

South Africa

## Deposit-taking Institutions Act, 1990

Act 94 of 1990

Legislation as at 1 August 1991

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# South Africa

## Deposit-taking Institutions Act, 1990

### Act 94 of 1990

Published in Government Gazette 12617 on 11 July 1990

Assented to on 28 June 1990

There are multiple commencements

Provisions	Status
Chapter I (section 1–2); Chapter II (section 3–10); Chapter III (section 11–35); Chapter IV (section 36–50); Chapter V, section 51–59, section 60(3), 60(4), section 61, section 62–69; Chapter VI (section 70–75); Chapter VII (section 76–80); Chapter VIII (section 81–84); Chapter IX (section 85–96)	commenced on 1 February 1991 by <a href="#">Proclamation 12 of 1991</a> .
Chapter V, section 60(1), 60(2), 60(3)(a), 60(3)(b), 60(5), 60(6)	commenced on 9 August 1991 by <a href="#">Proclamation R73 of 1991</a> .

*[This is the version of this document as it was from 1 August 1991 to 14 April 1992.]*

*[Amended by [Deposit-taking Institutions Amendment Act, 1992 \(Act 42 of 1992\)](#) on 1 February 1991]*

*[Amended by [Deposit-taking Institutions Amendment Act, 1991 \(Act 81 of 1991\)](#) on 12 June 1991]*

*[Amended by [Deposit-taking Institutions Act, 1990: Amendment \(Government Notice R1765 of 1991\)](#) on 1 August 1991]*

(English text signed by the State President.)

## ACT

**To provide for the regulation and supervision of the business of public companies taking deposits from the public; and to provide for matters connected therewith.**

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

### Chapter I Interpretation and application of Act

#### 1. Definitions

(1) In this Act, unless the context otherwise indicates—

"**agency**", in relation to a deposit-taking institution, means a right granted to a person by that deposit-taking institution to receive on its behalf from its clients any deposits, money due to it or applications for loans or advances, or to make payments to such clients on its behalf;

"**board of appeal**" means the board of appeal established by section 9(2);

"**chief executive officer**", in relation to a deposit-taking institution, means a person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the

board of directors of the deposit-taking institution for the conduct of the business of the deposit-taking institution;

"**chief representative officer**" means the person in charge of a representative office;

"**close relative**", in relation to any person, means—

- (a) his spouse;
- (b) his child, stepchild, parent or stepparent;
- (c) the spouse of any of the persons mentioned in paragraph (b);

"**Companies Act**" means the Companies Act, 1973 (Act No. 61 of 1973);

"**company**" means a company under the Companies Act;

"**controlling company**" means a public company registered in terms of this Act as a controlling company in respect of a deposit-taking institution;

"**co-operative**" means a co-operative incorporated in terms of the Cooperatives Act, 1981 (Act No. 91 of 1981), and includes a co-operative society or co-operative company deemed in terms of section 2 of that Act to be incorporated in terms of the said Act;

"**deposit**", when used as a noun, means an amount of money paid by one person to another person subject to an agreement in terms of which—

- (a) an equal amount or any part thereof will be conditionally or unconditionally repaid, with or without a premium, on demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it; and
- (b) no imprest will be payable on the amount so paid or interest will be payable thereon at specified intervals or otherwise,

notwithstanding that such payment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of such amount *mutatis mutandis* as contemplated in paragraph (a) or for the payment of interest on such amount *mutatis mutandis* as contemplated in paragraph (b) is issued in respect of such amount; but does not include an amount of money—

- (i) paid as an advance, or as part payment, in terms of a contract for the sale, letting and hiring or other provision of movable or immovable property or of services, and which is repayable only in the event of—
  - (aa) that property or those services not in fact being sold, let and hired or otherwise provided;
  - (bb) the fulfilment of a resolutive condition forming part of that contract; or
  - (cc) the non-fulfilment of a suspensive condition forming part of that contract;
- (ii) paid as security for the performance of a contract or as security in respect of any loss which may result from the non-performance of a contract;
- (iii) without derogating from the provisions of paragraph (ii), paid as security for the delivery up or return of any movable or immovable property, whether in a particular state of repair or otherwise;
- (iv) paid by a holding company to its subsidiary, or by a subsidiary to its holding company, or by one subsidiary to another subsidiary of the same, holding company;
- (v) paid by a person who, at the time of such payment—
  - (aa) is a close relative of the person to whom such money is paid;
  - (bb) is a director or executive officer of the person to whom such money is paid; or



(cc) is a close relative of a director or executive officer of the person to whom such money is paid;

- (vi) paid by any person to a registered insurer as defined in section 1(1) of the Insurance Act, 1943 (Act No. 27 of 1943), as a premium in respect of any kind of policy defined or referred to in that section and under which policy that insurer assumes, in return for such premium, such an obligation as is described in that section in the definition of, or with reference to, the kind of policy in question; or

*[paragraph (vi) substituted by section 1 of Government Notice R1765 of 1991]*

- (vii) paid to a fund registered or provisionally registered under section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), as a contribution, contemplated in Section 13A of that Act, by or on behalf of a member of that fund,

and "deposit" when used as a verb, or any derivative thereof, has a corresponding meaning;

"**deposit-taking institution**" means a public company registered provisionally or finally as a deposit-taking institution in terms of this Act;

"**domestic shareholder**", in relation to a deposit-taking institution or controlling company, means a shareholder of the deposit-taking institution or controlling company—

- (a) who is resident in the Republic;
- (b) which is a company controlled, *mutatis mutandis* as contemplated in paragraph (a), (b) or (c) of the definition of "controlling company" in section 1 of the Companies Act, by a person or persons who is or are resident in the Republic or, in the case of a juristic person or persons, was or were formed, established or incorporated by or under a law of the Republic;
- (c) which is a juristic person other than a company and was formed, established or incorporated by or under a law of the Republic, excluding a pension fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), where the head office of the association which carries on the business of that fund, or of every employer who is a party to that fund, is outside the Republic; or
- (d) that is a person belonging to a category of persons recognized by the Registrar as domestic shareholders for the purposes of this Act;

"**executive officer**", in relation to any institution, includes any general manager or deputy general manager of such an institution;

"**fellow subsidiary**", in relation to a company, means any other company which is a subsidiary of the holding company of which the first-mentioned company is a subsidiary;

"**financial statements**" means annual financial statements referred to in sections 286 and 288 of the Companies Act;

"**foreign shareholder**", in relation to a deposit-taking institution or controlling company, means a shareholder of such deposit-taking institution or controlling company that is not a domestic shareholder;

"**general public**" does not include a deposit-taking institution;

"**group of deposit-taking institutions**" means a group consisting of two or more deposit-taking institutions which have the same holding company, and such holding company;

"**holding company**" means a holding company as defined in section 1(4) of the Companies Act;

"**Land Bank**" means the Land and Agricultural Bank of South Africa;

"**liquid assets**" means—

- (a) Reserve Bank notes, subsidiary coin, gold coin and bullion;

- (b) any credit balance in an account maintained with the Reserve Bank in terms of section 71 or in a clearing account with the Reserve Bank;
- (c) for a period terminating on a date fixed by the Minister by notice in the *Gazette* (which date shall be a date not later than two years as from the date of commencement of this Act), loans, repayable on demand, to such deposit-taking institutions as the Minister may, with reference to the nature of the facilities offered by such deposit-taking institutions, designate by notice in the *Gazette*;
- (d) treasury bills of the Republic;
- (e) negotiable loan levy certificates issued by the Treasury in respect of any loan levy on companies levied in terms of any Act of Parliament, and with a maturity of not more than three years to their redemption dates;
- (f) stocks issued under section 19 of the Exchequer Act, 1975 ( Act No. 66 of 1975), with a maturity of not more than three years to the last redemption date;
- (g) bills issued by the Land Bank for purposes of extending short-term financing—
  - (i) to an agricultural co-operative or a special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (No. 91 of 1981), or deemed thereunder to be so formed and incorporated, for the purchase of agricultural products from farmers and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products; or
  - (ii) to a control board established under the Marketing Act, 1968 (Act No. 59 of 1968), for the purchase of agricultural products;
- (h) acceptances of a deposit-taking institution which are discountable with the Reserve Bank;
- (i) self-liquidating bills or promissory notes arising out of the movement of goods, with a maturity not exceeding 120 days, or six months in the case of agricultural bills, and which are discountable with the Reserve Bank; or
- (j) securities of the Reserve Bank with a maturity of not more than three years to the last redemption date thereof;

"**Minister**" means the Minister of Finance;

"**money broker**" means a person who conducts money broking as a material part of his business;

"**money broking**" means the effecting of a money lending transaction directly between a lender and a deposit-taking institution as borrower through the intermediation of a money broker;

"**mutual building society**" means a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965);

"**person**" includes any partnership;

"**prescribed**" means prescribed by regulation;

"**public**" includes a juristic person;

"**Registrar**" means the Registrar of Deposit-taking Institutions designated under section 4;

"**Registrar of Companies**" means the Registrar of Companies appointed under section 7 of the Companies Act;

"**regulation**" means a regulation made under section 90;

"**representative office**", in relation to—

- (a) a foreign institution referred to in section 34 (1), means premises situated within the Republic and from which the business referred to in the said section 34 (1) and conducted

by such foreign institution in the other country referred to in that section, is promoted or assisted in any way; or

- (b) the establishment by a deposit-taking institution of a representative office outside the Republic as contemplated in section 52 (1)(e), means premises situated outside the Republic and front which the business conducted by such deposit-taking institution within the Republic in terms of this Act is promoted or assisted in any way;

**"Republic"**, for the purposes of the definition of "domestic share-holder", includes any state the territory of which formerly formed part of the Republic;

**"Reserve Bank"** means the South African Reserve Bank;

**"subsidiary"** means a subsidiary as defined in section 1 (3) of the Companies Act;

**"the business of a deposit-taking institution"** means—

- (a) the acceptance of deposits from the general public as a regular feature of the business in question, including, in relation to such an institution, from persons in its employ;
- (b) the soliciting of or advertising for deposits;
- (c) the utilization of money, or of the interest or other income earned on money, accepted by way of deposit as contemplated in paragraph (a)—
  - (i) for the granting by any person, acting as lender in his own name or through the medium of a trust or a nominee, of loans to other persons;
  - (ii) for investment by any person, acting as investor in his own name or through the medium of a trust or a nominee; or
  - (iii) for the financing, wholly or to any material extent, by any person of any other business activity conducted by him in his own name or through the medium of a trust or a nominee;
- (d) the obtaining, as a regular feature of the business in question, of money through the sale of an asset, to any person other than a deposit-taking institution, subject to an agreement in terms of which the seller undertakes to purchase from the buyer at a future date the asset so sold or any other asset; or
- (e) any other activity which the Registrar has, after consultation with the Governor of the Reserve Bank, by notice in the *Gazette* declared to be the business of a deposit-taking institution,

but does not include—

- (aa) the acceptance of a deposit by a person who does not hold himself out as accepting deposits on a regular basis and who has not advertised for or solicited such deposit: Provided that—
  - (i) the person accepting deposits as contemplated in this paragraph shall not at any time hold deposits from more than twenty persons or deposits amounting in the aggregate to more than R500 000; and
  - (ii) a person and any person controlled directly or indirectly by him (whether such control is through shareholding or otherwise) or managed by him, and a subsidiary of such last-mentioned person, who accepts deposits as contemplated in this paragraph shall for the purposes of subparagraph (i) of this proviso be deemed to be one person;
- (bb) the borrowing of money from its members by a co-operative subject to such conditions as may be prescribed;

- (cc) any activity of a public sector, governmental or other institution, or of any person or category of persons, designated by the Registrar, with the approval of the Minister, by notice in the *Gazette*, provided such activity is performed in accordance with such conditions as the Registrar may with the approval of the Minister determine in the relevant notice;
- (dd) any activity contemplated in paragraph (a), (b) or (c)—
  - (i) performed by any institution registered or established in terms of, by or under any other Act of Parliament and designated by the Minister by notice in the *Gazette*; or
  - (ii) performed in terms of any scheme authorized and controlled by, and conducted in accordance with the provisions of, any other Act of Parliament and so designated by the Minister, provided such activity is performed in accordance with such conditions as the Minister may determine in the relevant notice;
- (ee) the acceptance of money against debentures issued in accordance with the provisions of the Companies Act provided such money is not used, in the case of such issue of debentures by a person other than a deposit-taking institution, for granting money loans or credit (other than customary credit in respect of the sale of goods or provision of services by the issuer of the debentures) to the general public; or
- (ff) an act of money broking which culminates in a money lending transaction on the same day on which the money broker concerned receives his instructions;

"**this Act**" includes the regulations;

"**undesirable practice**" means any act prohibited, or any failure to perform any act enjoined, by section 78 (1), and, in relation to a particular deposit-taking institution or deposit-taking institutions specified in a notice referred to in section 78 (2) (b) or all deposit-taking institutions, includes any act which in terms of a notice referred to in section 78 (2) constitutes an undesirable practice for such particular deposit-taking institution, such specified deposit-taking institutions or all deposit-taking institutions, as the case may be;

"**wholly owned subsidiary**" means a wholly owned subsidiary as defined in section 1 of the Companies Act.

- (2) (a) The Minister may, on the recommendation of the Registrar and after consultation with the Governor of the Reserve Bank, by regulation amend the definitions of "deposit", "deposit-taking institution" and "the business of a deposit-taking institution" for the purposes of the application of any of or all the provisions of this Act.
- (b) Every regulation made under paragraph (a) shall be of force and effect unless and until, during the session in which the relevant list has been laid upon the Tables in Parliament in accordance with the provisions of section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), every House of Parliament has by resolution disapproved of the regulation, in which event the regulation shall lapse as from a date to be specified in the resolution, but such lapsing of the regulation shall not affect the validity of anything done under such regulation before the date specified in the resolution, and nothing contained in this paragraph shall affect the power of the Minister to make a new regulation as to the subject matter of the regulation which has so lapsed.

## 2. Exclusions from application Act

Except where expressly stated otherwise, the provisions of this Act, in so far as they impose requirements with which any institution must comply—

- (a) before it may carry on the business of a deposit-taking institution; or
- (b) in the lawful carrying on of the business of a deposit-taking institution,

shall not apply to—

- (i) the Reserve Bank;
- (ii) the Land Bank;
- (iii) the Development Bank of Southern Africa;
- (iv) the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);
- (v) the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);
- (vi) any mutual building society; or
- (vii) any other institution or body designated by the Minister by notice in the *Gazette*.

## **Chapter II**

### **Administration of Act**

#### **3. Office for Deposit-taking Institutions**

For the registration of institutions as deposit-taking institutions and for the other purposes of this Act there shall, as part of the Reserve Bank, be an office in Pretoria called the Office for Deposit-taking Institutions, and at the head of such office shall be a person to be styled the Registrar of Deposit-taking Institutions.

#### **4. Registrar and Deputy Registrar of Deposit-taking Institutions**

- (1) The Reserve Bank shall, subject to the approval of the Minister, designate an officer or employee in its service as Registrar of Deposit-taking Institutions, who shall perform, under the control of the said Bank and in accordance with the directions issued by that Bank from time to time, the functions assigned to the Registrar by or under this Act.
- (2) The Reserve Bank may, subject to the approval of the Minister, designate an officer or employee in its service as Deputy Registrar of Deposit-taking Institutions, who shall, subject to the control and directions of the Registrar, be competent to perform any function which the Registrar is permitted or required to perform.

#### **5. Delegation of powers and assignment of functions by Registrar**

- (1) The Registrar may with the approval of the Reserve Bank—
  - (a) delegate to any officer or employee of the Reserve Bank any power conferred upon the Registrar by or under this Act; or
  - (b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this Act.
- (2) Any delegation under subsection shall not prevent the exercise of the relevant power by the Registrar himself.

#### **6. Powers of inspection of, and guide-lines by, Registrar**

- (1) In addition to the powers and duties conferred or imposed upon him by this Act, the Registrar shall, for the purposes of the performance of his functions under this Act, have powers and duties in all respects corresponding to the powers and duties conferred or imposed by the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), upon a registrar contemplated in the last-mentioned Act

- (2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made in accordance with the provisions of the Inspection of Financial Institutions Act, 1984.
- (3) Neither the provisions of this section nor any other provision of this Act shall be construed as prohibiting the Registrar from holding discussions, from time to time, with the chief executive officer of any deposit-taking institution, or with any employee of that institution designated by such chief executive officer, with a view to achieving effective supervision of such deposit-taking institution by the Registrar.
- (4) The Registrar may from time to time by means of a circular furnish deposit-taking institutions with guide-lines regarding the application and interpretation of the provisions of this Act.

## **7. Furnishing of information by deposit-taking institutions**

- (1) The Registrar may by notice in writing—
  - (a) direct a deposit-taking institution or a controlling company or a subsidiary of a deposit-taking institution or controlling company to furnish the Registrar, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as may be specified in the notice and as the Registrar may reasonably require for the performance of his functions under this Act; or
  - (b) direct such institution, controlling company or subsidiary to furnish the Registrar with a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or by any other person with appropriate professional skill, on any matter, or any aspect of any matter, about which the Registrar has directed or may direct under paragraph (a) the institution, controlling company or subsidiary to furnish information.
- (2) The public accountant or other person appointed by a deposit-taking institution, controlling company or subsidiary to make a report required under subsection (1)(b), shall be a person designated or approved by the Registrar, and the Registrar may require the relevant report to be in such form as may be specified in the notice referred to in subsection (1).

## **8. Power of Registrar to extend certain periods**

- (1) Any person who is required to submit to the Registrar or to furnish the Registrar with any return, statement, report or other document or information within a period determined by or under this Act, may before or after the expiry of that period apply to the Registrar in writing for an extension of that period.
- (2) The Registrar may, after consideration of an application referred to in subsection (1)—
  - (a) grant the application and extend by such period as he may determine the period within which the return, statement, report or other document or information had to be submitted or furnished; or
  - (b) refuse the application,and shall in writing notify the person who lodged the application of his decision.

## **9. Appeal against decisions of Registrar**

- (1) Subject to the provisions of section 13 (4), any person aggrieved by a decision taken by the Registrar under a provision of this Act may within the period and in the manner and upon payment of the prescribed fees appeal against such decision to the board of appeal established by subsection (2).

- (2) For the purposes of this Act there is hereby established a board of appeal which shall consist of five members, appointed by the Minister and of whom—
- (a) one shall be appointed on account of his knowledge of law and shall be the chairman;
  - (b) three shall be persons who in the opinion of the Minister have wide experience of, and are knowledgeable about the latest developments in, the deposit-taking institutions industry; and
  - (c) one shall be a person registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and who in the opinion of the Minister has wide experience of, and is knowledgeable about the latest developments in, the accountants' and auditors' profession.
- (3) For the purposes of the hearing of every appeal in terms of subsection (1), the board of appeal shall be constituted as follows, namely—
- (a) the chairman;
  - (b) one of the members appointed under subsection (2) (b), designated by the chairman; and
  - (c) the member appointed under subsection (2) (c),
- and any reference to the board of appeal in subsections (4), (7), (8), (9), (10), (11), (12) and (13) shall be deemed to be a reference to the board of appeal as so constituted.
- (4) If before or during the hearing of any appeal in terms of subsection (1) it transpires that any member of the board of appeal has any direct or indirect personal interest in the outcome of that appeal, such member shall recuse himself and he shall be replaced by—
- (a) in the case of the member referred to in subsection (2) (a), a person temporarily appointed, subject to the provisions of that subsection, by the Minister for the purposes of the hearing of that appeal;
  - (b) in the case of a member referred to in subsection (2) (b), one of the other members referred to in that subsection; or
  - (c) in the case of the member referred to in subsection (2) (c), a person temporarily appointed, subject to the provisions of that subsection, by the Minister for the purposes of the hearing of that appeal.
- (5) A member of the board of appeal shall hold office for a period of three years and shall on the expiration of his term of office be eligible for reappointment.
- (6) Any casual vacancy that occurs on the board of appeal shall be filled by the appointment by the Minister, subject to the provisions of subsection (2), of another member, and any person so appointed shall hold office for the unexpired portion of the period of office of his predecessor.
- (7) An appeal under subsection (1) shall be heard on the date and at the place and time fixed by the board of appeal, which shall previously in writing notify the appellant as well as the Registrar thereof.
- (8) The board of appeal may for the purposes of an appeal lodged with it—
- (a) summon any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his possession or custody or under his control any document which has any bearing upon the subject of the appeal, to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and retain for examination any document so produced;
  - (b) administer an oath to or accept an affirmation from any person called as a witness at the appeal; and

- (c) call any person present at the hearing of the appeal as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.
- (9) The procedure at the hearing of an appeal shall be determined by the chairman of the board of appeal.
- (10) The board of appeal may after hearing the appeal—
  - (a) confirm, set aside or vary the relevant decision of the Registrar; and
  - (b) direct the Registrar to execute the decision of the board of appeal in connection therewith.
- (11) The decision of a majority of the members of the board of appeal shall be the decision of that board.
- (12) The decision of the board of appeal shall be in writing, and a copy thereof shall be furnished to the appellant as well as to the Registrar.
- (13) If the board of appeal sets aside any decision by the Registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, and if the board of appeal varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.
- (14) A member of the board of appeal shall in respect of his services as such a member be paid such remuneration, including reimbursement for transport, travelling and subsistence expenses incurred by him in the performance of his functions as such a member, as the Minister may from time to time determine.

#### **10. Annual report by Registrar**

- (1) The Registrar shall annually submit to the Minister a report on his activities in terms of this Act during the year under review.
- (2) The Minister shall lay a copy of the report referred to in subsection (1) upon the Tables in Parliament within 14 days after receipt of such report, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

### **Chapter III**

#### **Authorization to establish, and registration and cancellation of registration of deposit-taking institutions**

#### **11. Registration a prerequisite for conducting business of deposit-taking institution**

- (1) No person shall conduct the business of a deposit-taking institution unless such person is a public company and is provisionally or finally registered as a deposit-taking institution in terms of this Act.
- (2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

#### **12. Application for authorization to establish deposit-taking institution**

- (1) Any person who wishes to conduct the business of a deposit-taking institution may apply to the Registrar for authorization to establish such an institution.
- (2) An application under subsection (1)—
  - (a) shall be made in the prescribed manner and on the prescribed form; and
  - (b) shall be accompanied by a statement containing the prescribed information.



- (3) The Registrar may require an applicant contemplated in subsection (1) to furnish him with—
- (a) such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2); or
  - (b) a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or by any other knowledgeable person approved by the Registrar, on such aspects relating to the application in question,
- as the Registrar may deem necessary.

### 13. Granting or refusal of application for authorization

- (1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and reports furnished to him for the purposes of an application under section 12, grant or refuse the relevant application or grant the application subject to such conditions as he may determine.
- (2) The Registrar shall not grant an application made under section 12 unless he is satisfied—
- (a) that the establishment of the proposed deposit-taking institution will be in the public interest;
  - (b) that the business the applicant proposes to conduct, is that of a deposit-taking institution;
  - (c) that the applicant will conduct the proposed business of a deposit-taking institution in the capacity of a public company incorporated and registered under the Companies Act;
  - (d) that the applicant will be able to establish itself successfully as a deposit-taking institution;
  - (e) that the applicant will have the financial means to comply, in the capacity of a deposit-taking institution, with the requirements of this Act;
  - (f) that the business of the proposed deposit-taking institution will be conducted in a prudent manner;
  - (g) that every person who is to be an executive officer of the proposed deposit-taking institution has sufficient experience of the management of the kind of business it is intended to conduct; and
  - (h) that the composition of the board of directors of the proposed deposit-taking institution will be appropriate having regard to the nature and scale of the business it is intended to conduct.
- (3) When the Registrar grants or refuses an application made under section 12, he shall give written notice of that fact to the applicant concerned.
- (4) No appeal to the board of appeal shall lie against a refusal by the Registrar of an application made under section 12.

### 14. Revocation of authorization

- (1) The Registrar may at any time prior to the provisional registration, in terms of section 17, of a deposit-taking institution, revoke the authorization granted for the establishment of such institution if the Registrar is satisfied that—
- (a) false or misleading information was furnished in the application for such authorization; or
  - (b) success has not been achieved within a period of six months as from the date of the granting of the said authorization, with the formation, in accordance with the proposals contained in the application for the said authorization, of the proposed deposit-taking institution.

- (2) When the Registrar revokes an authorization in terms of subsection (1), he shall give written notice of that fact to the person to whom the authorization was granted.

### **15. Formation of certain companies prohibited except with approval of Registrar**

- (1) No public company shall without the written approval of the Registrar be formed in terms of the Companies Act to conduct the business of a deposit-taking institution in accordance with the provisions of this Act.
- (2) The Registrar shall grant the approval referred to in subsection (1) only if he is of the opinion that the company concerned will probably, having regard to the provisions of section 17, be eligible for provisional registration as a deposit-taking institution in terms of this Act.
- (3) Notwithstanding anything to the contrary contained in the Companies Act, the Registrar of Companies shall not register in terms of that Act the memorandum of association and articles of association of a public company formed for the purpose of conducting the business of a deposit-taking institution, unless the application for such registration is accompanied by the approval referred to in subsection (1).

### **16. Application for provisional registration as deposit-taking institution**

- (1) An applicant to whom the Registrar has under section 13 granted authorization for the establishment of a deposit-taking institution (hereinafter in this Chapter referred to as the institution) may at any time during the period of 12 months commencing on the date of the granting of the said authorization apply to the Registrar for the provisional registration of the institution, as a deposit-taking institution, provided such authorization has not been revoked in terms of section 14 (1).
- (2) An application under Subsection (1) shall—
  - (a) be made in the prescribed manner and on the prescribed form; and
  - (b) be accompanied by—
    - (i) two copies each of the institution's memorandum of association and articles of association;
    - (ii) a written statement in which is set out—
      - (aa) the full and the abbreviated name of the institution as well as the literal translations thereof;
      - (bb) the address of the institution's head office as well as its postal address;
      - (cc) full particulars of the business the applicant proposes to conduct and of the manner in which it proposes to conduct such business; and
      - (dd) the full names and the addresses of the chairman, the other directors and the executive officers of the institution; and
    - (iii) a list of shareholders in the institution, as at the date of the application, drawn up in accordance with the requirements with which a return referred to in section 59 has to comply.
- (3) The Registrar may require an applicant contemplated in subsection (1) to furnish him with such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2), as the Registrar may deem necessary.
- (4) The application and every document lodged in terms of subsection (2) or (3) shall be signed by the chairman or the chief executive officer of the institution.

## 17. Granting or refusal of application for provisional registration

- (1) Subject to the provisions of subsection (2), the Registrar shall, after considering all information and documents furnished to him in terms of section 16 for the purposes of an application under that section, grant such application if he is satisfied—
  - (a) that the business the applicant proposes to conduct is that of a deposit-taking institution;
  - (b) that the applicant does not propose to adopt undesirable methods of conducting business; and
  - (c) that the memorandum of association and articles of association of the institution are consistent with this Act and are not undesirable for any reason.
- (2) Notwithstanding the provisions of subsection (1), the Registrar may refuse an application for the provisional registration of an institution as a deposit-taking institution if he is of the opinion—
  - (a) that any of the requirements specified in section 13 (2) is no longer complied with by or in respect of the institution concerned;
  - (b) that the institution concerned, when provisionally or finally registered as a deposit-taking institution, will probably not be able to comply with a provision of this Act, or is likely to pursue a practice contrary to a provision of this Act;
  - (c) that an interest which any person has in the institution concerned is inconsistent with a provision of this Act;
  - (d) that the interests of potential depositors with the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason;
  - (e) that the name of the institution concerned—
    - (i) is identical with a name under which an existing deposit-taking institution or a mutual building society has already been provisionally or finally registered;
    - (ii) so closely resembles the name of an existing deposit-taking institution or mutual building society that the one is likely to be mistaken for the other;
    - (iii) is identical with, or closely resembles, the name under which any deposit-taking institution or any other institution which was registered under any law repealed by this Act, or any mutual building society, was previously registered and that reasonable ground for objection against the use of that name by the institution concerned exists; or
    - (iv) is likely to mislead the public; or
  - (f) that the application does not comply with a requirement of this Act.
- (3) When the Registrar in terms of this section grants or refuses an application for provisional registration, he shall give written notice of that fact to the applicant concerned.
- (4) If the Registrar in terms of this section grants an application for provisional registration he shall, subject to the provisions of section 18, and on payment by the applicant of the prescribed registration fee, provisionally register the institution concerned as a deposit-taking institution and issue to the institution, on the prescribed form, a certificate of provisional registration as a deposit-taking institution,
- (5) An institution which is for the first time provisionally registered as a deposit-taking institution shall not commence doing the business of a deposit-taking institution until it has furnished proof to the Registrar that it complies with the provisions of section 70.
- (6) An institution which contravenes the provisions of subsection (5) shall be guilty of an offence.

## 18. Conditions, duration and renewal of provisional registration

- (1) The provisional registration under section 17 of an institution as a deposit-taking institution shall be for a period of 12 months and shall be subject to such conditions as the Registrar may determine.
- (2) The Registrar may in his discretion and subject to the same or any other or further conditions, from time to time before its expiration renew such provisional registration for periods not exceeding 12 months at a time: Provided that—
  - (a) no deposit-taking institution shall remain provisionally registered as such for an aggregate period exceeding five years; and
  - (b) without derogating from the Registrar's discretion in terms of this subsection to grant or refuse the renewal of such provisional registration, the Registrar may accept the fact that the institution concerned has not, during the period of six months expiring on the last day of the period of 12 months referred to in subsection (1), conducted any business as a deposit-taking institution, as a conclusive ground for the refusal of such a renewal.
- (3) In addition to any other condition which the Registrar may impose under subsection (1) or (2), he may impose a condition requiring the institution concerned to take within a specified period such steps in terms of the Companies Act as may be necessary to alter its memorandum of association or articles of association in accordance with the requirements of the Registrar.
- (4)
  - (a) An appeal in terms of section 9 by a deposit-taking institution against the Registrar's refusal to renew or further renew its provisional registration shall, notwithstanding the provisions of section 9, be lodged before such provisional registration or renewed provisional registration expires.
  - (b) If the provisional registration or renewed provisional registration expires while an appeal referred to in paragraph (a) is being considered, such provisional registration or renewed provisional registration, as the case may be, shall be deemed to have been renewed or further renewed until the appellant is notified of the board of appeal's decision on the appeal.

## 19. Application for final registration as deposit-taking institution

- (1) An institution which is provisionally registered as a deposit-taking institution may at any time while it is provisionally registered apply to the Registrar in the prescribed manner and on the prescribed form for final registration as a deposit-taking institution.
- (2) An institution applying in terms of subsection (1) for final registration as a deposit-taking institution shall furnish such additional information in connection with its application as the Registrar may require.

## 20. Granting or refusal of application for final registration

- (1) The Registrar may in his discretion grant or refuse an application under section 19 for final registration, or may grant such application subject to such conditions as he may determine, but the Registrar shall not grant an application unless he is satisfied that—
  - (a) the institution concerned has satisfied all the conditions subject to which it was provisionally registered;
  - (b) the institution concerned has complied and will be able to continue to comply with all the other requirements of this Act which are applicable to it in its capacity as a provisionally or finally registered deposit-taking institution;
  - (c) the board of directors and the executive management of the Institution concerned have during the period preceding the application for final registration demonstrated their integrity and their ability to conduct the business of a deposit-taking institution successfully; and

- (d) the business of a deposit-taking institution conducted by the institution concerned is conducted in a prudent manner and without resort to undesirable practices.
- (2) When the Registrar in terms of this section grants or refuses an application for final registration, he shall give written notice of that fact to the applicant concerned.
- (3) If the Registrar in terms of this section grants an application for final registration he shall on payment by the applicant of the prescribed registration fee, finally register the institution concerned as a deposit-taking institution and issue to the institution, on the prescribed form, a certificate of final registration as a deposit-taking institution.
- (4) Refusal in terms of this section of an application for final registration—
  - (a) shall, subject to the provisions of section 18 (2) (a), not affect the provisional registration of the institution concerned as a deposit-taking institution; and
  - (b) shall not prevent the institution concerned, while its provisional registration is in force, from reapplying under section 19 for final registration as a deposit-taking institution.

## 21. Untrue information in connection with applications

Any person who in or in connection with—

- (a) an application for authorization to establish a deposit-taking institution;
- (b) an application for provisional or final registration as a deposit-taking institution; or
- (c) an application for the renewal of such a provisional registration,

furnishes the Registrar with any information which to the knowledge of such person is untrue or misleading in any material respect, shall be guilty of an offence.

## 22. Use of name of deposit-taking institution

- (1) Subject to the provisions of subsection (2), an institution which is provisionally or finally registered as a deposit-taking institution shall not use, or refer to itself by, a name other than the name under which it is so registered, or any literal translation or abbreviation thereof which has been approved by the Registrar.
- (2) An institution referred to in subsection (1) may, with the consent of the Registrar, in conjunction with its registered name use, or refer to itself by, the name of another deposit-taking institution with which it has amalgamated or all the assets and liabilities of which have, as contemplated in section 54 (1), been transferred to it or, in the case of a change of name, the name by which it was previously known.
- (3) An institution which contravenes the provisions of subsection (1) shall be guilty of an offence.
- (4) Any person who, in connection with any business conducted by him—
  - (a) uses, or refers to himself by, any name, description or symbol indicating, or calculated to lead persons to infer, that he is a deposit-taking institution provisionally or finally registered as such under this Act; or
  - (b) in any other manner holds himself out to be a deposit-taking institution provisionally or finally registered as such under this Act,while he is not so registered as a deposit-taking institution, shall be guilty of an offence.
- (5) No person shall use in respect of any business a name or description which includes the word "bank", or any derivative thereof, or the words "building society", or any derivative thereof, unless—
  - (a) the business in question is a deposit-taking institution; or

- (b) the business in question is registered as a controlling company in respect of a deposit-taking institution under this Act and the name or description in question is so used for the purpose of indicating the connection between the two companies concerned; or
  - (c) such name or description is composed of words which include the word "bank" as part of a place-name or a personal name,and the Registrar has in writing authorized such person so to use such name or description.
- (6) Notwithstanding the prohibition contained in subsection (5), a company—
  - (a) of which the formation has been approved by the Registrar in terms of section 15, may be formed under a name which includes the word "bank" or the words "building society" or a derivative thereof; or
  - (b) whose application for provisional registration as a deposit-taking institution has been granted by the Registrar under section 17 and which has not been formed in accordance with paragraph (a) of this subsection under a name which already includes the word "bank" or the words "building society" or a derivative thereof, may before its provisional registration take the necessary steps in accordance with the Companies Act to include such word, words or derivative in its name.
- (7) The Registrar may in writing direct a company referred to in subsection (6) whose name includes the word "bank" or the words "building society" or any derivative thereof, to remove such word, words or derivative from its name—
  - (a) in the case of a company referred to in paragraph (a) of that subsection, if it fails to apply in terms of section 16 (1) for provisional registration as a deposit-taking institution within the period of 12 months referred to in that section, or if its application for such registration is refused under section 17; and
  - (b) in the case of a company referred to in paragraph (b) of that subsection, if it fails to comply, within a reasonable time after its application for provisional registration has been granted under section 17, with the condition; subject to which it was provisionally registered.
- (8) Any person who contravenes any provision of subsection (5) or refuses or fails to comply with a direction under subsection (7) shall be guilty of an offence.
- (9) The provisions of subsection (5) shall not be construed as prohibiting the use in respect of any company, society, firm, business or undertaking of any name, style or description which immediately prior to the commencement of this Act was lawfully so used in terms of the provisions of any law repealed by this Act.

### **23. Cancellation or suspension of registration by Registrar**

- (1) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is provisionally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional registration if the institution has not conducted any business as a deposit-taking institution during the period of six months commencing on the date on which the institution was for the first time provisionally registered as a deposit-taking institution.
- (2) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is provisionally or finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional or final registration if—
  - (a) it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 21; or

- (b) in the case of a deposit-taking institution of which the main place of business is situated in a country other than the Republic, the authorization in terms of which the institution concerned is authorized to conduct business in such other country similar to the business of a deposit-taking institution, is revoked by the competent authority in such other country.
- (3) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct the business of a deposit-taking institution or is no longer in operation.

#### **24. Notice by Registrar of intention to cancel or suspend registration**

- (1) The Registrar shall, before cancelling or suspending under section 23 the provisional or final registration of a deposit-taking institution, in a written notice addressed to the chairman or chief executive officer of the institution concerned—
  - (a) inform the institution of his intention to cancel or suspend, as the case may be, such registration;
  - (b) furnish the institution with the reasons for the intended cancellation or suspension; and
  - (c) call upon the institution to show cause within a period specified in the notice, which shall not be less than 30 days as from the date of the notice, why its provisional or final registration, as the case may be, should not be so cancelled or suspended.
- (2) After considering any representations received within the specified period from the institution concerned by virtue of the provisions of subsection (1) (c), the Registrar may in his discretion—
  - (a) proceed with the cancellation or suspension in terms of section 23, of the relevant registration; or
  - (b) refrain from taking any further steps in terms of section 23,

and the Registrar shall in writing inform the chairman or chief executive officer of the institution concerned of his decision in terms of this subsection.

#### **25. Cancellation or suspension of registration by court**

- (1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling or suspending the provisional or final registration of a deposit-taking institution if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 23, justifying such cancellation or suspension.
- (2) A competent court for the purposes of subsection (1) shall be any provincial or local division of the Supreme Court of South Africa within the area of jurisdiction of which the registered office, referred to in section 170 of the Companies Act, of the deposit-taking institution concerned is situated.
- (3) The court entertaining an application made under subsection (1) shall enquire into and consider the matter and shall grant or refuse the application, and may make such order as to costs as it may deem fit.
- (4) In addition to any other grounds which the court may consider sufficient to justify the granting of an order under subsection (1) cancelling or suspending the provisional or final registration of a deposit-taking institution, such an order may also be granted if the institution concerned—
  - (a) has, or any of its directors or executive officers has, been convicted of any offence in terms of this Act;
  - (b) does not carry on satisfactorily the business of a deposit-taking institution;
  - (c) has failed to comply with a requirement of this Act which is applicable to it in its capacity as a provisionally or finally registered deposit-taking institution;

- (d) continues to employ an undesirable practice; or
  - (e) has in a material respect misrepresented the facilities which it offers to the general public,
- or if, on any other ground advanced by the Registrar in the relevant application, the court is of the opinion that it is not in the public interest to allow the institution concerned to continue its activities as a deposit-taking institution.

## 26. Restriction by Registrar of activities of deposit-taking institution

- (1) The Registrar may, in lieu of an application under section 25 (1), by written notice to a provisionally or finally registered deposit-taking institution in respect of which, in the opinion of the Registrar, any of the circumstances mentioned in paragraphs (a) to (e), inclusive, of section 25 (4) is present, restrict the activities of the institution concerned as a deposit-taking institution in such respects and on such conditions as the Registrar may specify in the notice.
- (2) The provisions of section 24 shall *mutatis mutandis* apply in respect of the restriction of the activities of a deposit-taking institution by the Registrar under subsection (1).

## 27. Cancellation of registration at request of deposit-taking institution

The Registrar shall cancel the provisional or final registration, as the case may be, of a deposit-taking institution upon submission to him by the institution concerned of a special resolution contemplated in section 200 of the Companies Act authorizing such cancellation.

## 28. Cancellation of registration upon winding-up

When the affairs of a deposit-taking institution have been completely wound up as contemplated in section 419 (1) of the Companies Act, the responsible Master of the Supreme Court shall transmit to the Registrar a copy of the certificate referred to in that section, and the Registrar shall upon receipt of such copy cancel the provisional or final registration, as the case maybe, of the deposit-taking institution concerned.

## 29. Withdrawal of suspension or restriction

- (1) The Registrar may on the written application of a deposit-taking institution of which—
  - (a) the provisional or final registration was suspended under section 23; or
  - (b) the activities were restricted under section 26,by written notice to the institution concerned withdraw such suspension or restriction, as the case may be, provided the Registrar is satisfied that the institution has complied with all requirements for such withdrawal imposed by the Registrar in the conditions of suspension or restriction.
- (2) Application for an order discharging an order under section 25 whereby the provisional or final registration of a deposit-taking institution has been suspended by the court, may be made to the competent court referred to in section 25 (2).

## 30. Publication of information relating to deposit-taking institutions

The Registrar shall publish a notice in the *Gazette* of every—

- (a) provisional or final registration of an institution as a deposit-taking institution;
- (b) cancellation or suspension of such a registration;
- (c) expiration of such a provisional registration;
- (d) restriction of the activities of a deposit-taking institution;



- (e) withdrawal of such suspension or restriction; or
- (f) change of the name of a deposit-taking institution, which is effected or which takes place in terms of this Act.

### 31. Date on which registration lapses

An institution registered as a deposit-taking institution shall cease to be registered as such—

- (a) in the case of a provisional registration of which the period or, if such registration was renewed under section 18 (2), the period of such renewed registration has expired and such registration has not been renewed or further renewed under that section, upon the expiry of that period;
- (b) in the case of a registration cancelled by the Registrar under section 23, upon expiry of 30 days after the date of the notice referred to in subsection (1), (2) or (3) of that section or, if an appeal against such cancellation was lodged with the board of appeal in terms of section 9 before the expiry of the said 30 days and the board of appeal has confirmed such cancellation, upon the date on which the institution concerned is notified of such confirmation;
- (c) in the case of a registration in respect of which the court has granted an order under section 25 cancelling the registration, upon the date on which that order comes into force; or
- (d) in the case of a registration cancelled by the Registrar in terms of section 27 or 28, upon such date as may be determined by the Registrar.

### 32. Repayment of deposits upon lapse of registration

- (1) Whenever an institution which is provisionally or finally registered as a deposit-taking institution ceases to be registered as such, the Registrar may in writing order that institution—
  - (a) to repay, in accordance with such directions and within such period as may be specified in the order, all money due by it to members of the public in respect of deposits accepted by it while registered as a deposit-taking institution, including any interest or any other amounts owing by it in respect of such money; and
  - (b) to change its name and its memorandum of association and articles of association within the period and in the manner required by the Registrar.
- (2) Different directions and periods may under subsection (1) be determined in respect of different kinds of deposits: Provided that in determining such directions and periods no preference shall be given to any such member of the public which he does not in law enjoy.
- (3) An institution which by virtue of the provisions of subsection (1) repays a deposit before the due date agreed for the repayment thereof, shall not be bound to pay any interest or any other amounts which would have been payable in respect of such deposit for the period from the date of such repayment up to such due date.
- (4) Any institution which fails to comply with an order under subsection (1) shall—
  - (a) be guilty of an offence; and
  - (b) for the purposes of sections 344 and 345 of the Companies Act be deemed not to be able to pay its debts.

### 33. Registration in terms of this Act

- (1) Every institution which on the date of commencement of this Act is under the provisions of any law repealed by this Act—
  - (a) registered or provisionally registered, or deemed to be registered or provisionally registered, as a banking institution; or

(b) provisionally or finally registered as a building society,

shall, in accordance with and subject to the provisions of subsections (2) and (3), as soon as is practicable after such date of commencement be either provisionally or finally registered (according to whether the institution is provisionally or finally registered under the said repealed law) by the Registrar as a deposit-taking institution in terms of this Act.

- (2) The Registrar shall when complying with the provisions of subsection (1) issue to the institution in question a certificate of provisional or final registration as a deposit-taking institution, as the case may be.
- (3) The reregistration of an institution in terms of this section shall in the case of a provisional registration be for the unexpired portion of the period of the institution's provisional registration under the repealed law referred to in subsection (1).
- (4) Upon the reregistration of an institution in terms of this section its previous registration under the said repealed law shall be deemed to have lapsed and any certificate of registration issued in respect thereof shall be deemed to have been cancelled.
- (5) No fees shall be payable in respect of a reregistration in terms of this section.

#### **34. Representative offices of foreign institutions**

- (1) An institution which has been established in a country other than the Republic and which lawfully conducts in such other country a business similar to the business of a deposit-taking institution (hereinafter in this section referred to as a foreign institution), may not establish a representative office in the Republic without having previously obtained the written consent of the Registrar.
- (2) The consent referred to in subsection (1) shall be obtained by way of a written application to the Registrar in which is specified—
  - (a) the name of the foreign institution;
  - (b) the country in which it is established;
  - (c) the name of its proposed chief representative officer in the Republic; and
  - (d) the address of its proposed representative office in the Republic,and the application shall be accompanied by a certificate of the competent authority in the other country in question to the effect that the foreign institution concerned is by or under the laws of that other country authorized to conduct a business in such country similar to the business of a deposit-taking institution.
- (3) After the establishment of a representative office in terms of this section the foreign institution concerned shall in writing notify the Registrar—
  - (a) of any change of the name of the institution;
  - (b) of any substitution of its chief representative officer in the Republic;
  - (c) of any change of the address of the representative office; or
  - (d) of the closing of the representative office,as soon as it occurs.
- (4) A representative office contemplated in this section may not conduct the business of a deposit-taking institution in the Republic.

### 35. Annual licence

A deposit-taking institution shall obtain from the receiver of revenue of the district in which its registered office referred to in section 170 of the Companies Act is situated, a deposit-taking institution's licence in respect of each year ending on the thirty-first day of December against payment of the prescribed licence fees.

## Chapter IV Shareholding in, and registration of controlling companies in respect of, deposit-taking institutions

### 36. Restriction on shareholding in deposit-taking institution and controlling companies

- (1) Notwithstanding the provisions of the Companies Act, but subject to the provisions of section 37, no deposit-taking institution or controlling company shall, subject to the provisions of subsections (3) and (9), allot or issue any of its shares to a person or register the transfer of any of its shares to a person, to the extent to which the nominal value of such shares, and of any other shares in the deposit-taking institution or controlling company, as the case may be, already registered in the name of such a person or of any associate of such a person, exceeds in total 49 per cent of the total nominal value of all the issued vote-bearing shares in the deposit-taking institution or controlling company.
- (2) The Minister may, at the request of a deposit-taking institution or controlling company and if he is satisfied that it will be in the public interest to do so, in writing exempt that deposit-taking institution or controlling company from the provisions of subsection (1) for such period and on such conditions and, if the exemption is not granted generally, in respect of such person or category of persons, as the Minister may determine, and the Minister may at any time, at the request of the deposit-taking institution or controlling company concerned, or of his own volition, amend or withdraw an exemption granted in terms of this subsection.
- (3) The provisions of subsection (1) shall not apply to the allotment, issue or registration of the transfer of shares in a deposit-taking institution to a controlling company registered in respect of that deposit-taking institution, to another deposit-taking institution or to an institution which has been approved by the Registrar and which conducts business similar to the business of a deposit-taking institution in a country other than the Republic.
- (4) Shares in a deposit-taking institution or controlling company which are registered or to be registered in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances mentioned in section 103 (3) of the Companies Act shall for the purposes of subsection (1) be deemed to be so registered or to be registered in the name of the beneficiary concerned: Provided that if in consequence of the provisions of this subsection more of such shares are registered in the name of any such executor, administrator, trustee, curator, guardian or liquidator than would otherwise have been permissible in terms of subsection (1), the voting rights attached to the shares so registered in his name shall for the purposes of this Act or any other law be limited to 49 per cent of the voting rights attached to all the issued shares of the deposit-taking institution or controlling company concerned.
- (5) If the nominal value of shares in a deposit-taking institution or controlling company which are to be allotted or issued to, or to be registered in the name of, any person, together with the nominal value of any other shares in the deposit-taking institution or controlling company, as the case may be, already registered in his name, constitutes in total an amount which is less than the lower of R100 000 or one per cent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company, as the case may be, the deposit-taking institution or controlling company may for the purposes of this section summarily accept, unless it has knowledge to the contrary, that that person is not an associate of any other shareholder in the deposit-taking institution or controlling company.

- (6) If the total nominal value of shares in a deposit-taking institution or controlling company registered in the name of any person or of such person and his associate or associates exceeds the percentage mentioned in subsection (1) as a result of—
- (a) the amalgamation of the deposit-taking institution or controlling company with another deposit-taking institution or controlling company, respectively; or
  - (b) the taking over by the deposit-taking institution of the assets and liabilities of another deposit-taking institution or of a mutual building society; or
  - (c) an amalgamation of shareholders in the deposit-taking institution or controlling company or the taking over by one such shareholder of the assets and liabilities of another such shareholder, or the acquisition by one such shareholder of control over another such shareholder,

no further shares in the deposit-taking institution or controlling company in question shall be allotted or issued to or registered in the name of or transferred to that person or any of his associates as long as that percentage is so exceeded, and that person in conjunction with the deposit-taking institution or controlling company in question shall, within 45 days from the date on which the exceeding of that percentage developed, furnish the Registrar with particulars of the case and within six months from such date submit to the Registrar a scheme whereby the shareholdings in question will within a period acceptable to the Registrar and in accordance with such conditions as the Registrar may determine, be reduced to such an extent that the requirements of subsection (1) relating to such percentage will be complied with.

- (7) When and for as long as the total nominal value of shares in a deposit-taking institution or controlling company registered in the name of any person or of such person and his associate or associates, plus the total nominal value of such shares registered in the name of any pension fund established in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), of which the employees of that person or of any of his associates are members, exceeds the percentage mentioned in subsection (1), the maximum votes that may, in respect of all the shares mentioned hereinbefore in this subsection, be cast in favour of or against any proposed resolution of the deposit-taking institution or controlling company in question, shall, notwithstanding anything to the contrary contained in any other Act, as from the date of commencement of this Act be limited to 49 per cent (divided among the shareholders concerned in proportion to their respective shareholdings) of the voting rights attached to all the issued shares of the deposit-taking institution or controlling company in question.

- (8) (a) If at the commencement of this Act and by virtue of—
- (i) an authorization granted by the Minister under the provisions of section 28D (2) of the Banks Act, 1965 (Act No. 23 of 1965); or
  - (ii) an exemption granted by the Minister under the provisions of section 38 (2) of the Building Societies Act, 1986 (Act No. 82 of 1986),

as those provisions existed immediately prior to the repeal thereof by this Act, any person holds shares in a deposit-taking institution or controlling company with a total nominal value in excess of the percentage mentioned in subsection (1), the deposit-taking institution or controlling company concerned shall, within a period of 45 days as from the date of commencement of this Act, apply to the Minister for an exemption under subsection (2) in respect of such excess shareholding.

- (b) If on the expiration of the period of 45 days referred to in paragraph (a) no application in terms of that paragraph has been received by the Minister in respect of a particular excess shareholding, the relevant authorization or exemption, as the case may be, referred to in that paragraph shall be deemed to have been withdrawn.
- (9) A deposit-taking institution or controlling company may refuse to allot or issue any of its shares to any person or to register the transfer of any of its shares to any person before it has been furnished

with an affidavit referred to in section 39 by or on behalf of the person to whom such shares are to be allotted or issued or to whom the transfer of such shares is to be registered.

- (10) For the purposes of this section "associate"—
- (a) in relation to a natural person, means—
    - (i) a close relative of that person; or
    - (ii) any person who has entered into an agreement or arrangement with the first-mentioned person, relating to the acquisition, holding of disposal of, or the exercising of voting rights in respect of, shares in the deposit-taking institution or controlling company in question;
  - (b) in relation to a juristic person—
    - (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary; or
    - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act; and
  - (c) in relation to any person, includes any trust controlled or administered by that person.

### **37. Permission for acquisition of shares in deposit-taking institution or controlling company**

- (1) Subject to the provisions of subsection (6), no person shall acquire in a deposit-taking institution or controlling company shares—
- (a) of which the total nominal value; or
  - (b) of which the total nominal value together with the total nominal value or such shares already held by such person; or
  - (c) of which the total nominal value together with the total nominal value of such shares already held by such person and by his associate or associates,

amounts to more than 10 percent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company, without first having obtained permission in accordance with the provisions of subsection (2) for such acquisition.

- (2) (a) If—
- (i) any person has for a period of 12 months or such shorter period as the Registrar may deem fit held so many shares in a deposit-taking institution or controlling company as he may in accordance with the provisions of subsection (1) hold therein, he may, if the Registrar has granted permission in writing thereto, acquire more than 10 per cent, but not exceeding 17,5 per cent, of those shares as contemplated in the said subsection;
  - (ii) the said person has for a period of 12 months or such shorter period as the Registrar may deem fit held 17,5 per cent of those shares as so contemplated he may, if the Registrar has granted permission in writing thereto, acquire more than 17,5 per cent, but not exceeding 25 per cent, of those shares as contemplated in the said subsection (i);
  - (iii) the said person has for a period of 12 months or such shorter period as the Registrar may deem fit held 25 per cent of those shares as so contemplated he may, if the Registrar has granted permission in writing thereto, acquire more than 25 per cent, but not exceeding 30 per cent, of those shares as contemplated in the said subsection (1); and

- (iv) the said person has for a period of 12 months or such shorter period as the Minister may deem fit held 30 per cent of those shares as contemplated in the said subsection (1) he may, if the Minister has, through the Registrar, granted permission thereto in writing, acquire more than 30 per cent of those shares as contemplated in the said subsection.
  - (b) Permission in terms of paragraph (a) shall only be granted on application on the prescribed form and after consultation with the Competition Board established by section 3 of the Maintenance and promotion of Competition Act, 1979 (Act No. 96 of 1979).
- (3) If any person at the commencement of this Act already holds more than 10 per cent of the shares in a deposit-taking institution or controlling company as contemplated in subsection (1), he may not acquire more of those shares as contemplated in the said subsection before he has obtained the appropriate permission in terms of subsection (2).
- (4) Permission in terms of subsection (2) for the acquisition of shares in a deposit-taking institution or controlling company shall not be granted unless the Registrar or the Minister, as the case may be, is satisfied that the proposed acquisition of shares—
  - (a) will not be contrary to the public interest; and
  - (b) will not be contrary to the interests of the deposit-taking institution concerned or its depositors or of the controlling company concerned, as the case may be.
- (5) If, in the case of a shareholding contemplated in—
  - (a) subsection (2) (a) (i), (ii) and (iii), the Registrar; or
  - (b) subsection (2) (a) (iv), the Minister,
 is of the opinion that the retention of such shareholding in a deposit-taking institution or controlling company by a particular shareholder will be to the detriment of the deposit-taking institution or controlling company concerned, he may by way of application on notice of motion apply to the division of the Supreme Court in whose area of jurisdiction the head office of the deposit-taking institution or controlling company is situated, for an order—
  - (i) compelling such shareholder to reduce, within a period determined by the court, his shareholding in that deposit-taking institution or controlling company to a shareholding, as contemplated in subsection (1), with a total nominal value of not more than 10 per cent of the total nominal value of all the issued shares of that deposit-taking institution or controlling company; and
  - (ii) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his shareholding to 10 per cent of the voting rights attached to all the issued shares of the deposit-taking institution or controlling company concerned.
- (6) The provisions of subsection (1) shall not apply to the acquisition of shares in a deposit-taking institution by a controlling company registered as such in respect of that deposit-taking institution, by another deposit-taking institution or by an institution which has been approved by the Registrar and which conducts business similar to the business of a deposit-taking institution in a country other than the Republic.
- (7) For the purposes of this section "associate" means an associate as defined in section 36 (10).

### 38. Registration of shares in name of nominees

- (1) Notwithstanding the provisions of the Companies Act, no deposit-taking institution or controlling company shall without the written approval of the Registrar—
  - (a) allot or issue any of its shares to, or register any of its shares in the name of, any person other than the intended beneficial shareholder;

- (b) transfer any of its shares in the name of a person other than the beneficial shareholder; or
  - (c) after the commencement of this Act allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.
- (2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer, of shares in a deposit-taking institution or controlling company—
- (a) in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;
  - (b) in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances mentioned in section 103(3) of the Companies Act;
  - (c) for a period of not more than six months, in the name of a stock-broker or of a company established by him for a purpose mentioned in section 12(3) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or of a company controlled by the deposit-taking institution or of an employee of the deposit-taking institution, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares or where the beneficiary is not known; or
  - (d) in the name of a person in other special circumstances determined by the Minister by notice in the *Gazette*.

### 39. Furnishing of information by shareholders

Any person desiring shares in a deposit-taking institution or controlling company to be allotted or issued to him or to be registered in his name, or in whose name such shares are registered, and any person acting on behalf of such a person, shall at the written request of the deposit-taking institution or controlling company furnish it with—

- (a) an affidavit in which the names and addresses of all that person's associates, as defined in section 36(10), are set out so as to enable the deposit-taking institution or controlling company to comply with the provisions of the said section 36; or
- (b) such information as may be required by the deposit-taking institution or controlling company for the purposes of complying with the provisions of section 38.

### 40. Absence of wrongful intent

If a deposit-taking institution or a controlling company or any director, officer, employee or agent of a deposit-taking institution or controlling company in good faith and on the strength of information reasonably obtained acts or fails to act and thereby unknowingly contravenes the provisions of section 36 or 38, such act or failure to act shall not constitute an offence.

### 41. Effects of registration of shares contrary to Act

- (1) No person shall—
- (a) either personally or by proxy granted to any other person, cast a vote attached to; or
  - (b) receive a dividend payable on,
- any share in a deposit-taking institution or controlling company allotted or issued to him or registered in his name in contravention of a provision of this Act.
- (2) The validity of any resolution adopted by a deposit-taking institution or controlling company shall not be affected by a vote being cast in contravention of subsection (1)(a), if that resolution was adopted by the requisite majority of votes which were validly cast.

- (3) A dividend referred to in subsection (1)(b) shall accrue to the deposit-taking institution or controlling company concerned.

#### 42. Restriction of right to control deposit-taking institution

- (1) Subject to the provisions of section 36(2), no person other than a deposit-taking institution or an institution which has been approved by the Registrar and which conducts business similar to the business of a deposit-taking institution in a country other than the Republic may exercise control over a deposit-taking institution, unless such person is a public company and is registered as a controlling company in respect of such deposit-taking institution.

*[subsection (1) substituted by section 5(1) of Act 42 of 1992]*

- (2) For the purposes of this Act a person shall be deemed to exercise control over a deposit-taking institution if, in the case where that person is a company, the deposit-taking institution is a subsidiary of that company, or, whether or not that person is a company, if that person by himself or together with his associates—
- (a) holds shares in the deposit-taking institution of which the total nominal value represents more than 50 percent of the nominal value of all the issued shares of the deposit-taking institution, unless, due to limitations on the voting rights attached to the shares so held by the person by himself or together with his associates, as the case may be, such person voting on his own or such person and his associates voting at a group, is or are unable to decisively influence the outcome of the voting at a general meeting of the deposit-taking institution;
  - (b) is entitled to exercise more than 50 per cent of the voting rights in respect of the issued shares of that deposit-taking institution; or
  - (c) is entitled or has the power to determine the appointment of the majority of the directors of that deposit-taking institution, including—
    - (i) the power to appoint or remove, without the concurrence of any other person, all or the majority of such directors; or
    - (ii) the power to prevent any person from being appointed a director without his consent,and if a person's appointment as a director of the deposit-taking institution follows necessarily from his appointment as a director of the person first-mentioned in this subsection, the first-mentioned appointed shall for the purposes of this subsection be deemed to be an appointment by virtue of a power of a person so first-mentioned.
- (3) For the purposes of this section "associate" means an associate as defined in section 36 (10).

#### 43. Application for registration as controlling company

- (1) A public company—
- (a) which desires to exercise control over any deposit-taking institution; or
  - (b) which is a controlling company, as defined in section 1 of the Companies Act, in respect of any other public company which has applied in terms of section 16 for provisional registration as a deposit-taking institution,
- may apply to the Registrar on the prescribed form for registration as a controlling company in respect of that deposit-taking institution or proposed deposit-taking institution, as the case may be.
- (2) An application referred to in subsection (1) shall be accompanied by such information and documents as may be prescribed.
- (3) A public company applying in terms of subsection (1) for registration as a controlling company shall submit such additional particulars in connection with its application as the Registrar may require.



#### 44. Granting or refusal of application for registration as controlling company

- (1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and particulars furnished in terms of section 43 for the purposes of an application under that section, grant or refuse the relevant application or grant the application subject to such conditions as he may impose.
- (2) The Registrar shall not grant an application made under section 43 unless he is satisfied—
  - (a) that the registration of the applicant as a controlling company will not be contrary to the public interest;
  - (b) that, in the case of an applicant applying for registration in the circumstances referred to in section 43 (1) (a), the applicant will be able to establish control, as contemplated in section 42 (2), over the deposit-taking institution concerned;
  - (c) that no provision of the memorandum of association or articles of association of the applicant is inconsistent with a provision of this Act or is undesirable in so far as it concerns deposit-taking institutions;
  - (d) that every director or executive officer of the applicant is, as far as can reasonably be ascertained, a fit and proper person to hold the office of such director or executive officer, and that every such executive officer has sufficient knowledge and experience to manage the affairs of the applicant in its capacity of a controlling company;
  - (e) that the applicant is in a financially sound condition;
  - (f) that no interest which any person has in the applicant is inconsistent with a provision of this Act; and
  - (g) that the application complies with the requirements of this Act.
- (3) When the Registrar in terms of this section grants or refuses an application for registration as a controlling company, he shall give written notice of that fact to the applicant concerned.
- (4)
  - (a) If the Registrar in terms of this section grants an application he shall, upon compliance by the applicant with the conditions subject to which the application was granted and on payment of the prescribed registration fee, register the applicant concerned as a controlling company in respect of the, deposit-taking institution concerned and on the prescribed form issue to the applicant a certificate of registration as a controlling company in respect of the deposit-taking institution concerned.
  - (b) No applicant which has applied for registration as a controlling company in the circumstances referred to in section 43 (1) (b) shall be registered as such a controlling company unless the company in respect of which it made such application is registered as a deposit-taking institution.
- (5) In addition to any other condition which the Registrar may impose under subsection (1), he may impose a condition requiring an applicant which applied for registration as a controlling company in the circumstances referred to in section 43 (1) (a)—
  - (a) to furnish within a specified period proof to the satisfaction of the Registrar that it will immediately after its registration as a controlling company establish control over the deposit-taking institution in respect of which it desires to be registered; or
  - (b) to make an offer, within a specified period and on a basis and on conditions regarded by the Registrar as reasonable and fair, to persons holding shares in the said deposit-taking institution to take up shares in the applicant or to exchange shares held by them in the said deposit-taking institution for shares in the applicant.
- (6)
  - (a) Whenever the Registrar has imposed a condition referred to in subsection (5) (b), he may, after consultation with the applicant concerned, designate a person to investigate,

independently of the applicant, and to advise the Registrar on, the reasonableness and fairness of the basis and conditions on which the applicant intends to make the share offer in compliance with the condition.

- (b) The costs of an investigation in terms of paragraph (a) shall be paid by the applicant concerned.
- (7) A public company which on the date immediately preceding the date of commencement of this Act is, in terms of the provisions of any law repealed by this Act, registered as—
- (a) a bank controlling company in respect of a banking institution as defined in such repealed law; or
  - (b) a control company in respect of a building society as defined in such repealed law,

shall with effect from the date of commencement of this Act be deemed to be a controlling company registered in terms of this section as a controlling company in respect of the deposit-taking institution as which the banking institution or building society concerned has been reregistered in terms of section 33.

#### **45. Cancellation by Registrar of registration of controlling company**

- (1) If a controlling company has failed to establish control over the deposit-taking institution in respect of which it is registered, or no longer exercises such control, the Registrar may by notice in writing to such controlling company cancel its registration in respect of that deposit-taking institution.
- (2) No cancellation of any registration under subsection (1) shall be of force unless the Registrar has previously by notice in writing given the controlling company concerned an opportunity to show cause within a period specified in the notice, not being less than 30 days, why its registration should not be cancelled.

#### **46. Cancellation by court of registration of controlling company**

- (1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling the registration of a controlling company if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 45, justifying such cancellation.
- (2) The provisions of subsections (2) and (3) of section 25 shall *mutatis mutandis* apply to an application under subsection (1).
- (3) In addition to any other grounds which the court may consider sufficient to justify the granting of an order under subsection (1) cancelling the registration of a controlling company, such an order may also be granted if the controlling company concerned—
  - (a) has furnished the Registrar in or in connection with its application for registration with information which is in a material respect untrue; or
  - (b) has contravened or failed to comply with a provision of or a requirement under this Act,or if, on any other ground advanced by the Registrar in the relevant application, the court is of the opinion that it is not in the public interest to allow the controlling company concerned to continue its activities as a controlling company.

#### **47. Cancellation of registration at request of controlling company**

The Registrar shall cancel the registration of a controlling company upon submission to him by the controlling company of a special resolution contemplated in section 200 of the Companies Act authorizing such cancellation.

#### **48. Lapse of registration of controlling company upon cancellation of registration of deposit-taking institution**

- (1) If the provisional or final registration of a deposit-taking institution in respect of which a controlling company is registered, is cancelled, the registration of that controlling company in respect of that deposit-taking institution shall be deemed to have been cancelled simultaneously.
- (2) The cancellation of the registration of a controlling company by virtue of the provisions of subsection (1) shall be with effect from the date on which the deposit-taking institution concerned in terms of section 31 ceased to be registered as such.

#### **49. Date on which registration of controlling company lapses**

A controlling company shall cease to be registered as such—

- (a) in the case of a registration cancelled by the Registrar under section 45, upon expiry of 30 days after the date of the notice referred to in subsection (1) of that section or, if an appeal against such cancellation was lodged with the board of appeal in terms of section 9 before the expiry of the said 30 days and the board of appeal has confirmed such cancellation, upon the date on which the controlling company concerned is notified of such confirmation;
- (b) in the case of a registration in respect of which the court has granted an order under section 46 cancelling the registration, upon the date on which that order comes into force; or
- (c) in the case of a registration cancelled by the Registrar in terms of section 47, upon such date as may be determined by the Registrar.

#### **50. Investments by controlling companies**

A controlling company investing money—

- (a) in undertakings other than deposit-taking institutions, institutions which conduct business similar to the business of a deposit-taking institution in a country other than the Republic, controlling companies or companies of which the main object is the holding or development of property which is used or intended to be used mainly for the purpose of conducting the business of a deposit-taking institution; or
- (b) to fixed property which is not used or intended to be used mainly for the purpose of conducting the business of a deposit-taking institution,

shall manage its transactions in such investments in such a way that the amount of such investments does not at any time exceed 40 per cent of the sum of its share capital and reserve funds.

### **Chapter V**

#### **Functioning of deposit-taking institutions and controlling companies with reference to Companies Act**

#### **51. Application of Companies Act to deposit-taking institutions and controlling companies**

- (1) A company registered as a deposit-taking institution or as a controlling company shall continue to be a company in terms of the Companies Act, and the provisions of that Act shall, subject to the provisions of subsection (2), continue to apply to any such company to the extent to which they are not inconsistent with any provision of this Act: Provided that—
  - (a) the provisions of the Companies Act governing the conversion of public companies into other forms of companies shall not apply to any such company; and

- (b) in the application, by virtue of the provisions of this subsection, of the provisions of section 171 (1) of the Companies Act in respect of a company referred to in this subsection, the reference in the said section 171 (1)—
  - (i) to "director", shall be deemed to be a reference only to a director whose name appears in the relevant company's register of directors and officers contemplated in section 215 of the Companies Act; and
  - (ii) to "business letter", shall be deemed not to include a reference to any printed form of advice.
- (2) The Minister may with the concurrence of the Minister of Trade and Industry and Tourism by notice in the *Gazette* declare that a provision of the Companies Act specified in such notice—
  - (a) shall not apply to any company registered as a deposit-taking institution or as a controlling company;
  - (b) shall only apply to any such company subject to such adjustments and qualifications as may be specified in the notice; or
  - (c) the administration of which vests in the Registrar of Companies, shall in respect of companies registered as deposit-taking institutions or as controlling companies vest in the Registrar.
- (3) The Minister shall lay a copy of a notice under subsection (2) upon the Tables in Parliament within 14 days after the publication thereof, if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session, and any such notice shall cease to be in force if every House of Parliament by resolution passed during the session in which such notice has been so laid upon the Tables, disapproves thereof: Provided that nothing contained in this subsection shall affect the power of the Minister to issue a new notice under subsection (2) as to the subject matter of the notice which has so ceased to be in force.

## **52. Subsidiaries, branch offices, other interests and representative offices of deposit-taking institutions and controlling companies**

- (1) A deposit-taking institution shall not without the prior written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing—
  - (a) establish a subsidiary within or outside the Republic or enter into an agreement having the effect that any company becomes its subsidiary within or outside the Republic;
  - (b) open a branch office outside the Republic;
  - (c) acquire an interest in any undertaking conducting business outside the Republic;
  - (d) outside the Republic—
    - (i) create a trust of which the deposit-taking institution is a major beneficiary; or
    - (ii) establish any financial or other business undertaking under its direct or indirect control; or
  - (e) establish a representative office outside the Republic.
- (2) To obtain the prior approval of the Registrar as contemplated in subsection (1), there shall be lodged with the Registrar a written application in which full particulars of the proposed action are furnished, including, in the case of a proposed establishment of a representative office outside the Republic as contemplated in paragraph (e) of the said subsection—
  - (a) the country in which the representative office is to be established;

- (b) the name of the proposed chief representative officer, in that country, of the deposit-taking institution; and
  - (c) the address of the proposed representative office in that country.
- (3) The Registrar may require an applicant contemplated in subsection (2) to furnish him with such information, in addition to particulars furnished by the applicant in terms of that subsection, as the Registrar may deem necessary.
- (4) After the establishment in terms of this section of a representative office outside the Republic, the deposit-taking institution concerned shall in writing notify the Registrar of—
  - (a) any substitution of its chief representative officer in the country concerned;
  - (b) any change of the address of the representative office in question; or
  - (c) the closing down of the represent alive office,as soon as it occurs.
- (5) The provisions of subsection (1) (a), (c) and (d), and of subsections (2) and (3) in so far as they are relevant, shall *mutatis mutandis* apply in respect of any controlling company.

### **53. Disclosure by deposit-taking institutions and controlling companies of interest in subsidiaries, trusts and other undertakings**

A deposit-taking institution or a controlling company shall on such a form and at such intervals as may be prescribed furnish the Registrar with such particulars as may be prescribed relating to its shareholding or other interest in—

- (a) its subsidiaries contemplated in section 52 (1) (a);
- (b) an undertaking contemplated in section 52 (1) (c); or
- (c) any trust or financial or other business undertaking contemplated in section 52 (1) (d).

### **54. Compromises, amalgamations, arrangements and take-overs**

- (1) No compromise, amalgamation, arrangement or take-over referred to in Chapter XII of the Companies Act and which involves a deposit-taking institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of a deposit-taking institution to another person, shall have legal force unless the consent of the Minister, conveyed in writing through the Registrar, to the transaction in question has been obtained beforehand.
- (2) The Minister shall not grant his consent referred to in subsection (1) unless—
  - (a) he is satisfied that the transaction in question will not be detrimental to the public interest;
  - (b) in the case of an amalgamation or a take-over referred to in subsection (1), the amalgamation is an amalgamation of deposit-taking institutions only or the take-over involves only the acquisition of shares in a deposit-taking institution by another deposit-taking institution or its controlling company; or
  - (c) in the case or a transfer of assets and liabilities referred to in subsection (1) which entails the transfer by the transferor deposit-taking institution of the whole or any part of its business as a deposit-taking institution, such transfer is effected to another deposit-taking institution only.
- (3) Upon the coming into effect of a transaction effecting the amalgamation of one deposit-taking institution with another deposit-taking institution as contemplated in subsection (2) (b), or a

transaction effecting the transfer of assets and liabilities of one deposit-taking institution to another deposit-taking institution as contemplated in subsection (2) (c)—

- (a) all the assets and liabilities of the amalgamating institutions or, in the case of such transfer of assets and liabilities, of the institution by which the transfer is effected, shall vest in and become binding upon the amalgamated institution or, as the case may be, the institution taking over such assets and liabilities;
  - (b) the amalgamated institution or, in the case of such transfer of assets and liabilities, the institution taking over such assets and liabilities, shall have the same rights and be subject to the same obligations as those which immediately before the amalgamation or transfer the amalgamating institutions or, as the case may be, the institution by which the transfer has been effected may have had or to which they or it may then have been subject to;
  - (c) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating institutions or, as the case may be, the institution by which the transfer has been effected, and in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with, by or in favour of the amalgamated institution or, as the case may be, the institution taking over the assets and liabilities in question; and
  - (d) any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating institutions or, as the case may be, by the institution transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated institution or, as the case may be, the institution taking over such assets and liabilities, as security for future advances, facilities or services by that institution.
- (4) Any compromise, amalgamation, arrangement or take-over, or any arrangement for the transfer of assets and liabilities, referred to in subsection (1), excluding a transfer other than a transfer referred to in subsection (2) (c), shall be subject to confirmation at a general meeting of shareholders of each of the deposit-taking institutions concerned, and the notice convening such a meeting shall contain or have attached to it the terms and conditions of the relevant agreement or arrangement.
- (5) Notice of the passing of the resolution confirming, as contemplated in subsection (4), any compromise, amalgamation, arrangement or take-over, or any arrangement for the transfer of assets and liabilities, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the chairman of the meeting at which such resolution was passed and by the secretary of the deposit-taking institution concerned, shall be sent to the Registrar by each of the deposit-taking institutions involved, and the Registrar shall, after having received such notices from all the deposit-taking institutions which are parties to the relevant agreement or arrangement, register such notices.
- (6) Upon the registration by the Registrar of the notices referred to in subsection (5)—
- (a) of any amalgamation of two or more deposit-taking institutions, the registration of the individual institutions which were parties to the amalgamation shall be deemed to be cancelled and the Registrar shall withdraw those registrations and, on payment by the institution created by the amalgamation of the prescribed registration fee, register such institution, subject to the provisions of subsection (7), as a deposit-taking institution; or
  - (b) of any arrangement for the transfer of all the assets and liabilities of a deposit-taking institution, the registration of such deposit-taking institution shall be deemed to be cancelled and shall be withdrawn by the Registrar.
- (7) A registration by the Registrar in terms of subsection (6) shall—
- (a) in the case where all the parties to the relevant amalgamation were finally registered as deposit-taking institutions at the time, be a final registration as a deposit-taking institution;

- (b) in the case where all the parties to the relevant amalgamation were provisionally registered as deposit-taking institutions at the time, be a provisional registration as a deposit-taking institution; or
  - (c) in the case where some of the parties to the amalgamation were finally registered and some were provisionally registered as deposit-taking institutions at the time, be a final or a provisional registration as a deposit-taking institution, in the discretion of the Registrar,
- and the Registrar shall upon such registration issue the applicable certificate of registration to the institution concerned.
- (8) The Registrar of Companies, every Master of the Supreme Court and every officer in charge of a deeds registry or any other office in which—
- (a) is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by; or
  - (b) has been issued any licence to or in favour of,
- any deposit-taking institution which has amalgamated with any other such institution or any deposit-taking institution which has transferred all its assets and liabilities to any other such institution, shall—
- (i) if he is satisfied that the Minister has in terms of subsection (1) consented to the amalgamation or transfer; and
  - (ii) that such amalgamation or transfer has been duly effected,
- and upon the production to him of any relevant deed, bond, certificate, letter of appointment, licence or other document, make such endorsements thereon and effect such alterations in his registers as may be necessary to record the transfer thereof and of any rights thereunder to the amalgamated institution or, as the case may be, the institution which has so taken over the said assets and liabilities.
- (9) The provisions of this section shall not affect the rights of any creditor of a deposit-taking institution which has amalgamated with or transferred all its assets and liabilities to any other such institution or taken over all the asset; and liabilities of any other such institution, except to the extent provided in this section.
- (10) The conditions and any tax benefit which immediately prior to the date of a transfer, referred to in this section, of assets and liabilities were applicable in respect of an investment, referred to in section 10 (1) (i) (xii), (xiiA) or (xiii), 10 (1) (v), (vA) or (w) or 19 (5A) of the Income Tax Act, 1962 (Act No. 58 of 1952), with the transferor deposit-taking institution shall, notwithstanding such a transfer of assets and liabilities but subject to the provisions of the said Act, remain applicable to the investment until the expiration of a period of ten years as from the date on which it was initially made or until it is redeemed, whichever occurs first.

## 55. Reconstruction within group of companies

No reconstruction of companies within a group—

- (a) in respect of which annual financial statements are required to be made out in terms of section 283 (1) of the Companies Act; and
- (b) of which a deposit-taking institution or a controlling company or subsidiary of a deposit-taking institution is a member,

shall be effected without the prior written approval of the Registrar.

## 56. Alteration of memorandum or association or articles of association, and change of name

- (1) No—
  - (a) alteration, in terms of section 55, 56 or 62 of the Companies Act, of the memorandum of association or articles of association of a company registered as a deposit-taking institution; or
  - (b) change, in terms of section 44 of the Companies Act, of the name of any such company,shall have legal force for the purposes of this Act or any other law unless such alteration or change has been approved in writing by the Registrar prior to the registration thereof by the Registrar of Companies.
- (2) Any application for the Registrar's approval in terms of subsection (1) shall be lodged with the Registrar before the proposed special resolution authorizing the alteration or change in question is laid before a general meeting of the company, and such application shall be accompanied by—
  - (a) two copies of the proposed special resolution; and
  - (b) an explanation of the reasons for the resolution.
- (3) The Registrar shall not grant any application referred to in subsection (2) if he is of the opinion—
  - (a) that the proposed alteration is inconsistent with any provision of this Act or is undesirable in so far as it concerns the activities of deposit-taking institutions; or
  - (b) that the proposed new name is unacceptable on any of the grounds mentioned in subparagraphs (i), (ii), (iii) and (iv) of section 17 (2) (e).
- (4) A deposit-taking institution shall within 21 days of the registration by the Registrar of Companies of an alteration of its memorandum of association or articles of association or a change of its name, furnish the Registrar with a certified copy of the special resolution which sets out the alteration or change of name, as the case may be.
- (5) Upon receipt, by virtue of the provisions of subsection (4), of a copy of a special resolution, and payment by the deposit-taking institution concerned of the prescribed fee, the Registrar shall—
  - (a) in the case of a special resolution relating to an alteration of a memorandum of association or articles of association, register the alteration in question and issue to the deposit-taking institution concerned a certificate to the effect that the said alteration has been registered by the Registrar with effect from a date specified in the certificate; or
  - (b) in the case of a special resolution relating to a change of name, change the name of the deposit-taking institution concerned in his register of deposit-taking institutions, and issue to the institution concerned a certificate of such change of name.
- (6) An alteration referred to in subsection (5) (a) shall not take effect until it has been registered in terms of that subsection.
- (7) The provisions of subsections (1), (2) and (3) shall not apply with respect to any alteration of a deposit-taking institution's memorandum of association or articles of association to accordance with a direct ion by the Registrar under this Act.
- (8) The provisions of subsection (1) (a), and of subsections (2),(3), (4), (5) and (6) bi so far as they are relevant, shall *mutatis mutandis* apply in respect of any controlling company.



### **57. Alteration of memorandum of association or articles of association in accordance with direction of Registrar**

- (1) The Registrar may at any time in writing direct a deposit-taking institution to effect such alteration, not contrary to a provision of this Act, to its memorandum of association or articles of association as the Registrar may deem desirable in order to remove anomalies or undesirable divergences in the activities of different deposit-taking institutions.
- (2) An alteration directed by the Registrar under subsection (1) shall on or before the day of the first annual general meeting, referred to in section 175 of the Companies Act, following upon the date of such direction, be submitted for consideration to the shareholders of the deposit-taking institution concerned.
- (3) If a deposit-taking institution refuses or fails to alter its memorandum of association or articles of association in accordance with a direction of the Registrar under subsection (1), the Registrar may submit a copy of that direction to the Registrar of Companies, who shall thereupon deal with the proposed alteration contained therein in accordance with the Companies Act as if it were contained in a special resolution adopted by the deposit-taking institution concerned and submitted to him by that institution in accordance with that Act.

### **58. Information regarding directors and officers**

A deposit-taking institution shall within 30 days of its provisional registration as such, and a controlling company shall within 30 days of its registration as such, furnish the Registrar with a copy of its register of directors and officers referred to in section 215 of the Companies Act.

### **59. Returns regarding shareholders**

- (1) A deposit-taking institution shall within 90 days of its provisional registration as such, and a controlling company shall within 90 days of its registration as such, and annually thereafter within 30 days of the thirty-first day of December of each year, furnish the Registrar with a return regarding its shareholders as at the date of the said registration or as on the said thirty-first day of December, as the case may be.
- (2) A return referred to in subsection (1) shall comprise separate lists of domestic and foreign shareholders, each of which shall be compiled in alphabetical order according to the names of the shareholders and stating opposite each name—
  - (a) the address of the shareholder;
  - (b) the number and class of shares registered in his name;
  - (c) the total nominal value of those shares;
  - (d) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
  - (e) if the shareholder is a deposit-taking institution, controlling company or, in the case of a foreign shareholder, an institution conducting business similar to the business of a deposit-taking institution, the fact that it is such a deposit-taking institution, controlling company or institution, as the case may be:

Provided—

- (i) that two or more domestic shareholders who are associates shall in alphabetical order according to their names be included in the list as a group under the name of one of the associates, stating, in addition to the particulars referred to in paragraphs (a) to (f), inclusive—
  - (aa) the fact that they are associates;

- (bb) the total nominal value of all the shares registered in their respective names; and
- (cc) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
- (ii) that the name of a shareholder and the particulars referred to in paragraphs (a) to (e), inclusive, shall, subject to subsection (3), not be included in such a list if the total nominal value of the shares registered in his name—
  - (aa) in the case of a domestic shareholder, is less than one per cent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; or
  - (bb) the case of a foreign shareholder, is less than the lower of R100 000 or one per cent of the total nominal value of all such issued shares.
- (3) A return referred to in subsection (1) shall further specify—
  - (a) the number of domestic and the number of foreign shareholders whose names and individual particulars are by virtue of paragraph (ii) of the proviso to subsection (2) not included in the lists, and opposite the respective numbers—
    - (i) the number of shares registered in the name of the relevant share holders;
    - (ii) the total nominal value of such shares; and
    - (iii) the percentage which the total nominal value of such shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
  - (b) the total nominal value of shares registered in the name of all domestic and all foreign shareholders, respectively.
- (4) If the total nominal value of the shares in a deposit-taking institution or a controlling company registered in the name of a shareholder is less than the lower of R100 000 or one per cent of the total nominal value of all the issued shares of the institution or company concerned, such institution or company may, for the purposes of this section, summarily accept, unless it has knowledge to the contrary, that the shareholder concerned—
  - (a) is a domestic shareholder, if the address entered in respect of such shareholder in the register of members referred to in section 105 of the Companies Act is an address in the Republic; and
  - (b) is not an associate of any other shareholder of the institution or company.
- (5) For the purposes of this section "associate" means an associate as defined in section 36 (10).

## **60. Directors of deposit-taking institution or controlling company**

- (1) Each director of a deposit-taking institution or controlling company shall stand in a fiduciary relationship to the deposit-taking institution or controlling company, as the case may be, of which he is a director.
- (2) Without derogating from the generality of the expression 'fiduciary relationship' in subsection (1), the provisions of that subsection imply that a director—
  - (a) shall, in relation to the deposit-taking institution or controlling company of which he is a director, act honestly and in good faith and, in particular, shall exercise such powers as he may have to manage or represent the deposit-taking institution or controlling company, exclusively in the best interests and for the benefit of the deposit-taking institution and its depositors or of the controlling company, as the case may be; and

- (b) shall, in the performance of his functions as director of such deposit-taking institution or controlling company, observe such guide-lines and comply with such requirements as may be prescribed under section 90(1)(b).
- (3) Notwithstanding anything to the contrary in any law or the common law or in any agreement contained, not more than 49 per cent, rounded off to the next lower integral number, of the directors of—
  - (a) a deposit-taking institution shall be employees of that institution or of its controlling company;
  - (b) a controlling company shall be employees of that company or of any deposit-taking institution in respect of which that company is registered as a controlling company:

Provided that in respect of any matter put to the vote at a meeting of the board of directors of a deposit-taking institution or of a controlling company, as the case may be, such directors who are employees of that deposit-taking institution or that controlling company, as the case may be, shall together not have a vote in excess of 49 per cent of the total vote cast by all the directors present and voting at that meeting.

- (4) No person who on the date of commencement of this Act is a director of a deposit-taking institution or controlling company shall on the expiration of his term of office be eligible for reappointment as such a director unless or until he qualifies for such appointment in terms of the provisions of subsection (3).
- (5) Every deposit-taking institution and every controlling company shall, at least 14 days prior to the appointment of a new director (whether for the purpose of the filling of a casual vacancy or in any other circumstances) to its board of directors becoming effective, in writing furnish the Registrar with the name and *curriculum vitae* of the proposed new director.
- (6) The provisions of subsection (5) shall not be construed as rendering the appointment of a director referred to in that subsection subject to the approval of the Registrar.

[section 60 substituted by section 1 of Act 81 of 1991]

## 61. Appointment of auditor

- (1) Notwithstanding the provisions of Chapter X of the Companies Act—
  - (a) no person shall hold office as auditor of a deposit-taking institution unless his appointment as such an auditor has been approved by the Registrar; and
  - (b) a deposit-taking institution of which the total assets as at the close of its last preceding financial year exceeded R10 000 000 000 shall appoint not less than two auditors who are independent of each other.
- (2) A deposit-taking institution shall within 30 days of the appointment in accordance with the provisions of Chapter X of the Companies Act of a person as auditor of that institution, apply to the Registrar on the prescribed form for his approval of such appointment.
- (3) The Registrar may, without being required to furnish any reasons therefor—
  - (a) refuse an application under subsection (2) for his approval of the appointment of an auditor; or
  - (b) withdraw any approval of the appointment of an auditor previously granted by the Registrar under this section, and thereupon the auditor concerned shall vacate his office.
- (4) If the Registrar under paragraph (a) of subsection (3) refuses an application for his approval of the appointment of an auditor or under paragraph (b) of that subsection withdraws an approval previously granted by him, the board of directors of the deposit-taking institution concerned shall

appoint another person as auditor and the provisions of subsections (1) and (2) shall apply *mutatis mutandis* in respect of the last-mentioned appointment.

- (5) A person appointed under subsection (4) as auditor of a deposit-taking institution shall for the purposes of Chapter X of the Companies Act be deemed to have been so appointed as auditor at the immediately preceding annual general meeting of the deposit-taking institution.

## 62. Appointment of auditor by Registrar

- (1) If a deposit-taking institution for any reason fails to appoint an auditor the Registrar may, notwithstanding the provisions of sections 269 (4) and 271 (1) of the Companies Act, make the necessary appointment.
- (2) A person appointed under subsection (1) as auditor of a deposit-taking institution shall be deemed to have been so appointed by that institution.

## 63. Functions of auditor in relation to Registrar

- (1) Notwithstanding anything to the contrary contained in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or the Companies Act, but subject to the provisions or subsections (2) and (3) of this section, the auditor referred to in section 61 or 62—
  - (a) shall, whenever he furnishes, in terms of section 26 (3) (b) of the first-mentioned Act, the Public Accountants' and Auditors' Board with copies of the report, acknowledgement of receipt and reply and with the other particulars referred to in that section, relating to an irregularity or suspected irregularity in the conduct of the affairs of the deposit-taking institution for which he has been appointed as auditor, also furnish the Registrar with such copies and particulars; and
  - (b) may in writing inform the Registrar of any matter relating to the affairs of a deposit-taking institution—
    - (i) of which such auditor became aware in the performance of his functions as auditor of that institution; and
    - (ii) which, in the opinion of such auditor, may be of concern to the Registrar having regard to the Registrar's supervisory functions, in terms of this Act, in respect of the deposit-taking institution concerned; and
  - (c) shall, if requested by the Registrar to do so, furnish him with written information relating to a matter referred to in paragraph (b), specified by the Registrar.
- (2) Whenever an auditor by virtue of the provisions of subsection (1) (b) or (c) furnishes the Registrar with written information, he may at the same time furnish the chief executive officer of the deposit-taking institution to which such information relates with a copy of the relevant document.
- (3) The furnishing in good faith by an auditor of information in terms of subsection (1) (b) or (c) shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of a code of professional conduct to which such auditor may be subject, nor shall such auditor incur any liability to any person in consequence of having so furnished such information.

## 64. Audit committee

- (1) Subject to the provisions of subsections (3) and (4), the board of directors of a deposit-taking institution shall appoint at least three of its members to form an audit committee.
- (2) The functions of the audit committee shall be to—
  - (a) assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within that deposit-taking institution in the day-to-day management of its business;

- (b) facilitate and promote communication, regarding the matters referred to in paragraph (a) or any other related matter, between the board of directors and the executive officers of, the auditor appointed under section 61 or 62 for, and the employee charged with the internal auditing of the transactions of, the deposit-taking institution; and
  - (c) introduce such measures as in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the deposit-taking institution.
- (3) All of the members of the audit committee may be, and the majority of such members shall be, persons who are not employees of the deposit-taking institution.
- (4) The board of directors of a deposit-taking institution shall be exempt from the duty to appoint an audit committee if such institution is a member of a group of companies in respect of which group annual financial statements are required to be made out in terms of section 288 (1) of the Companies Act, provided an audit committee has been appointed for the holding company in that group and such audit committee has assumed the responsibilities of an audit committee in respect of all the deposit-taking institutions in that group.

#### **65. Forwarding of certain notices, reports, returns and financial statements to Registrar**

- (1) Whenever a deposit-taking institution or controlling company—
  - (a) forwards a notice of a meeting or of the declaration of a dividend or a report on its activities during a financial year or part of such year to its shareholders;
  - (b) gives notice to the Registrar of Companies in terms of section 170(2) of the Companies Act of any intended change in the situation of its registered office or of its postal address;
  - (c) forwards in terms of section 216 (2) of the Companies Act a return referred to in that section regarding its directors to the Registrar of Companies; or
  - (d) forwards in terms of section 302 (4) of the Companies Act financial statements to the Registrar of Companies,it shall simultaneously forward a copy of such notice, report, return or statements to the Registrar.
- (2) A deposit-taking institution or controlling company shall within 30 days after a general meeting of shareholders forward to the Registrar a copy of the minutes to be kept in respect of such meeting in terms of section 204 of the Companies Act.

#### **66. Disclosure of issued share capital**

If a deposit-taking institution publishes any statement or issues any document in which the amount of its authorized share capital is mentioned, the amount of its issued share capital shall also be mentioned in such statement or document.

#### **67. Disclosure of names of certain shareholders**

If, in the case of an individual shareholder in a deposit taking institution who holds more than 25 per cent of all the issued shares in that institution to which voting rights are attached, the sum of the amounts of such deposit-taking institution's investments with or loans or advances or other exposures to such individual shareholder exceeds the total nominal value of the said shares so held by that individual shareholder, the deposit-taking institution shall in its financial statements mention the name of such individual shareholder.

## 68. Special provisions relating to winding-up or judicial management of deposit-taking institution

- (1) Notwithstanding anything in the contrary contained in the Companies Act—
  - (a) the Registrar shall have the right to apply to a competent court for the winding-up of any deposit-taking institution or for an order placing any such institution under judicial management in terms of the said Act, and the Registrar shall have the right to oppose any such application made by any other person; and
  - (b) no person other than a person recommended by the Registrar shall be appointed by a Master of the Supreme Court as provisional liquidator, provisional judicial manager, liquidator or judicial manager of a deposit-taking institution.
- (2) During the voluntary winding-up of any deposit-taking institution the liquidator shall furnish the Registrar with every return or statement which the institution concerned would have been obliged to furnish to the Registrar in terms of this Act, were such institution not being wound up.
- (3) In the application, in relation to the winding-up of a company which is a deposit-taking institution—
  - (a) of section 346 of the Companies Act subsection (4) of that section shall be deemed to have been amended to read as follows:

"(4) (a) Before an application for the winding-up of a company which is a deposit-taking institution is presented to the Court, a copy of the application and of every affidavit confirming the facts stated therein shall be lodged with the Registrar of Deposit-taking Institutions and with the Master, or if there is no Master at the seat of the Court, with an officer in the public service designated for that purpose by the Master by notice in the *Gazette*.

(b) The Registrar of Deposit-taking Institutions or the Master or any such officer may report to the court any facts ascertained by him which appear to him to justify the Court in postponing the hearing or dismissing the application, and shall transmit a copy of that report to the applicant or his agent and to the said company."; and
  - (b) of section 357 of the Companies Act, subsection (3) of that section shall be deemed to have been amended to read as follows:

"(3) A copy of every special resolution for the voluntary winding-up of any company which is a deposit-taking institution, passed under section 349, and of every order of court amending or setting aside the proceedings in relation to the winding-up shall, within fourteen days after the registration of the resolution in terms of section 200 or the making of the order, be transmitted by that company to the officers and registrars referred to in paragraphs (a), (b) and (c) of subsection (1), as well as to the Registrar of Deposit-taking Institutions."
- (4) In the application of section 427 of the Companies Act in relation to the judicial management of a company which is a deposit-taking institution, the reference in subsection (2) of that section to section 346 (4) (a) of the said Act shall be deemed to be a reference to the said section 346 (4) (a) as deemed to have been amended in terms of subsection (3) (a) of this section.

## 69. Appointment of curator to deposit-taking institution

- (1) If any deposit-taking institution is in the opinion of the Registrar in financial difficulties, the Minister may, if he deems it desirable in the public interest, after consultation with and with the written consent of that institution, appoint a curator to the institution, and thereupon the provisions of paragraphs (b) to (g), inclusive, and (i) to (l), inclusive, of section 433, and sections 434 (2), 436, 437 and 440, of the Companies Act shall apply *mutatis mutandis*, in so far as such provisions are not inconsistent with the provisions of this section, in relation to the institution and to the curator: Provided that for the purposes of this section the powers conferred and the duties imposed by the first-mentioned provisions upon the court, the Master and the judicial manager, respectively, shall devolve upon the Minister, the Registrar and the curator, respectively.
- (2) The Minister shall appoint a curator by letter of appointment which shall set out—
  - (a) the name of the deposit-taking institution in respect of which the curator is appointed and the address of its head office;
  - (b) directions in regard to the security which the curator has to furnish for the proper performance of his duties;
  - (c) directions in regard to the remuneration of the curator; and
  - (d) such other directions as to the management of the institution concerned or any matter incidental thereto, including directions in regard to the raising of money by that institution, as the Minister may deem necessary.
- (3) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion, but subject to any condition which the Minister may impose—
  - (a) to suspend or reduce, as from the date of his appointment as curator or any subsequent date, the right of creditors of the institution concerned to claim or receive interest on any money owing to them by that institution;
  - (b) to make payments, whether in respect of capital or interest, to any creditor or creditors of the institution concerned at such time, in such order and in such manner as he may deem fit; or
  - (c) to cancel any agreement between the institution concerned and any other party to advance moneys due after the date of his appointment as curator, or to cancel any agreement to extend any existing facility, if, in the opinion of the curator, such advance or any loan under such facility would not be adequately secured or would not be repayable on terms satisfactory to the curator or if the institution lacks the necessary funds to meet its obligations under any such agreement or if it would not otherwise be in the interests of the institution.
- (4) The Minister may, at any time and in any manner, amend or withdraw the directions in the letter of appointment, and the powers granted by him under subsection (3) to the curator.
- (5) On the appointment of a curator—
  - (a) the management of the deposit-taking institution concerned shall vest in the curator, subject to the supervision of the Registrar, and any other person, vested with the management of the affairs of that institution shall be divested thereof; and
  - (b) the curator shall recover and take possession of all the assets of the institution.
- (6) While such deposit-taking institution is under curatorship—
  - (a) all actions, legal proceedings, the execution of all writs, summonses and other legal process against that institution shall be stayed and not be instituted or proceeded with without the leave of the court; and

- (b) the operation of set-off in respect of any amount owing by a creditor to the institution shall be suspended.
- (7) The Registrar shall as soon as is practicable announce the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the *Gazette*.

## Chapter VI Prudential requirements

### 70. Minimum share capital and unimpaired reserve funds

- (1) For the purposes of this Act—

"primary share capital" means capital obtained through the issue of ordinary shares or non-redeemable non-cumulative preference shares;

"primary unimpaired reserve funds" means funds obtained from actual earnings or by way of recoveries, premiums on the issue of shares or a surplus on the realization of capital assets, and which have been set aside as a general or special reserve, are disclosed as such a reserve in the financial statements of the deposit-taking institution concerned and are available for the purpose of meeting liabilities of or losses suffered by the deposit-taking institution, but does not include any fund required to be maintained in terms of any other law;

"secondary share capital" means capital obtained through the issue, with the prior written approval of the Registrar and in accordance with conditions approved by the Registrar in writing, of cumulative preference shares, and includes loan capital obtained by way of debentures issued subject to—

- (a) the condition that the debentures are issued for a minimum period of five years;
- (b) the condition that the debentures may be redeemed before maturity only at the option of the deposit-taking institution concerned and with the prior written approval of the Registrar;
- (c) the condition that, notwithstanding the provisions of any other Act, in the event of the winding-up of the deposit-taking institution concerned, the capital amount of the debentures shall not be repaid until the claims of other creditors have been fully satisfied; and
- (d) such further conditions, if any, as may be prescribed;

"secondary unimpaired reserve funds" means funds obtained and set aside as contemplated in the definition of "primary unimpaired reserve funds" in this subsection and which are available for the purpose contemplated in that definition, but which are not disclosed as a general or special reserve in the financial statements of the deposit-taking institution concerned, and includes—

- (a) 50 per cent of the amount of any surplus resulting from a revaluation of assets and determined as prescribed in subsection (4); and
  - (b) general provisions held against unidentified and unforeseen losses, but does not include any fund required to be maintained in terms of any other law.
- (2) A deposit taking institution shall manage its affairs in such a way that, subject to the provisions of subsections (3) and (5) (a), the sum of its issued primary and secondary share capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—
    - (a) R10 000 000 or, in the case of a deposit-taking institution which immediately prior to the date of commencement of this Act was registered as a banking institution or a building society under a law repealed by this Act, R1 000 000; or



- (b) an amount which represents a prescribed percentage of the sum of amounts calculated by multiplying the average of the amounts (as shown in the returns furnished to the Registrar in terms of section 75 (1) (a) (ii)) of such different categories of—
- (i) assets; and
  - (ii) other risk exposures in the conduct of its business,
- as may be prescribed, by the risk weights, expressed as percentages, prescribed in respect of such different categories of assets and other risk exposures.
- (3) Notwithstanding the provisions of subsection (2)—
- (a) the amount obtained by way of the issue, after the date of commencement of this Act, of debentures and which may in terms of this section rank as secondary share capital shall (except in the case of such debentures which are to be converted into preference shares) during the fifth year preceding the maturity of such debentures be reduced by an amount equal to 20 per cent of the amount so obtained and annually thereafter by an amount which in each successive year is increased by 20 per cent of the amount so obtained; and
  - (b) the sum of the issued secondary share capital and the secondary unimpaired reserve funds as defined in subsection (1) shall not at any time exceed an amount equal to 50 per cent of the aggregate amount which a deposit-taking institution is in terms of subsection (2) required to maintain by way of issued primary and secondary share capital and primary and secondary unimpaired reserve funds.
- (4) The determination of any surplus referred to in paragraph (a) of the definition of "secondary unimpaired reserve funds" in subsection (1) shall be effected—
- (a) at such times as may be prescribed; and
  - (b) by comparing the book value of assets with their market value as at the time of such determination.
- (5) (a) The sum of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of a deposit-taking institution shall for the purposes of subsection (2) be calculated by deducting from the amount thereof—
- (i) depreciation of assets and bad or doubtful debts;
  - (ii) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;
  - (iii) establishment costs, costs in respect of organization and extension of business and the purchase of a business or goodwill, and underwriting commission;
  - (iv) the value of assets lodged or pledged to secure liabilities incurred under any other law where all the liabilities, including contingent liabilities, so secured are not included in the calculation and where the effect of such lodging or pledging is that such assets are not available for the purpose of meeting the liabilities of the deposit-taking institution in terms of this Act;
  - (v) the amount by which the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds required to be maintained by virtue of the provisions of subsection (6) by a subsidiary referred to in that subsection, exceeds the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of that subsidiary;
  - (vi) an amount equal to the book value of shares held by the deposit-taking institution in any other deposit-taking institution; and
  - (vii) any amount made available by the deposit-taking institution for the permanent funding of the capital requirements of any foreign branch thereof.

- (b) A deposit-taking institution shall, in conformity with generally accepted accounting practice, make provision in its accounting records, referred to in section 284 of the Companies Act, for the items specified in paragraph (a).
- (6) The provisions of subsection (2) shall apply *mutatis mutandis* to the affairs of a subsidiary by way of which a deposit-taking institution conducts the business of a deposit-taking institution outside the Republic.
- (7) A deposit-taking institution, or a subsidiary referred to in subsection (6), which on the date of commencement of this Act does not comply with the provisions of subsection (2), shall correct the shortfall within such period and in accordance with such conditions as the Registrar may determine.

## 71. Minimum reserve balance

- (1) A deposit-taking institution shall maintain an account with the Reserve Bank into which it shall from time to time deposit at least such amounts as may be necessary to comply with the requirements of subsection (2) and from which it may, subject to that subsection, from time to time withdraw amounts.
- (2) The credit balance in an account maintained in terms of subsection (1) by a deposit-taking institution, together with the average daily amount of that institution's Reserve Bank notes and subsidiary coin calculated according to the total amounts of those assets held by the institution on all the days of the latest month in respect of which it furnished a return to the Registrar in terms of section 75 (1) (a) (i), may at no time during any month amount to less than an amount equal to the sum of amounts representing the percentages, determined in accordance with the provisions of subsection (3) by the Governor of the Reserve Bank, of the amounts of such different categories of the deposit-taking institution's liabilities as may be specified by regulation with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities.
  - (3) (a) The percentages determined by the Governor of the Reserve Bank in terms of subsection (2) shall be such percentages as the said Governor may, having regard to the national economic interest and with the concurrence of the Minister, deem desirable to determine from time to time.
  - (b) Whenever the Governor of the Reserve Bank has made a determination under paragraph (a), he shall inform the Registrar thereof in writing, and the Registrar shall as soon as is practicable give written notice of the determination to every deposit-taking institution and cause the determination to be published by notice in the *Gazette*.
  - (c) Any such determination shall take effect on a date mentioned in the notice whereby the determination is promulgated in the *Gazette* in terms of paragraph (b).
- (4) A deposit-taking institution's liabilities referred to in subsection (2) shall be calculated in such manner and determined at such times as may be prescribed.

## 72. Minimum liquid assets

- (1) A deposit-taking institution shall hold in the Republic liquid assets to a value which does not amount to less than the sum of amounts, calculated as prescribed percentages, but which in no instance may exceed 20 per cent, of such different categories of its liabilities as may be specified by regulation with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities.
- (2) The amounts of the liquid assets and of the liabilities referred to in subsection (1) shall be calculated in such manner and be determined at such times as may be prescribed.
- (3) A deposit-taking institution shall not pledge or otherwise encumber any portion of the liquid assets held by it in compliance with the provisions of subsection (1): Provided that the Registrar may, if he deems it necessary on account of any special circumstances in which a deposit-taking institution

may find itself, exempt such institution from the prohibition contained in this subsection on such conditions and to such an extent and for such a period as he may determine.

- (4) For the purposes of this section securities shall be valued at their market value, as certified by the Public Investment Commissioners.

### **73. Large exposures**

- (1) A deposit-taking institution shall not make investments with or grant loans or advances or other credit to any individual person, to an aggregate amount exceeding an amount representing a prescribed percentage of such deposit-taking institution's capital and reserves, without first having obtained the permission of its board of directors to make such investments or to grant such loans, advances or other credit.
- (2) A deposit-taking institution shall in such manner and on such a form as may be prescribed report to the Registrar if it proposes to enter into a transaction with any individual person which, either alone or together with any previous transaction or transactions entered into by it with that person, would result in the deposit-taking institution being exposed up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.

### **74. Failure or inability to comply with prudential requirements**

- (1) If a deposit-taking institution fails to comply with a provision of section 70, 71 or 72, or is unable to comply with any such provision, it shall forthwith in writing report its failure or inability to the Registrar, stating the reasons for such failure or inability.
- (2) The Registrar may summarily take action under this Act against a deposit-taking institution referred to in subsection (1) or, if in the circumstances he deems it fit to do so, condone the failure or inability and afford the institution concerned an opportunity, subject to such conditions as the Registrar may determine, to comply with the relevant provision within a specified period.
- (3) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a deposit-taking institution in respect of any failure or inability referred to in subsection (1), the Registrar may, subject to any condonation granted under subsection (2), by way of a written notice impose upon that institution, in respect of such failure or inability, a fine—
  - (a) in the case of any failure or inability to comply with the provisions of section 70 or 71, not exceeding one-tenth of one per cent of the amount of the shortfall for each day on which such failure or inability continues; or
  - (b) in the case of any failure or inability to comply with the provisions of section 72, not exceeding three per cent of the amount of the shortfall.
- (4) A fine imposed under subsection (3) shall be paid to the Registrar within such period as may be specified in the relevant notice, and if the deposit-taking institution concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from that institution the amount of the fine or any portion thereof which he may in the circumstances consider justified.

### **75. Returns**

- (1) A deposit-taking institution shall, in order to enable the Registrar to determine—
  - (a) whether the deposit-taking institution is complying with the provisions of—
    - (i) sections 71 and 72; or
    - (ii) section 70; or

- (b) the nature and amounts of the deposit-taking institution's assets and liabilities, furnish the Registrar, subject to the provisions of subsection (2), with a return on the prescribed form and in respect of the prescribed period.
- (2) A return referred to in subsection (1) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar not later than the fifteenth business day following upon the last business day of the period to which the return relates.
  - (3) A deposit-taking institution shall, in addition to the returns referred to in subsection (1), in respect of such period, at such times and on such form as may be prescribed, furnish the Registrar with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.
  - (4) The regulations contemplated in subsections (1) and (3) may also—
    - (a) prescribe that a deposit-taking institution which carries on the business of a deposit-taking institution through the medium of a subsidiary, branch office, agency or other undertaking outside the Republic, shall incorporate in the returns which it is required to furnish in terms of subsections (1) and (3) the required information in respect of such business, and also that such information shall be furnished separately by the deposit-taking institution on a form so prescribed; and
    - (b) prescribe that in the case of a group of deposit-taking institutions the holding company in such group shall, in addition to the returns furnished in terms of subsections (1) and (3) by each deposit-taking institution in the group, furnish the Registrar by means of a consolidated return, on a form prescribed, relating to all the companies in that group as well as to any business, if any, referred to in paragraph (a), with the information required to be furnished in such first-mentioned returns.
  - (5) of the returns furnished in terms of subsection (1) (b) to the Registrar by a deposit-taking institution that one which most nearly coincides with the end of the financial year of the institution shall be accompanied by a report by the auditor of the institution in which is stated whether or not that return fairly and in conformity with generally accepted accounting practice presents those affairs of the institution to which the return relates, and the Registrar may, if he deems it necessary, require that any other of those returns furnished during the financial year be accompanied by such an auditor's report.
  - (6) A deposit-taking institution shall, at such times as may be prescribed, furnish the Registrar with the further prescribed information regarding its assets and liabilities.

## **Chapter VII**

### **Provisions relating to aspects of the conduct of the business of a deposit-taking institution**

#### **76. Restriction on investments in immovable property and shares, and on loans and advances to certain subsidiaries**

- (1) Subject to the provisions of subsection (2), a deposit-taking institution which invests money in immovable property or in shares, or which lends or advances money to any of its subsidiaries of which the main object is the acquisition and holding or development of immovable property, shall manage its transactions in such investments, loans or advances in such a way that the sum of the amounts—
  - (a) invested by it in immovable property, taken at the book value thereof;
  - (b) invested by it in shares (excluding preference shares which are not convertible into ordinary shares), taken at the price at which they were acquired; and

(c) owing to it by any such subsidiary in respect of a loan or an advance granted by it,

does not at any time exceed the amount of its issued primary and secondary share capital and primary and secondary unimpaired reserve funds referred to in section 70, plus that part of the amount of any surplus resulting from a revaluation of assets and which in terms of paragraph (a) of the definition of 'secondary unimpaired reserve funds' in section 70 does not rank as secondary unimpaired reserve funds: Provided that if immovable property or an undertaking is bought in by a deposit-taking institution to protect an investment (including a loan or an advance), the amount of such an investment shall for a period of five years from the date of purchase not be taken into account for the purposes of this subsection.

*[subsection (1) amended by section 2 of Act 81 of 1991]*

- (2) A deposit-taking institution may with the written approval of the Minister and subject to such conditions as he may determine, make investments and grant loans and advances, referred to in subsection (1), to an aggregate amount which exceeds the sum to which it is limited in terms of subsection (1).

### **77. Restriction on investments with, and loans and advances to, certain associates**

- (1) A deposit-taking institution which invests money in debentures or preference shares of any of its associates (excluding any such associate which is a subsidiary referred to in section 76 (1), a deposit-taking institution or a mutual building society), or which lends or advances money to any such associate, or which provides guarantees in respect of liabilities of such associates, shall manage its transactions in such investments, loans, advances or guarantees in such a way that the sum of the amounts—
- (a) invested by it in debentures or preference shares of such associates (excluding debentures or preference shares which are convertible into ordinary shares), taken at the price at which they were acquired;
  - (b) owing to it by such associates in respect of loans or advances granted by it; and
  - (c) of such guarantees,
- does not at any time exceed ten per cent of its liabilities.
- (2) The sum of the amounts referred to in paragraphs (a), (b) and (c) of subsection (1) shall be calculated for the purposes of that subsection by deducting therefrom the amount by which the sum of the issued primary share capital and primary unimpaired reserve funds, referred to in section 76 (1), of the deposit-taking institution exceeds the sum of the amounts referred to in paragraphs (a), (b) and (c) of section 76 (1).
- (3) For the purposes of this section "associate" means an associate as defined in section 36 (10).

### **78. Undesirable practices**

- (1) A deposit-taking institution—
- (a) shall not hold shares in any company of which such deposit-taking institution is a subsidiary;
  - (b) shall not lend money to any person against security of its own shares;
  - (c) shall not, for the purpose of furthering the sale of its own shares, grant unsecured loans or loans against security which in the opinion of the Registrar is inadequate;
  - (d) shall hold all its assets in its own name, excluding any asset—
    - (i) *bona fide* hypothecated to secure an actual or potential liability;

- (ii) in respect of which the Registrar has, on application of the deposit-taking institution concerned, approved in writing that such asset may be held in the name of another person; or
  - (iii) falling within a category of assets designated by the Registrar by notice in the *Gazette* as a category of assets which may be held in the name of another person;
- (e) shall not show in its financial statements or in any return referred to in section 75 (1) (b) as an asset any amount representing the cost of organization or extension or the purchase of a business or a loss (including a loss originating from the sale of an asset) or bad debts;
- (f) shall not before provision has been made out of profits for the items referred to in paragraph (e)—
- (i) open any branch or agency or any further branch or agency; or
  - (ii) pay out dividends on its shares;
- (g) shall not, for the purpose of effecting a money lending transaction directly between a lender and a borrower, perform any act in the capacity of an agent;
- (h) shall not in its accounting records record any asset at a value increased by the amount of a loss incurred upon the realization of another asset;
- (i) shall not conclude a repurchase agreement in respect of a fictitious asset or an asset created by means of a simulated transaction; and
- (j) shall not purport to have concluded a repurchase agreement without—
- (i) such agreement being substantiated by a written document signed by the other party thereto; and
  - (ii) the details of such agreement being recorded in the accounts of the deposit-taking institution as well as in the accounts, if any, kept by the deposit-taking institution in the name of such other party.
- (2) The Registrar may—
- (a) in writing notify a deposit-taking institution that a practice employed by that institution and specified in the notice constitutes an undesirable practice for that institution; or
  - (b) by notice in the *Gazette* declare a practice specified in that notice to be an undesirable practice for deposit-taking institutions specified in that notice or for all deposit-taking institutions,
- and a deposit-taking institution which, after the expiry of a period of 21 days as from the date of a notice received by it by virtue of paragraph (a) or applicable to it in terms of paragraph (b), employs a practice which constitutes an undesirable practice for it by virtue of such a notice, shall be guilty of an offence.
- (3) A deposit-taking institution shall, upon receipt from the Registrar of a written request to that effect, discontinue the publication or issue of any advertisement, brochure, prospectus or similar document, specified in the request, which contains information which is not a correct statement of fact, or the publication or issue of which is, in the opinion of the Registrar, not in the public interest.

## 79. Shares, debentures, negotiable certificates of deposit and share warrants

- (1) A deposit-taking institution shall not—
- (a) sections 74 and 75 of the Companies Act notwithstanding, issue shares of no par value or convert any of its shares into shares of no par value;

- (b) without the written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing—
    - (i) issue any preference shares or debentures;
    - (ii) convert any of its shares into preference shares or debentures; or
    - (iii) convert any of its preference shares of a particular class into preference shares of any other class;
  - (c) issue negotiable certificates of deposit otherwise than in accordance with such conditions as may be prescribed; or
  - (d) section 101 of the Companies Act notwithstanding, issue share warrants to bearer within the meaning of that section.
- (2) The aggregate amount representing the value of debentures and negotiable certificates of deposit issued by a deposit-taking institution in terms of paragraphs (b) (i) and (c), respectively, of subsection (1), shall at no time exceed an amount representing the prescribed percentage of the aggregate amount of the deposit-taking institution's liabilities in respect of deposits made with it and in respect of such debentures and negotiable certificates of deposit.

#### **80. Limitation on certain activities of deposit-taking institutions**

- (1) A deposit-taking institution which has a branch system, which accepts money cheque and which has been admitted to a clearing house, shall not carry on any business in the Republic through a person who is not its full-time employee, except with the written permission of the Registrar and subject to such conditions as the Registrar may determine: Provided that such a deposit-taking institution may raise deposits through an agent and pay commission to such agent in respect thereof.
- (2) A deposit-taking institution shall not without the written permission of the Registrar accept deposits of money withdrawable by cheque unless it offered that facility prior to the date of commencement of this Act.
- (3) No deposit-taking institution and no associate of a deposit-taking institution shall, either jointly or individually, hold shares in any registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), to the extent to which the nominal value of those shares exceeds 49 per cent of the nominal value of all the issued shares of such insurer.
- (4) Where in any particular case at the commencement of this Act the ratio contemplated in subsection (3) is exceeded, the deposit-taking institution and its associates may retain the shares in question, but they shall not acquire any further shares in such insurer as long as such ratio is so exceeded.
- (5) For the purposes of this section—
  - (a) "associate", in relation to a deposit-taking institution, means—
    - (i) a holding company of that deposit-taking institution;
    - (ii) a company of which such holding company is a subsidiary;
    - (iii) a fellow subsidiary of that deposit-taking institution; or
    - (iv) a subsidiary (excluding a sub-subsidiary) of that deposit-taking institution or of such fellow subsidiary; and
  - (b) "sub-subsidiary", in relation to a deposit-taking institution or its fellow subsidiary, means a company which is a subsidiary of such deposit-taking institution or fellow subsidiary by virtue of its being a subsidiary of a subsidiary of that deposit-taking institution or fellow subsidiary.

## **Chapter VIII**

### **Control of certain activities of unregistered persons**

#### **81. Order prohibiting anticipated or actual contraventions of certain provisions of Act**

- (1) If the Registrar has reason to suspect that any person who is not provisionally or finally registered as a deposit-taking institution in terms of this Act—
  - (a) is likely to conduct the business of a deposit-taking institution in contravention of the provisions of section 11 (1); or
  - (b) has so contravened the provisions of section 11 (1) or has contravened the provisions of section 22 (4) or (5), or that such a contravention is likely to be continued or repeated,the Registrar may apply to a division of the Supreme Court having jurisdiction (hereinafter in this section referred to as the court) for an order—
  - (i) prohibiting the anticipated contravention referred to in paragraph (a);
  - (ii) prohibiting the continuation or repetition of a contravention referred to in paragraph (b); or
  - (iii) prohibiting the person concerned from disposing of or otherwise dealing with any of his or its assets while the contravention suspected of having been committed or of being continued is investigated.
- (2) If it is proved to the satisfaction of the court, in the case of an application for an order referred to in —
  - (a) subsection (1) (i), that there is a reasonable likelihood that the provisions of section 11 (1) will be contravened by a person concerned as contemplated in subsection (1) (a);
  - (b) subsection (1) (ii), that there is a reasonable likelihood that a contravention will be continued or repeated as contemplated in subsection (1) (b); or
  - (c) subsection (1) (iii), that there is a reasonable likelihood that a contravention has been committed or is being continued as contemplated in subsection (1) (b),the court may make the relevant order applied for.

#### **82. Registrar's power to exact information from unregistered persons**

- (1) If the Registrar has reason to suspect that any person who is not provisionally or finally registered as a deposit-taking institution in terms of this Act is carrying on the business of a deposit-taking institution, the Registrar may by notice in writing direct that person to submit to him such document or to furnish him with such information, relating to the affairs of that person, as the Registrar may specify in the notice and as may be available to that person.
- (2) A document or information referred to in subsection (1) shall be submitted or furnished within such period as the Registrar may specify in the relevant notice or within such extended period as the Registrar may allow on application made by the person concerned before the expiration of the period initially specified in the notice.
- (3) Any person who refuses to comply, or fails to comply within the specified or extended period referred to in subsection (2), with a direction issued by the Registrar under subsection (1) shall be guilty of an offence.

#### **83. Repayment of money unlawfully obtained**

- (1) If as a result of an inspection conducted under section 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar is satisfied that any person has obtained money by carrying



on the business of a deposit-taking institution without being provisionally or finally registered as a deposit-taking institution, the Registrar may in writing direct that person to repay, subject to the provisions of section 84 and in accordance with such requirements and within such period as may be specified in the direction, all money so obtained by him in so far as such money has not yet been repaid, including any interest or any other amounts owing by him in respect of such money.

- (2) Any person who by virtue of the provisions of subsection (1) repays any money referred to in that subsection before the due date for the repayment thereof agreed upon by that person and the person from whom the money was obtained, shall not be obliged to pay any interest or any other amounts which would have been payable in respect of such money for the period from the date of such repayment up to such due date.
- (3) Any person who refuses or fails to comply with a direction under subsection (1)—
  - (a) shall be guilty of an offence; and
  - (b) shall for the purposes of any law relating to the winding-up of juristic persons or to the sequestration of insolvent estates, be deemed not to be able to pay his debts or to have committed an act of insolvency, as the case may be, and the Registrar shall, notwithstanding anything to the contrary contained in any law, be competent to apply for the winding-up of such a juristic person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction.
- (4) The provisions of this section shall not be construed as relieving any person from liability to criminal proceedings arising out of a contravention of any provision of this Act or any law repealed by this Act.

#### **84. Management and control of repayment of money unlawfully obtained**

- (1) Simultaneously with the issuing of a direction under section 83 (1), or as soon thereafter as may be practicable, the Registrar shall by a letter of appointment signed by him appoint a person (hereinafter in this section referred to as the manager) to manage and control the repayment of money in compliance with the direction by the person subject thereto.
- (2) The Registrar shall serve a copy of the letter of appointment referred to in subsection (1) upon the person subject to the relevant direction, and such person shall, with effect from the date of the letter of appointment, be prohibited from disposing of or otherwise dealing with such of his assets as are specified in the letter of appointment, except with the written permission of the manager.
- (3) The manager shall act under the control of the Registrar, and he may from time to time apply to the Registrar for instructions in regard to any matter arising out of or in connection with the performance of his duties in terms of subsection (4).
- (4) It shall be the duty of the manager—
  - (a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the manager may deem necessary in order to establish—
    - (i) the true amount of money unlawfully obtained by that person as contemplated in section 83 (1);
    - (ii) the identities of all persons from whom such money was so unlawfully obtained;
    - (iii) where any such money or any assets into which such money was converted, is kept or can be located; or
    - (iv) any other fact which in the opinion of the Registrar or the manager needs to be established in order to facilitate the repayment of such money in terms of the relevant direction;
  - (b) to take all reasonable steps (including the liquidation of assets into which money unlawfully obtained as contemplated in section 83 (1) has been converted) which may serve to expedite

- and ensure the repayment of money in accordance with the requirements of and within the period specified in the relevant direction;
- (c) to report the suspected commission by any person of any offence of which he becomes aware in the course of the performance of his duties as manager in terms of this section, to the attorney-general having jurisdiction in the area in which such offence is so suspected of having been committed; and
  - (d) to perform any other function assigned to him by the Registrar in connection with the finalization of the repayment of money in accordance with the relevant direction.
- (5) For the purposes of the performance of his duties as set out in subsection (4), the manager shall, in relation to the person subject to the relevant direction and in relation to the affairs of that person, have the powers conferred by section 4 (1), (2), (3) and (4) of the Inspection of Financial Institutions Act, 1984 (Act No.38 of 1984), upon an inspector contemplated in that section, as if the manager were an inspector and the person subject to the direction were a financial institution contemplated in that section.
- (6) The manager shall in respect of the services rendered by him in terms of this section be paid such remuneration by the Registrar as the Minister may determine, and the Registrar may recover an amount equal to the remuneration so paid from the person subject to the direction.
- (7) The manager shall hold office until the relevant direction has been fully complied with, but the Registrar may at any time in writing withdraw the appointment of the manager on good cause shown, whereupon the manager shall vacate his office.
- (8) Any person who—
- (a) when requested by the manager to take an oath or to make an affirmation, refuses to do so;
  - (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to him by the manager in the exercise of his powers or the performance of his duties, even though the answer may lend to incriminate that person;
  - (c) wilfully furnishes the manager with any false information;
  - (d) refuses or fails to comply to the best of his ability with any reasonable request made to him by the manager in the exercise of his powers or the performance of his duties;
  - (e) wilfully hinders the manager in the exercise of his powers or the performance of his duties; or
  - (f) commits any other deed designed to obstruct, or to enable any person to evade, the repayment of money as required by a direction under section 83 (1),
- shall be guilty of an offence.

## Chapter IX General provisions

### 85. Certification of returns and other documents

Any return or other document to be furnished to the Registrar by a deposit-taking institution or controlling company in terms of a requirement of this Act, shall be certified as correct by the chief executive officer and, in the case of such a return, also by the chief accounting officer of the deposit-taking institution or controlling company and be endorsed by such chief executive officer with the date on which it is so certified.

## 86. Inspection, copies and keeping of documents

- (1) Any person may upon payment of the prescribed fee—
  - (a) inspect any document specified in subsection (2) and kept by the Registrar in terms of this Act;
  - (b) obtain a certificate from the Registrar as to the contents or any part of the contents of any such document; or
  - (c) obtain a copy of or extract from any such document.
- (2) The documents referred to in subsection (1) are—
  - (a) certificates of provisional or final registration or of the registration of an alteration of the memorandum or association or articles of association or of a change of name of deposit-taking institutions and of controlling companies;
  - (b) memorandums of association and articles of association of deposit-taking institutions and of controlling companies; and
  - (c) returns and copies of notices, reports, returns, statements or minutes lodged with the Registrar in terms of section 59, 65 or 75, excluding any return or statement so lodged by means or under cover of a proscribed form which, in terms of the regulation prescribing it, is to be treated as confidential and not available for inspection by the public.
- (3) The Registrar shall keep the documents specified in paragraph (c) of subsection (2) for a period of at least 10 years: Provided that the Registrar shall not be required to keep the said documents which relate to a deposit-taking institution or a controlling company of which the registration has lapsed or been cancelled, for a period longer than five years as from the date of termination of such registration.
- (4) If the Registrar is of the opinion that a person requires an inspection or any certificate, copy or extract referred to in subsection (1) to promote any public interest, he may exempt that person from the obligation to pay the prescribed fee in respect of such inspection, certificate, copy or extract.

## 87. Minors and married women as depositors

- (1) Notwithstanding anything to the contrary contained in any law or the common law, and unless otherwise provided in the memorandum of association or articles of association of a deposit-taking institution, a minor over the age of 16 years or a married woman, whether or not under marital power, may be a depositor with a deposit-taking institution and may without the consent or assistance of his guardian or her husband, as the case may be, execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against, and generally deal with, his or her deposit as he or she thinks fit, and shall enjoy all the privileges and be liable to all the obligations and conditions applicable to depositors.
- (2) The husband of a woman who is a depositor with a deposit-taking institution shall, save with her written consent, not be entitled to demand or receive from the deposit-taking institution any particulars concerning the deposits she holds with that institution.

## 88. Limitation of liability

No liability shall attach to the South African Reserve Bank or, either in his official or personal capacity, any member of the board of directors of the said Bank, the Registrar or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Registrar or such other officer or employee in the *bona fide* performance of any function or duty under this Act.

## 89. Furnishing of information by Registrar

Notwithstanding the provisions of section 33 (1) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar may furnish information acquired by him as contemplated in that section—

- (a) to any person charged with the performance of a function under any law, provided the Registrar is satisfied that possession of such information by that person is essential for the proper performance of such function by that person; or
- (b) to an authority in a country other than the Republic for the purpose of enabling such authority to perform functions, corresponding to those of the Registrar under this Act, in respect of a deposit-taking institution carrying on business in such other country.

## 90. Regulations

- (1) The Minister may make regulations—
  - (a) as to any matter which is required or permitted to be prescribed by regulation under this Act;
  - (b) subject to the provisions of the Companies Act, providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a deposit-taking institution in the performance of his functions as such a director;
  - (c) prescribing matters in addition to those contemplated in any other provision of this Act, in respect of which fees shall be payable, and the fee payable in respect of each such matter;
  - (d) prescribing the manner in which any payment in terms of this Act shall be made to the Registrar;
  - (e) prescribing such further returns as the Minister may deem expedient, in addition to those contemplated in any other provision of this Act, to be furnished by deposit-taking institutions to the Registrar;
  - (f) prescribing that the financial statements of a deposit-taking institution shall be prepared in conformity with generally accepted accounting practice;
  - (g) prescribing the amount of the fee payable in respect of a licence referred to in section 35 or the basis on which such amount shall be calculated, the period within which such fee shall be paid and a fine in respect of late payment of such a fee;
  - (h) prescribing the basis on which any movable or immovable assets shall for the purposes of this Act be valued; or
  - (i) prescribing, generally, any matter, whether or not connected with any matter specified in paragraphs (a) to (h), inclusive, which he may deem it necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved.
- (2) A person who is obliged in terms of any provision of this Act to render a return or statement in a prescribed form, shall be deemed not to have rendered that return or statement unless he has set forth therein all the particulars for which provision is made in the prescribed form.
- (3) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of R2 000 or imprisonment for a period of six months.

## 91. Offences and penalties

- (1) Any person who—
  - (a) fails to comply with a direction under section 7; or

- (b) contravenes or fails to comply with a provision of section 34, 35, 36 (1), (6) or (7), 37 (1), 38 (1), 39, 41, 42 (1), 52 (1) or (4), 53, 55, 58, 59, 61 (2), 65, 66, 67, 70 (2), 71, 72, 73, 75, 76, 77, 78 (1) or (3), 79, 80 or 84 (2),

shall be guilty of an offence.

- (2) A director or employee of a deposit-taking institution or controlling company who, or any company in which such director or employee has a direct interest and which—

- (a) accepts from any person any benefit for or in connection with any advance granted by that deposit-taking institution or by the deposit-taking institution in respect of which that controlling company is registered; or

- (b) otherwise than with the written consent of the Registrar or at a duly advertised public auction purchases any immovable property owned by or mortgaged to that deposit-taking institution or the deposit-taking institution in respect of which that controlling company is registered, and which is sold by or at the instance of the deposit-taking institution in question or is sold at a judicial sale at the instance of any other person,

shall be guilty of an offence.

- (3) A deposit-taking institution which, while a shortfall referred to in section 74 (3) exists in respect of its business, pays any dividends, shall be guilty of an offence.

- (4) Any person convicted of an offence in terms of—

- (a) section 11 (2) or 22 (4), shall be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or

- (b) section 17 (6), 21, 22 (3) or (8), 32 (4)(a), 78 (2), 82 (3), 83 (3) (a), 84 (8) or subsection (1), (2) or (3) of this section, shall be liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

- (5) Any person who accepts any benefit in contravention of the provisions of subsection (2) (a), shall pay to the deposit-taking institution concerned the amount or value of such benefit.

- (6) If any person fails to submit to the Registrar or to furnish the Registrar With any return, statement, report or other document or information in accordance with a requirement of this Act within the period determined by or under this Act or, if that period has been extended by the Registrar under section 8 (2) (a), within the extended period, the Registrar may impose upon him by way of a notice in writing a fine not exceeding R100 for every day during which such failure continues.

- (7) A fine imposed under subsection (6) shall be paid to the Registrar within such period as may be specified in the notice, and if the person concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified.

## 92. Review of Act

- (1) The Minister shall appoint a standing committee to review this Act from time to time, and such committee shall consist of such incumbents of offices and other members as the Minister may from time to time determine.
- (2) A member of the standing committee shall hold office for such period as the Minister may determine, and shall be eligible for reappointment on the expiration of his term of office.
- (3) The standing committee may from time to time make recommendations to the Minister with regard to amendments to this Act which, in the opinion of the committee, have become advisable owing to changed circumstances or which the administration of this Act has shown to be advisable.
- (4) A committee appointed by the Minister in terms of the provisions of section 53 of the Banks Act, 1965 (Act No. 23 of 1955), and which exists on the date immediately preceding the date of

Commencement of this Act, shall continue to exist until such time as a new committee is appointed by the Minister in terms of this section, and such first-mentioned committee shall, as long as it so continues to exist, be deemed to have been appointed by the Minister in terms of this section.

### 93. Interpretation of certain references in existing laws

A reference in any law in force immediately prior to the commencement of this Act, to—

- (a) a bank, discount house, banking institution, banking institution registered under or in terms of the Banks Act, 1965 (Act No. 23 of 1965), or building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a deposit-taking institution;
- (b) the Registrar of Banks or the Registrar of Building Societies shall be construed as a reference to the Registrar:

Provided that—

- (i) any such reference in section 10 (1) (i) (xii) (bb), (xiiA) or (xiii) (bb), 10 (1) (v) or (vA) or 19 (5A) of the Income Tax Act, 1962 (Act No. 58 of 1962), to a building society, shall be so construed as a reference to a deposit-taking institution which, immediately prior to its registration as a deposit-taking institution in terms of section 33, was a building society registered as such in terms of the Building Societies Act, 1986; and
- (ii) any such reference in section 10 (1) (w) of the Income Tax Act, 1962, to a banking institution shall be so construed as a reference to a deposit-taking institution which, immediately prior to its registration as a deposit-taking institution in terms of section 33, was a banking institution registered as such in terms of the Banks Act, 1965.

### 94. Amendment of section 3 of Act 61 of 1973, as amended by section 106 of Act 82 of 1986

Section 3 of the Companies Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) with reference to any company or external company or society which is subject to the provisions of any law relating to [banks or] insurance companies or societies in so far as those provisions are inconsistent with the provisions of this Act; or”.

### 95. Repeal of laws, and savings

- (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.
- (2) Any regulation made, direction, order or directive issued, request made or requirement laid down, and any other thing done under any provision of any law repealed by subsection (1), and which could be made, issued, laid down or done under a provision of this Act, shall be deemed to have been made, issued, laid down or done under the last-mentioned provision.

### 96. Short title and commencement

- (1) This Act shall be called the Deposit-taking Institutions Act, 1990, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in terms of subsection (1) in respect of the different provisions of this Act.
- (3) Any reference in this Act to the date of commencement thereof shall be construed as a reference to the applicable date so fixed.

**Schedule**  
**Laws repealed**

No. and year of law	Short title	Extent of repeal
Act No. 23 of 1965	Banks Act, 1965	The whole
Act No. 80 of 1969	Financial Institutions Amendment Act, 1969	Section 2
Act No. 23 of 1970	Financial Institutions Amendment Act, 1970	Sections 3, 4, 5 and 6
Act No. 89 of 1972	Revenue Laws Amendment Act, 1972	Section 8
Act No. 91 of 1972	Institutions Amendment Act, 1972	Sections 12 to 17, inclusive
Act No. 67 of 1973	Financial Institutions Amendment Act, 1973	Section 4
Act No. 101 of 1976	Financial Institutions Amendment Act, 1976	Sections 37 to 53, inclusive
Act No. 94 of 1977	Financial Institutions Amendment Act, 1977	Sections 17 to 21 inclusive
Act No. 80 of 1978	Financial Institutions Amendment Act, 1978	Sections 18 to 21, inclusive
Act No. 103 of 1979	Financial Institutions Amendment Act, 1979	Sections 27 to 31, inclusive
Act No. 99 of 1980	Financial Institutions Amendment Act, 1980	Sections 45 to 49, Inclusive
Act No. 36 of 1981	Financial Institutions Amendment Act, 1981	Sections 23 to 25, inclusive

No. and year of law	Short title	Extent of repeal
Act No. 82 of 1982	Financial Institutions Amendment Act, 1982	Sections 16 and 17
Act No. 86 of 1984	Financial Institutions Amendment Act, 1984	Sections 22 to 33, inclusive
Act No. 106 of 1985	Financial Institutions Amendment Act, 1985	Sections 10 to 36, inclusive
Act No. 82 of 1986	Building Societies. Act, 1996	The whole
Act No. 6 of 1987	Financial Institutions Amendment Act, 1987	Sections 3 to 7, inclusive, and 10 to 12, inclusive
Act No. 96 of 1988	South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988	Sections 2 to 16, inclusive, and 32 to 51, inclusive
Act No. 13 of 1989	Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1989	Sections 1 to 6, inclusive, and 11 to 14, inclusive