

(H. B. 3461)

(No. 204)

(Approved December 14, 2007)

AN ACT

To amend subsection (a) of Section 6.02 of Act No. 255 of October 28, 2002, as amended, known as the “Cooperative Savings and Credit Unions Act of 2002,” to broaden the considerations related to indivisible capital.

STATEMENT OF MOTIVES

The Cooperative Movement is an integral part and pillar of strength of the economic and social development of the Island. The growth and bolstering of the cooperative movement in Puerto Rico is vested with high public interest. Act No. 255 of October 28, 2002, known as the Cooperative Savings and Credit Unions Act of 2002, recognized as the public policy of the Government of Puerto Rico to promote and further the growth and strengthening of savings and credit cooperatives, propitiate extensive and widespread participation in the financial services markets, and encourage the furthering of the cooperative philosophy and principles. In accordance with the above, it is imperative to allow savings and credit cooperatives to have the opportunity to be more competitive and prominent entities in the economic development of the Island and to have broad and full participation in the financial services markets. See Section 1.02 of Act No. 255 of 2002.

During the implementation of Act No. 255 of 2002, however, savings and credit cooperatives have experienced difficulties in the operational flexibility and competitive equality pursued with said statute. One of these difficulties has manifested in the enforcement of the strict requirements set forth in Act No. 255 of

2002, to establish indivisible capital. Indivisible capital, as established in Section 6 of Act No. 255, is a reserve of capital that cooperatives shall maintain. Act No. 255 of 2002 specifically establishes as a requirement that fifty percent (50%) of the indivisible capital reserve shall be maintained in liquid assets. Section 6.02 (a) of Act No. 255 of 2002. This high proportion of liquid assets contained in the indivisible capital reserve complicates the operational capacity and competitive flexibility of savings and credit cooperatives.

Liquid assets are those assets that may be converted into cash promptly and at the lesser cost possible. An example of liquid assets are cash itself and short term instruments. Traditionally, liquidity is measured through proportions of liquid assets over total assets or proportions of liquid assets over liabilities. However, taking into consideration the potential volatility of certain liabilities, these relations on liquidity have proven to be of little relevance. For this reason, a modern definition of liquidity must take into account, not only quantitative elements, as is currently done, but also qualitative elements.

Qualitative elements are factors related to the financial institution's capacity to respond to liquidity problems, such as internal control mechanisms, management information systems and the existence of contingency plans for handling liquidity problems. In other words, the qualitative analysis first evaluates the degree of knowledge the entity has of the risk of liquidity it is assuming and second, it ascertains what preventive measures have been taken to face eventual liquidity problems.

Act No. 255 of 2002, as a regulating instrument of savings and credit cooperatives, imposes adequate and objective processes for the evaluation and measurement of credit risk. Furthermore, the referred legislation provides that, regardless of the guarantees and collaterals offered, no cooperative shall grant a loan to any person unless the existence of reliable sources for the repayment

thereof, as agreed, is confirmed and documented, which sources can be sufficient assets deposited in the cooperative and withheld by it, including liquid assets as provided in Section 2.03 of Act No. 255 of 2002, in the case of non-members.

Act No. 255 of 2002 also provides that lending policies shall be revised periodically to ensure their adequacy in view of market fluctuations, delinquency trends of the portfolio, the quality of the assets of the institution and the need to maintain a competitive position.

Evidently, the qualitative elements required by law to savings and credit cooperatives promote a greater financial solvency in said financial entities, considerably lowering the liquidity problems that they may face.

However, the requirement set forth in Section 6.02 (a) of Act No. 255 of 2002, on maintaining fifty percent (50%) of the indivisible capital reserve in liquid assets, exclusively adheres to the traditional definition of liquid assets. Said Section requires a proportion of liquid assets in relation to liabilities without taking into account the qualitative elements contained in the very law that regulates savings and credit cooperatives. This situation creates incompatibility in the operational flexibility and competitive equality of the cooperatives by requiring strict lending policies while requiring high proportions of liquid assets as components of an indivisible capital reserve.

For the purpose of allowing savings and credit cooperatives to have the opportunity to be more competitive and prominent entities in the economic development of the Island, and to establish terms and conditions similar to those of the other financial market participants, this Legislature deems it necessary to amend Section 6.02 (b) of Act No. 255 of 2002 to lower the proportion of liquid assets that shall form a part of the indivisible capital reserve.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.– Subsection (a) of Section 6.02 of Act No. 255 of October 28, 2002, as amended, is hereby amended to read as follows:

“Section 6.02.– Indivisible Capital

- (a) Cooperatives shall maintain an indivisible capital reserve that shall be known as indivisible capital. Thirty-five percent (35%) of the indivisible capital reserve shall be maintained in liquid assets. As of December 31 of the year of approval of this Act, each cooperative must have a minimum indivisible capital of three percent (3%) of its total risk assets. From this date on, the indivisible capital of each cooperative must reach the following levels on the dates listed below, regarding the risk assets defined in subsection (d) of this Section:

...”

Section 2.– This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 204 (H.B. 3461) of the 6th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (a) of Section 6.02 of Act No. 255 of October 28, 2002, as amended, known as the “Cooperative Savings and Credit Unions Act of 2002,” to broaden the considerations related to indivisible capital,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 31st of March of 2008.

Francisco J. Domenech
Director