



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

FOR THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

No. 1773.

1 Julie 1992

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

No. 85 van 1992: Wet op die Veilige Bewaring van Effekte, 1992.

STATE PRESIDENT'S OFFICE

No. 1773.

1 July 1992

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

No. 85 of 1992: Safe Deposit of Securities Act, 1992.

ALGEMENE VERDUIDELIKENDE NOTA:

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

WET

Om voorsiening te maak vir die registrasie van 'n sentrale effekkebewaarnemer vir die veilige bewaring van effekte ingevolge 'n vooropgestelde stel reëls; om 'n bewaarnemende instelling toe te laat om lid te word van 'n sentrale effekkebewaarnemer; om beleggers toe te laat om effekte deur 'n bewaarnemende instelling by 'n sentrale effekkebewaarnemer te deponeer; en om voorsiening te maak vir die eienaarskap, oordrag, verpanding en lewering van effekte wat in veilige bewaring gehou word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 18 Junie 1992.)*

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

HOOFTUK 1**UITLEG EN TOEPASSING VAN WET****Woordomskrywing**

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1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) "bewaarnemende instelling" 'n instelling of persoon of kategorie persone wat deur die Registrateur gemagtig is om effekte vir die doeleindes van hierdie Wet in veilige bewaring te hou; (vi)
- (ii) "deposant" 'n persoon wat effekte vir veilige bewaring by 'n bewaarnemende instelling deponeer, of so 'n instelling wat effekte by 'n sentrale effekkebewaarnemer deponeer; (v)
- (iii) "effekte" enige genoteerde effekte soos omskrywe in artikel 1 van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), enige genoteerde finansiële instrumente soos omskrywe in artikel 1 van die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), of enige ander effekte goedgekeur deur die Registrateur by kennisgewing in die *Staatskoerant* en alle bestaande regte of ander voordele ten opsigte van sodanige effekte of instrumente of wat sodanige effekte of instrumente toekom, en ook enige sertifikaat wat uitgereik is ten aansien van sodanige effekte of instrumente en sodanige regte of ander voordele; (xiii)
- (iv) "effektedepot" alle effekte van dieselfde soort wat gehou word deur—
 - (a) 'n bewaarnemende instelling; en
 - (b) 'n ander bewaarnemende instelling of 'n sentrale effekkebewaarnemer by wie die bewaarnemende instelling waarna in subparagraaf (a) verwys word effekte van daardie soort gedeponeer of hergedeponeer het; en

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GENERAL EXPLANATORY NOTE:

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

ACT

To provide for the registration of a central securities depository for the safe custody of securities in terms of a predetermined set of rules; to permit a depository institution to become a member of a central securities depository; to permit investors to deposit securities through a depository institution with a central securities depository; and to provide for the ownership, transfer, pledge and delivery of securities held in safe custody; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 18 June 1992.)

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

CHAPTER 1

INTERPRETATION AND APPLICATION OF ACT

5 Definitions

1. In this Act, unless the context otherwise indicates—

- (i) "auditor" means a public accountant as defined in the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991); (ix)
- 10 (ii) "central securities account" means an account kept by a central securities depository for a depository institution and reflecting the number or nominal value of securities of each kind deposited for safe deposit and all entries made in respect of such securities; (xv)
- (iii) "central securities depository" means a public company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), and registered as a central securities depository in terms of this Act; (xiii)
- 15 (iv) "central securities repository" means a central securities repository as contemplated in section 11; (xiv)
- (v) "depositor" means a person who deposits securities for safe deposit with a depository institution, or such an institution that deposits securities with a central securities depository; (ii)
- 20 (vi) "depository institution" means an institution or person or category of persons authorized by the Registrar to hold securities in safe deposit for the purposes of this Act; (i)
- (vii) "entry" includes an electronic recording of any transfer, attachment or pledge in respect of an interest in securities; (vii)
- 25 (viii) "Minister" means the Minister of Finance; (viii)

- (c) 'n sentrale effektebewaarnemer by wie die ander bewaarnemende instelling waarna in subparagraaf (b) verwys word effekte van daardie soort gedeponeer of hergedeponeer het; (xv)
- (v) "effekterekening" 'n rekening wat deur of ten behoeve van 'n bewaarnemende instelling vir 'n deposant gehou word en wat die getal of nominale waarde van effekte van elke soort wat vir veilige bewaring gedeponeer is, asook alle inskrywings in verband met sodanige effekte gedoen, aandui; (xiv) 5
- (vi) "hierdie Wet" ook die regulasies; (xvi)
- (vii) "inskrywing" ook 'n elektroniese aantekening van enige oordrag, beslaglegging of verpanding ten opsigte van 'n belang in effekte; (vii) 10
- (viii) "Minister" die Minister van Finansies; (viii)
- (ix) "ouditeur" 'n openbare rekenmeester soos omskrywe in die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991); (i)
- (x) "reëls" die reëls van 'n sentrale effektebewaarnemer; (xii) 15
- (xi) "Registrateur" die Registrateur van Finansiële Markte soos omskrywe in artikel 1 van die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989); (x)
- (xii) "regulasie" 'n regulasie kragtens artikel 15 uitgevaardig; (xi)
- (xiii) "sentrale effektebewaarnemer" 'n publieke maatskappy wat ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), ingelyf is en wat as sentrale effektebewaarnemer ingevolge hierdie Wet geregistreer is; (iii) 20
- (xiv) "sentrale effektedepot" 'n sentrale effektedepot soos in artikel 11 beoog; (iv)
- (xv) "sentrale effekterekening" 'n rekening wat deur 'n sentrale effektebewaarnemer vir 'n bewaarnemende instelling gehou word en wat die getal of nominale waarde van effekte van elke soort wat vir veilige bewaring gedeponeer is, asook alle inskrywings in verband met sodanige effekte gedoen, aandui; (ii) 25
- (xvi) "voorgeskrewe" by regulasie voorgeskryf. (ix) 30

HOOFTUK 2

VEILIGE BEWARING VAN EFFEKTE

Deponering van effekte

2. (1) Die Registrateur kan—
- (a) 'n persoon; of 35
- (b) enige kategorie van persone by kennisgewing in die *Staatskoerant*, magtig om as 'n bewaarnemende instelling vir doeleindes van hierdie Wet op te tree op die bedinge en voorwaardes wat hy skriftelik ten opsigte van sodanige persoon of in die bepaalde kennisgewing ten opsigte van sodanige kategorie persone bepaal. 40
- (2) Indien effekte vir veilige bewaring by 'n bewaarnemende instelling gedeponeer word, kan sodanige instelling, tensy die deposant uitdruklik skriftelik anders gelas, die effekte by 'n ander bewaarnemende instelling wat 'n lid van 'n sentrale effektebewaarnemer is of by 'n sentrale effektebewaarnemer herdeponeer. 45
- (3) Elke deposant word geag om teenoor die bewaarnemende instelling of sentrale effektebewaarnemer, na gelang van die geval, te waarborg dat hy geregtig is om genoemde effekte te deponeer en dat enige dokument wat op daardie effekte betrekking het en wat deur hom aan sodanige instelling of bewaarnemer gelewer word eg en in alle opsigte korrek is en hy word geag ooreen te gekom het om sodanige instelling of bewaarnemer te vrywaar teen enige eis wat teen hom ingestel word en teen enige verlies wat deur hom gely word en wat ontstaan uit bedoelde deponering. 50

Effektedepot

3. 'n Bewaarnemende instelling wat effekte hou, kan alle effekte van dieselfde soort wat by hom vir veilige bewaring gedeponeer is gesamentlik in 'n aparte effektedepot hou. 55

- (ix) "prescribed" means prescribed by regulation; (xvi)
- (x) "Registrar" means the Registrar of Financial Markets as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989); (xi)
- 5 (xi) "regulation" means a regulation made under section 15; (xii)
- (xii) "rules" means the rules of a central securities depository; (x)
- (xiii) "securities" means any listed securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), any listed financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any other securities approved by the Registrar by notice in the *Gazette* and all rights or other benefits existing in respect of or accruing to such securities or instruments, including any certificate issued in respect of such securities or instruments and of such rights or other benefits; (iii)
- 10 (xiv) "securities account" means an account kept by or on behalf of a depository institution for a depositor and reflecting the number or nominal value of securities of each kind deposited for safe deposit and all entries made in respect of such securities; (v)
- 15 (xv) "securities repository" means all securities of the same kind held by—
 - 20 (a) a depository institution; and
 - (b) another depository institution or a central securities depository with which the depository institution mentioned in subparagraph (a) has deposited or re-deposited securities of that kind; and
 - (c) a central securities depository with which the other depository institution mentioned in subparagraph (b) has deposited or re-deposited securities of that kind; (iv)
- 25 (xvi) "this Act" includes the regulations. (vi)

CHAPTER 2

SAFE CUSTODY OF SECURITIES

30 Deposit of securities

2. (1) The Registrar may—

- (a) authorize any person; or
- (b) authorize any category of persons by notice in the *Gazette*,

to act as a depository institution for the purposes of this Act on such terms and
35 conditions as he may determine in writing to such person or publish in the notice concerned in respect of such category of persons.

(2) Where securities are deposited for safe custody with a depository institution such institution shall, unless the depositor expressly directs otherwise in writing, be entitled to re-deposit them with another depository institution
40 which is a member of a central securities depository or with a central securities depository.

(3) Every depositor shall be deemed to warrant to the depository institution or central securities depository, as the case may be, that he is entitled to deposit such securities and that any document relating to such securities and lodged by
45 him with such institution or depository is genuine and correct in all respects and he shall be deemed to have agreed to indemnify such institution or depository against any claim made upon it and against any loss suffered by it arising out of such deposit.

Securities repository

50 3. A depository institution holding securities may hold all securities of the same kind deposited with it for safe custody collectively in a separate securities repository.

Eiendomsreg van effekte

4. (1) Indien effekte van enige soort by 'n bewaarnemende instelling of by 'n sentrale effekdebewaarnemer vir veilige bewaring gedeponeer word of aanwas by effekte wat deur sodanige instelling of bewaarnemer gehou word, word die persoon wat eienaar van die effekte ten tyde van die deponering of aanwas daarvan was, geregtig op 'n belang as mede-eienaar van al die effekte van dieselfde soort wat in die effektedepot of sentrale effektedepot vir effekte van daardie soort vervat is. 5

(2) Vir sover as 'n beperkte reg ten opsigte van enige effekte ten tyde van sodanige deponering of aanwas bestaan, bestaan sodanige beperkte reg ook ten opsigte van die belang van sodanige mede-eienaar. 10

(3) Die belang van 'n eienaar in al die effekte in 'n effektedepot of sentrale effektedepot word bereken met verwysing na die verhouding waarin die getal of nominale waarde van effekte wat deur of namens hom gedeponeer is en wat by sodanige effekte aanwas van tyd tot tyd staan tot die totale getal of nominale waarde van alle effekte van daardie soort wat in die effektedepot of sentrale effektedepot gehou word, na gelang van die geval. 15

(4) 'n Sertifikaat wat deur of namens 'n bewaarnemende instelling of sentrale effekdebewaarnemer onderteken is en die belang van die deposant vermeld, is *prima facie*-bewys van die titel van die deposant in sodanige belang. 20

Oordrag van effekte

5. Oordrag van 'n belang in effekte wat deur 'n bewaarnemende instelling in 'n effektedepot gehou word, vind plaas deur ooreenkoms voltooi deur inskrywing in die effekterekeninge van die oordraggewer en die oordragnemer by die betrokke bewaarnemende instelling of instellings. 25

Pand van effekte

6. (1) 'n Pand ten opsigte van 'n belang in effekte wat deur 'n bewaarnemende instelling in 'n effektedepot gehou word, vind plaas deur ooreenkoms voltooi deur inskrywing in die effekterekening van die pandgewer ten gunste van die pandhouer waarin die naam van die pandhouer, die belang verpand en die datum vermeld word. 30

(2) Sodanige belang word nie oorgedra sonder die skriftelike toestemming van die pandhouer nie.

(3) Die pandhouer van sodanige belang is geregtig op al die regte van 'n pandhouer van 'n roerende liggaamlike saak wat in besit van sodanige saak is. 35

Aangifte

7. 'n Bewaarnemende instelling moet die houer van 'n effekterekening by hom in kennis stel van enige inskrywing wat daarin gedoen word.

Lewering van effekte

8. Behoudens die bepalinge van artikel 6, is die eienaar van 'n belang in effekte wat in 'n effektedepot of sentrale effektedepot gehou word te alle tye geregtig op lewering binne 'n redelike tyd deur die betrokke bewaarnemende instelling of sentrale effekdebewaarnemer, van dieselfde getal effekte, of effekte van dieselfde nominale waarde, en van dieselfde soort, as die effekte wat namens hom in sodanige effektedepot of sentrale effektedepot gehou word. 40 45

HOOFSTUK 3**SENTRALE EFFEKTEBEWAARNEMER****Registrasie van sentrale effekdebewaarnemer**

9. (1) 'n Sentrale effekdebewaarnemer moet as sodanig ingevolge hierdie Wet geregistreer word. 50

Ownership of securities

4. (1) Where securities of any kind are deposited with a depositary institution or with a central securities depository for safe deposit, or accrue to securities held by such institution or depository, the person who was the owner of the securities at the time of deposit or accrual shall become entitled to an interest as co-owner of all the securities of the same kind comprised in the securities repository or central securities repository for securities of that kind.

(2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right shall extend to the interest of such co-owner and to any securities delivered to him.

(3) The interest of an owner in all the securities in a securities repository shall be calculated with reference to the proportion that the number or nominal value of securities deposited by him or on his behalf and accruing to such securities bears from time to time to the total number or nominal value of all securities of that kind held in the securities repository or central securities repository, as the case may be.

(4) A certificate signed by or on behalf of a depositary institution or a central securities depository and specifying the interest of the depositor, shall be *prima facie* evidence of the title of the depositor to such interest.

20 Transfer of securities

5. Transfer of an interest in securities held by a depositary institution in a securities repository shall be effected by agreement completed by entry in the securities accounts of the transferor and the transferee with the depositary institution or institutions concerned.

25 Pledge of securities

6. (1) A pledge in respect of an interest in securities held by a depositary institution in a securities repository shall be effected by agreement completed by entry in the securities account of the pledgor in favour of the pledgee specifying the name of the pledgee, the interest pledged and the date.

(2) Such an interest shall not be transferred except with the written consent of the pledgee.

(3) The pledgee of such an interest shall be entitled to all the rights of a pledgee of movable corporeal property in possession of that property.

Notification

7. A depositary institution shall notify the holder of a securities account with it of any entry made in that account.

Delivery of securities

8. Subject to the provisions of section 6, the owner of an interest in securities held in a securities repository or central securities repository shall at all times be entitled to delivery, within a reasonable time, by the depositary institution or central securities depository concerned, of the same number of securities, or securities of the same nominal value, and of the same kind as the securities held on his behalf in such securities repository or central securities repository.

CHAPTER 3**CENTRAL SECURITIES DEPOSITORY****Registration of central securities depository**

9. (1) A central securities depository shall be registered as such in terms of this Act.

(2) Enige publieke maatskappy kan by die Registrateur om registrasie as 'n sentrale effekdebewaarnemer aansoek doen.

(3) 'n Aansoek ingevolge subartikel (2)—

(a) moet op die voorgeskrewe wyse en op die voorgeskrewe vorm gedoen word;

(b) moet vergesel gaan van 'n verklaring waarin die voorgeskrewe inligting en die ander inligting, met inbegrip van 'n verslag deur 'n ouditeur oor enige aangeleentheid, wat die Registrateur relevant mag beskou, vervat is.

(4) Die Registrateur kan, nadat hy al die inligting, dokumente en verslae wat ingevolge hierdie artikel aan hom verstrekkend is, oorweeg het, die betrokke aansoek toestaan of weier of die aansoek onderworpe aan die voorwaardes wat hy goedgevind, toestaan.

(5) Die Registrateur staan nie 'n aansoek kragtens hierdie artikel om die registrasie van 'n sentrale effekdebewaarnemer toe nie tensy hy oortuig is—

(a) dat die oprigting van die voorgestelde sentrale effekdebewaarnemer in die openbare belang sal wees;

(b) dat die aansoeker in staat sal wees om homself met welslae as 'n sentrale effekdebewaarnemer te vestig;

(c) dat die besigheid van die aansoeker op omsigtige wyse bedryf sal word en met behoorlike inagneming van die belange van deposante, lede en die uitgewers van effekte; en

(d) dat die lede van die voorgestelde sentrale effekdebewaarnemer ingestem het om aan die vereistes van die reëls van die sentrale effekdebewaarnemer en die Wet gebonde te wees en in staat is om daaraan te voldoen en dat hulle bewaarnemende instellings is wat deur die Registrateur as lede van die sentrale effekdebewaarnemer goedgekeur is.

(6) Die Registrateur kan, behoudens die bepalinge van subartikel (7), die registrasie van 'n sentrale effekdebewaarnemer intrek—

(a) indien die registrasie op grond van valse of misleidende inligting bekom is;

(b) indien hy van mening is dat dit nie in die openbare belang is om die sentrale effekdebewaarnemer toe te laat om met sy bedrywighede voort te gaan nie; of

(c) op die skriftelike versoek van die sentrale effekdebewaarnemer.

(7)(a) Die Registrateur, voordat hy die registrasie van 'n sentrale effekdebewaarnemer ingevolge subartikel (6) intrek, in 'n skriftelike kennisgewing gerig aan sodanige bewaarnemer—

(i) stel die sentrale effekdebewaarnemer van sy voorneme om die registrasie in te trek in kennis;

(ii) stel die sentrale effekdebewaarnemer van die gronde van sy voorgenome intrekking in kennis; en

(iii) versoek die sentrale effekdebewaarnemer om redes aan te toon, binne die tydperk in die kennisgewing genoem, wat nie minder as 30 dae vanaf die datum van die kennisgewing sal wees nie, waarom die registrasie nie aldus ingetrek sal word nie.

(b) Nadat enige verhoër wat binne die gemelde tydperk van die betrokke sentrale effekdebewaarnemer ontvang is, oorweeg is, mag die Registrateur na sy oordeel—

(i) voortgaan met die intrekking; of

(ii) geen verdere stappe doen nie,

en die Registrateur stel skriftelik die betrokke sentrale effekdebewaarnemer van sy beslissing ingevolge hierdie subartikel in kennis.

(8) Wanneer die Registrateur 'n aansoek ingevolge hierdie artikel toestaan of weier of die registrasie van 'n sentrale effekdebewaarnemer intrek, moet hy die aansoeker of die sentrale effekdebewaarnemer, na gelang van die geval, skriftelik daarvan verwittig.

(9) Wanneer 'n sentrale effekdebewaarnemer bewus word daarvan dat 'n bepaalde bewaarnemende instelling ophou om 'n lid van hom te wees, moet die sentrale effekdebewaarnemer so gou doenlik die Registrateur daarvan in kennis stel.

Deponering van effekte by sentrale effekdebewaarnemer

10. (1) Slegs 'n bewaarnemende instelling wat 'n lid van 'n sentrale effekdebewaarnemer is, is geregtig om effekte by dié sentrale effekdebewaarnemer te deponeer of om effekte van daardie sentrale effekdebewaarnemer te onttrek en om 'n sentrale effekterekening by hom te hou.

(2) Any public company may apply to the Registrar for registration as a central securities depository.

(3) An application in terms of subsection (2)—

- 5 (a) shall be made in the prescribed manner and on the prescribed form;
(b) shall be accompanied by a statement containing the prescribed information and such other information, including a report on any matter by an auditor, as the Registrar may deem relevant.

10 (4) The Registrar may, after considering all the information, documents and reports furnished to him in terms of this section, grant or refuse the relevant application or grant the application subject to such conditions as he may deem fit.

(5) The Registrar shall not grant an application under this section for the registration of a central securities depository unless he is satisfied—

- 15 (a) that the establishment of the proposed central securities depository will be in the public interest;
(b) that the applicant will be able to establish itself successfully as a central securities depository;
(c) that the business of the applicant will be conducted in a prudent manner and with due regard to the rights of depositors, members and the issuers of securities; and
20 (d) that the members of the proposed central securities depository have agreed in writing to abide by and are able to comply with the requirements of the rules of the central securities depository and the Act and that they are depository institutions which have been approved by the Registrar as members of the central securities depository.
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(6) The Registrar may, subject to the provisions of subsection (7), cancel the registration of a central securities depository—

- 30 (a) if the registration has been obtained on the strength of untrue or misleading information;
(b) if he is of the opinion that it is not in the public interest to allow the central securities depository to continue its activities; or
(c) at the written request of the central securities depository.

35 (7)(a) The Registrar shall, before cancelling under subsection (6) the registration of a central securities depository, in a written notice addressed to the central securities depository—

- (i) inform the central securities depository of his intention to cancel such registration;
(ii) furnish the central securities depository with the reasons for the intended cancellation; and
40 (iii) call upon it 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 registration should not be so cancelled;

45 (b) After considering any representations received within the specified period from the central securities depository concerned, the Registrar may in his discretion—

- (i) proceed with the cancellation; or
(ii) refrain from taking any further steps,
and the Registrar shall in writing inform the central securities depository concerned of his decision in terms of this subsection.

50 (8) Whenever the Registrar grants or refuses an application in terms of this section or cancels the registration of a central securities depository, he shall give written notice of that fact to the applicant or to the central securities depository, as the case may be.

55 (9) Whenever a central securities depository becomes aware of a particular depository institution ceasing to be a member of it, the central securities depository shall as soon as practicable notify the Registrar thereof.

Deposit of securities with central securities depository

60 10. (1) Only a depository institution that is a member of a central securities depository shall be entitled to deposit with or withdraw securities from that central securities depository and to have a central securities account with it.

(2) Indien die eienaar van effekte wat deur 'n bewaarnemende instelling by 'n sentrale effektebewaarnemer gedeponeer is, sy regte wil uitoefen, moet hy dit deur daardie bewaarnemende instelling doen, en sodanige bewaarnemende instelling oefen sodanige regte uit in sy eie naam.

(3) Alle effekte wat deur 'n sentrale effektebewaarnemer gehou word, moet, tensy hulle toondereffekte is, geregistreer word in die naam van die sentrale effektebewaarnemer of sy volfiliaal, soos omskryf in artikel 1(1) van die Maatskappywet, 1973 (Wet No. 61 van 1973), wat deur die Registrateur goedgekeur is.

Sentrale effektedepot

11. (1) 'n Sentrale effektebewaarnemer kan alle effekte van dieselfde soort wat by hom vir veilige bewaring deur 'n bewaarnemende instelling gedeponeer is gesamentlik in 'n aparte sentrale effektedepot hou.

(2) 'n Sentrale effektedepot behels alle effekte van dieselfde soort wat deur die sentrale effektebewaarnemer gehou word.

(3) Die bepalinge van artikels 5 en 6 is *mutatis mutandis* van toepassing op die oordrag en verpanding deur een bewaarnemende instelling aan 'n ander van 'n belang in effekte wat deur 'n sentrale effektebewaarnemer in veilige bewaring gehou word.

(4) 'n Sentrale effektebewaarnemer moet die bewaarnemende instelling wat 'n sentrale effekterekening by hom het in kennis stel van enige inskrywing wat daarin gedoen is.

HOOFSTUK 4

ALGEMENE BEPALINGS

Reëls van sentrale effektebewaarnemer

12. (1) Die reëls van enige sentrale effektebewaarnemer moet opgestel word ten einde tot oortuiging van die Registrateur te verseker—

- (a) dat die besigheid van die sentrale effektebewaarnemer met behoorlike inagneming van die openbare belang en die belange van deposante, lede en die uitreikers van effekte bedryf word;
- (b) dat die sentrale effektebewaarnemer op 'n effektiewe wyse bestuur en geadministreer word;
- (c) dat slegs 'n persoon of kategorie persone deur die Registrateur goedgekeur, lid van die sentrale effektebewaarnemer word en dat die reëls wat die toelating van 'n persoon as lid beheer, billik en in die openbare belang is;
- (d) dat die sentrale effekterekeninge wat vir bewaarnemende instellings gehou word, met behoorlike inagneming van hulle belange bedryf word;
- (e) dat gepaste stappe beskikbaar is teen 'n bewaarnemende instelling wat die bepalinge van hierdie Wet of hierdie reëls oortree of nie daaraan voldoen nie;
- (f) dat sy lede finansiële gesond is en geldige en afdoende waarborge ten opsigte van sy verpligtinge verskaf het;
- (g) dat toereikende stappe op 'n gereelde grondslag volgens algemene aanvaarde rekeningkundige praktyk vir die ouditering van die effekterekeninge wat deur hom gehou word, gedoen word, en waar die effekterekeninge en sentrale effekterekeninge nie bygehou word deur die maak van inskrywings in gebinde boeke nie, toereikende voorsorg getref word om te waak teen vervalsing en vir die vasstelling van die belang van die eienaar van effekte;
- (h) dat gepaste stappe gedoen word om aan deposante alle dividende en ander betalings wat deur die uitreiker van effekte gemaak word, oor te betaal, en om hulle te verwittig van alle kennisgewings ten opsigte van regte en ander voordele wat die effekte toekom en om gevolg te gee aan die wettige opdragte van die bewaargewers ten opsigte van stemreg en

(2) If the owner of securities deposited by a depositary institution with a central securities depository wishes to exercise his rights, he shall do so through that depositary institution, and that depositary institution shall exercise those rights in its own name.

- 5 (3) All securities held by a central securities depository shall, unless they are bearer securities, be registered in the name of that central securities depository or its wholly owned subsidiary, as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973), approved by the Registrar.

Central securities repository

- 10 11. (1) A central securities depository may hold all securities of the same kind deposited with it by a depositary institution for safe custody collectively in a separate central securities repository.

(2) A central securities repository shall comprise all securities of the same kind held by the central securities depository.

- 15 (3) The provisions of sections 5 and 6 shall apply *mutatis mutandis* to the transfer and pledge by one depositary institution to another of an interest in securities held by a central securities depository in safe custody.

(4) A central securities depository shall notify the depositary institution having a central securities account with it of any entry made in such account.

20

CHAPTER 4

GENERAL PROVISIONS

Rules of central securities depository

12. (1) The rules of any central securities depository shall be framed so as to ensure, to the satisfaction of the Registrar—

- 25 (a) that the business of the central securities depository is carried out with due regard to the public interest and the interests of depositors, members and the issuers of securities;
- (b) that the central securities depository is managed and administered in an efficient manner;
- 30 (c) that only a person or category of persons approved by the Registrar is admitted as a member of the central securities depository and that the rules governing the admission of a person as a member are equitable and in the public interest;
- (d) that the central securities accounts kept for depositary institutions are
- 35 conducted with due regard to their interests;
- (e) that adequate steps are available against any depositary institution which contravenes or fails to comply with the provisions of this Act or these rules;
- (f) that its members are financially sound and have entered into valid and
- 40 adequate guarantees in respect of its liabilities;
- (g) that adequate steps are taken on a regular basis according to generally accepted accounting practice for the auditing of the securities accounts held by it and that where the securities accounts and central securities
- 45 accounts are not kept by the making of entries in bound books, adequate precautions are taken for guarding against falsification and for the ascertainment of the interest of the owner of securities;
- (h) that proper measures are taken to pay to the depositors all dividends
- 50 and other payments made by the issuer of securities and to convey to them all notices regarding rights and other benefits accruing to the securities and to give effect to the lawful instructions of the depositors with regard to voting rights and other matters and to ensure that the

- ander aangeleenthede en om te verseker dat die regte van deposante nie op enige wyse verminder word vanweë die feit dat effekte gesamentlik in 'n effektedepot ten behoeve van hulle soos deur hierdie Wet voorsien, gehou word nie; en
- (i) dat gelde en heffings deur hom vir sy dienste gevorder, aan sy deposante en lede bekendgemaak word. 5
- (2) Op versoek van die Registrateur moet 'n sentrale effektebewaarnemer sy reëls en 'n lys van sy lede soos deur die Registrateur gelas op eie koste publiseer.
- (3) Geen byvoeging by, wysiging van of skrapping uit die reëls van 'n sentrale effektebewaarnemer of genoemde lys van lede is geldig tensy dit deur die Registrateur goedgekeur word nie. 10
- (4) 'n Kennisgewing waarin die voorgestelde byvoeging by, wysiging van of skrapping uit genoemde reëls of die lys van lede uiteengesit word, moet deur die sentrale effektebewaarnemer in beide amptelike tale by kennisgewing in die *Staatskoerant* gepubliseer word. 15
- (5) Genoemde kennisgewing moet lede van die publiek wat besware teen die voorgestelde byvoeging, wysiging of skrapping het, versoek om sodanige besware by die Registrateur aanhangig te maak binne 'n tydperk van 30 dae vanaf die datum van publikasie in die *Staatskoerant*.
- (6) Wanneer die Registrateur dit in die openbare belang ag, kan hy, na redelike oorlegpleging met die sentrale effektebewaarnemer en met die instemming van die Minister, by kennisgewing in die *Staatskoerant* die reëls van daardie sentrale effektebewaarnemer met ingang van 'n datum wat hy in die *Staatskoerant* vermeld, wysig, uitbrei of herroep. 20

Beslaglegging

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13. (1) Beslaglegging op 'n belang in effekte wat vir veilige bewaring by 'n bewaarnemende instelling gedeponeer is en in 'n effektedepot bevat is, is slegs voltooid indien—
- (a) kennis van die beslaglegging skriftelik deur die balju aan die bewaarnemende instelling gegee is; 30
- (b) die balju besit van enige effekterekening soos gestaaf deur 'n sertifikaat uitgereik deur 'n sentrale effektebewaarnemer of lid van sodanige bewaarnemer, na gelang van die geval, verkry het of gesertifiseer het dat hy, ondanks sorgvuldige nasporing, nie in staat was om besit van sodanige sertifikaat te verkry nie; en 35
- (c) die balju 'n inskrywing van die beslaglegging op sodanige effekterekening gemaak of deur die bewaarnemende instelling laat maak het.
- (2) Die balju kan nadat hy die oorspronklike lasbrief vir eksekusie aan die betrokke bewaarnemende instelling vertoon het, die perseel waarop sodanige rekening gehou word, betree en 'n inventaris en waardasie van die belang waarop beslag gelê word, maak. 40

Regulasies

14. Die Minister kan regulasies uitvaardig aangaande—

- (a) die aantekeninge wat deur die bewaarnemende instellings en sentrale effektebewaarnemers gehou en aan die Registrateur voorgelê moet word; 45
- (b) enige aangeleenthede wat hy nodig ag om voor te skryf sodat die doeleindes van hierdie Wet verwesenlik kan word; en
- (c) enige aangeleenthede wat kragtens hierdie Wet by regulasie voorgeskryf moet of kan word. 50

Bywoning van sekere vergaderings deur Registrateur en verstrekking van sekere stukke aan hom

15. (1) Die Registrateur of 'n persoon deur hom benoem, kan enige vergadering van 'n beherende liggaam van 'n sentrale effektebewaarnemer of 'n subkomitee van so 'n liggaam bywoon, en aan al die verrigtinge by so 'n vergadering deelneem. 55
- (2) 'n Uitvoerende beampte van 'n sentrale effektebewaarnemer moet die

- rights of depositors are not in any way diminished by the fact that securities held on their behalf are held collectively in a securities repository as provided for by this Act; and
- 5 (i) that fees and charges required by it for its services shall be made known to its depositors and members.
- (2) At the request of the Registrar a central securities depository shall publish its rules and a list of its members as directed by the Registrar, at its own expense.
- (3) No addition to, amendment of or deletion from the rules of a central securities depository or the said list of members shall be valid until it has been
- 10 approved by the Registrar.
- (4) A notice setting out the proposed addition to, amendment of or deletion from the said rules or the list of members, shall be published by notice in the *Gazette* by the central securities depository in both official languages.
- (5) The said notice shall call upon members of the public who have objections
- 15 to the proposed addition, amendment or deletion, to lodge such objections with the Registrar within a period of 30 days from the date of publication in the *Gazette*.
- (6) Whenever the Registrar deems it in the public interest, he may, after reasonable consultation with the central securities depository and with the
- 20 consent of the Minister, by notice in the *Gazette* amend, add to or rescind the rules of that central securities depository with effect from such date as he may specify in the *Gazette*.

Attachment

13. (1) The attachment of an interest in securities deposited for safe custody
- 25 with a depository institution and comprised in a securities repository shall only be complete when—
- (a) notice of the attachment has been given in writing by the sheriff to the depository institution;
- (b) the sheriff has taken possession of any securities account as evidenced
- 30 by a certificate issued by a central securities depository or member of such depository, as the case may be, or has certified that he has been unable, despite diligent search, to obtain possession of such certificate; and
- (c) the sheriff has made an entry of the attachment on such securities
- 35 account or caused it to be made by such depository institution.
- (2) The sheriff may upon exhibiting the original of the warrant of execution to the depository institution concerned enter upon the premises where such account is kept and make an inventory and valuation of the interest attached.

Regulations

- 40 14. The Minister may make regulations as to—
- (a) the records to be kept and furnished to the Registrar by depository institutions and central securities depositories;
- (b) any matter which he considers it necessary to prescribe in order to give effect to the objects of this Act; and
- 45 (c) any matter which in terms of this Act is required or permitted to be prescribed by regulation.

Attendance of certain meetings by Registrar and furnishing of certain documents to him

15. (1) The Registrar or a person nominated by him may attend any meeting
- 50 of a controlling body of a central securities depository or a subcommittee of such a body, and take part in all the proceedings at such meeting.
- (2) An executive officer of a central securities depository shall furnish the

Registrateur van alle kennisgewings, notules en stukke voorsien wat aan lede van die beherende liggaam daarvan of 'n subkomitee van daardie liggaam besorg word, asof die Registrateur 'n lid van daardie liggaam of subkomitee was.

(3) By die toepassing van hierdie artikel beteken "uitvoerende beampte" die persoon wat die beherende liggaam van die sentrale effektebewaarnemer ingevolge die betrokke reëls as die uitvoerende beampte van daardie effektebewaarnemer aanstel of, in sy afwesigheid, sy plaasvervanger of, as daar nie so 'n plaasvervanger is nie, die ander persoon wat die beherende liggaam aanstel om die werksaamhede te verrig wat deur die uitvoerende beampte verrig moet of kan word.

Wysiging van artikel 22 van Wet 90 van 1989

16. Artikel 22 van die Wet op die Suid-Afrikaanse Reserwebank, 1989, word hierby gewysig deur die volgende woorde by subartikel (4) te voeg:

"tensy daardie genomineerde 'n sentrale effektebewaarnemer soos in artikel 1 van die Wet op die Veilige Bewaring van Effekte, 1992, omskrywe, is."

Wysiging van artikel 38 van Wet 94 van 1990

17. Artikel 38 van die Wet op Depositonemende Instellings, 1990, word hierby gewysig—

(a) deur in subartikel (2) die woord "of" aan die einde van paragraaf (c) te skrap;

(b) deur in subartikel (2) die woord "of" aan die einde van paragraaf (d) by te voeg; en

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

"(e) op naam van 'n sentrale effektebewaarnemer soos in artikel 1 van die Wet op die Veilige Bewaring van Effekte, 1992, omskrywe."

Inspeksies

18. (1) Die bepalings van die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), is *mutatis mutandis* van toepassing op 'n sentrale effektebewaarnemer en 'n lid daarvan, 'n sentrale effektedepot, 'n deposant en 'n bewaarnemende instelling, en by sodanige toepassing word die sentrale effektebewaarnemer, lid, sentrale effektedepot, deposant of bewaarnemende instelling geag 'n finansiële instelling te wees, en is die Registrateur soos omskryf in artikel 1 van hierdie Wet, die registrator met betrekking tot die sentrale effektebewaarnemer, lid, sentrale effektedepot, deposant of bewaarnemende instelling.

(2) By sodanige toepassing van genoemde bepalings van die Wet op Inspeksie van Finansiële Instellings, 1984—

(a) word artikel 2(4) daarvan uitgelê asof die woorde "of iemand wat met so 'n instelling sake gedoen het" na die woord "was" ingevoeg is; en

(b) word artikel 8(1) daarvan uitgelê asof die volgende verdere voorbehoudsbepaling aan die end daarvan bygevoeg is:

"(e) die registrator na goedgekeurde aan die beherende liggaam van 'n sentrale effektebewaarnemer inligting kan oordra wat deur hom bekom is in die loop van 'n inspeksie kragtens hierdie Wet, of uit 'n verslag deur 'n inspekteur oor 'n inspeksie, van die sake van 'n persoon wat 'n lid is of was van daardie sentrale effektebewaarnemer."

(3) 'n Beherende liggaam van 'n sentrale effektebewaarnemer kan by enige dissiplinêre geding ingevolge die betrokke reëls teen 'n lid van die sentrale effektebewaarnemer, enige toepaslike inligting uit hoofde van subartikel (2)(b) aan die beherende liggaam verstrek, in ag neem.

Registrar with all notices, minutes and documents which are furnished to members of the controlling body thereof or a subcommittee of that body, as if the Registrar were a member of that body or subcommittee.

- (3) For the purposes of this section "executive officer" means the person appointed by the controlling body of the central securities depository in terms of the rules concerned as executive officer of that securities depository or, in his absence, his deputy or, if there is no such deputy, such other person as may be appointed by the controlling body to perform all the functions which shall or may be performed by the executive officer.

10 Amendment of section 22 of Act 90 of 1989

16. Section 22 of the South African Reserve Bank Act, 1989, is hereby amended by the addition to subsection (4) of the following words:

"unless that nominee is a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992."

15 Amendment of section 38 of Act 94 of 1990

17. Section 38 of the Deposit-taking Institutions Act, 1990, is hereby amended—

- (a) by the deletion in subsection (2) of the word "or" at the end of paragraph (c);
- 20 (b) by the addition in subsection (2) of the word "or" at the end of paragraph (d); and
- (c) by the addition in subsection (2) of the following paragraph:
"(e) in the name of a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992."

25 Inspections

18. (1) The provisions of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), shall *mutatis mutandis* apply to a central securities depository and a member thereof, a central securities repository, a depositor and a depository institution, and for such purposes the central securities depository, member, central securities repository, depositor or depository institution shall be deemed to be a financial institution, and the Registrar as defined in section 1 of this Act shall be the registrar in relation to the central securities depository, member, central securities repository, depositor or depository institution.

35 (2) In such application of the said provisions of the Inspection of Financial Institutions Act, 1984—

- (a) section 4(2) thereof shall be construed as if the words "or any person who has had dealings with such institution" were inserted after the words "of the financial institution"; and
- 40 (b) section 8(1) thereof shall be construed as if the following further proviso were added at the end thereof:
"(e) the registrar may in his discretion communicate to the controlling body of a central securities depository information obtained by him in the course of an inspection under this Act, or from a report by an inspector on an inspection, of the affairs of a person who is or was a member of that central securities depository."
- 45

(3) A controlling body of a central securities depository may in any disciplinary proceedings in terms of the rules concerned against any member of the central securities depository in question, take into consideration any relevant information furnished to the controlling body by virtue of subsection (2)(b).

Kort titel en inwerkingtreding

19. (1) Hierdie Wet heet die Wet op die Veilige Bewaring van Effekte, 1992, en die bepalings daarvan tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan ingevolge subartikel (1) ten opsigte van verskil- 5 lende bepalings van hierdie Wet bepaal word.

Short title and commencement

19. (1) This Act shall be called the Safe Deposit of Securities Act, 1992, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

- 5 (2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

