set out in legislation.

In order to establish such a body, the process needs to be consultative and cannot be handed to the Minister of Finance in his executive authority, like in the Co-operatives Act.³⁸³ Consultation is imperative as there can be no oversight body that is effective without buy-in from the communities in which Village Banks operate. By garnering support from these entities, the oversight body will be better equipped to attend to the needs of the banks which, in turn, leads to sustainability of these institutions.

It is further submitted, that this body would need to be made up of members of Village Banks and not just civil servants. Constant training and education of not only the members of Village Banks but also those in positions of power, is imperative as most people in South Africa are not skilled in the field of microfinance. The process of learning and development must be felt at all levels.

It is evident that the South African formal financial sector needs great transformation. Although we have seen the number of 'banked' persons increase drastically, it is submitted that these statistics are not always an accurate reflection of the population's dealings with financial services. Instead, as argued above, there is a vast percentage of the population that although seemingly served by the formal financial sector, interact with these services intermittently.

This is where the informal sector has stepped in. By catering to the needs of the population that cannot afford financial services from formal banks, informal sector entities provide savings and credit services. It is essentially the people's response to the inadequacies seen in

³⁸³ Op cit note 12.

the modern banking system and the pooling of accessible resources, that brings into focus the creation of entities like the Village Bank.

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**Formalising the Informal: The 'fate'
of Village Banks**



By

KATY MAY BOLTON
(BLTKAT001)

This dissertation is submitted for the fulfilment of the partial requirement for the degree of Masters of Laws in Commercial Law

Supervisor: Associate Professor Andrew Hutchison

University of Cape Town
February 2018

UNIVERSITY OF CAPE TOWN

FACULTY OF LAW

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