REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

FOR THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer *Registered at the Post Office as a Newspaper*

R0,80 Prys • Price
R0,08 Plus 10% BTW • VAT
R0,88 Verkoopprys • Selling price
Buitelands **R1,10** Other countries
Posvry • Post free

VOL. 322

KAAPSTAD, 15 APRIL 1992
CAPE TOWN, 15 APRIL 1992

No. 13919

KANTOOR VAN DIE STAATSPRESIDENT

No. 1070. 15 April 1992

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 42 van 1992: Wysigingswet op Depositonemende Instellings, 1992.

STATE PRESIDENT'S OFFICE

No. 1070. 15 April 1992

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 42 of 1992: Deposit-taking Institutions Amendment Act, 1992.

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Depositonemende Instellings, 1990, ten einde sekere uitdrukkings nader te omskryf en die omskrywings van sekere uitdrukkings te skrap; sekere sintaktiese gebreke te verbeter; die uitdrukking "geassosieerde" nader te omskryf; die prosedure vir die verkryging van toestemming tot die verkryging van aandele in 'n depositonemende instelling of beherende maatskappy verder te reël; 'n bepaling waarby depositonemende instellings gemagtig word om sonder die voorafgaande toestemming van die Registrateur van Depositonemende Instellings of die Minister van Finansies aandele in ander depositonemende instellings of in beherende maatskappye te verkry, te skrap; voorsiening te maak vir die uitoefening van beheer oor depositonemende instellings deur sekere buitelandse instellings; sekere bepalings daarvan in ooreenstemming te bring met nuwe wetgewing; sekere werksaamhede van die ouditeure van depositonemende instellings verder te reël; die bevoegdhede van die kurator aangestel oor 'n depositonemende instelling wat in finansiële moeilikheid verkeer, uit te brei; 'n sekere bepaling met betrekking tot die berekening van die minimum aandelekapitaal en onaangetaste reserwefondse wat deur depositonemende instellings in stand gehou moet word, duideliker te stel; 'n sekere bepaling wat nie langer van toepassing is nie te skrap; ander voorsiening te maak aangaande die waardasie van sekuriteite wat deel uitmaak van die likwiede bates wat deur depositonemende instellings gehou moet word; voorsiening te maak vir die verlening deur 'n komitee aangestel deur die raad van direkteure van 'n depositonemende instelling van toestemming tot sekere groot blootstellings; die tydstip van indiening en die inhoud van sekere opgawes wat deur depositonemende instellings aan die Registrateur van Depositonemende Instellings verstrek moet word, verder te reël; en verpligtinge ten opsigte van kapitaal en reserwes uit te sluit van die verpligtinge waarteen die toelaatbare perke van sekere beleggings deur depositonemende instellings bereken moet word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 7 April 1992.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 94 van 1990

1. Artikel 1 van die Wet op Depositonemende Instellings, 1990 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur die woord "of" aan die einde van paragraaf (vi) van die omskrywing van "deposito" te skrap;

(b) deur die woord "of" aan die einde van paragraaf (vii) van die omskrywing van "deposito" in te voeg;

(c) deur in die omskrywing van "deposito" die volgende paragraaf na paragraaf (vii) in te voeg:

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Deposit-taking Institutions Act, 1990, so as to further define certain expressions and to delete the definitions of certain expressions; to correct certain syntactical deficiencies; to further define the expression "associate"; to further regulate the procedure for the obtaining of permission for the acquisition of shares in a deposit-taking institution or controlling company; to delete a provision authorizing deposit-taking institutions to acquire shares in other deposit-taking institutions or in controlling companies without the prior permission of the Registrar of Deposit-taking Institutions or the Minister of Finance; to provide for the exercise of control over deposit-taking institutions by certain foreign institutions; to bring certain provisions thereof into line with new legislation; to further regulate certain functions of the auditors of deposit-taking institutions; to extend the powers of the curator appointed to a deposit-taking institution which is in financial difficulties; to clarify a certain provision relating to the calculation of the minimum share capital and unimpaired reserve funds required to be maintained by deposit-taking institutions; to delete a certain provision which is no longer applicable; to make other provision regarding the valuation of securities forming part of the liquid assets required to be held by deposit-taking institutions; to provide for the granting by a committee appointed by the board of directors of a deposit-taking institution of permission for certain large exposures; to further regulate the time of submission and the contents of certain returns to be furnished by deposit-taking institutions to the Registrar of Deposit-taking Institutions; and to exclude liabilities in respect of capital and reserves from the liabilities against which the permissible limits of certain investments by deposit-taking institutions are to be calculated; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 7 April 1992.)

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

Amendment of section 1 of Act 94 of 1990

1. Section 1 of the Deposit-taking Institutions Act, 1990 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of the word "or" at the end of paragraph (vi) of the definition of "deposit";

(b) by the insertion of the word "or" at the end of paragraph (vii) of the definition of "deposit";

(c) by the insertion in the definition of "deposit" of the following paragraph after paragraph (vii):

"(viii) aan 'n bystandsfonds, soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), betaal word as 'n bydrae of ledegeld deur of namens 'n lid van daardie fonds,";

(d) deur paragrawe *(ee)* en *(ff)* van die omskrywing van "die bedryf van 'n depositonemende instelling" deur onderskeidelik die volgende paragrawe te vervang:

"*(ee)* die opneem, onderworpe aan die voorwaardes wat die Registrateur van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, van geld teen skuldbriewe, wissels, promesses of ander soortgelyke finansiële instrumente, mits die geld aldus opgeneem nie, in die geval van sodanige opneem van geld deur 'n ander persoon as 'n depositonemende instelling, vir die toestaan van geldlenings of krediet (uitgesonderd gebruiklike krediet ten opsigte van die verkoop van goedere of die lewering van dienste deur die uitreiker van sodanige finansiële instrumente) aan die algemene publiek gebruik word nie; of

(ff) die bewerkstelliging, onderworpe aan die voorwaardes wat die Registrateur van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, van 'n geldleningstransaksie regstreeks tussen 'n uitlener en 'n depositonemende instelling as lener deur bemiddeling van 'n derde party wat nie as 'n prinsipaal by die transaksie optree nie, mits sodanige geldleningstransaksie aldus bewerkstellig word op dieselfde dag waarop die betrokke derde party van die uitlener die fondse ontvang wat ingevolge die geldleningstransaksie uitgeleen staan te word;"; en

(e) deur die omskrywing van onderskeidelik "geldmakelaar" en "geldmakelary" te skrap.

Wysiging van artikel 9 van Wet 94 van 1990

2. Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Behoudens die bepalings van artikel 13(4) kan 'n persoon wat hom veronreg voel deur 'n besluit wat deur die Registrateur kragtens 'n bepaling van hierdie Wet geneem is, binne die voorgeskrewe tydperk en op die voorgeskrewe wyse en by betaling van die voorgeskrewe gelde teen daardie besluit appèl aanteken by die appèlraad ingestel by subartikel (2).".

Wysiging van artikel 36 van Wet 94 van 1990

3. Artikel 36 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (10) deur die volgende paragraaf te vervang:

"*(b)* met betrekking tot 'n regspersoon—

(i) wat 'n maatskappy is, 'n filiaal of houermaatskappy van daardie maatskappy, enige ander filiaal van daardie houermaatskappy en enige ander maatskappy waarvan daardie houermaatskappy 'n filiaal is; **[of]**

(ii) wat 'n beslote korporasie is wat kragtens die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), geregistreer is, 'n lid daarvan soos omskryf in artikel 1 van daardie Wet; **[en]**

(iii) wat nie 'n maatskappy of 'n beslote korporasie soos in hierdie paragraaf bedoel, is nie, 'n ander regspersoon wat 'n filiaal van eersgenoemde regspersoon sou gewees het—

(aa) indien eersgenoemde regspersoon 'n maatskappy was; of

(bb) in die geval waar ook daardie ander regspersoon nie 'n maatskappy is nie, indien sowel eersgenoemde regspersoon as daardie ander regspersoon 'n maatskappy was;

"(viii) paid to a benefit fund, as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), as a contribution or a subscription by or on behalf of a member of that fund,";

(d) by the deletion of the definition of "money broker" and "money broking", respectively; and

(e) by the substitution for paragraphs *(ee)* and *(ff)* of the definition of "the business of a deposit-taking institution" of the following paragraphs, respectively:

"*(ee)* the acceptance, subject to such conditions as the Registrar may from time to time determine by notice in the *Gazette*, of money against debentures, bills of exchange, promissory notes or other similar financial instruments, provided the money so accepted is not used, in the case of such acceptance of money by a person other than a deposit-taking institution, for the granting of money loans or credit (other than customary credit in respect of the sale of goods or the provision of services by the issuer of such financial instruments) to the general public; or

(ff) the effecting, subject to such conditions as the Registrar may from time to time determine by notice in the *Gazette*, of a money lending transaction directly between a lender and a deposit-taking institution as borrower through the intermediation of a third party who does not act as a principal to the transaction, provided such money lending transaction is so effected on the same day on which the third party concerned receives from the lender the funds to be lent in terms of the money lending transaction;".

Amendment of section 9 of Act 94 of 1990

2. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 prescribed period and in the prescribed manner and upon payment of the prescribed fees appeal against such decision to the board of appeal established by subsection (2).".

Amendment of section 36 of Act 94 of 1990

3. Section 36 of the principal Act is hereby amended—

(a) by the substitution for paragraph *(b)* of subsection (10) of the following paragraph:

"*(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]**

(iii) which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person—

(aa) had such first-mentioned juristic person been a company; or

(bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;

(iv) enige persoon ooreenkomstig wie se voorskrifte of opdragte dit vir die raad van direkteure van of, in die geval waar sodanige regspersoon nie 'n maatskappy is nie, dit vir die bestuursliggaam van sodanige regspersoon gebruiklik is om te handel; en"; en

(b) deur paragraaf *(c)* van subartikel (10) deur die volgende paragraaf te vervang:

"*(c)* met betrekking tot enige persoon—

(i) enige regspersoon vir die raad van direkteure waarvan of, in die geval waar sodanige regspersoon nie 'n maatskappy is nie, vir die bestuursliggaam waarvan dit gebruiklik is om ooreenkomstig die voorskrifte of opdragte van die in hierdie paragraaf eersgenoemde persoon te handel; en

(ii) ook enige trust wat deur daardie persoon beheer of geadministreer word.".

Wysiging van artikel 37 van Wet 94 van 1990

4. Artikel 37 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) die woorde wat op paragraaf *(c)* volg deur die volgende woorde te vervang:

"meer beloop as **[10]** 15 persent van die totale nominale waarde van al die uitgereikte aandele van die depositonemende instelling of beherende maatskappy, alvorens hy ooreenkomstig die bepalings van subartikel (2) toestemming tot sodanige verkryging verkry het.";

(b) deur paragraaf *(a)* van subartikel (2) deur die volgende paragraaf te vervang:

"*(a)* Indien, behoudens die bepalings van paragraaf *(c)*—

(i) 'n persoon vir 'n tydperk van 12 maande of die korter tydperk wat die Registrateur goedvind, soveel aandele in 'n depositonemende instelling of beherende maatskappy besit het as wat hy volgens die bepalings van subartikel (1) daarin mag besit, kan hy, indien die Registrateur skriftelike toestemming daartoe verleen het, meer as **[10]** 15 persent maar hoogstens **[17,5]** 24 persent van bedoelde aandele verkry soos in genoemde subartikel beoog;

(ii) genoemde persoon vir 'n tydperk van 12 maande of die korter tydperk wat die Registrateur goedvind, **[17,5]** 24 persent van bedoelde aandele besit het soos aldus beoog, kan hy, indien die Registrateur skriftelike toestemming daartoe verleen het, meer as **[17,5]** 24 persent maar hoogstens **[25]** 49 persent van bedoelde aandele verkry soos in genoemde subartikel (1) beoog;

(iii) **[genoemde persoon vir 'n tydperk van 12 maande of die korter tydperk wat die Registrateur goedvind, 25 persent van bedoelde aandele besit het soos aldus beoog, kan hy, indien die Registrateur skriftelike toestemming daartoe verleen het, meer as 25 persent maar hoogstens 30 persent van bedoelde aandele verkry soos in genoemde subartikel (1) beoog; en**

(iv)] genoemde persoon vir 'n tydperk van 12 maande of die korter tydperk wat die Minister goedvind, **[30]** 49 persent van bedoelde aandele besit het soos in genoemde subartikel (1) beoog, kan hy, indien die Minister deur bemiddeling van die Registrateur skriftelike toestemming daartoe verleen het, meer as **[30]** 49 persent maar hoogstens 74 persent van bedoelde aandele verkry soos in genoemde subartikel beoog; en

(iv) genoemde persoon vir 'n tydperk van 12 maande of die korter tydperk wat die Minister goedvind, 74 persent van bedoelde aandele besit het soos in genoemde subartikel (1) beoog, kan hy, indien die Minister deur bemiddeling van die Registrateur skriftelike toestemming daartoe verleen het, meer as 74

(iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act; and"; and

(b) by the substitution for paragraph *(c)* of subsection (10) of the following paragraph:

"*(c)* in relation to any person—

(i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph; and

(ii) includes any trust controlled or administered by that person.".

Amendment of section 37 of Act 94 of 1990

4. Section 37 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words following upon paragraph *(c)* of the following words:

"amounts to more than **[10]** 15 per cent 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.";

(b) by the substitution for paragraph *(a)* of subsection (2) of the following paragraph:

"*(a)* If, subject to the provisions of paragraph *(c)*—

(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]** 15 per cent, but not exceeding **[17,5]** 24 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]** 24 per cent of those shares as so contemplated he may, if the Registrar has granted permission in writing thereto, acquire more than **[17,5]** 24 per cent, but not exceeding **[25]** 49 per cent, of those shares as contemplated in the said subsection (1);

(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]** 49 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]** 49 per cent, but not exceeding 74 per cent, of those shares as contemplated in the said subsection; and

(iv) the said person has for a period of 12 months or such shorter period as the Minister may deem fit held 74 per cent of those shares as contemplated in the said subsection (1) he may, if the Minister has, through the Registrar, granted permission

persent van bedoelde aandele verkry soos in genoemde subartikel beoog.";

(c) deur die volgende paragraaf by subartikel (2) te voeg:

"*(c)* Ondanks die bepalings van paragraaf *(a)* kan die Registrateur of die Minister, na gelang van die geval, indien hy dit in 'n bepaalde geval goedvind, toestemming verleen tot die verkryging van aandele soos bedoel in subparagraaf (i), (ii), (iii) of (iv) van paragraaf *(a)* sonder dat die aansoeker om sodanige toestemming aandele besit het vir die tydperk van 12 maande of enige korter tydperk soos in enige van genoemde subparagrawe vereis.";

(d) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Indien 'n persoon by die inwerkingtreding van **[hierdie Wet]** die Wysigingswet op Depositonemende Instellings, 1992, reeds meer as **[10]** 15 persent van die aandele in 'n depositonemende instelling of beherende maatskappy besit soos in subartikel (1) beoog, mag hy nie meer van dié aandele verkry soos in genoemde subartikel beoog nie voordat hy die toepaslike toestemming ingevolge subartikel (2) verkry het.";

(e) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) Indien, in die geval van 'n aandeelhouding bedoel in—

(a) subartikel (2)*(a)*(i) en (ii) **[en (iii)]**, die Registrateur; of

(b) subartikel (2)*(a)*(iii) en (iv), die Minister,

van oordeel is dat die behoud van dié aandeelhouding in 'n depositonemende instelling of beherende maatskappy deur 'n bepaalde aandeelhouer tot nadeel van die betrokke depositonemende instelling of beherende maatskappy sal strek, kan hy by wyse van aansoek na kennisgewing van mosie by die afdeling van die Hooggeregshof in die regsgebied waarvan die hoofkantoor van dié depositonemende instelling of beherende maatskappy geleë is, aansoek doen om 'n bevel—

(i) waarby so 'n aandeelhouer verplig word om binne 'n tydperk deur die hof bepaal sy aandeelhouding in daardie depositonemende instelling of beherende maatskappy te verminder tot 'n aandeelhouding, soos beoog in subartikel (1), met 'n totale nominale waarde van nie meer nie as **[10]** 15 persent van die totale nominale waarde van al die uitgereikte aandele van daardie depositonemende instelling of beherende maatskappy; en

(ii) waarby die stemregte wat deur so 'n aandeelhouer uit hoofde van sy aandeelhouding uitgeoefen mag word, onverwyld beperk word tot **[10]** 15 persent van die stemregte verbonde aan al die uitgereikte aandele van die betrokke depositonemende instelling of beherende maatskappy."; en

(f) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) Die bepalings van subartikel (1) is nie van toepassing nie op die verkryging van aandele in 'n depositonemende instelling deur 'n beherende maatskappy wat as sodanig ten opsigte van daardie depositonemende instelling geregistreer is **[deur 'n ander depositonemende instelling of deur 'n instelling wat deur die Registrateur goedgekeur is en wat in 'n ander land as die Republiek 'n bedryf soortgelyk aan die bedryf van 'n depositonemende instelling uitoefen]**.".

Wysiging van artikel 42 van Wet 94 van 1990

5. (1) Artikel 42 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Behoudens die bepalings van artikel 36(2) mag geen ander persoon as 'n depositonemende instelling of 'n instelling wat deur die Registrateur goedgekeur is en wat in 'n ander land as die Republiek 'n bedryf uitoefen wat soortgelyk is aan die bedryf van 'n depositonemende instelling beheer oor 'n depositonemende instelling uitoefen nie, tensy sodanige persoon 'n publieke maatskappy is en as 'n beherende maatskappy ten opsigte van daardie depositonemende instelling geregistreer is.".

thereto in writing, acquire more than 74 per cent of those shares as contemplated in the said subsection.";

(c) by the addition of the following paragraph to subsection (2):

"*(c)* Notwithstanding the provisions of paragraph *(a)*, the Registrar or the Minister, as the case may be, may, if in a particular case he deems it fit to do so, grant permission for the acquisition of shares as contemplated in subparagraph (i), (ii), (iii) or (iv) of paragraph *(a)* without the applicant for such permission having held shares for the period of 12 months or any shorter period as required in any of the said subparagraphs.";

(d) by the substitution for subsection (3) of the following subsection:

"(3) If any person at the commencement of **[this]** the Deposit-taking Institutions Amendment Act, 1992, already holds more than **[10]** 15 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).";

(e) by the substitution for subsection (5) of the following subsection:

"(5) If, in the case of a shareholding contemplated in—

(a) subsection (2)*(a)*(i) and (ii) **[and (iii)]**, the Registrar; or

(b) subsection (2)*(a)* (iii) and (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]** 15 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]** 15 per cent of the voting rights attached to all the issued shares of the deposit-taking institution or controlling company concerned."; and

(f) by the substitution for subsection (6) of the following subsection:

"(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]**.".

Amendment of section 42 of Act 94 of 1990

5. (1) Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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.".

(2) Subartikel (1) word geag op die datum van inwerkingtreding van die Hoofwet in werking te getree het.

Vervanging van artikel 54 van Wet 94 van 1990

6. Artikel 54 van die Hoofwet word hierby deur die volgende artikel vervang:

"Skikkings, amalgamasies, reëlings en geaffekteerde transaksies

54. (1) Geen skikking, amalgamasie of reëling **[of oorname]** bedoel in Hoofstuk XII van die Maatskappywet en waarby 'n depositonemende instelling as een van die hoofpartye by die tersaaklike transaksie betrokke is, en geen reëling vir die oordrag van alle of enige gedeelte van die bates en laste van 'n depositonemende instelling aan 'n ander persoon, het regskrag nie tensy die toestemming van die Minister, skriftelik deur bemiddeling van die Registrateur meegedeel, tot die betrokke transaksie vooraf verkry is.

(2) Die Minister verleen nie sy toestemming bedoel in subartikel (1) nie tensy—

(a) hy daarvan oortuig is dat die betrokke transaksie nie vir die openbare belang nadelig sal wees nie;

(b) in die geval van 'n amalgamasie **[of 'n oorname]** bedoel in subartikel (1), die amalgamasie 'n amalgamasie slegs van depositonemende instellings is **[of by die oorname slegs die verkryging van aandele in 'n depositonemende instelling deur 'n ander depositonemende instelling of sy beherende maatskappy betrokke is]**; of

(c) in die geval van 'n oordrag van bates en laste bedoel in subartikel (1) wat die oordrag deur die oordraggewende depositonemende instelling van die geheel of enige gedeelte van sy bedryf as 'n depositonemende instelling meebring, sodanige oordrag slegs aan 'n ander depositonemende instelling geskied.

(3) Wanneer 'n transaksie waarby die amalgamasie van een depositonemende instelling met 'n ander depositonemende instelling bewerkstellig word soos beoog in subartikel (2)*(b)*, of 'n transaksie waarby die oordrag van bates en laste van een depositonemende instelling aan 'n ander depositonemende instelling bewerkstellig word soos beoog in subartikel (2)*(c)*, van krag word—

(a) gaan al die bates en laste van die amalgamerende instellings of, in die geval van so 'n oordrag van bates en laste, van die instelling wat die oordrag gee, oor op en word dit bindend vir die geamalgameerde instelling of, na gelang van die geval, die instelling wat bedoelde bates en laste oorneem;

(b) het die geamalgameerde instelling of, in die geval van so 'n oordrag van bates en laste, die instelling wat dié bates en laste oorneem, dieselfde regte en is hy onderworpe aan dieselfde verpligtinge as dié wat die amalgamerende instellings of, na gelang van die geval, die instelling wat die oordrag gegee het, onmiddellik voor die amalgamasie of oordrag mag gehad het of waaraan hulle of hy dan onderworpe mag gewees het;

(c) bly alle ooreenkomste, aanstellings, transaksies en stukke aangegaan, gedoen, opgestel of verly met, deur of ten gunste van enigeen van die amalgamerende instellings of, na gelang van die geval, die instelling wat die oordrag gegee het, en van krag onmiddellik voor die amalgamasie of oordrag, ten volle van krag, en word dit vir alle doeleindes uitgelê asof dit met, deur of ten gunste van die geamalgameerde instelling of, na gelang van die geval, die instelling wat die betrokke bates en laste oorneem, aangegaan, gedoen, opgestel of verly was; en

(d) bly enige verband, verpanding, waarborg of stuk ter dekking van toekomstige voorskotte, fasiliteite of dienste deur enigeen van die amalgamerende instellings of, na gelang van die geval, die instelling wat genoemde bates en laste oordra, wat onmiddellik voor die amalgamasie of oordrag van krag was, ten volle van

(2) Subsection (1) shall be deemed to have come into operation on the date of commencement of the principal Act.

Substitution of section 54 of Act 94 of 1990

6. The following section is hereby substituted for section 54 of the principal Act:

"Compromises, amalgamations, arrangements and affected transactions

54. (1) No compromise, amalgamation or 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 of 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

krag, en word dit uitgelê as 'n verband, verpanding, waarborg of stuk gegee aan of ten gunste van die geamalgameerde instelling of, na gelang van die geval, die instelling wat genoemde bates en laste oorneem, ter dekking van toekomstige voorskotte, fasiliteite of dienste deur daardie instelling.

(4) 'n Skikking, amalgamasie of reëling **[of oorname]**, of 'n reëling vir die oordrag van bates en laste, bedoel in subartikel (1), uitgesonderd 'n ander oordrag as 'n oordrag bedoel in subartikel (2)*(c)*, is onderworpe aan bekragtiging by 'n algemene vergadering van aandeelhouers van elk van die betrokke depositonemende instellings, en die kennisgewing waarby so 'n vergadering byeengeroep word, moet die bedinge en voorwaardes van die betrokke ooreenkoms of reëling bevat of daarby aangeheg hê.

(5) 'n Kennisgewing dat 'n besluit ter bekragtiging, soos beoog in subartikel (4), van 'n skikking, amalgamasie of reëling **[of oorname]**, of van 'n reëling vir die oordrag van bates en laste, geneem is, moet deur elkeen van die betrokke depositonemende instellings aan die Registrateur gestuur word, tesame met 'n afskrif van die besluit en die bedinge en voorwaardes van die betrokke ooreenkoms of reëling wat behoorlik deur die voorsitter van die vergadering waarop dié besluit geneem is en die sekretaris van die betrokke depositonemende instelling gesertifiseer is, en die Registrateur moet nadat hy sodanige kennisgewings ontvang het van al die depositonemende instellings wat partye by die betrokke ooreenkoms of reëling is, daardie kennisgewings registreer.

(6) By die registrasie deur die Registrateur van die kennisgewings bedoel in subartikel (5)—

(a) van 'n amalgamasie van twee of meer depositonemende instellings, word die registrasie van die individuele instellings wat partye by die amalgamasie was, geag gerojeer te wees en moet die Registrateur daardie registrasies intrek en teen betaling van die voorgeskrewe registrasiegeld deur die instelling wat deur die amalgamasie tot stand gebring is, en behoudens die bepalings van subartikel (7), daardie instelling as 'n depositonemende instelling registreer; of

(b) van 'n reëling vir die oordrag van al die bates en laste van 'n depositonemende instelling, word so 'n depositonemende instelling se registrasie geag gerojeer te wees en moet dit deur die Registrateur ingetrek word.

(7) 'n Registrasie deur die Registrateur ingevolge subartikel (6) moet—

(a) in die geval waar al die partye by die betrokke amalgamasie op daardie tydstip finaal as depositonemende instellings geregistreer was, 'n finale registrasie as 'n depositonemende instelling wees;

(b) in die geval waar al die partye by die betrokke amalgamasie op daardie tydstip voorlopig as depositonemende instellings geregistreer was, 'n voorlopige registrasie as 'n depositonemende instelling wees; of

(c) in die geval waar sommige van die partye by die amalgamasie op daardie tydstip finaal en ander voorlopig as depositonemende instellings geregistreer was, 'n finale of 'n voorlopige registrasie, na goeddunke van die Registrateur, wees,

en die Registrateur moet by sodanige registrasie die toepaslike sertifikaat van registrasie aan die betrokke instelling uitreik.

(8) Die Registrateur van Maatskappye, elke Meester van die Hooggeregshof en elke beampte wat aan die hoof staan van 'n registrasiekantoor van aktes of enige ander kantoor waarin—

(a) geregistreer is 'n titelbewys van goed wat behoort aan, of 'n verbandakte of ander reg ten gunste van, of 'n aanstelling van of deur; of

(b) 'n lisensie uitgereik is aan of ten gunste van,

'n depositonemende instelling wat met 'n ander sodanige instelling geamalgameer het of 'n depositonemende instelling wat al sy bates en

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 or 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 or 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 trans-

laste aan 'n ander sodanige instelling oorgedra het, moet, indien hy daarvan oortuig is—

(i) **[indien hy daarvan oortuig is]** dat die Minister ingevolge subartikel (1) tot die amalgamasie of oordrag toegestem het; en

(ii) dat bedoelde amalgamasie of oordrag behoorlik geskied het,

en by voorlegging aan hom van 'n tersaaklike akte, verbandakte, sertifikaat, aanstellingsbrief, lisensie of ander stuk, die endossemente daarop aanbring en die veranderings in sy registers aanbring wat nodig is om die oordrag daarvan en van enige regte daarkragtens aan die geamalgameerde instelling of, na gelang van die geval, die instelling wat bedoelde bates en laste aldus oorgeneem het, te boekstaaf.

(9) Die bepalings van hierdie artikel raak nie die regte nie van 'n skuldeiser van 'n depositonemende instelling wat met 'n ander sodanige instelling geamalgameer het, of al sy bates en laste aan 'n ander sodanige instelling oorgedra het, of al die bates en laste van 'n ander sodanige instelling oorgeneem het, behalwe vir sover in hierdie artikel bepaal.

(10) Die voorwaardes en enige belastingvoordeel wat onmiddellik voor die datum van 'n oordrag van bates en laste bedoel in hierdie artikel, van toepassing was ten opsigte van 'n belegging, bedoel in artikel 10(1)*(i)*(xii), (xiiA) of (xiii), 10(1)*(v)*, (*v*A) of *(w)* of 19(5A) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), by die oordraggewende depositonemende instelling bly, ondanks so 'n oordrag van bates en laste maar behoudens die bepalings van genoemde Wet, op die belegging van toepassing tot by verstryking van 'n tydperk van tien jaar vanaf die datum waarop dit aanvanklik gedoen is, of totdat dit afgelos word, watter ook al eerste voorval.

(11) Ondanks andersluidende bepalings van—

(a) Hoofstuk XVA van die Maatskappywet;

(b) die Sekuriteitereguleringskode vir Oornames en Samesmeltings afgekondig by *Goewermentskennisgewing* No. R.29 gedateer 18 Januarie 1991, en enige wysiging daarvan; of

(c) die Reëls kragtens artikel 440C(4)*(a)*, *(b)*, *(c)* en *(f)* van die Maatskappywet, afgekondig by genoemde *Goewermentskennisgewing* No. R.29, en enige wysiging daarvan,

mag nóg die Paneel oor Sekuriteiteregulering ingestel by artikel 440B van die Maatskappywet nóg sy uitvoerende komitee of sy uitvoerende direkteur enige uitklaring, beslissing of uitsluitsel verstrek ten opsigte van 'n aangeleentheid wat ingevolge die bepalings van bogenoemde Kode of Reëls aan hom voorgelê word, en welke aangeleentheid betrekking het op 'n geaffekteerde transaksie, soos omskryf in artikel 440A(1) van die Maatskappywet, wat—

(i) die toewysing, uitreiking of oordrag van aandele in 'n depositonemende instelling of beherende maatskappy behels waarvoor 'n vrystelling kragtens artikel 36(2) 'n voorvereiste is; of

(ii) 'n verkryging van aandele in 'n depositonemende instelling of beherende maatskappy behels waarvoor toestemming kragtens artikel 37(2)*(a)*(i), (ii), (iii) of (iv) 'n voorvereiste is,

tensy die persoon wat die betrokke aangeleentheid voorlê, aan genoemde Paneel, uitvoerende komitee of uitvoerende direkteur skriftelike bewys verstrek het dat sodanige vrystelling of toestemming, na gelang van die geval, inderdaad verkry is.".

Wysiging van artikel 63 van Wet 94 van 1990

7. Artikel 63 van die Hoofwet word hierby gewysig—

(a) deur in paragraaf *(b)* van subartikel (1) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
"**[kan]** moet hy die Registrateur skriftelik verwittig van enige aangeleentheid met betrekking tot die sake van 'n depositonemende instelling—";

(b) deur subartikel (3) deur die volgende subartikel te vervang:
"(3) Die verstrekking te goeder trou deur 'n ouditeur van inligting ingevolge subartikel (1)*(b)* of *(c)* word in geen omstandighede geag 'n

ferred all its assets and liabilities to any other such institution, shall, if he is satisfied—

(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 assets 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)*, (*v*A) or *(w)* or 19(5A) of the Income Tax Act, 1962 (Act No. 58 of 1962), 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.

(11) Notwithstanding anything to the contrary contained in—

(a) Chapter XVA of the Companies Act;

(b) the Securities Regulation Code on Take-overs and Mergers published by *Government Notice* No. R.29 dated 18 January 1991, and any amendment thereof; or

(c) the Rules under section 440C(4)*(a)*, *(b)*, *(c)* and *(f)* of the Companies Act, published by the said *Government Notice* No. R.29, and any amendment thereof,

neither the Securities Regulation Panel established by section 440B of the Companies Act nor its executive committee or its executive director shall furnish any clearance, decision or ruling in respect of a matter submitted to it or him in terms of the provisions of the above-mentioned Code or Rules, and which matter relates to an affected transaction, as defined in section 440A(1) of the Companies Act, involving—

(i) the allotment, issuing or transfer of shares in a deposit-taking institution or controlling company for which an exemption under section 36(2) is a prerequisite; or

(ii) an acquisition of shares in a deposit-taking institution or controlling company for which permission under section 37(2)*(a)*(i), (ii), (iii) or (iv) is a prerequisite,

unless the person submitting the matter in question has furnished the said Panel, executive committee or executive director with written proof that such exemption or permission, as the case may be, has in fact been obtained.".

Amendment of section 63 of Act 94 of 1990

7. Section 63 of the principal Act is hereby amended—

(a) by the substitution in paragraph *(b)* of subsection (1) for the words preceding subparagraph (i), of the following words:
"**[may]** shall in writing inform the Registrar of any matter relating to the affairs of a deposit-taking institution—";

(b) by the substitution for subsection (3) of the following subsection:
"(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

oortreding van 'n regsbepaling of 'n verbreking van enige bepaling van 'n professionele gedragskode waaraan so 'n ouditeur onderworpe mag wees, uit te maak nie **[en so 'n ouditeur loop geen aanspreeklikheid teenoor enigiemand op op grond daarvan dat hy aldus sodanige inligting verstrek het nie]**."; en

(c) deur die volgende subartikel by te voeg:

"(4) Subartikel (1) word nie so vertolk dat dit aan enigiemand 'n reg verleen om 'n eis teen 'n ouditeur in te stel wat hy by ontstentenis van daardie subartikel nie sou gehad het nie.".

Wysiging van artikel 69 van Wet 94 van 1990

8. Artikel 69 van die Hoofwet word hierby gewysig—

(a) deur die volgende paragrawe by subartikel (1) te voeg, terwyl die bestaande subartikel paragraaf *(a)* word:

"*(b)* Die Registrateur moet 'n persoon, uitgesonderd 'n persoon in diens van die depositonemende instelling onder kuratele, wat na die oordeel van die Registrateur wye ervaring het van en oor kundigheid beskik aangaande die bepaalde werkterrein waarby die depositonemende instelling onder kuratele oorwegend betrokke is, aanstel om die kurator by te staan by die bestuur van die sake van die depositonemende instelling onder kuratele.

(c) Daar word aan die persoon ingevolge paragraaf *(b)* aangestel uit die fondse van die depositonemende instelling onder kuratele die vergoeding betaal ten opsigte van die dienste uit hoofde van sy aanstelling deur hom gelewer wat die Registrateur na oorleg met die kurator bepaal.";

(b) deur die woord "of" aan die einde van paragraaf *(b)* van subartikel (3) te skrap;

(c) deur die volgende paragrawe by subartikel (3) te voeg:

"*(d)* op die wyse wat hy goedvind van tyd tot tyd 'n vergadering van krediteure van die betrokke instelling te belê met die doel om die aard en omvang van die instelling se skuldelas teenoor sodanige krediteure te bepaal en om oorleg te pleeg met sodanige krediteure vir sover hul belange geraak word deur besluite deur die kurator geneem in die loop van die bestuur van die sake van die betrokke instelling;

(e) met enige individuele krediteur van die betrokke instelling te onderhandel met die oog op die finale afsluiting van die sake van so 'n krediteur met die instelling;

(f) in die loop van sy bestuur van die betrokke instelling, enige besluit te neem en uit te voer wat ingevolge die bepalings van die Maatskappywet by wyse van 'n spesiale besluit beoog in artikel 199 van genoemde Wet geneem sou moes word;

(g) enige huurooreenkoms ten opsigte van roerende of onroerende goed wat deur die betrokke instelling aangegaan is voordat dit onder kuratele geplaas is, op te sê: Met dien verstande dat, ondanks die bepalings van subartikel (6), 'n eis om skadevergoeding ten opsigte van so 'n opsegging teen die instelling ingestel kan word na verloop van 'n tydperk van 'n jaar vanaf die datum van sodanige opsegging;

(h) by wyse van openbare veiling, tender of individuele onderhandeling, enige bate van die betrokke instelling te vervreem, met inbegrip van—

(i) 'n voorskot of 'n lening uit hoofde van 'n fasiliteit bedoel in paragraaf *(c)*; en

(ii) enige bate vir die vervreemding waarvan 'n goedkeuring bedoel in artikel 228 van die Maatskappywet 'n voorvereiste sou gewees het; of

(i) enige waarborg deur die betrokke instelling uitgereik voordat dit onder kuratele geplaas is, uitgesonderd so 'n waarborg wat die instelling vereis word om gestand te doen binne 'n tydperk van 30 dae vanaf die datum van die

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]**."; and

(c) by the addition of the following subsection:

"(4) Nothing in subsection (1) contained shall be construed as conferring upon any person any right of action against an auditor which, but for the provisions of that subsection, he would not have had.".

Amendment of section 69 of Act 94 of 1990

8. Section 69 of the principal Act is hereby amended—

(a) by the addition to subsection (1) of the following paragraphs, the existing subsection becoming paragraph *(a)*:

"*(b)* The Registrar shall appoint a person, other than a person who is in the employ of the deposit-taking institution under curatorship, who in the opinion of the Registrar has wide experience of and is knowledgeable about the specific field of activities in which the deposit-taking institution under curatorship is predominantly engaged, to assist the curator in the management of the affairs of the deposit-taking institution under curatorship.

(c) The person appointed in terms of paragraph *(b)* shall in respect of the services rendered by him pursuant to his appointment be paid such remuneration out of the funds of the deposit-taking institution under curatorship as the Registrar may after consultation with the curator determine.";

(b) by the deletion of the word "or" at the end of paragraph *(b)* of subsection (3);

(c) by the addition of the following paragraphs to subsection (3):

"*(d)* to convene from time to time, in such manner as he may deem fit, a meeting of creditors of the institution concerned for the purpose of establishing the nature and extent of the institution's indebtedness to such creditors and for consultation with such creditors in so far as their interests may be affected by decisions taken by the curator in the course of the management of the affairs of the institution concerned;

(e) to negotiate with any individual creditor of the institution concerned with a view to the final settlement of the affairs of such creditor with the institution;

(f) to make and carry out, in the course of his management of the institution concerned, any decision which in terms of the provisions of the Companies Act would have been required to be made by way of a special resolution contemplated in section 199 of the said Act;

(g) to cancel any lease of movable or immovable property entered into by the institution concerned prior to its being placed under curatorship: Provided that, notwithstanding the provisions of subsection (6), a claim for damages in respect of such cancellation may be instituted against the institution after the expiration of a period of one year as from the date of such cancellation;

(h) to dispose, by public auction, tender or individual negotiation, of any asset of the institution concerned, including—

(i) any advance or any loan under a facility contemplated in paragraph *(c)*; and

(ii) any asset for the disposal of which an approval contemplated in section 228 of the Companies Act would have been a prerequisite; or

(i) to cancel any guarantee issued by the institution concerned prior to its being placed under curatorship, excluding such guarantee which the institution is required to make good within a period of 30 days as from the date of the appoint-

aanstelling van die kurator, op te sê: Met dien verstande dat, ondanks die bepalings van subartikel (6), 'n eis om skadevergoeding ten opsigte van enige verlies gely deur of skade berokken aan enige persoon ten gevolge van 'n opsegging van 'n waarborg ingevolge hierdie paragraaf, teen die instelling ingestel kan word na verloop van 'n tydperk van 'n jaar vanaf die datum van sodanige opsegging."; en

(d) deur na subartikel (3) die volgende subartikel in te voeg:

"(3A) Die kurator moet behoorlike aantekeninge maak van die aard van en die redes vir elke handeling deur hom verrig kragtens 'n bevoegdheid ingevolge subartikel (3) aan hom verleen, en sodanige aantekeninge moet ondersoek word as deel van die normale oudit wat ten opsigte van die sake van die betrokke instelling uitgevoer word.".

Wysiging van artikel 70 van Wet 94 van 1990

9. Artikel 70 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (3) deur die volgende paragraaf te vervang:

"*(b)* mag die som van 'n depositonemende instelling se uitgereikte sekondêre aandelekapitaal en sekondêre onaangetaste reserwefondse, by die berekening van die totale bedrag wat sodanige instelling ingevolge subartikel (2) in stand moet hou by wyse van uitgereikte primêre en sekondêre aandelekapitaal en primêre en sekondêre onaangetaste reserwefondse, in berekening gebring word tot 'n bedrag wat nie 50 persent van bogenoemde totale bedrag te bowe gaan nie.";

(b) deur subparagraaf (iv) van paragraaf *(a)* van subartikel (5) deur die volgende subparagraaf te vervang:

"(iv) die waarde van bates wat gedeponeer of verpand is om verpligtings wat ingevolge 'n ander wet aangegaan is, te verseker, waar **[al die aldus versekerde verpligtings, met inbegrip van voorwaardelike verpligtings, nie by die berekening ingesluit is nie en]** so 'n deponering of verpanding die uitwerking het dat daardie bates nie beskikbaar is vir die nakoming van die depositonemende instelling se verpligtings ingevolge hierdie Wet nie;"; en

(c) deur subparagraaf (vi) van paragraaf *(a)* van subartikel (5) deur die volgende subparagraaf te vervang:

"(vi) 'n bedrag gelyk aan die boekwaarde van—

(aa) aandele wat deur die depositonemende instelling in enige ander depositonemende instelling gehou word;

(bb) skuldbriewe wat deur die depositonemende instelling gehou word, welke skuldbriewe deur 'n ander depositonemende instelling uitgereik is en waarvan die bedrae ingevolge hierdie artikel as sekondêre aandelekapitaal van daardie ander depositonemende instelling gereken kan word; en".

Wysiging van artikel 72 van Wet 94 van 1990

10. Artikel 72 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

"(4) By die toepassing van hierdie artikel word sekuriteite gewaardeer teen hul **[markwaarde soos deur die Openbare Beleggingskommissarisse gesertifiseer]** pryse soos genoteer op 'n lys van prysnoterings—

(a) van effekte, soos omskryf in artikel 1 van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), wat op gesag van 'n gelisensieerde effektebeurs, soos aldus omskryf, vir publikasie uitgereik is; of

(b) van finansiële instrumente, soos omskryf in artikel 1 van die Wet op

ment of the curator: Provided that, notwithstanding the provisions of subsection (6), a claim for damages in respect of any loss sustained by or damage caused to any person as a result of the cancellation of a guarantee in terms of this paragraph, may be instituted against the institution after the expiration of a period of one year as from the date of such cancellation."; and

(d) by the insertion of the following subsection after subsection (3):

"(3A) The curator shall duly record the nature of and the reasons for each act performed by him under any power conferred upon him in terms of subsection (3), and such records shall be examined as part of the normal audit performed in respect of the affairs of the institution concerned.".

Amendment of section 70 of Act 94 of 1990

9. Section 70 of the principal Act is hereby amended—

(a) by the substitution for paragraph *(b)* of subsection (3) of the following paragraph:

"*(b)* the sum of a deposit-taking institution's issued secondary share capital and secondary unimpaired reserve funds may, in the calculation of the aggregate amount which such 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, be taken into account to an amount not exceeding 50 per cent of the above-mentioned aggregate amount.";

(b) by the substitution for subparagraph (iv) of paragraph *(a)* of subsection (5) of the following subparagraph:

"(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;"; and

(c) by the substitution for subparagraph (vi) of paragraph *(a)* of subsection (5) of the following subparagraph:

"(vi) an amount equal to the book value of—

(aa) shares held by the deposit-taking institution in any other deposit-taking institution;

(bb) debentures held by the deposit-taking institution, which debentures have been issued by any other deposit-taking institution and the amounts of which may in terms of this section rank as secondary share capital of that other deposit-taking institution; and".

Amendment of section 72 of Act 94 of 1990

10. Section 72 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) For the purposes of this section securities shall be valued at their **[market value, as certified by the Public Investment Commissioners]** prices as quoted in a list of quotations of prices—

(a) of securities, as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), issued for publication on the authority of a licensed stock exchange, as so defined; or

(b) of financial instruments, as defined in section 1 of the Financial

Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), wat op gesag van die uitvoerende komitee van 'n finansiële beurs, soos aldus omskryf, vir publikasie uitgereik is,

na gelang van die geval, en welke lys van krag is op die tydstip waarop die sekuriteite aldus gewaardeer word.".

Vervanging van artikel 73 van Wet 94 van 1990

11. Artikel 73 van die Hoofwet word hierby deur die volgende artikel vervang:

"Groot blootstellings

73. (1) 'n Depositonemende instelling mag nie beleggings doen by, of lenings of voorskotte of ander krediet toestaan nie aan, 'n individuele persoon tot 'n totale bedrag wat 'n bedrag oorskry wat 'n voorgeskrewe persentasie van so 'n depositonemende instelling se kapitaal en reserwes verteenwoordig, tensy hy vooraf die toestemming verkry het van sy raad van direkteure of van 'n komitee vir dié doel deur sy raad van direkteure aangestel (ten minste een van die lede van welke komitee 'n direkteur van die depositonemende instelling moet wees wat nie in sy diens is nie), om so 'n belegging te doen of sodanige lenings, voorskotte of ander krediet toe te staan.

(2) 'n Depositonemende instelling moet op die wyse en op die vorm wat voorgeskryf word die Registrateur in kennis stel **[indien]** wanneer daardie instelling **[van voorneme is om met]** 'n belegging doen by, of 'n lening of voorskot of ander krediet toestaan aan, 'n individuele persoon, **['n]** welke transaksie **[aan te gaan wat]**, hetsy op sigself of tesame met enige vorige transaksie of transaksies deur hom met daardie persoon aangegaan, die uitwerking **[sal hê]** het dat dit die depositonemende instelling blootstel tot 'n bedrag wat 'n bedrag oorskry wat 'n voorgeskrewe persentasie van sy kapitaal en reserwes verteenwoordig.".

Wysiging van artikel 75 van Wet 94 van 1990

12. Artikel 75 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* die aard en bedrae van die depositonemende instelling se bates, **[en]** laste en voorwaardelike laste vas te stel,";

(b) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) **[Van die opgawes wat ingevolge subartikel (1)*(b)* deur 'n depositonemende]** 'n Depositonemende instelling **[aan die Registrateur verstrek word]** moet, binne die tydperk wat die Registrateur op aansoek van sodanige instelling goedkeur, ten opsigte van daardie een van die opgawes in subartikel (1)*(b)* bedoel wat die naaste saamval met die einde van die finansiële jaar van die instelling **[vergesel gaan van]** aan die Registrateur 'n verslag verstrek van die ouditeur van die instelling waarin verklaar word of daardie opgawe daardie sake van die instelling waarop die opgawe betrekking het redelik en ooreenkomstig algemeen aanvaarde rekeningkundige praktyk weergee of nie, en die Registrateur kan, indien hy dit nodig ag, van die instelling vereis om aldus so 'n verslag aan hom te verstrek ten opsigte van **[dat]** enige ander van daardie opgawes wat gedurende die finansiële jaar verstrek word **[van so 'n ouditeursverslag vergesel gaan]**."; en

(c) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) 'n Depositonemende instelling moet op die voorgeskrewe tye die verdere voorgeskrewe inligting aangaande sy bates, **[en]** laste en voorwaardelike laste aan die Registrateur verstrek.".

Markets Control Act, 1989 (Act No. 55 of 1989), issued for publication on the authority of the executive committee of a financial exchange, as so defined,

as the case may be, and which list is in force at the time when the securities are so valued.".

Substitution of section 73 of Act 94 of 1990

11. The following section is hereby substituted for section 73 of the principal Act:

"Large exposures

73. (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, or of a committee appointed for such purpose by its board of directors (at least one of the members of which committee shall be a director of the deposit-taking institution, not in its employ), 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]** whenever it makes an investment with or grants a loan or advance or other credit to any individual person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that person, **[would result]** results in the deposit-taking institution being exposed up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.".

Amendment of section 75 of Act 94 of 1990

12. Section 75 of the principal Act is hereby amended—

(a) by the substitution for paragraph *(b)* of subsection (1) of the following paragraph:

"*(b)* the nature and amounts of the deposit-taking institution's assets, **[and]** liabilities and contingent liabilities,";

(b) by the substitution for subsection (5) of the following subsection:

"(5) **[Of the returns furnished in terms of subsection (1)*(b)* to the Registrar by a]** A deposit-taking institution shall, within such period as the Registrar may on the application of such institution approve, furnish the Registrar, in respect of that one of the returns referred to in subsection (1)*(b)* which most nearly coincides with the end of the financial year of the institution **[shall be accompanied by]** with 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]** the institution so to furnish him with such a report in respect of any other of those returns furnished during the financial year **[be accompanied by such an auditor's report]**."; and

(c) by the substitution for subsection (6) of the following subsection:

"(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 and contingent liabilities.".

Wysiging van artikel 77 van Wet 94 van 1990

13. Artikel 77 van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat op paragraaf *(c)* volg deur die volgende woorde te vervang:

"op geen tydstip meer bedra nie as tien persent van sy verpligtings, uitgesonderd sy verpligtings ten opsigte van kapitaal en reserwes.".

Kort titel

14. Hierdie Wet heet die Wysigingswet op Depositonemende Instellings, 1992.

Amendment of section 77 of Act 94 of 1990

13. Section 77 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon paragraph *(c)* of the following words:

"does not at any time exceed ten per cent of its liabilities, excluding its liabilities in respect of capital and reserves.".

Short title

14. This Act shall be called the Deposit-taking Institutions Amendment Act, 1992.

GEDRUK DEUR CREDA PRESS, KAAPSTAD, VIR DIE STAATSDRUKKER, PRETORIA, TEL. (012) 323-9731 X267—14000
PRINTED BY CREDA PRESS, CAPE TOWN, FOR THE GOVERNMENT PRINTER, PRETORIA, TEL. (012) 323-9731 X267—14000