



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprijs • Selling price
(AVB uitgesluit/GST excluded)

Plaaslik **70c** Local
Buitelands R1,00 Other countries
Posvry • Post free

Vol. 301

KAAPSTAD, 11 JULIE 1990

CAPE TOWN, 11 JULY 1990

No. 12617

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1597.

11 Julie 1990

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

No. 94 van 1990: Wet op Depositonemende Instellings, 1990.

No. 1597.

11 July 1990

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

No. 94 of 1990: Deposit-taking Institutions Act, 1990.

Wet No. 94, 1990

WET OP DEPOSITONEMENDE INSTELLINGS, 1990

ALGEMENE VERDUIDELIKENDE NOTA:

- []** Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

WET

Om voorsiening te maak vir die reëling van en toesig oor die bedryf van publieke maatskappye wat deposito's van die publiek neem; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 28 Junie 1990.)*

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

INDELING VAN ARTIKELS**HOOFSTUK I****UITLEG EN TOEPASSING VAN WET***Artikel*

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2. Uitsluitings van toepassing van Wet

HOOFSTUK II**ADMINISTRASIE VAN WET**

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4. Registrateur en Adjunk-registrateur van Depositonemende Instellings
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DEPOSIT-TAKING INSTITUTIONS ACT, 1990

Act No. 94, 1990

GENERAL EXPLANATORY NOTE:

- I** Words in bold type in square brackets indicate omissions from existing enactments.

ACT

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

(English text signed by the State President.)
(Assented to 28 June 1990.)

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

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Woordomskrywing

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “agentskap”, met betrekking tot ’n depositonemende instelling, ’n reg deur daardie depositonemende instelling aan ’n persoon verleen om namens hom van sy klante deposito’s, geld aan hom verskuldig of aansoeke om lenings of voorskotte te ontvang, of om namens hom betalings aan sodanige klante te doen; (i) 5
 - (ii) “algemene publiek” nie ook ’n depositonemende instelling nie; (xvii) 10
 - (iii) “appèlraad” die appèlraad by artikel 9 (2) ingestel; (ii)
 - (iv) “beherende maatskappy” ’n publieke maatskappy wat ingevolge hierdie Wet as ’n beherende maatskappy ten opsigte van ’n depositonemende instelling geregistreer is; (viii)
 - (v) “binnelandse aandeelhouer”, met betrekking tot ’n depositonemende instelling of beherende maatskappy, ’n aandeelhouer van dié depositonemende instelling of beherende maatskappy wat—
 - (a) in die Republiek woonagtig is;
 - (b) ’n maatskappy is wat, *mutatis mutandis* soos bedoel in paragraaf (a), (b) of (c) van die omskrywing van “beherende maatskappy” in artikel 1 van die Maatskappywet, beheer word deur ’n persoon of persone wat in die Republiek woonagtig is of, in die geval van ’n regspersoon of regspersone, by of kragtens ’n wet van die Republiek opgerig, ingestel of ingelyf is;
 - (c) ’n ander regspersoon as ’n maatskappy is en by of kragtens ’n wet van die Republiek opgerig, ingestel of ingelyf is, uitgesonderd ’n pensioenfonds wat geregistreer is ingevolge die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), waar die hoofkantoor van die vereniging wat die sake van daardie fonds bedryf, of van elke werkgewer wat ’n party by daardie fonds is, buite die Republiek is; of 25
 - (d) ’n persoon is wat behoort tot ’n kategorie persone wat deur die Registrateur vir die doeleindes van hierdie Wet as binnelandse aandeelhouers erken word; (xii) 30
 - (vi) “buitelandse aandeelhouer”, met betrekking tot ’n depositonemende instelling of beherende maatskappy, ’n aandeelhouer van dié depositonemende instelling of beherende maatskappy wat nie ’n binnelandse aandeelhouer is nie; (xvi) 35
 - (vii) “deposito” ’n bedrag geld wat deur ’n persoon aan ’n ander persoon betaal word onderworpe aan ’n ooreenkoms ingevolge waarvan—
 - (a) ’n gelyke bedrag of enige gedeelte daarvan voorwaardelik of onvoorwaardelik, met of sonder ’n premie, terugbetaal sal word op aanvraag of op bepaalde of onbepaalde datums of in omstandighede waartoe ooreengekom is deur of namens die persoon wat die betaling doen en die persoon wat dit ontvang; en
 - (b) geen rente betaalbaar sal wees nie op die bedrag aldus betaal of rente daarop betaalbaar sal wees te gesetter tye of andersins, al word sodanige betaling beperk tot ’n vasgestelde bedrag of al word ’n oordraagbare of nie-oordraagbare sertifikaat of ander stuk wat voorsiening maak vir die terugbetaling van sodanige bedrag *mutatis mutandis* soos bedoel in paragraaf (a) of vir die betaling van rente op sodanige bedrag *mutatis mutandis* soos bedoel in paragraaf (b) ten opsigte van sodanige bedrag uitgereik; maar nie ook ’n bedrag geld nie wat—
 - (i) betaal word as ’n voorskot of as gedeeltelike betaling ingevolge ’n kontrak vir die verkoop, verhuring en huur of ander verskaffing van roerende of onroerende goed of dienste, en wat terugbetaalbaar is slegs— 55
 - (aa) indien daardie goed of dienste inderdaad nie verkoop, verhuur en gehuur of andersins verskaf word nie;
 - (bb) by die vervulling van ’n ontbindende voorwaarde wat deel uitmaak van daardie kontrak; of
 - (cc) by die nie-nakoming van ’n opskortende voorwaarde wat deel uitmaak van daardie kontrak; 60

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CHAPTER I

INTERPRETATION AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context otherwise indicates—
- 5 (i) “agency”, in relation to a deposit-taking institution, means a right granted to a person by that deposit-taking institution to receive on its behalf from its clients any deposits, money due to it or applications for loans or advances, or to make payments to such clients on its behalf; (i)
- 10 (ii) “board of appeal” means the board of appeal established by section 9 (2); (iii)
- (iii) “chief executive officer”, in relation to a deposit-taking institution, means a person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the board of directors of the deposit-taking institution for the conduct of the business of the deposit-taking institution; (xvi)
- 15 (iv) “chief representative officer” means the person in charge of a representative office; (xvii)
- (v) “close relative”, in relation to any person, means—
- 20 (a) his spouse;
- (b) his child, stepchild, parent or stepparent;
- (c) the spouse of any of the persons mentioned in paragraph (b); (xxvi)
- (vi) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xxiii)
- (vii) “company” means a company under the Companies Act; (xxii)
- 25 (viii) “controlling company” means a public company registered in terms of this Act as a controlling company in respect of a deposit-taking institution; (iv)
- (ix) “co-operative” means a co-operative incorporated in terms of the Co-operatives Act, 1981 (Act No. 91 of 1981), and includes a co-operative society or co-operative company deemed in terms of section 2 of that Act to be incorporated in terms of the said Act; (xix)
- 30 (x) “deposit”, when used as a noun, means an amount of money paid by one person to another person subject to an agreement in terms of which—
- 35 (a) an equal amount or any part thereof will be conditionally or unconditionally repaid, with or without a premium, on demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it; and
- 40 (b) no interest will be payable on the amount so paid or interest will be payable thereon at specified intervals or otherwise,
- notwithstanding that such payment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of such amount *mutatis mutandis* as contemplated in paragraph (a) or for the payment of interest on such amount *mutatis mutandis* as contemplated in paragraph (b) is issued in respect of such amount; but does not include an amount of money—
- 45 (i) paid as an advance, or as part payment, in terms of a contract for the sale, letting and hiring or other provision of movable or immovable property or of services, and which is repayable only in the event of—
- 50 (aa) that property or those services not in fact being sold, let and hired or otherwise provided;
- (bb) the fulfilment of a resolutive condition forming part of that contract; or
- 55 (cc) the non-fulfilment of a suspensive condition forming part of that contract;
- (ii) paid as security for the performance of a contract or as security in respect of any loss which may result from the non-performance of a contract;
- 60 (iii) without derogating from the provisions of paragraph (ii), paid as security for the delivery up or return of any movable or immovable property, whether in a particular state of repair or otherwise;
- (iv) paid by a holding company to its subsidiary, or by a subsidiary to its

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- (ii) betaal word as sekerheidstelling vir die nakoming van 'n kontrak of as sekerheidstelling ten opsigte van enige verlies wat mag voortspruit uit die nie-nakoming van 'n kontrak;
- (iii) betaal word (sonder afbreuk aan die bepalings van paragraaf (ii)) as sekerheidstelling vir die afgee of teruggawe van enige roerende of onroerende goed, hetsy in 'n bepaalde toestand van behoud of andersins;
- (iv) betaal word deur 'n houermaatskappy aan sy filiaal of deur 'n filiaal aan sy houermaatskappy, of deur een filiaal aan 'n ander filiaal van dieselfde houermaatskappy;
- (v) betaal word deur 'n persoon wat, ten tyde van sodanige betaling—
 - (aa) 'n naverwant is van die persoon aan wie sodanige geld betaal word;
 - (bb) 'n direkteur of uitvoerende beamppte is van die persoon aan wie sodanige geld betaal word; of
 - (cc) 'n naverwant is van 'n direkteur of uitvoerende beamppte van die persoon aan wie sodanige geld betaal word;
- (vi) deur enige persoon aan 'n geregistreerde versekeraar soos omskryf in artikel 1 (1) van die Versekeringswet, 1943 (Wet No. 27 van 1943), betaal word as 'n premie ten opsigte van enige soort polis wat in daardie artikel omskryf of bedoel word en kragtens welke polis daardie versekeraar as teenprestasie vir sodanige premie 'n verpligting aanvaar wat in daardie artikel beskryf word in die omskrywing van, of met verwysing na, die betrokke soort polis: Met dien verstande dat, met ingang van 'n datum ses maande na die datum van inwerkingtreding van hierdie Wet, die bepalings van hierdie paragraaf nie langer van krag is nie; of
- (vii) aan 'n fonds wat geregistreer of voorlopig geregistreer is kragtens artikel 4 van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), betaal word as 'n bydrae, bedoel in artikel 13A van daardie Wet, deur of namens 'n lid van daardie fonds,
- en het "deponeer" of enige woord wat daarvan afgelei is, 'n ooreenstemmende betekenis; (x)
- (viii) "deposidonemende instelling" 'n publieke maatskappy wat ingevolge hierdie Wet voorlopig of finaal as 'n deposidonemende instelling geregistreer is; (xi)
- (ix) "die bedryf van 'n deposidonemende instelling"—
 - (a) die neem van deposito's van die algemene publiek as 'n staande kenmerk van die betrokke bedryf en, met betrekking tot so 'n instelling, met inbegrip van die persone wat by hom in diens is;
 - (b) die werwing van of advertering vir deposito's;
 - (c) die aanwending van geld, of van die rente of ander inkomste verdien op geld, wat soos in paragraaf (a) beoog by wyse van deposito geneem is—
 - (i) vir die toestaan deur enige persoon, wat in sy eie naam of deur middel van 'n trust of 'n benoemde as uitlener optree, van lenings aan ander persone;
 - (ii) vir belegging deur enige persoon wat in sy eie naam of deur middel van 'n trust of 'n benoemde as belegger optree; of
 - (iii) vir die finansiering, algeheel of in 'n wesenlike mate, deur enige persoon van enige ander sakebedrywigheid wat hy in sy eie naam of deur middel van 'n trust of 'n benoemde uitoefen;
 - (d) die verkryging, as 'n staande kenmerk van die betrokke bedryf, van geld deur die verkoop van 'n bate, aan 'n ander persoon as 'n deposidonemende instelling, onderworpe aan 'n ooreenkoms ingevolge waarvan die verkoper onderneem om op 'n toekomstige datum die bate aldus verkoop of enige ander bate van die koper te koop; of
 - (e) enige ander bedrywigheid wat die Registrateur, na oorleg met die President van die Reserwebank, by kennisgewing in die *Staatskoerant* verklaar het die bedryf van 'n deposidonemende instelling te wees, maar nie ook nie—
 - (aa) die neem van 'n deposito deur 'n persoon wat homself nie uitgee as iemand wat op 'n gereelde grondslag deposito's neem en wat nie vir sodanige deposito geadverteer het of dit gewerf het nie: Met dien verstande dat—
 - (i) die persoon wat deposito's neem soos in hierdie paragraaf beoog, nie te eniger tyd deposito's van meer as twintig persone of deposito's wat in totaal meer as R500 000 bedra, mag hou nie; en

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holding company, or by one subsidiary to another subsidiary of the same holding company;

(v) paid by a person who, at the time of such payment—

(aa) is a close relative of the person to whom such money is paid;

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

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

(vi) paid by any person to a registered insurer as defined in section 1(1) of the Insurance Act, 1943 (Act No. 27 of 1943), as a premium in respect of any kind of policy defined or referred to in that section and under which policy that insurer assumes, in return for such premium, such an obligation as is described in that section in the definition of, or with reference to, the kind of policy in question: Provided that the provisions of this paragraph shall, as from a date six months after the date of commencement of this Act, no longer be in force; or

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

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

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

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

(a) who is resident in the Republic;

(b) which is a company controlled, *mutatis mutandis* as contemplated in paragraph (a), (b) or (c) of the definition of "controlling company" in section 1 of the Companies Act, by a person or persons who is or are resident in the Republic or, in the case of a juristic person or persons, was or were formed, established or incorporated by or under a law of the Republic;

(c) which is a juristic person other than a company and was formed, established or incorporated by or under a law of the Republic, excluding a pension fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), where the head office of the association which carries on the business of that fund, or of every employer who is a party to that fund, is outside the Republic; or

(d) that is a person belonging to a category of persons recognized by the Registrar as domestic shareholders for the purposes of this Act; (v)

(xiii) "executive officer", in relation to any institution, includes any general manager or deputy general manager of such an institution; (xxxvi)

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

(xv) "financial statements" means annual financial statements referred to in sections 286 and 288 of the Companies Act; (xi)

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

(xvii) "general public" does not include a deposit-taking institution; (ii)

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

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

(xx) "Land Bank" means the Land and Agricultural Bank of South Africa; (xx)

- (ii) 'n persoon en 'n persoon wat regstreeks of onregstreeks deur hom beheer word (ongeag of sodanige beheer by wyse van aandeelhouding of andersins geskied) of deur hom geadministreer word, en 'n filiaal van laasgenoemde persoon, wat deposito's neem soos in hierdie paragraaf beoog, by die toepassing van subparagraaf (i) 5 van hierdie voorbehoudsbepaling geag word een persoon te wees;
- (bb) die leen van geld van sy lede deur 'n koöperasie onderworpe aan die voorgeskrewe voorwaardes;
- (cc) 'n bedrywigheid van 'n instelling van die openbare sektor of 'n regerings- of ander instelling, of van 'n persoon of kategorie persone, 10 wat met die goedkeuring van die Minister deur die Registrateur by kennisgewing in die *Staatskoerant* aangewys is, mits sodanige bedrywigheid verrig word ooreenkomstig die voorwaardes wat die Registrateur met die goedkeuring van die Minister in die tersaaklike kennisgewing bepaal; 15
- (dd) 'n bedrywigheid bedoel in paragraaf (a), (b) of (c) wat—
- (i) verrig word deur enige instelling wat ingevolge of by of kragtens enige ander Wet van die Parlement geregistreer of ingestel is en deur die Minister by kennisgewing in die *Staatskoerant* aangewys is; of 20
- (ii) verrig word ingevolge enige skema wat gemagtig en beheer word deur, en bedryf word ooreenkomstig die bepalings van, enige ander Wet van die Parlement en wat aldus deur die Minister aangewys is, mits sodanige bedrywigheid verrig word ooreenkomstig die voor- 25 waardes wat die Minister in die tersaaklike kennisgewing bepaal;
- (ee) die opneem van geld teen skuldbriewe ooreenkomstig die bepalings van die Maatskappywet uitgereik, mits sodanige geld nie, in die geval van sodanige uitreiking van skuldbriewe deur 'n ander persoon as 'n depositonemende instelling, vir die toestaan van geldlenings of die 30 verlening van krediet aan die algemene publiek gebruik word nie (uitgesonderd gebruiklike krediet ten opsigte van die verkoop van goedere of die lewering van dienste deur die uitreiker van die skuldbriewe); of
- (ff) 'n handeling van geldmakelary wat op dieselfde dag waarop die 35 betrokke geldmakelaar sy opdrag ontvang, op 'n geldleningstransaksie uitloop; (xxxvi)
- (x) "filiaal" 'n filiaal soos omskryf in artikel 1(3) van die Maatskappywet; (xxxv)
- (xi) "finansiële state" finansiële jaarstate bedoel in artikels 286 en 288 van die 40 Maatskappywet; (xv)
- (xii) "geldmakelaar" 'n persoon wat geldmakelary bedryf as 'n wesenlike deel van sy sake; (xxiii)
- (xiii) "geldmakelary" die bewerkstelling van 'n geldleningstransaksie regstreeks tussen 'n uitlener en 'n depositonemende instelling as lener deur 45 bemiddeling van 'n geldmakelaar; (xxiv)
- (xiv) "groep depositonemende instellings" 'n groep bestaande uit twee of meer depositonemende instellings wat dieselfde houermaatskappy het, en daardie houermaatskappy; (xviii)
- (xv) "hierdie Wet" ook die regulasies; (xxxvii) 50
- (xvi) "hoof- uitvoerende beampte", met betrekking tot 'n depositonemende instelling, 'n persoon wat, hetsy alleen of saam met een of meer ander persone en onderworpe aan die regstreekse gesag van die raad van direkteure van die depositonemende instelling, verantwoordelik is vir die uitoefening van die bedryf van die depositonemende instelling; (iii) 55
- (xvii) "hoof- verteenwoordigende beampte" die persoon wat aan die hoof staan van 'n verteenwoordigende kantoor; (iv)
- (xviii) "houermaatskappy" 'n houermaatskappy soos omskryf in artikel 1(4) van die Maatskappywet; (xix)
- (xix) "koöperasie" 'n koöperasie ingelyf ingevolge die Koöperasiewet, 1981 60 (Wet No. 91 van 1981), en ook 'n koöperatiewe vereniging of koöperatiewe maatskappy wat ingevolge artikel 2 van daardie Wet geag word ingevolge genoemde Wet ingelyf te wees; (ix)

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(xxi) "liquid assets" means—

- (a) Reserve Bank notes, subsidiary coin, gold coin and bullion;
 - (b) any credit balance in an account maintained with the Reserve Bank in terms of section 71 or in a clearing account with the Reserve Bank;
 - (c) for a period terminating on a date fixed by the Minister by notice in the *Gazette* (which date shall be a date not later than two years as from the date of commencement of this Act), loans, repayable on demand, to such deposit-taking institutions as the Minister may, with reference to the nature of the facilities offered by such deposit-taking institutions, designate by notice in the *Gazette*;
 - (d) treasury bills of the Republic;
 - (e) negotiable loan levy certificates issued by the Treasury in respect of any loan levy on companies levied in terms of any Act of Parliament, and with a maturity of not more than three years to their redemption dates;
 - (f) stocks issued under section 19 of the Exchequer Act, 1975 (Act No. 66 of 1975), with a maturity of not more than three years to the last redemption date;
 - (g) bills issued by the Land Bank for purposes of extending short-term financing—
 - (i) to an agricultural co-operative or a special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), or deemed thereunder to be so formed and incorporated, for the purchase of agricultural products from farmers and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products; or
 - (ii) to a control board established under the Marketing Act, 1968 (Act No. 59 of 1968), for the purchase of agricultural products;
 - (h) acceptances of a deposit-taking institution which are discountable with the Reserve Bank;
 - (i) self-liquidating bills or promissory notes arising out of the movement of goods, with a maturity not exceeding 120 days, or six months in the case of agricultural bills, and which are discountable with the Reserve Bank; or
 - (j) securities of the Reserve Bank with a maturity of not more than three years to the last redemption date thereof; (xxi)
- (xxii) "Minister" means the Minister of Finance; (xxv)
- (xxiii) "money broker" means a person who conducts money broking as a material part of his business; (xii)
- (xxiv) "money broking" means the effecting of a money lending transaction directly between a lender and a deposit-taking institution as borrower through the intermediation of a money broker; (xiii)
- (xxv) "mutual building society" means a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965); (xxvii)
- (xxvi) "person" includes any partnership; (xxix)
- (xxvii) "prescribed" means prescribed by regulation; (xxxix)
- (xxviii) "public" includes a juristic person; (xxx)
- (xxix) "Registrar" means the Registrar of Deposit-taking Institutions designated under section 4; (xxxi)
- (xxx) "Registrar of Companies" means the Registrar of Companies appointed under section 7 of the Companies Act; (xxxii)
- (xxxi) "regulation" means a regulation made under section 90; (xxxiii)
- (xxxii) "representative office", in relation to—
 - (a) a foreign institution referred to in section 34 (1), means premises situated within the Republic and from which the business referred to in the said section 34 (1) and conducted by such foreign institution in the other country referred to in that section, is promoted or assisted in any way; or

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- (xx) "Landbank" die Land- en Landboubank van Suid-Afrika; (xx)
- (xxi) "likwiede bates"—
- (a) Reserwebanknote, pasmunt, goudmunt en staafgoud;
 - (b) 'n kredietsaldo in 'n rekening wat ingevolge artikel 71 by die Reserwebank gehou word of in 'n verrekeningsrekening by die Reserwebank; 5
 - (c) vir 'n tydperk wat verstryk op 'n datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word (welke datum 'n datum nie later as twee jaar vanaf die datum van inwerkingtreding van hierdie Wet mag wees nie), onmiddellik opeisbare lenings aan dié depositonemende instellings wat die Minister, met verwysing na die aard van die fasiliteite wat deur sodanige depositonemende instellings aangebied word, by kennisgewing in die *Staatskoerant* aanwys; 10
 - (d) skatkisbiljette van die Republiek;
 - (e) verhandelbare leningsheffingsertifikate uitgereik deur die Tesourie ten opsigte van enige leningsheffing op maatskappye gehef ingevolge 'n Wet van die Parlement, en met 'n oorblywende termyn tot hul aflosdatums van nie meer as drie jaar nie;
 - (f) effekte uitgereik kragtens artikel 19 van die Skatkiswet, 1975 (Wet No. 66 van 1975), met 'n oorblywende termyn tot die laaste aflosdatum van nie meer as drie jaar nie; 20
 - (g) wissels deur die Landbank uitgereik vir doeleindes van die verstrekking van korttermynfinansiering—
 - (i) aan 'n landboukoöperasie of 'n spesiale boerekoöperasie wat kragtens die Koöperasiewet, 1981 (Wet No. 91 van 1981), opgerig en ingelyf is of geag word aldus opgerig en ingelyf te wees, vir die aankoop van landbouprodukte van boere en van landbou-implemente, -uitrusting en ander produksiemiddele vir herverkoop aan boere vir die produksie van landbouprodukte; of 25
 - (ii) aan 'n beheerraad ingestel kragtens die Bemarkingswet, 1968 (Wet No. 59 van 1968), vir die aankoop van landbouprodukte; 30
 - (h) aksepte van 'n depositonemende instelling wat by die Reserwebank verdiskonteerbaar is;
 - (i) self-likwiderende wissels of promesses wat uit die beweging van goedere ontstaan, binne hoogstens 120 dae of, in die geval van landbouwissels, ses maande verval, en by die Reserwebank verdiskonteerbaar is; of 35
 - (j) effekte van die Reserwebank met 'n oorblywende termyn tot die laaste aflosdatum daarvan van nie meer as drie jaar nie; (xxi) 40
- (xxii) "maatskappy" 'n maatskappy kragtens die Maatskappywet; (vii) 40
- (xxiii) "Maatskappywet" die Maatskappywet, 1973 (Wet No. 61 van 1973); (vi)
- (xxiv) "medefiliaal", met betrekking tot 'n maatskappy, 'n ander maatskappy wat 'n filiaal is van die houermaatskappy waarvan eersgenoemde maatskappy 'n filiaal is; (xiv)
- (xxv) "Minister" die Minister van Finansies; (xxii) 45
- (xxvi) "navorwant", met betrekking tot enige persoon—
- (a) sy gade;
 - (b) sy kind, stiefkind, ouer of stiefouer;
 - (c) die gade van enige van die persone vermeld in paragraaf (b); (v)
- (xxvii) "onderlinge bouvereniging" 'n onderlinge bouvereniging soos omskryf in artikel 1 van die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965); (xxv) 50
- (xxviii) "ongewenste praktyk" enige handeling wat verbied word, of 'n versuim om enige handeling te verrig wat gelas word, by artikel 78 (1), en, met betrekking tot 'n bepaalde depositonemende instelling of depositonemende instellings vermeld in 'n kennisgewing bedoel in artikel 78 (2) (b) of alle depositonemende instellings, ook enige handeling wat ingevolge 'n kennisgewing bedoel in artikel 78 (2) 'n ongewenste praktyk uitmaak vir so 'n bepaalde depositonemende instelling, sodanige vermelde depositonemende instellings of alle depositonemende instellings, na gelang van die geval; (xxxviii) 55
- (xxix) "persoon" ook 'n vennootskap; (xxvi)
- (xxx) "publiek" ook 'n regspersoon; (xxviii) 60

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- (b) the establishment by a deposit-taking institution of a representative office outside the Republic as contemplated in section 52 (1) (e), means premises situated outside the Republic and from which the business conducted by such deposit-taking institution within the Republic in terms of this Act is promoted or assisted in any way; (xxxvii)
- (xxxiii) "Republic", for the purposes of the definition of "domestic shareholder", includes any state the territory of which formerly formed part of the Republic; (xxxiv)
- (xxxiv) "Reserve Bank" means the South African Reserve Bank; (xxxv)
- (xxxv) "subsidiary" means a subsidiary as defined in section 1 (3) of the Companies Act; (x)
- (xxxvi) "the business of a deposit-taking institution" means—
- (a) the acceptance of deposits from the general public as a regular feature of the business in question, including, in relation to such an institution, from persons in its employ;
- (b) the soliciting of or advertising for deposits;
- (c) the utilization of money, or of the interest or other income earned on money, accepted by way of deposit as contemplated in paragraph (a)—
- (i) for the granting by any person, acting as lender in his own name or through the medium of a trust or a nominee, of loans to other persons;
- (ii) for investment by any person, acting as investor in his own name or through the medium of a trust or a nominee; or
- (iii) for the financing, wholly or to any material extent, by any person of any other business activity conducted by him in his own name or through the medium of a trust or a nominee;
- (d) the obtaining, as a regular feature of the business in question, of money through the sale of an asset, to any person other than a deposit-taking institution, subject to an agreement in terms of which the seller undertakes to purchase from the buyer at a future date the asset so sold or any other asset; or
- (e) any other activity which the Registrar has, after consultation with the Governor of the Reserve Bank, by notice in the *Gazette* declared to be the business of a deposit-taking institution,
- but does not include—
- (aa) the acceptance of a deposit by a person who does not hold himself out as accepting deposits on a regular basis and who has not advertised for or solicited such deposit: Provided that—
- (i) the person accepting deposits as contemplated in this paragraph shall not at any time hold deposits from more than twenty persons or deposits amounting in the aggregate to more than R500 000; and
- (ii) a person and any person controlled directly or indirectly by him (whether such control is through shareholding or otherwise) or managed by him, and a subsidiary of such last-mentioned person, who accepts deposits as contemplated in this paragraph shall for the purposes of subparagraph (i) of this proviso be deemed to be one person;
- (bb) the borrowing of money from its members by a co-operative subject to such conditions as may be prescribed;
- (cc) any activity of a public sector, governmental or other institution, or of any person or category of persons, designated by the Registrar, with the approval of the Minister, by notice in the *Gazette*, provided such activity is performed in accordance with such conditions as the Registrar may with the approval of the Minister determine in the relevant notice;
- (dd) any activity contemplated in paragraph (a), (b) or (c)—
- (i) performed by any institution registered or established in terms of, by or under any other Act of Parliament and designated by the Minister by notice in the *Gazette*; or

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- (xxxi) "Registrateur" die Registrateur van Depositonemende Instellings aangewys kragtens artikel 4; (xxix)
- (xxxii) "Registrateur van Maatskappye" die Registrateur van Maatskappye aangestel kragtens artikel 7 van die Maatskappywet; (xxx)
- (xxxiii) "regulasie" 'n regulasie kragtens artikel 90 uitgevaardig; (xxxi) 5
- (xxxiv) "Republiek", by die toepassing van die omskrywing van "binnelandse aandeelhouer", ook 'n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het; (xxxiii)
- (xxxv) "Reserwebank" die Suid-Afrikaanse Reserwebank; (xxxiv)
- (xxxvi) "uitvoerende beampte", met betrekking tot 'n instelling, ook 'n hoof- 10 bestuurder of adjunk-hoofbestuurder van so 'n instelling; (xiii)
- (xxxvii) "verteenwoordigende kantoor", met betrekking tot—
- (a) 'n buitelandse instelling bedoel in artikel 34 (1), 'n perseel geleë binne die Republiek en waarvandaan die bedryf, bedoel in genoemde artikel 34 (1), wat deur dié buitelandse instelling uitgeoefen word in die ander 15 land in daardie artikel bedoel, op enige wyse bevorder of ondersteun word; of
- (b) die opening deur 'n depositonemende instelling van 'n verteenwoordigende kantoor buite die Republiek soos beoog in artikel 52 (1) (e), 'n perseel geleë buite die Republiek en waarvandaan die bedryf wat 20 deur dié depositonemende instelling ingevolge hierdie Wet binne die Republiek uitgeoefen word, op enige wyse bevorder of ondersteun word; (xxxii)
- (xxxviii) "volfiliaal" 'n volfiliaal soos omskryf in artikel 1 van die Maatskappywet; (xxxix) 25
- (xxxix) "voorgeskryf" by regulasie voorgeskryf en het "voorgeskrewe" 'n ooreenstemmende betekenis. (xxvii)
- (2) (a) Die Minister kan, op aanbeveling van die Registrateur en na oorleg met die President van die Reserwebank, by regulasie die omskrywings van "de- 30 posito", "depositonemende instelling" en "die bedryf van 'n depositonemende instelling" wysig vir die doeleindes van die toepassing van enige van of al die bepalings van hierdie Wet.
- (b) Elke regulasie kragtens paragraaf (a) uitgevaardig, is van krag en regsgeldig tensy en totdat, gedurende die sessie waarin die toepaslike lys in die Parle- 35 ment ter Tafel gelê is ooreenkomstig die bepalings van artikel 17 van die Interpretasiewet, 1957 (Wet No. 33 van 1957), elke Huis van die Parlement die regulasie by besluit afgekeur het, in welke geval die regulasie verval met ingang van 'n datum wat in die besluit vermeld word, maar die verval van die regulasie raak nie die geldigheid nie van enigiets wat gedoen is kragtens so 'n regulasie voor die datum in die besluit vermeld, en niks wat in hierdie 40 paragraaf vervat is, raak die bevoegdheid van die Minister om 'n nuwe regulasie uit te vaardig nie aangaande die onderwerp van die regulasie wat aldus verval het.

Uitsluitings van toepassing van Wet

2. Behalwe waar uitdruklik anders vermeld, is die bepalings van hierdie Wet, vir 45 sover dit vereistes stel waaraan enige instelling moet voldoen—

- (a) alvorens dit die bedryf van 'n depositonemende instelling mag uitoefen; of
- (b) by die wettige uitoefening van die bedryf van 'n depositonemende instel- 50 ling,
- nie van toepassing nie op—
- (i) die Reserwebank;
- (ii) die Landbank;
- (iii) die Ontwikkelingsbank van Suider-Afrika;
- (iv) die Korporasie vir Openbare Deposito's ingestel by artikel 2 van die Wet op die Korporasie vir Openbare Deposito's, 1984 (Wet No. 46 van 1984); 55
- (v) die Openbare Beleggingskommissaris bedoel in artikel 2 van die Wet op die Openbare Beleggingskommissaris, 1984 (Wet No. 45 van 1984);
- (vi) 'n onderlinge bouvereniging; of
- (vii) enige ander instelling of liggaam deur die Minister by kennisgewing in die 60 *Staatskoerant* aangewys.

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- (ii) performed in terms of any scheme authorized and controlled by, and conducted in accordance with the provisions of, any other Act of Parliament and so designated by the Minister, provided such activity is performed in accordance with such conditions as the Minister may determine in the relevant notice;
- 5 (ee) the acceptance of money against debentures issued in accordance with the provisions of the Companies Act, provided such money is not used, in the case of such issue of debentures by a person other than a deposit-taking institution, for granting money loans or credit (other than customary credit in respect of the sale of goods or provision of services by the issuer of the debentures) to the general public; or
- 10 (ff) an act of money broking which culminates in a money lending transaction on the same day on which the money broker concerned receives his instructions; (ix)
- 15 (xxxvii) "this Act" includes the regulations; (xv)
- (xxxviii) "undesirable practice" means any act prohibited, or any failure to perform any act enjoined, by section 78 (1), and, in relation to a particular deposit-taking institution or deposit-taking institutions specified in a notice referred to in section 78 (2) (b) or all deposit-taking institutions, includes any act which in terms of a notice referred to in section 78 (2) constitutes an undesirable practice for such particular deposit-taking institution, such specified deposit-taking institutions or all deposit-taking institutions, as the case may be; (xxviii)
- 20 (xxxix) "wholly owned subsidiary" means a wholly owned subsidiary as defined in section 1 of the Companies Act. (xxxviii)
- 25 (2) (a) The Minister may, on the recommendation of the Registrar and after consultation with the Governor of the Reserve Bank, by regulation amend the definitions of "deposit", "deposit-taking institution" and "the business of a deposit-taking institution" for the purposes of the application of any of or all the provisions of this Act.
- 30 (b) Every regulation made under paragraph (a) shall be of force and effect unless and until, during the session in which the relevant list has been laid upon the Tables in Parliament in accordance with the provisions of section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), every House of Parliament has by resolution disapproved of the regulation, in which event the regulation shall lapse as from a date to be specified in the resolution, but such lapsing of the regulation shall not affect the validity of anything done under such regulation before the date specified in the resolution, and nothing contained in this paragraph shall affect the power of the Minister to make a new regulation as to the subject matter of the regulation which has so lapsed.
- 35 40

Exclusions from application of Act

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

- 45 (a) before it may carry on the business of a deposit-taking institution; or
(b) in the lawful carrying on of the business of a deposit-taking institution, shall not apply to—
- 50 (i) the Reserve Bank;
(ii) the Land Bank;
(iii) the Development Bank of Southern Africa;
(iv) the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);
(v) the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);
- 55 (vi) any mutual building society; or
(vii) any other institution or body designated by the Minister by notice in the *Gazette*.

HOOFSTUK II

ADMINISTRASIE VAN WET

Kantoor vir Depositionemende Instellings

3. Vir die registrasie van instellings as depositionemende instellings en vir die ander doeleindes van hierdie Wet is daar, as deel van die Reserwebank, 'n kantoor in Pretoria wat die Kantoor vir Depositionemende Instellings genoem word, en aan die hoof van daardie kantoor staan 'n persoon genoem die Registrateur van Depositionemende Instellings. 5

Registrateur en Adjunk-registrateur van Depositionemende Instellings

4. (1) Die Reserwebank wys, onderworpe aan die goedkeuring van die Minister, 'n beampte of werknemer in sy diens aan as Registrateur van Depositionemende Instellings, wat onder die beheer van genoemde Bank en ooreenkomstig die voorskrifte wat daardie Bank van tyd tot tyd uitreik, die werksaamhede verrig wat by of kragtens hierdie Wet aan die Registrateur opgedra word. 10

(2) Die Reserwebank kan, onderworpe aan die goedkeuring van die Minister, 'n beampte of werknemer in sy diens as Adjunk-registrateur van Depositionemende Instellings aanwys, wat bevoeg is om onderworpe aan die beheer en voorskrifte van die Registrateur enige werksaamheid te verrig wat die Registrateur kan of moet verrig. 15

Delegering van bevoegdhede en opdra van werksaamhede deur Registrateur 20

5. (1) Die Registrateur kan met die goedkeuring van die Reserwebank—

(a) aan 'n beampte of werknemer van die Reserwebank 'n bevoegdheid by of kragtens hierdie Wet aan die Registrateur verleen, deleger; of

(b) so 'n beampte of werknemer magtig om 'n plig by of kragtens hierdie Wet aan die Registrateur opgedra, te verrig. 25

(2) 'n Delegering kragtens subartikel (1) (a) belet nie die uitoefening van die betrokke bevoegdheid deur die Registrateur self nie.

Inspeksiebevoegdhede van en riglyne deur Registrateur

6. (1) Benewens die bevoegdhede en pligte aan hom verleen of hom opgelê deur hierdie Wet, het die Registrateur, vir die doeleindes van die verrigting van sy werksaamhede kragtens hierdie Wet, bevoegdhede en pligte wat in alle opsigte ooreenstem met die bevoegdhede en pligte deur die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), aan 'n registrateur bedoel in laasgenoemde Wet verleen of hom opgelê. 30

(2) Enige verwysing in hierdie Wet na 'n inspeksie of ondersoek kragtens hierdie artikel gedoen, word uitgelê as 'n verwysing na 'n inspeksie gedoen ooreenkomstig die bepalinge van die Wet op Inspeksie van Finansiële Instellings, 1984.

(3) Nóg die bepalinge van hierdie artikel nóg enige ander bepaling van hierdie Wet word so uitgelê dat dit die Registrateur belet om van tyd tot tyd samesprekinge te voer met die hoof- uitvoerende beampte van 'n depositionemende instelling, of met 'n werknemer van daardie instelling wat deur so 'n hoof- uitvoerende beampte aangewys is, met die oog op die bewerkstelling van doelmatige toesighouding oor so 'n depositionemende instelling deur die Registrateur. 40

(4) Die Registrateur kan van tyd tot tyd deur middel van 'n omsendbrief aan depositionemende instellings riglyne verstrek met betrekking tot die toepassing en vertolking van die bepalinge van hierdie Wet. 45

Verstreking van inligting deur depositionemende instellings

7. (1) Die Registrateur kan by skriftelike kennisgewing—

(a) 'n depositionemende instelling of 'n beherende maatskappy of 'n filiaal van 'n depositionemende instelling of beherende maatskappy gelas om op die tyd of tye of by die tussenpose of ten opsigte van die tydperk of tydperke wat in die kennisgewing vermeld word, aan die Registrateur die inligting te 50

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CHAPTER II

ADMINISTRATION OF ACT

Office for Deposit-taking Institutions

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

Registrar and Deputy Registrar of Deposit-taking Institutions

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

Delegation of powers and assignment of functions by Registrar

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

Powers of inspection of, and guide-lines by, Registrar

6. (1) In addition to the powers and duties conferred or imposed upon him by this
Act, the Registrar shall, for the purposes of the performance of his functions under
this Act, have powers and duties in all respects corresponding to the powers and
30 duties conferred or imposed by the Inspection of Financial Institutions Act, 1984
(Act No. 38 of 1984), upon a registrar contemplated in the last-mentioned Act.
- (2) Any reference in this Act to an inspection or investigation made under this
section shall be construed as a reference to an inspection made in accordance with
the provisions of the Inspection of Financial Institutions Act, 1984.
- 35 (3) Neither the provisions of this section nor any other provision of this Act shall
be construed as prohibiting the Registrar from holding discussions, from time to
time, with the chief executive officer of any deposit-taking institution, or with any
employee of that institution designated by such chief executive officer, with a view
to achieving effective supervision of such deposit-taking institution by the Registrar.
- 40 (4) The Registrar may from time to time by means of a circular furnish
deposit-taking institutions with guide-lines regarding the application and interpreta-
tion of the provisions of this Act.

Furnishing of information by deposit-taking institutions

7. (1) The Registrar may by notice in writing—
45 (a) direct a deposit-taking institution or a controlling company or a subsidiary
of a deposit-taking institution or controlling company to furnish the
Registrar, at such time or times or at such intervals or in respect of such
period or periods as may be specified in the notice, with such information

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verstrek wat in die kennisgewing vermeld word en wat die Registrateur redelikerwys nodig het vir die verrigting van sy werksaamhede kragtens hierdie Wet; of

- (b) so 'n instelling, beherende maatskappy of filiaal gelas om die Registrateur te voorsien van 'n verslag deur 'n openbare rekenmeester soos omskryf in artikel 1 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951 (Wet No. 51 van 1951), of deur enige ander persoon met toepaslike professionele kundigheid, aangaande enige aangeleentheid, of enige aspek van enige aangeleentheid, waaromtrent die Registrateur kragtens paragraaf (a) die instelling, beherende maatskappy of filiaal gelas het of kan gelas om inligting te verstrek.

(2) Die openbare rekenmeester of ander persoon wat deur 'n depositonemende instelling, beherende maatskappy of filiaal aangestel word om 'n verslag op te stel wat kragtens subartikel (1) (b) vereis word, moet 'n persoon wees wat deur die Registrateur aangewys of deur hom goedgekeur is, en die Registrateur kan vereis dat die tersaaklike verslag in die vorm moet wees wat vermeld word in die kennisgewing bedoel in subartikel (1).

Bevoegdheid van Registrateur om sekere tydperke te verleng

8. (1) 'n Persoon wat enige opgawe, staat, verslag of ander stuk of inligting aan die Registrateur moet voorlê of verstrek binne 'n tydperk by of kragtens hierdie Wet bepaal, kan voor of na die verstryking van daardie tydperk skriftelik by die Registrateur om 'n verlenging van daardie tydperk aansoek doen.

(2) Die Registrateur kan na oorweging van 'n aansoek in subartikel (1) bedoel—

- (a) die aansoek toestaan en die tydperk waarbinne die opgawe, staat, verslag of ander stuk of inligting voorgelê of verstrek moet geword het, verleng met die tydperk wat hy bepaal; of

- (b) die aansoek van die hand wys,

en moet die persoon wat aansoek gedoen het skriftelik van sy beslissing verwittig.

Appel teen besluite van Registrateur

9. (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 tydperk en op die wyse en by betaling van die voorgeskrewe gelde teen daardie besluit appel aanteken by die appèlraad ingestel by subartikel (2).

(2) Vir die doeleindes van hierdie Wet word daar hierby 'n appèlraad ingestel wat bestaan uit vyf lede, aangestel deur die Minister en van wie—

- (a) een, wat die voorsitter is, aangestel word op grond van sy kennis van die reg;

- (b) drie persone moet wees wat na die oordeel van die Minister wye ervaring het van, en oor kundigheid beskik aangaande die jongste ontwikkelinge in, die depositonemende instellingsbedryf; en

- (c) een 'n persoon moet wees wat kragtens artikel 23 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951 (Wet No. 51 van 1951), as 'n rekenmeester en ouditeur geregistreer is en wat na die oordeel van die Minister wye ervaring het van, en oor kundigheid beskik aangaande die jongste ontwikkelinge in, die rekenmeesters- en ouditeursberoep.

(3) Vir die doeleindes van die aanhoor van elke appel ingevolge subartikel (1) is die samestelling van die appèlraad soos volg, naamlik—

- (a) die voorsitter;

- (b) een van die lede wat kragtens subartikel (2) (b) aangestel is en deur die voorsitter aangewys word; en

- (c) die lid aangestel kragtens subartikel (2) (c),

en 'n verwysing na die appèlraad in subartikels (4), (7), (8), (9), (10), (11), (12) en (13) word geag 'n verwysing na die appèlraad te wees soos aldus saamgestel.

(4) Indien dit voor of gedurende die aanhoor van 'n appel ingevolge subartikel (1) blyk dat 'n lid van die appèlraad enige direkte of indirekte persoonlike belang by die uitslag van daardie appel het, moet daardie lid hom aan die verrigtinge onttrek en word hy vervang deur—

- (a) in die geval van die lid bedoel in subartikel (2) (a), 'n persoon wat die Minister, behoudens die bepalings van daardie subartikel, tydelik aanstel vir die doeleindes van die aanhoor van daardie appel;

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as may be specified in the notice and as the Registrar may reasonably require for the performance of his functions under this Act; or

- (b) direct such institution, controlling company or subsidiary to furnish the Registrar with a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or by any other person with appropriate professional skill, on any matter, or any aspect of any matter, about which the Registrar has directed or may direct under paragraph (a) the institution, controlling company or subsidiary to furnish information.

- (2) The public accountant or other person appointed by a deposit-taking institution, controlling company or subsidiary to make a report required under subsection (1) (b), shall be a person designated or approved by the Registrar, and the Registrar may require the relevant report to be in such form as may be specified in the notice referred to in subsection (1).

15 Power of Registrar to extend certain periods

8. (1) Any person who is required to submit to the Registrar or to furnish the Registrar with any return, statement, report or other document or information within a period determined by or under this Act, may before or after the expiry of that period apply to the Registrar in writing for an extension of that period.

- (2) The Registrar may, after consideration of an application referred to in subsection (1)—

- (a) grant the application and extend by such period as he may determine the period within which the return, statement, report or other document or information had to be submitted or furnished; or
- (b) refuse the application,
- and shall in writing notify the person who lodged the application of his decision.

Appeal against decisions of Registrar

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

(2) For the purposes of this Act there is hereby established a board of appeal which shall consist of five members, appointed by the Minister and of whom—

- (a) one shall be appointed on account of his knowledge of law and shall be the chairman;
- (b) three shall be persons who in the opinion of the Minister have wide experience of, and are knowledgeable about the latest developments in, the deposit-taking institutions industry; and
- (c) one shall be a person registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and who in the opinion of the Minister has wide experience of, and is knowledgeable about the latest developments in, the accountants' and auditors' profession.

- (3) For the purposes of the hearing of every appeal in terms of subsection (1), the board of appeal shall be constituted as follows, namely—

- (a) the chairman;
- (b) one of the members appointed under subsection (2) (b), designated by the chairman; and
- (c) the member appointed under subsection (2) (c),
- and any reference to the board of appeal in subsections (4), (7), (8), (9), (10), (11), (12) and (13) shall be deemed to be a reference to the board of appeal as so constituted.

- (4) If before or during the hearing of any appeal in terms of subsection (1) it transpires that any member of the board of appeal has any direct or indirect personal interest in the outcome of that appeal, such member shall recuse himself and he shall be replaced by—

- (a) in the case of the member referred to in subsection (2) (a), a person temporarily appointed, subject to the provisions of that subsection, by the Minister for the purposes of the hearing of that appeal;

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- (b) in die geval van 'n lid bedoel in subartikel (2) (b), een van die ander lede bedoel in daardie subartikel; of
- (c) in die geval van die lid bedoel in subartikel (2) (c), 'n persoon wat die Minister, behoudens die bepalinge van daardie subartikel, tydelik aanstel vir die doeleindes van die aanhoor van daardie appèl. 5
- (5) 'n Lid van die appèlraad beklee sy amp vir 'n tydperk van drie jaar en kan by verstryking van sy ampstermyn weer aangestel word.
- (6) 'n Toevallige vakature wat in die appèlraad ontstaan, word gevul deur die aanstelling deur die Minister, behoudens die bepalinge van subartikel (2), van 'n ander lid, en enige persoon aldus aangestel, beklee sy amp vir die onverstreke gedeelte van die ampstermyn van sy voorganger. 10
- (7) 'n Appèl kragtens subartikel (1) word aangehoor op die datum, plek en tyd wat die appèlraad bepaal en wat vooraf skriftelik deur die appèlraad aan sowel die appellant as die Registrateur bekend gemaak moet word.
- (8) Die appèlraad kan vir die doeleindes van 'n appèl wat by hom aanhangig gemaak is— 15
- (a) enige persoon wat na sy oordeel in staat mag wees om wesenlike inligting te verstrek aangaande die onderwerp van die appèl of wat, na die oordeel van die appèlraad, enige stuk in sy besit of bewaring of onder sy beheer het wat betrekking het op die onderwerp van die appèl, dagvaar om op 'n tyd en plek wat in die dagvaarding genoem word voor hom te verskyn om ondervra te word of daardie stuk voor te lê, en 'n stuk wat aldus voorgelê is, vir ondersoek behou; 20
- (b) iemand wat as 'n getuie by die appèl geroep is, onder eed stel of van hom 'n bevestiging aanneem; en 25
- (c) iemand wat by die aanhoor van die appèl teenwoordig is, as 'n getuie roep en hom ondervra en van hom vereis om 'n stuk wat in sy besit of bewaring of onder sy beheer is, voor te lê.
- (9) Die prosedure by die aanhoor van 'n appèl word deur die voorsitter van die appèlraad bepaal. 30
- (10) Die appèlraad kan na die aanhoor van die appèl—
- (a) die betrokke besluit van die Registrateur bevestig, tersyde stel of wysig; en
- (b) die Registrateur gelas om aan die beslissing van die appèlraad in verband daarmee uitvoering te gee.
- (11) Die besluit van 'n meerderheid van die lede van die appèlraad maak die beslissing van daardie raad uit. 35
- (12) Die beslissing van die appèlraad moet op skrif gestel word, en 'n afskrif daarvan moet aan sowel die appellant as die Registrateur verstrek word.
- (13) Indien die appèlraad 'n besluit van die Registrateur tersyde stel, moet die voorgeskrewe gelde wat deur die appellant ten opsigte van die betrokke appèl betaal is, aan hom terugbetaal word, en indien die appèlraad so 'n besluit wysig, kan die appèlraad na goeëdunke gelas dat al of enige gedeelte van sodanige gelde aan die appellant terugbetaal word. 40
- (14) 'n Lid van die appèlraad ontvang ten opsigte van sy diens as so 'n lid die besoldiging, met inbegrip van vergoeding vir vervoer-, reis- en verblyfsuitgawes deur hom aangegaan by die verrigting van sy werksaamhede as so 'n lid, wat die Minister van tyd tot tyd bepaal. 45

Jaarlikse verslag deur Registrateur

10. (1) Die Registrateur moet jaarliks 'n verslag aangaande sy werksaamhede ingevolge hierdie Wet gedurende die verslagjaar, aan die Minister voorlê. 50
- (2) Die Minister moet 'n afskrif van die verslag bedoel in subartikel (1) in die Parlement ter Tafel lê binne 14 dae na ontvangs van dié verslag, indien die Parlement dan in gewone sessie byeen is, of, indien die Parlement nie dan in gewone sessie byeen is nie, binne 14 dae na die aanvang van sy eersvolgende gewone sessie.

HOOFSTUK III

55

MAGTIGING TOT OPRIGTING, EN REGISTRASIE EN INTREKING VAN REGISTRASIE, VAN DEPOSITONEMENDE INSTELLINGS

Registrasie 'n voorvereiste vir uitoefening van bedryf van deponisionemende instelling

11. (1) Geen persoon mag die bedryf van 'n deponisionemende instelling uitoefen nie tensy so 'n persoon 'n publieke maatskappy is en ingevolge hierdie Wet voorlopig of finaal as 'n deponisionemende instelling geregistreer is. 60

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- (b) in the case of a member referred to in subsection (2) (b), one of the other members referred to in that subsection; or
- (c) in the case of the member referred to in subsection (2) (c), a person temporarily appointed, subject to the provisions of that subsection, by the Minister for the purposes of the hearing of that appeal.
- (5) A member of the board of appeal shall hold office for a period of three years and shall on the expiration of his term of office be eligible for reappointment.
- (6) Any casual vacancy that occurs on the board of appeal shall be filled by the appointment by the Minister, subject to the provisions of subsection (2), of another member, and any person so appointed shall hold office for the unexpired portion of the period of office of his predecessor.
- (7) An appeal under subsection (1) shall be heard on the date and at the place and time fixed by the board of appeal, which shall previously in writing notify the appellant as well as the Registrar thereof.
- (8) The board of appeal may for the purposes of an appeal lodged with it—
- (a) summon any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his possession or custody or under his control any document which has any bearing upon the subject of the appeal, to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at the appeal; and
- (c) call any person present at the hearing of the appeal as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.
- (9) The procedure at the hearing of an appeal shall be determined by the chairman of the board of appeal.
- (10) The board of appeal may after hearing the appeal—
- (a) confirm, set aside or vary the relevant decision of the Registrar; and
- (b) direct the Registrar to execute the decision of the board of appeal in connection therewith.
- (11) The decision of a majority of the members of the board of appeal shall be the decision of that board.
- (12) The decision of the board of appeal shall be in writing, and a copy thereof shall be furnished to the appellant as well as to the Registrar.
- (13) If the board of appeal sets aside any decision by the Registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, and if the board of appeal varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.
- (14) A member of the board of appeal shall in respect of his services as such a member be paid such remuneration, including reimbursement for transport, travelling and subsistence expenses incurred by him in the performance of his functions as such a member, as the Minister may from time to time determine.

45 Annual report by Registrar

10. (1) The Registrar shall annually submit to the Minister a report on his activities in terms of this Act during the year under review.

- (2) The Minister shall lay a copy of the report referred to in subsection (1) upon the Tables in Parliament within 14 days after receipt of such report, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

CHAPTER III**AUTHORIZATION TO ESTABLISH, AND REGISTRATION AND CANCELLATION OF REGISTRATION OF, DEPOSIT-TAKING INSTITUTIONS****55 Registration a prerequisite for conducting business of deposit-taking institution**

11. (1) No person shall conduct the business of a deposit-taking institution unless such person is a public company and is provisionally or finally registered as a deposit-taking institution in terms of this Act.

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- (2) Iemand wat 'n bepaling van subartikel (1) oortree, is aan 'n misdryf skuldig.

Aansoek om magtiging tot oprigting van depositonemende instelling

12. (1) Iemand wat die bedryf van 'n depositonemende instelling wil uitoefen, kan by die Registrateur aansoek doen om magtiging om so 'n instelling op te rig.

- (2) 'n Aansoek kragtens subartikel (1)—

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

(b) moet vergesel gaan van 'n verklaring wat die voorgeskrewe inligting bevat.

- (3) Die Registrateur kan van 'n aansoeker beoog in subartikel (1) vereis om—

(a) benewens die inligting en stukke ingevolge subartikel (2) deur die aan- 10
soeker verstrek, die inligting of stukke; of

(b) 'n verslag deur 'n openbare rekenmeester soos omskryf in artikel 1 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951 (Wet No. 51 van 1951), of deur 'n ander kundige persoon wat deur die registrateur goedgekeur is, aangaande die aspekte wat op die betrokke aansoek 15
betrekking het,

wat die Registrateur nodig ag, aan hom te verstrek.

Toestaan of weiering van aansoek om magtiging

13. (1) Die Registrateur kan, behoudens die bepalings van subartikel (2), na oorweging van alle inligting, stukke en verslae wat vir die doeleindes van 'n aansoek 20
kragtens artikel 12 aan hom verstrek is, die betrokke aansoek toestaan of weier of die aansoek toestaan onderworpe aan die voorwaardes wat hy bepaal.

(2) Die Registrateur mag nie 'n aansoek wat kragtens artikel 12 gedoen is, toestaan nie tensy hy daarvan oortuig is—

(a) dat die oprigting van die beoogde depositonemende instelling in die 25
openbare belang sal wees;

(b) dat die bedryf wat die aansoeker van plan is om uit te oefen, dié van 'n depositonemende instelling is;

(c) dat die aansoeker die beoogde bedryf van 'n depositonemende instelling sal uitoefen in die hoedanigheid van 'n publieke maatskappy wat kragtens die 30
Maatskappywet ingelyf en geregistreer is;

(d) dat die aansoeker daartoe in staat sal wees om homself suksesvol as 'n depositonemende instelling te vestig;

(e) dat die aansoeker oor die finansiële middele sal beskik om, in sy hoedanigheid van 'n depositonemende instelling, aan die vereistes van hierdie 35
Wet te voldoen;

(f) dat die bedryf van die beoogde depositonemende instelling op 'n sorgsame wyse uitgeoefen sal word;

(g) dat elke persoon wat 'n uitvoerende beampte van die beoogde depositonemende instelling gaan wees, voldoende ondervinding het van die bestuur 40
van die soort bedryf wat volgens voorneme uitgeoefen sal word; en

(h) dat die samestelling van die raad van direkteure van die beoogde depositonemende instelling gepas sal wees, in ag genome die aard en omvang van die bedryf wat volgens voorneme uitgeoefen sal word.

(3) Wanneer die Registrateur 'n aansoek wat kragtens artikel 12 gedoen is, 45
toestaan of weier, moet hy die betrokke aansoeker skriftelik daarvan in kennis stel.

(4) 'n Weiering deur die Registrateur van 'n aansoek wat kragtens artikel 12 gedoen is, is nie vatbaar vir appèl na die appèlraad nie.

Intrekking van magtiging

14. (1) Die Registrateur kan te eniger tyd voor die voorlopige registrasie, 50
ingevolge artikel 17, van 'n depositonemende instelling die magtiging toegestaan tot oprigting van so 'n instelling, intrek indien die Registrateur daarvan oortuig is dat—

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(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

Application for authorization to establish deposit-taking institution

12. (1) Any person who wishes to conduct the business of a deposit-taking institution may apply to the Registrar for authorization to establish such an institution.

(2) An application under subsection (1)—

(a) shall be made in the prescribed manner and on the prescribed form; and

(b) shall be accompanied by a statement containing the prescribed information.

10 (3) The Registrar may require an applicant contemplated in subsection (1) to furnish him with—

(a) such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2); or

15 (b) a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or by any other knowledgeable person approved by the Registrar, on such aspects relating to the application in question, as the Registrar may deem necessary.

Granting or refusal of application for authorization

20 13. (1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and reports furnished to him for the purposes of an application under section 12, grant or refuse the relevant application or grant the application subject to such conditions as he may determine.

(2) The Registrar shall not grant an application made under section 12 unless he is satisfied—

(a) that the establishment of the proposed deposit-taking institution will be in the public interest;

(b) that the business the applicant proposes to conduct, is that of a deposit-taking institution;

30 (c) that the applicant will conduct the proposed business of a deposit-taking institution in the capacity of a public company incorporated and registered under the Companies Act;

(d) that the applicant will be able to establish itself successfully as a deposit-taking institution;

35 (e) that the applicant will have the financial means to comply, in the capacity of a deposit-taking institution, with the requirements of this Act;

(f) that the business of the proposed deposit-taking institution will be conducted in a prudent manner;

40 (g) that every person who is to be an executive officer of the proposed deposit-taking institution has sufficient experience of the management of the kind of business it is intended to conduct; and

(h) that the composition of the board of directors of the proposed deposit-taking institution will be appropriate having regard to the nature and scale of the business it is intended to conduct.

45 (3) When the Registrar grants or refuses an application made under section 12, he shall give written notice of that fact to the applicant concerned.

(4) No appeal to the board of appeal shall lie against a refusal by the Registrar of an application made under section 12.

Revocation of authorization

50 14. (1) The Registrar may at any time prior to the provisional registration, in terms of section 17, of a deposit-taking institution, revoke the authorization granted for the establishment of such institution if the Registrar is satisfied that—

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- (a) vals of misleidende inligting in die aansoek om sodanige magtiging verstrekk is; of
- (b) daar nie binne 'n tydperk van ses maande vanaf die datum van die toestaan van genoemde magtiging sukses behaal is nie met die oprigting van die beoogde deponisionemende instelling ooreenkomstig die voorstelle vervat in die aansoek om genoemde magtiging. 5

(2) Wanneer die Registrateur ingevolge subartikel (1) 'n magtiging intrek, moet hy die persoon aan wie die magtiging toegestaan was, skriftelik daarvan in kennis stel.

Verbod op oprigting van sekere maatskappye behalwe met goedkeuring van Registrateur 10

15. (1) Geen publieke maatskappy word, behalwe met die skriftelike goedkeuring van die Registrateur, ingevolge die Maatskappywet opgerig om ooreenkomstig die bepalings van hierdie Wet die bedryf van 'n deponisionemende instelling uit te oefen nie.

(2) Die Registrateur verleen die goedkeuring bedoel in subartikel (1) slegs indien hy van oordeel is dat die betrokke maatskappy waarskynlik, in ag genome die bepalings van artikel 17, voorlopig as 'n deponisionemende instelling ingevolge hierdie Wet geregistreer sal kan word. 15

(3) Ondanks andersluidende bepalings van die Maatskappywet registreer die Registrateur van Maatskappye nie ingevolge daardie Wet die akte van oprigting en statute van 'n publieke maatskappy nie wat opgerig is vir die doel om die bedryf van 'n deponisionemende instelling uit te oefen, tensy die aansoek om sodanige registrasie vergesel gaan van die goedkeuring bedoel in subartikel (1). 20

Aansoek om voorlopige registrasie as deponisionemende instelling

16. (1) 'n Aansoeker aan wie die Registrateur kragtens artikel 13 magtiging tot oprigting van 'n deponisionemende instelling verleen het (hieronder in hierdie Hoofstuk die instelling genoem), kan te eniger tyd gedurende die tydperk van 12 maande wat op die datum van die verlening van daardie magtiging 'n aanvang neem, by die Registrateur aansoek doen om die voorlopige registrasie van die instelling as 'n deponisionemende instelling, mits sodanige magtiging nie ingevolge artikel 14(1) ingetrek is nie. 30

(2) 'n Aansoek kragtens subartikel (1) moet—

- (a) gedoen word op die voorgeskrewe wyse en op die voorgeskrewe vorm; en
- (b) vergesel gaan van—

- (i) twee afskrifte van elk van die instelling se akte van oprigting en statute; 35

- (ii) 'n geskrewe verklaring waarin uiteengesit word—

- (aa) die volledige en die verkorte naam van die instelling sowel as die letterlike vertalings daarvan;

- (bb) die adres van die instelling se hoofkantoor sowel as sy posadres; 40

- (cc) volle besonderhede van die bedryf wat die aansoeker volgens voorneme sal uitoefen en van die wyse waarop hy volgens voorneme daardie bedryf sal uitoefen; en

- (dd) die volle name en die adresse van die voorsitter, die ander direkteure en die uitvoerende beamptes van die instelling; en 45

- (iii) 'n lys van aandeelhouders in die instelling, soos op die datum van die aansoek, wat opgestel is ooreenkomstig die vereistes waaraan 'n opgawe bedoel in artikel 59 moet voldoen.

(3) Die Registrateur kan van 'n aansoeker beoog in subartikel (1) vereis om die inligting of stukke wat die Registrateur nodig ag, aan hom te verstrek, benewens inligting en stukke ingevolge subartikel (2) deur die aansoeker verstrek. 50

(4) Die aansoek en elke stuk wat ingevolge subartikel (2) of (3) ingelewer word, moet deur die voorsitter of die hoof- uitvoerende beampte van die instelling onderteken word.

Toestaan of weiering van aansoek om voorlopige registrasie 55

17. (1) Die Registrateur moet, behoudens die bepalings van subartikel (2), na oorweging van alle inligting en stukke wat ingevolge artikel 16 vir die doeleindes van 'n aansoek kragtens daardie artikel aan hom verstrek is, daardie aansoek goedkeur indien hy daarvan oortuig is—

- (a) dat die bedryf wat die aansoeker volgens voorneme sal uitoefen, dié van 'n deponisionemende instelling is; 60

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- (a) false or misleading information was furnished in the application for such authorization; or
- (b) success has not been achieved within a period of six months as from the date of the granting of the said authorization, with the formation, in accordance with the proposals contained in the application for the said authorization, of the proposed deposit-taking institution.

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

10 Formation of certain companies prohibited except with approval of Registrar

15. (1) No public company shall without the written approval of the Registrar be formed in terms of the Companies Act to conduct the business of a deposit-taking institution in accordance with the provisions of this Act.

(2) The Registrar shall grant the approval referred to in subsection (1) only if he is of the opinion that the company concerned will probably, having regard to the provisions of section 17, be eligible for provisional registration as a deposit-taking institution in terms of this Act.

(3) Notwithstanding anything to the contrary contained in the Companies Act, the Registrar of Companies shall not register in terms of that Act the memorandum of association and articles of association of a public company formed for the purpose of conducting the business of a deposit-taking institution, unless the application for such registration is accompanied by the approval referred to in subsection (1).

Application for provisional registration as deposit-taking institution

16. (1) An applicant to whom the Registrar has under section 13 granted authorization for the establishment of a deposit-taking institution (hereinafter in this Chapter referred to as the institution) may at any time during the period of 12 months commencing on the date of the granting of the said authorization apply to the Registrar for the provisional registration of the institution as a deposit-taking institution, provided such authorization has not been revoked in terms of section 14 (1).

(2) An application under subsection (1) shall—

(a) be made in the prescribed manner and on the prescribed form; and

(b) be accompanied by—

(i) two copies each of the institution's memorandum of association and articles of association;

(ii) a written statement in which is set out—

(aa) the full and the abbreviated name of the institution as well as the literal translations thereof;

(bb) the address of the institution's head office as well as its postal address;

(cc) full particulars of the business the applicant proposes to conduct and of the manner in which it proposes to conduct such business; and

(dd) the full names and the addresses of the chairman, the other directors and the executive officers of the institution; and

(iii) a list of shareholders in the institution, as at the date of the application, drawn up in accordance with the requirements with which a return referred to in section 59 has to comply.

(3) The Registrar may require an applicant contemplated in subsection (1) to furnish him with such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2), as the Registrar may deem necessary.

(4) The application and every document lodged in terms of subsection (2) or (3) shall be signed by the chairman or the chief executive officer of the institution.

55 Granting or refusal of application for provisional registration

17. (1) Subject to the provisions of subsection (2), the Registrar shall, after considering all information and documents furnished to him in terms of section 16 for the purposes of an application under that section, grant such application if he is satisfied—

(a) that the business the applicant proposes to conduct is that of a deposit-taking institution;

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- (b) dat die aansoeker nie beoog om ongewenste besigheidsmetodes toe te pas nie; en
- (c) dat die akte van oprigting en statute van die instelling met hierdie Wet versoenbaar is en nie om enige rede ongewens is nie.
- (2) Ondanks die bepalings van subartikel (1) kan die Registrateur 'n aansoek om die voorlopige registrasie van 'n instelling as 'n deponisionemende instelling weier indien hy van oordeel is—
- (a) dat daar nie langer deur of ten opsigte van die betrokke instelling aan die een of ander van die vereistes vermeld in artikel 13 (2) voldoen word nie;
- (b) dat die betrokke instelling, wanneer hy voorlopig of finaal as 'n deponisionemende instelling geregistreer is, waarskynlik nie daartoe in staat sal wees om aan 'n bepaling van hierdie Wet te voldoen nie, of waarskynlik 'n praktyk wat in stryd met 'n bepaling van hierdie Wet is, sal navolg;
- (c) dat 'n belang wat enige persoon in die betrokke instelling het, onversoenbaar met 'n bepaling van hierdie Wet is;
- (d) dat die belange van potensiële deposante by die betrokke instelling nadelig geraak sal word deur die wyse waarop die instelling volgens voorneme sy bedryf sal uitoefen, of om enige ander rede;
- (e) dat die naam van die betrokke instelling—
- (i) dieselfde is as 'n naam waaronder 'n bestaande deponisionemende instelling of 'n onderlinge bouvereniging reeds voorlopig of finaal geregistreer is;
- (ii) soveel met die naam van 'n bestaande deponisionemende instelling of onderlinge bouvereniging ooreenstem dat die een waarskynlik met die ander verwar sal word;
- (iii) dieselfde is as, of baie ooreenstem met, die naam waaronder 'n deponisionemende instelling of enige ander instelling wat geregistreer was kragtens 'n wet wat deur hierdie Wet herroep is, of 'n onderlinge bouvereniging, voorheen geregistreer was en dat daar 'n redelike grond vir beswaar teen die gebruik van daardie naam deur die betrokke instelling bestaan; of
- (iv) waarskynlik die publiek sal mislei; of
- (f) dat die aansoek nie aan 'n voorskrif van hierdie Wet voldoen nie.
- (3) Wanneer die Registrateur ingevolge hierdie artikel 'n aansoek om voorlopige registrasie toestaan of weier, moet hy die betrokke aansoeker skriftelik daarvan in kennis stel.
- (4) Indien die Registrateur ingevolge hierdie artikel 'n aansoek om voorlopige registrasie toestaan, moet hy, behoudens die bepalings van artikel 18, en teen betaling deur die aansoeker van die voorgeskrewe registrasiegelde, die betrokke instelling voorlopig as 'n deponisionemende instelling registreer en op die voorgeskrewe vorm aan die instelling 'n sertifikaat van voorlopige registrasie as 'n deponisionemende instelling uitreik.
- (5) 'n Instelling wat vir die eerste maal as 'n deponisionemende instelling voorlopig geregistreer word, mag nie begin om die bedryf van 'n deponisionemende instelling uit te oefen nie alvorens hy aan die Registrateur bewys voorgelê het dat hy aan die bepalings van artikel 70 voldoen.
- (6) 'n Instelling wat die bepalings van subartikel (5) oortree, is aan 'n misdryf skuldig.

Voorwaardes, duur en hernuwing van voorlopige registrasie

18. (1) Die voorlopige registrasie kragtens artikel 17 van 'n instelling as 'n deponisionemende instelling geld vir 'n tydperk van 12 maande en is onderworpe aan die voorwaardes wat die Registrateur bepaal.

(2) Die Registrateur kan na goeddunke en onderworpe aan dieselfde of enige ander of verdere voorwaardes so 'n voorlopige registrasie voor die verstryking daarvan van tyd tot tyd hernu vir tydperke van hoogstens 12 maande op 'n keer: Met dien verstande dat—

- (a) geen deponisionemende instelling vir 'n totale tydperk van langer as vyf jaar voorlopig geregistreer mag bly nie; en
- (b) sonder om afbreuk te doen aan die diskresie van die Registrateur ingevolge hierdie subartikel om die hernuwing van so 'n voorlopige registrasie toe te staan of te weier, die Registrateur die feit dat die betrokke instelling nie

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

Conditions, duration and renewal of provisional registration

18. (1) The provisional registration under section 17 of an institution as a deposit-taking institution shall be for a period of 12 months and shall be subject to such conditions as the Registrar may determine.
- (2) The Registrar may in his discretion and subject to the same or any other or further conditions, from time to time before its expiration renew such provisional registration for periods not exceeding 12 months at a time: Provided that—
- (a) no deposit-taking institution shall remain provisionally registered as such for an aggregate period exceeding five years; and
- (b) without derogating from the Registrar's discretion in terms of this subsection to grant or refuse the renewal of such provisional registration, the Registrar may accept the fact that the institution concerned has not, during

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gedurende die tydperk van ses maande wat verstryk op die laaste dag van die tydperk van 12 maande bedoel in subartikel (1), enige sake as 'n deponisionemende instelling gedoen het nie, as 'n afdoende grond kan aanvaar vir die weiering van sodanige hernuwing.

(3) Benewens enige ander voorwaarde wat die Registrateur kragtens subartikel (1) of (2) kan oplê, kan hy 'n voorwaarde oplê wat die betrokke instelling verplig om binne 'n bepaalde tydperk die nodige stappe ingevolge die Maatskappywet te doen om sy akte van oprigting of statute ooreenkomstig die voorskrifte van die Registrateur te wysig.

(4) (a) 'n Appêl ingevolge artikel 9 deur 'n deponisionemende instelling teen die Registrateur se weiering om sy voorlopige registrasie te hernu of weer te hernu, moet, ondanks die bepalinge van artikel 9, aangeteken word voordat sodanige voorlopige registrasie of hernude voorlopige registrasie verstryk.

(b) Indien die voorlopige registrasie of hernude voorlopige registrasie verstryk terwyl 'n appêl bedoel in paragraaf (a) oorweeg word, word sodanige voorlopige registrasie of hernude voorlopige registrasie, na gelang van die geval, geag hernu of weer hernu te wees totdat die appellant van die appêlraad se beslissing oor die appêl verwittig word.

Aansoek om finale registrasie as deponisionemende instelling

19. (1) 'n Instelling wat voorlopig geregistreer is as 'n deponisionemende instelling kan te eniger tyd, terwyl hy voorlopig geregistreer is, by die Registrateur aansoek doen op die voorgeskrewe wyse en op die voorgeskrewe vorm om finale registrasie as 'n deponisionemende instelling.

(2) 'n Instelling wat ingevolge subartikel (1) om finale registrasie as 'n deponisionemende instelling aansoek doen, moet die verdere inligting in verband met sy aansoek verstrek wat die Registrateur vereis.

Toestaan of weiering van aansoek om finale registrasie

20. (1) Die Registrateur kan na goeëdunke 'n aansoek kragtens artikel 19 om finale registrasie toestaan of weier, of so 'n aansoek toestaan onderworpe aan die voorwaardes wat hy bepaal, maar die Registrateur mag nie so 'n aansoek toestaan nie tensy hy daarvan oortuig is dat—

- (a) die betrokke instelling voldoen het aan al die voorwaardes onderworpe waaraan dit voorlopig geregistreer was;
- (b) die betrokke instelling aan al die ander vereistes van hierdie Wet wat op hom van toepassing is in sy hoedanigheid van 'n voorlopig of finaal geregistreeerde deponisionemende instelling, voldoen het en in staat sal wees om voort te gaan om daaraan te voldoen;
- (c) die raad van direkteure en die uitvoerende bestuur van die betrokke instelling gedurende die tydperk wat die aansoek om finale registrasie voorafgegaan het, bewys gelewer het van hul integriteit en hul vermoë om die bedryf van 'n deponisionemende instelling suksesvol uit te oefen; en
- (d) die bedryf van 'n deponisionemende instelling wat deur die betrokke instelling uitgeoefen word, op 'n sorgsame wyse en sonder om gebruik te maak van ongewenste praktyke uitgeoefen word.

(2) Wanneer die Registrateur ingevolge hierdie artikel 'n aansoek om finale registrasie toestaan of weier, moet hy die betrokke aansoeker skriftelik daarvan in kennis stel.

(3) Indien die Registrateur ingevolge hierdie artikel 'n aansoek om finale registrasie toestaan, moet hy teen betaling deur die aansoeker van die voorgeskrewe registrasiegeelde die betrokke instelling finaal as 'n deponisionemende instelling registreer en op die voorgeskrewe vorm aan die instelling 'n sertifikaat van finale registrasie as 'n deponisionemende instelling uitreik.

(4) Weiering ingevolge hierdie artikel van 'n aansoek om finale registrasie—

- (a) raak, behoudens die bepalinge van artikel 18 (2) (a), nie die voorlopige registrasie van die betrokke instelling as 'n deponisionemende instelling nie; en
- (b) belet nie die betrokke instelling om, terwyl sy voorlopige registrasie van krag is, weer kragtens artikel 19 om finale registrasie as 'n deponisionemende instelling aansoek te doen nie.

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the period of six months expiring on the last day of the period of 12 months referred to in subsection (1), conducted any business as a deposit-taking institution, as a conclusive ground for the refusal of such a renewal.

(3) In addition to any other condition which the Registrar may impose under subsection (1) or (2), he may impose a condition requiring the institution concerned to take within a specified period such steps in terms of the Companies Act as may be necessary to alter its memorandum of association or articles of association in accordance with the requirements of the Registrar.

(4) (a) An appeal in terms of section 9 by a deposit-taking institution against the Registrar's refusal to renew or further renew its provisional registration shall, notwithstanding the provisions of section 9, be lodged before such provisional registration or renewed provisional registration expires.

(b) If the provisional registration or renewed provisional registration expires while an appeal referred to in paragraph (a) is being considered, such provisional registration or renewed provisional registration, as the case may be, shall be deemed to have been renewed or further renewed until the appellant is notified of the board of appeal's decision on the appeal.

Application for final registration as deposit-taking institution

19. (1) An institution which is provisionally registered as a deposit-taking institution may at any time while it is provisionally registered apply to the Registrar in the prescribed manner and on the prescribed form for final registration as a deposit-taking institution.

(2) An institution applying in terms of subsection (1) for final registration as a deposit-taking institution shall furnish such additional information in connection with its application as the Registrar may require.

Granting or refusal of application for final registration

20. (1) The Registrar may in his discretion grant or refuse an application under section 19 for final registration, or may grant such application subject to such conditions as he may determine, but the Registrar shall not grant an application unless he is satisfied that—

- (a) the institution concerned has satisfied all the conditions subject to which it was provisionally registered;
- (b) the institution concerned has complied and will be able to continue to comply with all the other requirements of this Act which are applicable to it in its capacity as a provisionally or finally registered deposit-taking institution;
- (c) the board of directors and the executive management of the institution concerned have during the period preceding the application for final registration demonstrated their integrity and their ability to conduct the business of a deposit-taking institution successfully; and
- (d) the business of a deposit-taking institution conducted by the institution concerned is conducted in a prudent manner and without resort to undesirable practices.

(2) When the Registrar in terms of this section grants or refuses an application for final registration, he shall give written notice of that fact to the applicant concerned.

(3) If the Registrar in terms of this section grants an application for final registration he shall on payment by the applicant of the prescribed registration fee, finally register the institution concerned as a deposit-taking institution and issue to the institution, on the prescribed form, a certificate of final registration as a deposit-taking institution.

(4) Refusal in terms of this section of an application for final registration—

- (a) shall, subject to the provisions of section 18 (2) (a), not affect the provisional registration of the institution concerned as a deposit-taking institution; and
- (b) shall not prevent the institution concerned, while its provisional registration is in force, from reapplying under section 19 for final registration as a deposit-taking institution.

Onware inligting in verband met aansoeke**21. 'n Persoon wat in of in verband met—**

- (a) 'n aansoek om magtiging tot oprigting van 'n depositonemende instelling;
 - (b) 'n aansoek om voorlopige of finale registrasie as 'n depositonemende instelling; of
 - (c) 'n aansoek om die hernuwing van so 'n voorlopige registrasie,
- enige inligting wat na die wete van so 'n persoon in enige wesenlike opsig onwaar of misleidend is, aan die Registrateur verstrek, is aan 'n misdryf skuldig.

Gebruik van naam van depositonemende instelling

22. (1) Behoudens die bepalings van subartikel (2) mag 'n instelling wat voorlopig of finaal as 'n depositonemende instelling geregistreer is, nie 'n ander naam gebruik of op homself toepas nie as die naam waaronder hy aldus geregistreer is of 'n letterlike vertaling of 'n verkorting daarvan wat deur die Registrateur goedgekeur is.

(2) 'n Instelling bedoel in subartikel (1) kan, met die toestemming van die Registrateur, tesame met sy geregistreerde naam die naam van 'n ander depositonemende instelling met wie hy geamalgameer het of waarvan al die bates en laste soos in artikel 54 (1) beoog aan hom oorgedra is of, in die geval van 'n verandering van naam, die naam waaronder hy voorheen bekend gestaan het, gebruik of op homself toepas.

(3) 'n Instelling wat die bepalings van subartikel (1) oortree, is aan 'n misdryf skuldig.

(4) Iemand wat in verband met enige bedryf wat deur hom uitgeoefen word—

- (a) enige naam, beskrywing of teken gebruik of op homself toepas wat aandui, of daarop gemik is om persone te laat aflei, dat hy 'n depositonemende instelling is wat voorlopig of finaal kragtens hierdie Wet as sodanig geregistreer is; of
- (b) op enige ander manier homself voordoen as 'n depositonemende instelling wat voorlopig of finaal kragtens hierdie Wet as sodanig geregistreer is, terwyl hy nie aldus as 'n depositonemende instelling geregistreer is nie, is aan 'n misdryf skuldig.

(5) Niemand mag ten opsigte van enige sakeonderneming 'n naam of beskrywing gebruik wat die woord "bank", of enige daarvan afgeleide woord, of die woord "bouvereniging", of enige daarvan afgeleide woord, insluit nie tensy—

- (a) die betrokke sakeonderneming 'n depositonemende instelling is; of
 - (b) die betrokke sakeonderneming as 'n beherende maatskappy ten opsigte van 'n depositonemende instelling kragtens hierdie Wet geregistreer is en die betrokke naam of beskrywing aldus gebruik word om die verbintenis tussen die betrokke twee maatskappye aan te dui; of
 - (c) sodanige naam of beskrywing saamgestel is uit woorde wat die woord "bank" as deel van 'n pleknaam of 'n persoonsnaam insluit,
- en die Registrateur sodanige persoon skriftelik gemagtig het om so 'n naam of beskrywing aldus te gebruik.

(6) Ondanks die verbod vervat in subartikel (5) kan 'n maatskappy—

- (a) waarvan die oprigting deur die Registrateur ingevolge artikel 15 goedgekeur is, opgerig word onder 'n naam wat die woord "bank" of die woord "bouvereniging" of 'n daarvan afgeleide woord insluit; of
- (b) wie se aansoek om voorlopige registrasie as 'n depositonemende instelling kragtens artikel 17 deur die Registrateur toegestaan is en wat nie ooreenkomstig paragraaf (a) van hierdie subartikel opgerig is onder 'n naam wat reeds die woord "bank" of die woord "bouvereniging" of 'n daarvan afgeleide woord insluit nie, voor sy voorlopige registrasie die nodige stappe ooreenkomstig die Maatskappywet doen om genoemde woord of afgeleide woord by sy naam in te sluit.

(7) Die Registrateur kan 'n maatskappy bedoel in subartikel (6) wie se naam die woord "bank" of die woord "bouvereniging" of 'n daarvan afgeleide woord insluit, skriftelik gelas om daardie woord of afgeleide woord uit sy naam te verwyder—

- (a) in die geval van 'n maatskappy bedoel in paragraaf (a) van daardie subartikel, indien hy versuim om binne die tydperk van 12 maande vermeld in artikel 16 (1) om voorlopige registrasie as 'n depositonemende instelling

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Untrue information in connection with applications

21. Any person who in or in connection with—
- (a) an application for authorization to establish a deposit-taking institution;
 - (b) an application for provisional or final registration as a deposit-taking institution; or
 - (c) an application for the renewal of such a provisional registration,
- furnishes the Registrar with any information which to the knowledge of such person is untrue or misleading in any material respect, shall be guilty of an offence.

Use of name of deposit-taking institution

22. (1) Subject to the provisions of subsection (2), an institution which is provisionally or finally registered as a deposit-taking institution shall not use, or refer to itself by, a name other than the name under which it is so registered, or any literal translation or abbreviation thereof which has been approved by the Registrar.
- (2) An institution referred to in subsection (1) may, with the consent of the Registrar, in conjunction with its registered name use, or refer to itself by, the name of another deposit-taking institution with which it has amalgamated or all the assets and liabilities of which have, as contemplated in section 54 (1), been transferred to it or, in the case of a change of name, the name by which it was previously known.
- (3) An institution which contravenes the provisions of subsection (1) shall be guilty of an offence.
- (4) Any person who, in connection with any business conducted by him—
- (a) uses, or refers to himself by, any name, description or symbol indicating, or calculated to lead persons to infer, that he is a deposit-taking institution provisionally or finally registered as such under this Act; or
 - (b) in any other manner holds himself out to be a deposit-taking institution provisionally or finally registered as such under this Act,
- while he is not so registered as a deposit-taking institution, shall be guilty of an offence.
- (5) No person shall use in respect of any business a name or description which includes the word "bank", or any derivative thereof, or the words "building society", or any derivative thereof, unless—
- (a) the business in question is a deposit-taking institution; or
 - (b) the business in question is registered as a controlling company in respect of a deposit-taking institution under this Act and the name or description in question is so used for the purpose of indicating the connection between the two companies concerned; or
 - (c) such name or description is composed of words which include the word "bank" as part of a place-name or a personal name;
- and the Registrar has in writing authorized such person so to use such name or description.
- (6) Notwithstanding the prohibition contained in subsection (5), a company—
- (a) of which the formation has been approved by the Registrar in terms of section 15; may be formed under a name which includes the word "bank" or the words "building society" or a derivative thereof; or
 - (b) whose application for provisional registration as a deposit-taking institution has been granted by the Registrar under section 17 and which has not been formed in accordance with paragraph (a) of this subsection under a name which already includes the word "bank" or the words "building society" or a derivative thereof, may before its provisional registration take the necessary steps in accordance with the Companies Act to include such word, words or derivative in its name.
- (7) The Registrar may in writing direct a company referred to in subsection (6) whose name includes the word "bank" or the words "building society" or any derivative thereof, to remove such word, words or derivative from its name—
- (a) in the case of a company referred to in paragraph (a) of that subsection, if it fails to apply in terms of section 16 (1) for provisional registration as a deposit-taking institution within the period of 12 months referred to in that

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ingevolge daardie artikel aansoek te doen, of indien sy aansoek om sodanige registrasie kragtens artikel 17 geweier word; en

- (b) in die geval van 'n maatskappy bedoel in paragraaf (b) van daardie subartikel, indien hy versuim om binne 'n redelike tyd nadat sy aansoek om voorlopige registrasie kragtens artikel 17 goedgekeur is, te voldoen aan die voorwaardes onderworpe waaraan dit voorlopig geregistreer is. 5

(8) 'n Persoon wat 'n bepaling van subartikel (5) oortree of weier of versuim om aan 'n lasgewing kragtens subartikel (7) te voldoen, is aan 'n misdryf skuldig.

(9) Die bepalings van subartikel (5) word nie so uitgelê dat dit die gebruik ten opsigte van enige maatskappy, vereniging, firma, besigheid of onderneming van 'n naam, betiteling of beskrywing wat onmiddellik voor die inwerkingtreding van hierdie Wet wettig aldus gebruik is ingevolge die bepalings van 'n wet wat deur hierdie Wet herroep is, belet nie. 10

Intrekking of opskorting van registrasie deur Registrateur

23. (1) Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van 'n depositonemende instelling wat voorlopig as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige voorlopige registrasie intrek of onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien die instelling nie gedurende die tydperk van ses maande vanaf die datum waarop die instelling vir die eerste maal voorlopig as 'n depositonemende instelling geregistreer is, enige sake as 'n depositonemende instelling gedoen het nie. 15 20

(2) Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van 'n depositonemende instelling wat voorlopig of finaal as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanig voorlopige of finale registrasie intrek of onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien— 25

- (a) dit, na die oordeel van die Registrateur, verkry is op grond van onware of misleidende inligting wat deur enige persoon verstrekkend is en daardie persoon uit hoofde daarvan dat hy aldus sodanige inligting verstrekkend het, aan 'n misdryf ingevolge artikel 21 skuldig bevind is; of 30
- (b) in die geval van 'n depositonemende instelling waarvan die hoofbesigheidsplek in 'n ander land as die Republiek geleë is, die magtiging ingevolge waarvan die betrokke instelling gemagtig is om 'n bedryf ooreenstemmend met die bedryf van 'n depositonemende instelling in daardie ander land uit te oefen, deur die bevoegde gesag in daardie ander land ingetrek word. 35

(3) Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van 'n depositonemende instelling wat finaal as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige registrasie intrek indien die instelling opgehou het om die bedryf van 'n depositonemende instelling uit te oefen of nie langer in werking is nie. 40

Kennisgewing deur Registrateur van voorneme om registrasie in te trek of op te skort

24. (1) Die Registrateur moet, voordat hy kragtens artikel 23 die voorlopige of finale registrasie van 'n depositonemende instelling intrek of opskort, in 'n skriftelike kennisgewing gerig aan die voorsitter of hoof-uitvoerende beampte van die betrokke instelling— 45

- (a) die instelling in kennis stel van sy voorneme om sodanige registrasie in te trek of op te skort, na gelang van die geval;
- (b) aan die instelling die redes verstrekkend vir die voorgenome intrekking of opskorting; en 50
- (c) die instelling aansê om binne 'n tydperk in die kennisgewing vermeld, wat nie minder as 30 dae vanaf die datum van die kennisgewing mag wees nie, redes aan te voer waarom sy voorlopige of finale registrasie, na gelang van die geval, nie aldus ingetrek of opgeskort behoort te word nie. 55

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section, or if its application for such registration is refused under section 17; and

- (b) in the case of a company referred to in paragraph (b) of that subsection, if it fails to comply, within a reasonable time after its application for provisional registration has been granted under section 17, with the conditions subject to which it was provisionally registered.

(8) Any person who contravenes any provision of subsection (5) or refuses or fails to comply with a direction under subsection (7) shall be guilty of an offence.

- (9) The provisions of subsection (5) shall not be construed as prohibiting the use in respect of any company, society, firm, business or undertaking of any name, style or description which immediately prior to the commencement of this Act was lawfully so used in terms of the provisions of any law repealed by this Act.

Cancellation or suspension of registration by Registrar

23. (1) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is provisionally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional registration if the institution has not conducted any business as a deposit-taking institution during the period of six months commencing on the date on which the institution was for the first time provisionally registered as a deposit-taking institution.

- (2) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is provisionally or finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional or final registration if—

- (a) it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 21; or
- (b) in the case of a deposit-taking institution of which the main place of business is situated in a country other than the Republic, the authorization in terms of which the institution concerned is authorized to conduct business in such other country similar to the business of a deposit-taking institution, is revoked by the competent authority in such other country.

- (3) The Registrar may, subject to the provisions of section 24, in the case of a deposit-taking institution which is finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct the business of a deposit-taking institution or is no longer in operation.

Notice by Registrar of intention to cancel or suspend registration

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

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(2) Na oorweging van enige verhoë uit hoofde van die bepalings van subartikel (1) (c) van die betrokke instelling binne die vermelde tydperk ontvang, kan die Registrateur na goeddunke—

- (a) voortgaan met die intrekking of opskorting ingevolge artikel 23 van die tersaaklike registrasie; of
 - (b) geen verdere stappe ingevolge artikel 23 doen nie,
- en die Registrateur moet die voorsitter of hoof- uitvoerende beampte van die betrokke instelling skriftelik van sy besluit ingevolge hierdie subartikel in kennis stel.

Intrekking of opskorting van registrasie deur hof

25. (1) Die Registrateur kan by wyse van aansoek na kennisgewing van mosie by 'n bevoegde hof 'n bevel tot intrekking of opskorting van die voorlopige of finale registrasie van 'n depositonemende instelling aanvra indien daar na die oordeel van die Registrateur ander gronde as die gronde bedoel in artikel 23 bestaan wat sodanige intrekking of opskorting regverdig.

(2) By die toepassing van subartikel (1) is 'n bevoegde hof enige provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika binne die regsgebied waarvan die geregistreerde kantoor, bedoel in artikel 170 van die Maatskappywet, van die betrokke depositonemende instelling geleë is.

(3) Die hof wat 'n aansoek wat kragtens subartikel (1) gedoen is, aanhoor, moet die saak ondersoek en oorweeg en die aansoek toestaan of van die hand wys, en kan die bevel met betrekking tot koste uitreik wat hy goedvind.

(4) Benewens enige ander gronde wat die hof as voldoende mag beskou om 'n bevel kragtens subartikel (1) tot intrekking of opskorting van die voorlopige of finale registrasie van 'n depositonemende instelling te regverdig, kan so 'n bevel ook verleen word indien die betrokke instelling—

- (a) of enige van sy direkteure of uitvoerende beamptes, aan 'n misdryf ingevolge hierdie Wet skuldig bevind is;
 - (b) nie die bedryf van 'n depositonemende instelling op 'n bevredigende wyse uitoefen nie;
 - (c) in gebreke gebly het om te voldoen aan 'n vereiste van hierdie Wet wat op hom van toepassing is in sy hoedanigheid van 'n voorlopig of finaal geregistreerde depositonemende instelling;
 - (d) volhou om 'n ongewenste praktyk toe te pas; of
 - (e) hom in 'n wesenlike opsig skuldig gemaak het aan 'n wanvoorstelling betreffende die dienste wat hy aan die publiek bied,
- of indien, op enige ander grond deur die Registrateur in die betrokke aansoek aangevoer, die hof van oordeel is dat dit nie in die openbare belang is om die betrokke instelling toe te laat om sy bedrywighede as 'n depositonemende instelling voort te sit nie.

Beperking deur Registrateur van bedrywighede van depositonemende instelling

26. (1) Die Registrateur kan, in plaas van 'n aansoek kragtens artikel 25 (1), by skriftelike kennisgewing aan 'n voorlopig of finaal geregistreerde depositonemende instelling ten opsigte waarvan, na die oordeel van die Registrateur, enige van die omstandighede vermeld in paragrafe (a) tot en met (e) van artikel 25 (4) aanwesig is, die bedrywighede van die betrokke instelling as 'n depositonemende instelling beperk in die opsigte en onderworpe aan die voorwaardes wat die Registrateur in die kennisgewing vermeld.

(2) Die bepalings van artikel 24 is *mutatis mutandis* van toepassing ten opsigte van die beperking van die bedrywighede van 'n depositonemende instelling deur die Registrateur kragtens subartikel (1).

Intrekking van registrasie op versoek van depositonemende instelling

27. Die Registrateur moet die voorlopige of finale registrasie, na gelang van die geval, van 'n depositonemende instelling intrek by voorlegging aan hom deur die betrokke instelling van 'n spesiale besluit beoog in artikel 200 van die Maatskappywet waarby sodanige intrekking gemagtig word.

Intrekking van registrasie by likwidasie

28. Wanneer die sake van 'n depositonemende instelling heeltemal gelikwadeer is soos beoog in artikel 419 (1) van die Maatskappywet, moet die verantwoordelike

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(2) After considering any representations received within the specified period from the institution concerned by virtue of the provisions of subsection (1) (c), the Registrar may in his discretion—

- 5 (a) proceed with the cancellation or suspension in terms of section 23, of the relevant registration; or
(b) refrain from taking any further steps in terms of section 23, and the Registrar shall in writing inform the chairman or chief executive officer of the institution concerned of his decision in terms of this subsection.

Cancellation or suspension of registration by court

10 25. (1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling or suspending the provisional or final registration of a deposit-taking institution if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 23, justifying such cancellation or suspension.

15 (2) A competent court for the purposes of subsection (1) shall be any provincial or local division of the Supreme Court of South Africa within the area of jurisdiction of which the registered office, referred to in section 170 of the Companies Act, of the deposit-taking institution concerned is situated.

(3) The court entertaining an application made under subsection (1) shall enquire
20 into and consider the matter and shall grant or refuse the application, and may make such order as to costs as it may deem fit.

(4) In addition to any other grounds which the court may consider sufficient to justify the granting of an order under subsection (1) cancelling or suspending the provisional or final registration of a deposit-taking institution, such an order may
25 also be granted if the institution concerned—

- (a) has, or any of its directors or executive officers has, been convicted of any offence in terms of this Act;
(b) does not carry on satisfactorily the business of a deposit-taking institution;
(c) has failed to comply with a requirement of this Act which is applicable to
30 it in its capacity as a provisionally or finally registered deposit-taking institution;
(d) continues to employ an undesirable practice; or
(e) has in a material respect misrepresented the facilities which it offers to the general public,
35 or if, on any other ground advanced by the Registrar in the relevant application, the court is of the opinion that it is not in the public interest to allow the institution concerned to continue its activities as a deposit-taking institution.

Restriction by Registrar of activities of deposit-taking institution

40 26. (1) The Registrar may, in lieu of an application under section 25 (1), by written notice to a provisionally or finally registered deposit-taking institution in respect of which, in the opinion of the Registrar, any of the circumstances mentioned in paragraphs (a) to (e), inclusive, of section 25 (4) is present, restrict the activities of the institution concerned as a deposit-taking institution in such respects and on such conditions as the Registrar may specify in the notice.

45 (2) The provisions of section 24 shall *mutatis mutandis* apply in respect of the restriction of the activities of a deposit-taking institution by the Registrar under subsection (1).

Cancellation of registration at request of deposit-taking institution

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

Cancellation of registration upon winding-up

55 28. When the affairs of a deposit-taking institution have been completely wound up as contemplated in section 419 (1) of the Companies Act, the responsible Master

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Meester van die Hooggeregshof 'n afskrif van die sertifikaat bedoel in daardie artikel aan die Registrateur stuur, en die Registrateur moet by ontvangs van sodanige afskrif die voorlopige of finale registrasie, na gelang van die geval, van die betrokke depositonemende instelling intrek.

Opheffing van opskorting of beperking

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29. (1) Die Registrateur kan op skriftelike aansoek van 'n depositonemende instelling waarvan—

- (a) die voorlopige of finale registrasie kragtens artikel 23 opgeskort is; of
- (b) die bedrywighede kragtens artikel 26 beperk is,

by skriftelike kennisgewing aan die betrokke instelling sodanige opskorting of 10 beperking, na gelang van die geval, ophef mits die Registrateur daarvan oortuig is dat die instelling voldoen het aan alle vereistes vir sodanige opheffing wat deur die Registrateur in die voorwaardes van opskorting of beperking opgelê is.

(2) Aansoek om 'n bevel waarby 'n bevel kragtens artikel 25 tot opskorting van die voorlopige of finale registrasie van 'n depositonemende instelling opgehef word, kan 15 by die bevoegde hof bedoel in artikel 25 (2) gedoen word.

Publikasie van inligting aangaande depositonemende instellings

30. Die Registrateur moet 'n kennisgewing in die *Staatskoerant* publiseer van elke—

- (a) voorlopige of finale registrasie van 'n instelling as 'n depositonemende 20 instelling;
- (b) intrekking of opskorting van sodanige registrasie;
- (c) verstryking van sodanige voorlopige registrasie;
- (d) beperking van die bedrywighede van 'n depositonemende instelling;
- (e) opheffing van sodanige opskorting of beperking; of 25
- (f) verandering van die naam van 'n depositonemende instelling,

wat ingevolge hierdie Wet gedoen word of plaasvind.

Datum waarop registrasie verval

31. 'n Instelling wat as 'n depositonemende instelling geregistreer is, hou op om as sodanig geregistreer te wees— 30

- (a) in die geval van 'n voorlopige registrasie waarvan die tydperk of, indien sodanige registrasie kragtens artikel 18 (2) hernu is, die tydperk van sodanige hernude registrasie verstryk het en sodanige registrasie nie kragtens daardie artikel hernu of verder hernu is nie, by verstryking van daardie tydperk; 35
- (b) in die geval van 'n registrasie wat kragtens artikel 23 deur die Registrateur ingetrek is, by verstryking van 30 dae na die datum van die kennisgewing bedoel in subartikel (1), (2) of (3) van daardie artikel of, indien 'n appèl voor die verstryking van genoemde 30 dae teen sodanige intrekking by die appèlraad aangeteken is ingevolge artikel 9 en die appèlraad sodanige 40 intrekking bekragtig het, op die datum waarop die betrokke instelling van sodanige bekragtiging verwittig word;
- (c) in die geval van 'n registrasie ten opsigte waarvan die hof 'n bevel tot die intrekking daarvan kragtens artikel 25 toegestaan het, op die datum waarop daardie bevel van krag word; of 45
- (d) in die geval van 'n registrasie wat deur die Registrateur ingevolge artikel 27 of 28 ingetrek is, op die datum wat die Registrateur bepaal.

Terugbetaling van deposito's by verval van registrasie

32. (1) Wanneer 'n instelling wat voorlopig of finaal as 'n depositonemende instelling geregistreer is, ophou om as sodanig geregistreer te wees, kan die 50 Registrateur daardie instelling skriftelik gelas—

- (a) om alle geld deur hom aan lede van die publiek verskuldig ten opsigte van deposito's deur hom gedurende sy registrasie as 'n depositonemende instelling geneem, met inbegrip van enige rente of ander bedrae wat deur

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of the Supreme Court shall transmit to the Registrar a copy of the certificate referred to in that section, and the Registrar shall upon receipt of such copy cancel the provisional or final registration, as the case may be, of the deposit-taking institution concerned.

5 Withdrawal of suspension or restriction

29. (1) The Registrar may on the written application of a deposit-taking institution of which—

- (a) the provisional or final registration was suspended under section 23; or
 - (b) the activities were restricted under section 26,
- 10 by written notice to the institution concerned withdraw such suspension or restriction, as the case may be, provided the Registrar is satisfied that the institution has complied with all requirements for such withdrawal imposed by the Registrar in the conditions of suspension or restriction.

(2) Application for an order discharging an order under section 25 whereby the
15 provisional or final registration of a deposit-taking institution has been suspended by the court, may be made to the competent court referred to in section 25 (2).

Publication of information relating to deposit-taking institutions

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

- 20 (a) provisional or final registration of an institution as a deposit-taking institution;
 - (b) cancellation or suspension of such a registration;
 - (c) expiration of such a provisional registration;
 - (d) restriction of the activities of a deposit-taking institution;
 - (e) withdrawal of such suspension or restriction; or
 - 25 (f) change of the name of a deposit-taking institution,
- which is effected or which takes place in terms of this Act.

Date on which registration lapses

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

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

Repayment of deposits upon lapse of registration

32. (1) Whenever an institution which is provisionally or finally registered as a deposit-taking institution ceases to be registered as such, the Registrar may in writing order that institution—

- 50 (a) to repay, in accordance with such directions and within such period as may be specified in the order, all money due by it to members of the public in respect of deposits accepted by it while registered as a deposit-taking

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hom ten opsigte van sodanige geld verskuldig mag wees, ooreenkomstig die voorskrifte en binne die tydperk in die lasgewing vermeld, terug te betaal; en

- (b) om sy naam en sy akte van oprigting en statute binne die tydperk en op die wyse deur die Registrateur vereis, te verander. 5

(2) Verskillende voorskrifte en tydperke kan kragtens subartikel (1) ten opsigte van verskillende soorte deposito's bepaal word: Met dien verstande dat by die bepaling van sodanige voorskrifte en tydperke geen voorkeur verleen mag word aan so 'n lid van die publiek wat hy nie regtens het nie.

(3) 'n Instelling wat uit hoofde van die bepalings van subartikel (1) 'n deposito 10 terugbetaal voor die vervaldatum wat vir die terugbetaling daarvan beding is, is nie verplig nie om rente of enige ander bedrae te betaal wat vir die tydperk vanaf sodanige terugbetaling tot die vervaldatum op daardie deposito betaalbaar sou gewees het.

(4) 'n Instelling wat versuim om aan 'n lasgewing kragtens subartikel (1) te 15 voldoen—

- (a) is aan 'n misdryf skuldig; en

- (b) word by die toepassing van artikels 344 en 345 van die Maatskappywet geag nie in staat te wees om sy skulde te betaal nie.

Herregistrasie ingevolge hierdie Wet 20

33. (1) Elke instelling wat op die datum van inwerkingtreding van hierdie Wet kragtens die bepalings van 'n wet wat deur hierdie Wet herroep word—

- (a) geregistreer of voorlopig geregistreer is, of geag word geregistreer of voorlopig geregistreer te wees, as 'n bankinstelling; of

(b) voorlopig of finaal geregistreer is as 'n bouvereniging, 25 moet, met inagneming van en behoudens die bepalings van subartikels (2) en (3), so gou doenlik na genoemde datum van inwerkingtreding deur die Registrateur of voorlopig of finaal geregistreer word (na gelang die instelling voorlopig of finaal geregistreer is kragtens genoemde herroepe wet) as 'n depositonemende instelling ingevolge hierdie Wet. 30

(2) Die Registrateur moet wanneer hy die bepalings van subartikel (1) nakom, aan die betrokke instelling 'n sertifikaat van voorlopige of finale registrasie, na gelang van die geval, as 'n depositonemende instelling uitreik.

(3) Die herregistrasie van 'n instelling ingevolge hierdie artikel geskied in die geval van 'n voorlopige registrasie vir die onverstreke gedeelte van die tydperk van die 35 instelling se voorlopige registrasie kragtens die herroepe wet bedoel in subartikel (1).

(4) By die herregistrasie van 'n instelling ingevolge hierdie artikel word sy vorige registrasie kragtens genoemde herroepe wet geag te verval het en word enige 40 registrasiesertifikaat ten opsigte daarvan uitgereik, geag gerojear te wees.

(5) Geen gelde is ten opsigte van 'n herregistrasie ingevolge hierdie artikel betaalbaar nie.

Verteenwoordigende kantore van buitelandse instellings

34. (1) 'n Instelling wat in 'n ander land as die Republiek opgerig is en wat wettig in daardie ander land 'n bedryf soortgelyk aan die bedryf van 'n depositonemende 45 instelling uitoefen (hieronder in hierdie artikel 'n buitelandse instelling genoem), mag nie sonder die voorafverkreë skriftelike toestemming van die Registrateur 'n verteenwoordigende kantoor in die Republiek open nie.

(2) Die toestemming bedoel in subartikel (1) moet verkry word deur middel van 'n skriftelike aansoek by die Registrateur waarin vermeld word— 50

- (a) die naam van die buitelandse instelling;

- (b) die land waarin hy opgerig is;

- (c) die naam van sy voorgenome hoof- verteenwoordigende beampte in die Republiek; en

(d) die adres van sy beoogde verteenwoordigende kantoor in die Republiek, 55 en die aansoek moet vergesel gaan van 'n sertifikaat van die bevoegde gesag in die betrokke ander land ten effekte dat die betrokke buitelandse instelling by of kragtens die wette van daardie ander land gemagtig is om in daardie ander land 'n bedryf soortgelyk aan die bedryf van 'n depositonemende instelling uit te oefen.

(3) Na die opening van 'n verteenwoordigende kantoor ingevolge hierdie artikel 60 moet die betrokke buitelandse instelling die Registrateur skriftelik in kennis stel—

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

Reregistration in terms of this Act

33. (1) Every institution which on the date of commencement of this Act is under the provisions of any law repealed by this Act—
- 20 (a) registered or provisionally registered, or deemed to be registered or provisionally registered, as a banking institution; or
- (b) provisionally or finally registered as a building society,
- shall, in accordance with and subject to the provisions of subsections (2) and (3), as soon as is practicable after such date of commencement be either provisionally or
- 25 finally registered (according to whether the institution is provisionally or finally registered under the said repealed law) by the Registrar as a deposit-taking institution in terms of this Act.
- (2) The Registrar shall when complying with the provisions of subsection (1) issue to the institution in question a certificate of provisional or final registration as a
30 deposit-taking institution, as the case may be.
- (3) The reregistration of an institution in terms of this section shall in the case of a provisional registration be for the unexpired portion of the period of the institution's provisional registration under the repealed law referred to in subsection (1).
- 35 (4) Upon the reregistration of an institution in terms of this section its previous registration under the said repealed law shall be deemed to have lapsed and any certificate of registration issued in respect thereof shall be deemed to have been cancelled.
- (5) No fees shall be payable in respect of a reregistration in terms of this section.

40 Representative offices of foreign institutions

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

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- (a) van elke verandering van die naam van die instelling;
 - (b) van elke vervanging van sy hoof- verteenwoordigende beampte in die Republiek;
 - (c) van elke verandering van die adres van die verteenwoordigende kantoor; of
 - (d) van die sluiting van die verteenwoordigende kantoor, 5
- sodra dit plaasvind.
- (4) 'n Verteenwoordigende kantoor beoog in hierdie artikel mag nie die bedryf van 'n depositonemende instelling in die Republiek uitoefen nie.

Jaarlikse lisensie

35. 'n Depositonemende instelling moet van die ontvanger van inkomste van die distrik waarin sy geregisteerde kantoor bedoel in artikel 170 van die Maatskappywet geleë is, 'n lisensie as depositonemende instelling verkry ten opsigte van elke jaar eindigende op die een-en-dertigste dag van Desember teen betaling van die voorgeskrewe lisensiegeld. 10

HOOFSTUK IV

15

AANDEELHOUDING IN, EN REGISTRASIE VAN BEHERENDE MAATSKAPPE TEN OPSIGTE VAN,
DEPOSITONEMENDE INSTELLINGS

Beperking op aandeelhouing in depositonemende instellings en beherende maatskappye

36. (1) Ondanks die bepalings van die Maatskappywet, maar behoudens die bepalings van artikel 37, mag geen depositonemende instelling of beherende maatskappy, behoudens die bepalings van subartikels (3) en (9), enige van sy aandele aan 'n persoon toewys of uitreik of die oordrag aan 'n persoon van enige van sy aandele registreer nie, vir sover die nominale waarde van sodanige aandele, en van enige ander aandele in die depositonemende instelling of beherende maatskappy, na gelang van die geval, wat reeds op die naam van so 'n persoon of van enige geassosieerde van so 'n persoon geregisteer is, in totaal 49 persent van die totale nominale waarde van al die uitgereikte stendraende aandele in die depositonemende instelling of beherende maatskappy oorskry. 20

(2) Die Minister kan, op versoek van 'n depositonemende instelling of beherende maatskappy en indien hy daarvan oortuig is dat dit in die openbare belang sal wees om dit te doen, daardie depositonemende instelling of beherende maatskappy skriftelik van die bepalings van subartikel (1) vrystel vir die tydperk en onderworpe aan die voorwaardes en, indien die vrystelling nie algemeen verleen word nie, ten opsigte van die persoon of kategorie persone wat die Minister bepaal, en die Minister kan te eniger tyd, op versoek van die betrokke depositonemende instelling of beherende maatskappy, of uit eie beweging, 'n vrystelling wat ingevolge hierdie subartikel verleen is, wysig of intrek. 25

(3) Die bepalings van subartikel (1) is nie van toepassing nie op die toewysing, uitreiking of registrasie van die oordrag van aandele in 'n depositonemende instelling aan 'n beherende maatskappy wat ten opsigte van daardie depositonemende instelling geregisteer is, aan 'n ander depositonemende instelling of aan '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. 30

(4) Aandele in 'n depositonemende instelling of beherende maatskappy wat geregisteer is of geregisteer staan te word op naam van 'n eksekuteur, administrateur, kurator, voog of likwidateur in die omstandighede vermeld in artikel 103 (3) van die Maatskappywet, word by die toepassing van subartikel (1) geag geregisteer te wees of geregisteer staan te word op naam van die betrokke begunstigde: Met dien verstande dat indien as gevolg van die bepalings van hierdie subartikel meer sodanige aandele op naam van so 'n eksekuteur, administrateur, kurator, voog of likwidateur geregisteer word as wat andersins ingevolge subartikel (1) toelaatbaar sou wees, die stemregte verbonde aan die aandele aldus op sy naam geregisteer by die toepassing van hierdie Wet of 'n ander wet beperk is tot 49 persent van die stemregte verbonde aan al die uitgereikte aandele van die betrokke depositonemende instelling of beherende maatskappy. 45 50 55

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- (a) of any change of the name of the institution;
 - (b) of any substitution of its chief representative officer in the Republic;
 - (c) of any change of the address of the representative office; or
 - (d) of the closing down of the representative office,
- 5 as soon as it occurs.
- (4) A representative office contemplated in this section may not conduct the business of a deposit-taking institution in the Republic.

Annual licence

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

CHAPTER IV

15 SHAREHOLDING IN, AND REGISTRATION OF CONTROLLING COMPANIES IN RESPECT OF,
DEPOSIT-TAKING INSTITUTIONS**Restriction on shareholding in deposit-taking institutions and controlling companies**

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

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(5) Indien die nominale waarde van aandele in 'n depositonemende instelling of beherende maatskappy wat aan die een of ander persoon toegewys of uitgereik staan te word, of op die naam van die een of ander persoon geregistreer staan te word, tesame met die nominale waarde van enige ander aandele in die depositonemende instelling of beherende maatskappy, na gelang van die geval, wat reeds op sy naam 5 geregistreer is, in totaal 'n bedrag uitmaak wat minder is as die kleinste van R100 000 of een persent van die totale nominale waarde van al die uitgereikte aandele van die depositonemende instelling of beherende maatskappy, na gelang van die geval, kan die depositonemende instelling of beherende maatskappy by die toepassing van hierdie artikel sonder meer aanvaar, tensy hy van die teendeel bewus is, dat daardie 10 persoon nie 'n geassosieerde van enige ander aandeelhouer in die depositonemende instelling of beherende maatskappy is nie.

(6) Indien die totale nominale waarde van aandele in 'n depositonemende instelling of beherende maatskappy wat op die naam van 'n persoon of van so 'n persoon en sy geassosieerde of geassosieerdes geregistreer is, die persentasie 15 vermeld in subartikel (1) oorskry as gevolg van—

- (a) die amalgamasie van die depositonemende instelling of beherende maatskappy met, onderskeidelik, 'n ander depositonemende instelling of beherende maatskappy; of
- (b) die oorname deur die depositonemende instelling van die bates en laste van 'n ander depositonemende instelling of van 'n onderlinge bouvereniging; of 20
- (c) 'n amalgamasie van aandeelhouders in die depositonemende instelling of beherende maatskappy of die oorname deur een so 'n aandeelhouer van die bates en laste van 'n ander so 'n aandeelhouer, of die verkryging deur een 25 so 'n aandeelhouer van beheer oor 'n ander so 'n aandeelhouer,

mag geen verdere aandele in die betrokke depositonemende instelling of beherende maatskappy aan daardie persoon of enige van sy geassosieerdes toegewys of uitgereik of oorgedra word of op naam van daardie persoon of enige van sy geassosieerdes geregistreer word solank daardie persentasie aldus oorskry word nie, en moet daardie persoon in samewerking met die betrokke depositonemende 30 instelling of beherende maatskappy binne 45 dae vanaf die datum waarop die oorskryding van daardie persentasie ontstaan het, besonderhede van die geval aan die Registrateur verstrek en binne ses maande vanaf daardie datum 'n skema aan die Registrateur voorlê waarvolgens die betrokke aandeelhoudings binne 'n tydperk wat vir die Registrateur aanneemlik is en ooreenkomstig die voorwaardes wat die 35 Registrateur bepaal, verminder sal word in so 'n mate dat aan die vereistes van subartikel (1) betreffende sodanige persentasie voldoen sal word.

(7) Wanneer en solank die totale nominale waarde van aandele in 'n depositonemende instelling of beherende maatskappy wat geregistreer is op die naam van enige persoon of van so 'n persoon en sy geassosieerde of geassosieerdes, plus die totale 40 nominale waarde van sodanige aandele wat geregistreer is op die naam van enige pensioenfonds ingestel kragtens die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), waarvan die werknemers van daardie persoon of van enige van sy geassosieerdes lede is, die persentasie vermeld in subartikel (1) oorskry, is, ondanks enige andersluidende bepaling van 'n ander wet, die maksimum stemme wat ten opsigte 45 van al die aandele hierbo in hierdie subartikel vermeld ten gunste van of teen 'n voorgestelde besluit van die betrokke depositonemende instelling of beherende maatskappy uitgeoefen mag word, vanaf die datum van inwerkingtreding van hierdie Wet beperk tot 49 persent (onder die betrokke aandeelhouders verdeel in verhouding tot hul onderskeie aandeelhoudings) van die stemregte verbonde aan al die 50 uitgereikte aandele van die betrokke depositonemende instelling of beherende maatskappy.

(8) (a) Indien by die inwerkingtreding van hierdie Wet en uit hoofde van—

- (i) 'n magtiging deur die Minister verleen kragtens die bepalings van artikel 28D (2) van die Bankwet, 1965 (Wet No. 23 van 1965); of 55
- (ii) 'n vrystelling deur die Minister verleen kragtens die bepalings van artikel 38 (2) van die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986),

soos daardie bepalings gegeld het onmiddellik voor die herroeping daarvan deur hierdie Wet, 'n persoon aandele in 'n depositonemende instelling of beherende maatskappy hou met 'n totale nominale waarde wat die persentasie 60 vermeld in subartikel (1) oorskry, moet die betrokke depositonemende instelling of beherende maatskappy binne 'n tydperk van 45 dae vanaf die datum van inwerkingtreding van hierdie Wet by die Minister aansoek doen om 'n vrystelling kragtens subartikel (2) ten opsigte van 65 sodanige oorskrydende aandeelhouding.

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(5) If the nominal value of shares in a deposit-taking institution or controlling company which are to be allotted or issued to, or to be registered in the name of, any person, together with the nominal value of any other shares in the deposit-taking institution or controlling company, as the case may be, already registered in his name, constitutes in total an amount which is less than the lower of R100 000 or one per cent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company, as the case may be, the deposit-taking institution or controlling company may for the purposes of this section summarily accept, unless it has knowledge to the contrary, that that person is not an associate of any other shareholder in the deposit-taking institution or controlling company.

(6) If the total nominal value of shares in a deposit-taking institution or controlling company registered in the name of any person or of such person and his associate or associates exceeds the percentage mentioned in subsection (1) as a result of—

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

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

(8) (a) If at the commencement of this Act and by virtue of—

- (i) an authorization granted by the Minister under the provisions of section 28D (2) of the Banks Act, 1965 (Act No. 23 of 1965); or
 - (ii) an exemption granted by the Minister under the provisions of section 38 (2) of the Building Societies Act, 1986 (Act No. 82 of 1986),
- as those provisions existed immediately prior to the repeal thereof by this Act, any person holds shares in a deposit-taking institution or controlling company with a total nominal value in excess of the percentage mentioned in subsection (1), the deposit-taking institution or controlling company concerned shall, within a period of 45 days as from the date of commencement of this Act, apply to the Minister for an exemption under subsection (2) in respect of such excess shareholding.

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- (b) Indien by die verstryking van die tydperk van 45 dae bedoel in paragraaf (a) geen aansoek ingevolge daardie paragraaf ten opsigte van 'n bepaalde oorskrydende aandeelhouding deur die Minister ontvang is nie, word die tersaaklike magtiging of vrystelling, na gelang van die geval, bedoel in daardie paragraaf, geag ingetrek te wees. 5
- (9) 'n Depositonemende instelling of beherende maatskappy kan weier om enige van sy aandele aan enige persoon toe te wys of uit te reik of om die oordrag van enige van sy aandele aan enige persoon te registreer alvorens 'n beëdigde verklaring bedoel in artikel 39 deur of namens die persoon aan wie sodanige aandele toegewys of uitgereik staan te word of aan wie die oordrag van sodanige aandele geregistreer 10 staan te word, aan hom verstrek is.
- (10) By die toepassing van hierdie artikel beteken "geassosieerde"—
- (a) met betrekking tot 'n natuurlike persoon—
- (i) 'n naverwant van daardie persoon; of
 - (ii) enige persoon wat 'n ooreenkoms of reëling met eersgenoemde 15 persoon aangegaan het betreffende die verkryging, hou of vervreemding van, of die uitoefening van stemreg ten opsigte van, aandele in die betrokke depositonemende instelling of beherende maatskappy;
- (b) met betrekking tot 'n regspersoon—
- (i) wat 'n maatskappy is, 'n filiaal of houermaatskappy van daardie 20 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 25
- (c) met betrekking tot enige persoon, ook enige trust wat deur daardie persoon beheer of geadministreer word.

Toestemming tot verkryging van aandele in depositonemende instelling of beherende maatskappy

37. (1) Behoudens die bepalings van subartikel (6) mag geen persoon aandele in 'n depositonemende instelling of beherende maatskappy verkry nie— 30
- (a) waarvan die totale nominale waarde; of
 - (b) waarvan die totale nominale waarde tesame met die totale nominale waarde van sodanige aandele wat reeds deur daardie persoon gehou word; of
 - (c) waarvan die totale nominale waarde tesame met die totale nominale 35 waarde van sodanige aandele wat reeds deur daardie persoon en deur sy geassosieerde of geassosieerdes gehou word,
- meer beloop as 10 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. 40
- (2) (a) Indien—
- (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 45 skriftelike toestemming daartoe verleen het, meer as 10 persent maar hoogstens 17,5 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 persent van bedoelde aandele besit 50 het soos aldus beoog, kan hy, indien die Registrateur skriftelik toestemming daartoe verleen het, meer as 17,5 persent maar hoogstens 25 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 55 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 60 wat die Minister goedvind, 30 persent van bedoelde aandele besit het

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- (b) If on the expiration of the period of 45 days referred to in paragraph (a) no application in terms of that paragraph has been received by the Minister in respect of a particular excess shareholding, the relevant authorization or exemption, as the case may be, referred to in that paragraph shall be deemed to have been withdrawn.
- (9) A deposit-taking institution or controlling company may refuse to allot or issue any of its shares to any person or to register the transfer of any of its shares to any person before it has been furnished with an affidavit referred to in section 39 by or on behalf of the person to whom such shares are to be allotted or issued or to whom the transfer of such shares is to be registered.
- (10) For the purposes of this section "associate"—
- (a) in relation to a natural person, means—
- (i) a close relative of that person; or
- (ii) any person who has entered into an agreement or arrangement with the first-mentioned person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the deposit-taking institution or controlling company in question;
- (b) in relation to a juristic person—
- (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary; or
- (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act; and
- (c) in relation to any person, includes any trust controlled or administered by that person.

Permission for acquisition of shares in deposit-taking institution or controlling company

37. (1) Subject to the provisions of subsection (6), no person shall acquire in a deposit-taking institution or controlling company shares—
- (a) of which the total nominal value; or
- (b) of which the total nominal value together with the total nominal value of such shares already held by such person; or
- (c) of which the total nominal value together with the total nominal value of such shares already held by such person and by his associate or associates, amounts to more than 10 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.
- (2) (a) If—
- (i) any person has for a period of 12 months or such shorter period as the Registrar may deem fit held so many shares in a deposit-taking institution or controlling company as he may in accordance with the provisions of subsection (1) hold therein, he may, if the Registrar has granted permission in writing thereto, acquire more than 10 per cent, but not exceeding 17,5 per cent, of those shares as contemplated in the said subsection;
- (ii) the said person has for a period of 12 months or such shorter period as the Registrar may deem fit held 17,5 per cent of those shares as so contemplated he may, if the Registrar has granted permission in writing thereto, acquire more than 17,5 per cent, but not exceeding 25 per cent, of those shares as contemplated in the said subsection (i);
- (iii) the said person has for a period of 12 months or such shorter period as the Registrar may deem fit held 25 per cent of those shares as so contemplated he may, if the Registrar has granted permission in writing thereto, acquire more than 25 per cent, but not exceeding 30 per cent, of those shares as contemplated in the said subsection (1); and
- (iv) the said person has for a period of 12 months or such shorter period as the Minister may deem fit held 30 per cent of those shares as

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soos in genoemde subartikel (1) beoog, kan hy, indien die Minister deur bemiddeling van die Registrateur skriftelike toestemming daartoe verleen het, meer as 30 persent van bedoelde aandele verkry soos in genoemde subartikel beoog.

- (b) Toestemming ingevolge paragraaf (a) word slegs verleen op aansoek op die voorgeskrewe vorm en na oorlegpleging met die Raad op Mededinging ingestel by artikel 3 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979). 5

(3) Indien 'n persoon by die inwerkingtreding van hierdie Wet reeds meer as 10 persent van die aandele in 'n depositonemende instelling of beheerende 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. 10

(4) Toestemming ingevolge subartikel (2) tot die verkryging van aandele in 'n depositonemende instelling of beheerende maatskappy word nie verleen nie tensy die Registrateur of die Minister, na gelang van die geval, daarvan oortuig is dat die voorgenome verkryging van aandele— 15

- (a) nie in stryd met die openbare belang sal wees nie; en
(b) nie in stryd met die belange van die betrokke depositonemende instelling of sy deposante of van die betrokke beheerende maatskappy, na gelang van die geval, sal wees nie. 20

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

- (a) subartikel (2) (a) (i), (ii) en (iii), die Registrateur; of
(b) subartikel (2) (a) (iv), die Minister,

van oordeel is dat die behoud van dié aandeelhouding in 'n depositonemende instelling of beheerende maatskappy deur 'n bepaalde aandeelhouer tot nadeel van die betrokke depositonemende instelling of beheerende 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 beheerende maatskappy geleë is, aansoek doen om 'n bevel— 30

- (i) waarby so 'n aandeelhouer verplig word om binne 'n tydperk deur die hof bepaal sy aandeelhouding in daardie depositonemende instelling of beheerende maatskappy te verminder tot 'n aandeelhouding, soos beoog in subartikel (1), met 'n totale nominale waarde van nie meer as 10 persent van die totale nominale waarde van al die uitgereikte aandele van daardie depositonemende instelling of beheerende maatskappy; en 35
(ii) waarby die stemregte wat deur so 'n aandeelhouer uit hoofde van sy aandeelhouding uitgeoefen mag word, onverwyld beperk word tot 10 persent van die stemregte verbonde aan al die uitgereikte aandele van die betrokke depositonemende instelling of beheerende maatskappy. 40

(6) Die bepaling van subartikel (1) is nie van toepassing nie op die verkryging van aandele in 'n depositonemende instelling deur 'n beheerende 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. 45

(7) By die toepassing van hierdie artikel beteken "geassosieerde" 'n geassosieerde soos omskryf in artikel 36 (10).

Registrasie van aandele op naam van benoemdes

38. (1) Ondanks die bepaling van die Maatskappywet mag geen depositonemende instelling of beheerende maatskappy sonder die skriftelike goedkeuring van die Registrateur—

- (a) enige van sy aandele toewys of uitreik nie aan, of enige van sy aandele registreer nie op naam van, 'n ander persoon as die beoogde voordeeltrekkende aandeelhouer; 55
(b) enige van sy aandele op naam van 'n ander persoon as die voordeeltrekkende aandeelhouer oordra nie; of
(c) toelaat dat enige van sy aandele na die inwerkingtreding van hierdie Wet geregistreer bly op naam van 'n ander persoon as die voordeeltrekkende aandeelhouer nie. 60

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contemplated in the said subsection (1) he may, if the Minister has, through the Registrar, granted permission thereto in writing, acquire more than 30 per cent of those shares as contemplated in the said subsection.

- 5 (b) Permission in terms of paragraph (a) shall only be granted on application on the prescribed form and after consultation with the Competition Board established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979).

(3) If any person at the commencement of this Act already holds more than 10 per cent of the shares in a deposit-taking institution or controlling company as contemplated in subsection (1), he may not acquire more of those shares as contemplated in the said subsection before he has obtained the appropriate permission in terms of subsection (2).

(4) Permission in terms of subsection (2) for the acquisition of shares in a deposit-taking institution or controlling company shall not be granted unless the Registrar or the Minister, as the case may be, is satisfied that the proposed acquisition of shares—

- (a) will not be contrary to the public interest; and
20 (b) will not be contrary to the interests of the deposit-taking institution concerned or its depositors or of the controlling company concerned, as the case may be.

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

- (a) subsection (2) (a) (i), (ii) and (iii), the Registrar; or
25 (b) subsection (2) (a) (iv), the Minister,
is of the opinion that the retention of such shareholding in a deposit-taking institution or controlling company by a particular shareholder will be to the detriment of the deposit-taking institution or controlling company concerned, he may by way of application on notice of motion apply to the division of the Supreme Court in whose area of jurisdiction the head office of the deposit-taking institution
30 or controlling company is situated, for an order—

- (i) compelling such shareholder to reduce, within a period determined by the court, his shareholding in that deposit-taking institution or controlling company to a shareholding, as contemplated in subsection (1), with a total nominal value of not more than 10 per cent of the total nominal value of all the issued shares of that deposit-taking institution or controlling company;
35 and
(ii) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his shareholding to 10 per cent of the voting rights attached to all the issued shares of the deposit-taking institution or
40 controlling company concerned.

(6) The provisions of subsection (1) shall not apply to the acquisition of shares in a deposit-taking institution by a controlling company registered as such in respect of that deposit-taking institution, by another deposit-taking institution or by an institution which has been approved by the Registrar and which conducts business
45 similar to the business of a deposit-taking institution in a country other than the Republic.

(7) For the purposes of this section “associate” means an associate as defined in section 36 (10).

Registration of shares in name of nominees

50 38. (1) Notwithstanding the provisions of the Companies Act, no deposit-taking institution or controlling company shall without the written approval of the Registrar—

- (a) allot or issue any of its shares to, or register any of its shares in the name of, any person other than the intended beneficial shareholder;
55 (b) transfer any of its shares in the name of a person other than the beneficial shareholder; or
(c) after the commencement of this Act allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.

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(2) Subartikel (1) raak nie die toewysing of uitreiking, of die registrasie van die oordrag, van aandele in 'n depositonemende instelling of beherende maatskappy nie—

- (a) op naam van 'n trustee van 'n effekte-trustskema soos omskryf in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), of van 'n genomineerde maatskappy van die trustee wat deur die Registrateur van Effekte-trustmaatskappye goedgekeur is; 5
- (b) op naam van 'n eksekuteur, administrateur, kurator, voog of likwidateur in die omstandighede in artikel 103 (3) van die Maatskappywet vermeld; 10
- (c) vir 'n tydperk van hoogstens ses maande, op naam van 'n effektemakelaar of van 'n maatskappy deur hom gestig vir 'n doel vermeld in artikel 12 (3) van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), of van 'n maatskappy wat deur die depositonemende instelling beheer word of van 'n werknemer van die depositonemende instelling, indien dit nodig is dat die aandele aldus toegewys, uitgereik of geregistreer word ten einde lewering aan die koper te vergemaklik of die regte van die begunstigde ten opsigte van daardie aandele te beskerm of waar die begunstigde nie bekend is nie; of 15
- (d) op naam van 'n persoon in ander spesiale omstandighede deur die Minister by kennisgewing in die *Staatskoerant* bepaal. 20

Verstreking van inligting deur aandeelhouders

39. 'n Persoon wat verlang dat aandele in 'n depositonemende instelling of beherende maatskappy aan hom toegewys of uitgereik of op sy naam geregistreer moet word, of op wie se naam sodanige aandele geregistreer is, en enige persoon wat namens so 'n persoon optree, moet op die skriftelike versoek van die depositonemende instelling of beherende maatskappy aan hom— 25

- (a) 'n beëdigde verklaring verstrekk waarin die name en adresse van al daardie persoon se geassosieerdes soos omskryf in artikel 36 (10), uiteengesit word ten einde die depositonemende instelling of beherende maatskappy in staat te stel om aan die bepalings van genoemde artikel 36 te voldoen; of 30
- (b) dié inligting verstrekk wat deur die depositonemende instelling of beherende maatskappy vereis word ten einde aan die bepalings van artikel 38 te kan voldoen.

Afwesigheid van wederregtelike opset

40. Indien 'n depositonemende instelling of 'n beherende maatskappy of 'n direkteur, beampte, werknemer of agent van 'n depositonemende instelling of beherende maatskappy te goeder trou en op grond van inligting redelikerwys verkry, handel of nalaat om te handel en daardeur onwetend die bepalings van artikel 36 of 38 oortree, maak sodanige handeling of nalate nie 'n misdryf uit nie.

Gevolge van registrasie van aandele strydig met Wet

- 41. (1) Geen persoon mag— 40
 - (a) hetsy persoonlik of deur volmag aan 'n ander persoon, 'n stem uitbring wat verbonde is aan; of
 - (b) 'n dividend ontvang wat betaalbaar is op,
 'n aandeel in 'n depositonemende instelling of beherende maatskappy wat strydig met 'n bepaling van hierdie Wet aan hom toegewys of uitgereik of op sy naam geregistreer is nie. 45
- (2) Die geldigheid van 'n besluit deur 'n depositonemende instelling of beherende maatskappy geneem, word nie deur die uitbring van 'n stem in stryd met subartikel (1) (a) geraak nie, indien daardie besluit geneem is met die vereiste meerderheid van stemme wat geldig uitgebring is. 50
- (3) 'n Dividend bedoel in subartikel (1) (b) val die betrokke depositonemende instelling of beherende maatskappy toe.

Beperking van reg om depositonemende instelling te beheer

42. (1) Behoudens die bepalings van artikel 36 (2) mag geen ander persoon as 'n depositonemende instelling beheer oor 'n depositonemende instelling uitoefen nie,

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(2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer, of shares in a deposit-taking institution or controlling company—

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

20 Furnishing of information by shareholders

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

25 furnish it with—

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

Absence of wrongful intent

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

Effects of registration of shares contrary to Act

40 41. (1) No person shall—

- (a) either personally or by proxy granted to any other person, cast a vote attached to; or
 - (b) receive a dividend payable on,
- any share in a deposit-taking institution or controlling company allotted or issued to him or registered in his name in contravention of a provision of this Act.

45 (2) The validity of any resolution adopted by a deposit-taking institution or controlling company shall not be affected by a vote being cast in contravention of subsection (1)(a), if that resolution was adopted by the requisite majority of votes which were validly cast.

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

Restriction of right to control deposit-taking institution

42. (1) Subject to the provisions of section 36(2), no person other than a deposit-taking institution may exercise control over a deposit-taking institution,

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tensy sodanige persoon 'n publieke maatskappy is en as 'n beherende maatskappy ten opsigte van daardie deponemende instelling geregistreer is.

(2) By die toepassing van hierdie Wet word 'n persoon geag beheer oor 'n deponemende instelling uit te oefen indien, in die geval waar daardie persoon 'n maatskappy is, die deponemende instelling 'n filiaal van daardie maatskappy is, of, hetsy daardie persoon 'n maatskappy is al dan nie, indien daardie persoon alleen of tesame met sy geassosieerdes—

- (a) aandeel in die deponemende instelling hou waarvan die totale nominale waarde meer as 50 persent van die nominale waarde van al die uitgereikte aandeel van die deponemende instelling verteenwoordig, tensy, vanweë beperkings op die stemregte verbonde aan die aandeel wat aldus deur die persoon alleen of tesame met sy geassosieerdes, na gelang van die geval, gehou word, daardie persoon terwyl hy alleen stem of daardie persoon en sy geassosieerdes terwyl hulle as 'n groep stem, nie daartoe in staat is om die uitslag van die stemming op 'n algemene vergadering van die deponemende instelling deurslaggewend te beïnvloed nie;
- (b) geregtig is om meer as 50 persent van die stemregte ten opsigte van die uitgereikte aandeel van daardie deponemende instelling uit te oefen; of
- (c) geregtig is of die bevoegdheid het om die aanstelling van die meerderheid van die direkteur van daardie deponemende instelling te bepaal, met inbegrip van—
 - (i) die bevoegdheid om sonder die instemming van 'n ander persoon al of die meerderheid van sodanige direkteur aan te stel of af te dank; of
 - (ii) die bevoegdheid om te verhinder dat iemand sonder sy toestemming as direkteur aangestel word,

en indien iemand se aanstelling as direkteur van die deponemende instelling noodwendig volg uit sy aanstelling as 'n direkteur van die persoon eerste in hierdie subartikel genoem, word eersgenoemde aanstelling by die toepassing van hierdie subartikel geag 'n aanstelling te wees uit hoofde van 'n bevoegdheid van die aldus eersgenoemde persoon.

(3) By die toepassing van hierdie artikel beteken "geassosieerde" 'n geassosieerde soos omskryf in artikel 36 (10).

Aansoek om registrasie as beherende maatskappy

43. (1) 'n Publieke maatskappy—

- (a) wat beheer oor 'n deponemende instelling wil uitoefen; of
- (b) wat 'n beherende maatskappy, soos omskryf in artikel 1 van die Maatskappijwet, is ten opsigte van 'n ander publieke maatskappy wat ingevolge artikel 16 aansoek gedoen het om voorlopige registrasie as 'n deponemende instelling,

kan op die voorgeskrewe vorm by die Registrateur aansoek doen om registrasie as 'n beherende maatskappy ten opsigte van daardie deponemende instelling of beoogde deponemende instelling, na gelang van die geval.

(2) 'n Aansoek bedoel in subartikel (1) moet vergesel gaan van die inligting en stukke wat voorgeskryf word.

(3) 'n Publieke maatskappy wat ingevolge subartikel (1) aansoek doen om registrasie as 'n beherende maatskappy, moet die bykomende besonderhede in verband met sy aansoek voorlê wat die Registrateur vereis.

Toestaan of weiering van aansoek om registrasie as beherende maatskappy

44. (1) Behoudens die bepalings van subartikel (2) kan die Registrateur, na oorweging van alle inligting, stukke en besonderhede wat ingevolge artikel 43 verstrekkend is vir die doeleindes van 'n aansoek kragtens daardie artikel, die betrokke aansoek toestaan of weier of die aansoek toestaan onderworpe aan die voorwaardes wat hy oplaë.

(2) Die Registrateur mag nie 'n aansoek wat kragtens artikel 43 gedoen is, toestaan nie tensy hy daarvan oortuig is—

- (a) dat die registrasie van die aansoeker as 'n beherende maatskappy nie in stryd met die openbare belang sal wees nie;

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unless such person is a public company and is registered as a controlling company in respect of such deposit-taking institution.

(2) For the purposes of this Act a person shall be deemed to exercise control over a deposit-taking institution if, in the case where that person is a company, the deposit-taking institution is a subsidiary of that company, or, whether or not that person is a company, if that person by himself or together with his associates—

(a) holds shares in the deposit-taking institution of which the total nominal value represents more than 50 per cent of the nominal value of all the issued shares of the deposit-taking institution, unless, due to limitations on the voting rights attached to the shares so held by the person by himself or together with his associates, as the case may be, such person voting on his own or such person and his associates voting as a group, is or are unable to decisively influence the outcome of the voting at a general meeting of the deposit-taking institution;

(b) is entitled to exercise more than 50 per cent of the voting rights in respect of the issued shares of that deposit-taking institution; or

(c) is entitled or has the power to determine the appointment of the majority of the directors of that deposit-taking institution, including—

(i) the power to appoint or remove, without the concurrence of any other person, all or the majority of such directors; or

(ii) the power to prevent any person from being appointed a director without his consent,

and if a person's appointment as a director of the deposit-taking institution follows necessarily from his appointment as a director of the person first-mentioned in this subsection, the first-mentioned appointment shall for the purposes of this subsection be deemed to be an appointment by virtue of a power of a person so first-mentioned.

(3) For the purposes of this section "associate" means an associate as defined in section 36 (10).

30 Application for registration as controlling company

43. (1) A public company—

(a) which desires to exercise control over any deposit-taking institution; or

(b) which is a controlling company, as defined in section 1 of the Companies Act, in respect of any other public company which has applied in terms of section 16 for provisional registration as a deposit-taking institution,

may apply to the Registrar on the prescribed form for registration as a controlling company in respect of that deposit-taking institution or proposed deposit-taking institution, as the case may be.

(2) An application referred to in subsection (1) shall be accompanied by such information and documents as may be prescribed.

(3) A public company applying in terms of subsection (1) for registration as a controlling company shall submit such additional particulars in connection with its application as the Registrar may require.

Granting or refusal of application for registration as controlling company

44. (1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and particulars furnished in terms of section 43 for the purposes of an application under that section, grant or refuse the relevant application or grant the application subject to such conditions as he may impose.

(2) The Registrar shall not grant an application made under section 43 unless he is satisfied—

(a) that the registration of the applicant as a controlling company will not be contrary to the public interest;

- (b) dat, in die geval van 'n aansoeker wat in die omstandighede bedoel in artikel 43 (1) (a) om registrasie aansoek doen, die aansoeker daartoe in staat sal wees om beheer, soos beoog in artikel 42 (2), oor die betrokke depositonemende instelling te vestig;
- (c) dat geen bepaling van die akte van oprigting of statute van die aansoeker met 'n bepaling van hierdie Wet onbestaanbaar is of ongewens is sover dit depositonemende instellings betref nie; 5
- (d) dat elke direkteur of uitvoerende beampte van die aansoeker sover redelik bepaalbaar 'n geskikte en gepaste persoon is om die amp van so 'n direkteur of uitvoerende beampte te beklee, en dat elke sodanige uitvoerende beampte voldoende kennis en ondervinding het om die sake van die aansoeker in sy hoedanigheid van 'n beherende maatskappy te bestuur; 10
- (e) dat die aansoeker finansiële in 'n gesonde toestand verkeer;
- (f) dat geen belang wat die een of ander persoon in die aansoeker het, onbestaanbaar met 'n bepaling van hierdie Wet is nie; en 15
- (g) dat die aansoek aan die voorskrifte van hierdie Wet voldoen.
- (3) Wanneer die Registrateur ingevolge hierdie artikel 'n aansoek om registrasie as 'n beherende maatskappy toestaan of weier, moet hy die betrokke aansoeker skriftelik daarvan in kennis stel.
- (4) (a) Indien die Registrateur ingevolge hierdie artikel 'n aansoek toestaan, moet hy, by voldoening deur die aansoeker aan die voorwaardes onderworpe waaraan die aansoek toegestaan is en teen betaling van die voorgeskrewe registrasiegelde, die betrokke aansoeker as 'n beherende maatskappy ten opsigte van die betrokke depositonemende instelling registreer en op die voorgeskrewe vorm aan die aansoeker 'n sertifikaat van registrasie as 'n beherende maatskappy ten opsigte van die betrokke depositonemende instelling uitreik. 20
- (b) Geen aansoeker wat in die omstandighede bedoel in artikel 43 (1) (b) om registrasie as 'n beherende maatskappy aansoek gedoen het, word as so 'n beherende maatskappy geregistreer nie tensy die maatskappy ten opsigte waarvan hy sodanige aansoek gedoen het as 'n depositonemende instelling geregistreer word. 30
- (5) Benewens enige ander voorwaarde wat die Registrateur kragtens subartikel (1) mag opleë, kan hy 'n voorwaarde opleë wat vereis dat 'n aansoeker wat in die omstandighede bedoel in artikel 43 (1) (a) om registrasie as 'n beherende maatskappy aansoek gedoen het— 35
- (a) binne 'n bepaalde tydperk ten genoë van die Registrateur bewys lewer dat hy onmiddellik na sy registrasie as 'n beherende maatskappy beheer sal vestig oor die depositonemende instelling ten opsigte waarvan hy geregistreer wil word; of 40
- (b) binne 'n bepaalde tydperk en op 'n grondslag en op voorwaardes wat die Registrateur redelik en billik ag, 'n aanbod doen aan persone wat aandeel in genoemde depositonemende instelling hou, om aandeel in die aansoeker op te neem of om aandeel wat hulle in die depositonemende instelling hou, vir aandeel in die aansoeker om te ruil. 45
- (6) (a) Wanneer die Registrateur 'n voorwaarde bedoel in subartikel (5) (b) opgelê het, kan hy, na oorlegpleging met die betrokke aansoeker, 'n persoon aanwys om, onafhanklik van die aansoeker, ondersoek in te stel na, en die Registrateur van advies te dien aangaande, die redelikheid en billikheid van die grondslag en voorwaardes waarop die aansoeker van voorneme is om die aanbod van aandeel ter voldoening aan die voorwaarde te doen. 50
- (b) Die koste van 'n ondersoek ingevolge paragraaf (a) word deur die betrokke aansoeker betaal.
- (7) 'n Publieke maatskappy wat op die datum onmiddellik voor die datum van inwerkingtreding van hierdie Wet ingevolge die bepalings van 'n wet wat deur hierdie Wet herroep word, geregistreer is as— 55
- (a) 'n bankbeheermaatskappy ten opsigte van 'n bankinstelling soos omskryf in so 'n herroepe wet; of
- (b) 'n beheermaatskappy ten opsigte van 'n bouvereniging soos omskryf in so 'n herroepe wet, 60
- word met ingang van die datum van inwerkingtreding van hierdie Wet geag 'n beherende maatskappy te wees wat ingevolge hierdie artikel geregistreer is as 'n

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- (b) that, in the case of an applicant applying for registration in the circumstances referred to in section 43 (1) (a), the applicant will be able to establish control, as contemplated in section 42 (2), over the deposit-taking institution concerned;
- 5 (c) that no provision of the memorandum of association or articles of association of the applicant is inconsistent with a provision of this Act or is undesirable in so far as it concerns deposit-taking institutions;
- (d) that every director or executive officer of the applicant is, as far as can reasonably be ascertained, a fit and proper person to hold the office of such director or executive officer, and that every such executive officer has
- 10 sufficient knowledge and experience to manage the affairs of the applicant in its capacity of a controlling company;
- (e) that the applicant is in a financially sound condition;
- (f) that no interest which any person has in the applicant is inconsistent with a
- 15 provision of this Act; and
- (g) that the application complies with the requirements of this Act.
- (3) When the Registrar in terms of this section grants or refuses an application for registration as a controlling company, he shall give written notice of that fact to the applicant concerned.
- 20 (4) (a) If the Registrar in terms of this section grants an application he shall, upon compliance by the applicant with the conditions subject to which the application was granted and on payment of the prescribed registration fee, register the applicant concerned as a controlling company in respect of the deposit-taking institution concerned and on the prescribed form issue to the
- 25 applicant a certificate of registration as a controlling company in respect of the deposit-taking institution concerned.
- (b) No applicant which has applied for registration as a controlling company in the circumstances referred to in section 43 (1) (b) shall be registered as such a controlling company unless the company in respect of which it made such application is registered as a deposit-taking institution.
- 30 (5) In addition to any other condition which the Registrar may impose under subsection (1), he may impose a condition requiring an applicant which applied for registration as a controlling company in the circumstances referred to in section
- 35 43 (1) (a)—
- (a) to furnish within a specified period proof to the satisfaction of the Registrar that it will immediately after its registration as a controlling company establish control over the deposit-taking institution in respect of which it desires to be registered; or
- 40 (b) to make an offer, within a specified period and on a basis and on conditions regarded by the Registrar as reasonable and fair, to persons holding shares in the said deposit-taking institution to take up shares in the applicant or to exchange shares held by them in the said deposit-taking institution for shares in the applicant.
- 45 (6) (a) Whenever the Registrar has imposed a condition referred to in subsection (5) (b), he may, after consultation with the applicant concerned, designate a person to investigate, independently of the applicant, and to advise the Registrar on, the reasonableness and fairness of the basis and conditions on which the applicant intends to make the share offer in compliance with the
- 50 condition.
- (b) The costs of an investigation in terms of paragraph (a) shall be paid by the applicant concerned.
- (7) A public company which on the date immediately preceding the date of commencement of this Act is, in terms of the provisions of any law repealed by this
- 55 Act, registered as—
- (a) a bank controlling company in respect of a banking institution as defined in such repealed law; or
- (b) a control company in respect of a building society as defined in such repealed law,
- 60 shall with effect from the date of commencement of this Act be deemed to be a controlling company registered in terms of this section as a controlling company in

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beherende maatskappy ten opsigte van die depositonemende instelling as wat die betrokke bankinstelling of bouvereniging ingevolge artikel 33 herregistreer is.

Intrekking deur Registrateur van registrasie van beherende maatskappy

45. (1) Indien 'n beherende maatskappy nie daarin geslaag het om beheer oor die depositonemende instelling ten opsigte waarvan hy geregistreer is, te vestig nie, of nie meer sodanige beheer uitoefen nie, kan die Registrateur by skriftelike kennisgewing aan so 'n beherende maatskappy sy registrasie ten opsigte van daardie depositonemende instelling intrek. 5

(2) Geen intrekking van 'n registrasie kragtens subartikel (1) is van krag nie tensy die Registrateur vooraf by skriftelike kennisgewing die betrokke beherende maatskappy 'n geleentheid gegee het om binne 'n tydperk in die kennisgewing vermeld, wat nie korter as 30 dae mag wees nie, redes aan te voer waarom sy registrasie nie ingetrek behoort te word nie. 10

Intrekking deur hof van registrasie van beherende maatskappy

46. (1) Die Registrateur kan by wyse van aansoek na kennisgewing van mosie by 'n bevoegde hof 'n bevel tot intrekking van die registrasie van 'n beherende maatskappy aanvra indien daar na die oordeel van die Registrateur ander gronde as die gronde vermeld in artikel 45 bestaan wat sodanige intrekking regverdig. 15

(2) Die bepalinge van subartikels (2) en (3) van artikel 25 is *mutatis mutandis* van toepassing op 'n aansoek kragtens subartikel (1). 20

(3) Benewens enige ander gronde wat die hof as voldoende mag beskou om 'n bevel kragtens subartikel (1) tot intrekking van die registrasie van 'n beherende maatskappy te regverdig, kan so 'n bevel ook verleen word indien die betrokke beherende maatskappy—

(a) in of in verband met sy aansoek om registrasie aan die Registrateur inligting verstrek het wat in 'n wesenlike opsig onwaar is; of 25

(b) 'n bepaling van of vereiste kragtens hierdie Wet oortree het of versuim het om daaraan te voldoen,

of indien, op enige ander grond deur die Registrateur in die betrokke aansoek aangevoer, die hof van oordeel is dat dit nie in die openbare belang is om die betrokke beherende maatskappy toe te laat om sy bedrywighede as 'n beherende maatskappy voort te sit nie. 30

Intrekking van registrasie op versoek van beherende maatskappy

47. Die Registrateur moet die registrasie van 'n beherende maatskappy intrek by voorlegging aan hom deur die beherende maatskappy van 'n spesiale besluit beoog in artikel 200 van die Maatskappywet waarby sodanige intrekking gemagtig word. 35

Verval van registrasie van beherende maatskappy by intrekking van registrasie van depositonemende instelling

48. (1) Indien die voorlopige of finale registrasie van 'n depositonemende instelling ten opsigte waarvan 'n beherende maatskappy geregistreer is, ingetrek word, word die registrasie van daardie beherende maatskappy ten opsigte van daardie depositonemende instelling geag terselfdertyd ingetrek te wees. 40

(2) Die intrekking van die registrasie van 'n beherende maatskappy uit hoofde van die bepalinge van subartikel (1), geld met ingang van die datum waarop die betrokke depositonemende instelling ingevolge artikel 31 opgehou het om as sodanig geregistreer te wees. 45

Datum waarop registrasie van beherende maatskappy verval

49. 'n Beherende maatskappy hou op om as sodanig geregistreer te wees—

(a) in die geval van 'n registrasie wat kragtens artikel 45 deur die Registrateur ingetrek is, by verstryking van 30 dae na die datum van die kennisgewing bedoel in subartikel (1) van daardie artikel of, indien 'n appèl voor die verstryking van genoemde 30 dae teen sodanige intrekking by die appèlraad aangeteken is ingevolge artikel 9 en die appèlraad sodanige intrekking 50

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respect of the deposit-taking institution as which the banking institution or building society concerned has been reregistered in terms of section 33.

Cancellation by Registrar of registration of controlling company

45. (1) If a controlling company has failed to establish control over the deposit-taking institution in respect of which it is registered, or no longer exercises such control, the Registrar may by notice in writing to such controlling company cancel its registration in respect of that deposit-taking institution.

(2) No cancellation of any registration under subsection (1) shall be of force unless the Registrar has previously by notice in writing given the controlling company concerned an opportunity to show cause within a period specified in the notice, not being less than 30 days, why its registration should not be cancelled.

Cancellation by court of registration of controlling company

46. (1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling the registration of a controlling company if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 45, justifying such cancellation.

(2) The provisions of subsections (2) and (3) of section 25 shall *mutatis mutandis* apply to an application under subsection (1).

(3) In addition to any other grounds which the court may consider sufficient to justify the granting of an order under subsection (1) cancelling the registration of a controlling company, such an order may also be granted if the controlling company concerned—

- (a) has furnished the Registrar in or in connection with its application for registration with information which is in a material respect untrue; or
- (b) has contravened or failed to comply with a provision of or a requirement under this Act,

or if, on any other ground advanced by the Registrar in the relevant application, the court is of the opinion that it is not in the public interest to allow the controlling company concerned to continue its activities as a controlling company.

Cancellation of registration at request of controlling company

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

Lapse of registration of controlling company upon cancellation of registration of deposit-taking institution

48. (1) If the provisional or final registration of a deposit-taking institution in respect of which a controlling company is registered, is cancelled, the registration of that controlling company in respect of that deposit-taking institution shall be deemed to have been cancelled simultaneously.

(2) The cancellation of the registration of a controlling company by virtue of the provisions of subsection (1) shall be with effect from the date on which the deposit-taking institution concerned in terms of section 31 ceased to be registered as such.

Date on which registration of controlling company lapses

49. A controlling company shall cease to be registered as such—

- (a) in the case of a registration cancelled by the Registrar under section 45, upon expiry of 30 days after the date of the notice referred to in subsection (1) of that section or, if an appeal against such cancellation was lodged with the board of appeal in terms of section 9 before the expiry of the said 30 days and the board of appeal has confirmed such cancellation, upon the

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bekragtig het, op die datum waarop die betrokke beherende maatskappy van sodanige bekragtiging verwittig word;

- (b) in die geval van 'n registrasie ten opsigte waarvan die hof 'n bevel tot die intrekking daarvan kragtens artikel 46 toegestaan het, op die datum waarop daardie bevel van krag word; of 5
- (c) in die geval van 'n registrasie wat deur die Registrateur ingevolge artikel 47 ingetrek is, op die datum wat die Registrateur bepaal.

Beleggings deur beherende maatskappye**50. 'n Beherende maatskappy wat geld belê—**

- (a) in ander ondernemings as depositonemende instellings, instellings wat in 'n 10
ander land as die Republiek 'n bedryf soortgelyk aan die bedryf van 'n
depositonemende instelling uitoefen, beherende maatskappye of
maatskappye waarvan die hoofdoelstelling die hou of ontwikkeling van
eiendom is wat hoofsaaklik gebruik word of bestem is om hoofsaaklik
gebruik te word vir die doeleindes van die uitoefening van die bedryf van 15
'n depositonemende instelling; of
 - (b) in onroerende eiendom wat nie hoofsaaklik gebruik word of bestem is om
hoofsaaklik gebruik te word vir die doeleindes van die uitoefening van die
bedryf van 'n depositonemende instelling nie,
- moet sy transaksies in sodanige beleggings so bestuur dat die bedrag van sodanige 20
beleggings op geen tydstop meer as 40 persent van die som van sy aandeelkapitaal en
reserwefondse bedra nie.

HOOFSTUK V

**FUNKSIONERING VAN DEPOSITONEMENDE INSTELLINGS EN BEHERENDE MAATSKAPPYE
MET VERWYSING NA MAATSKAPPYWET 25**

Toepassing van Maatskappywet op depositonemende instellings en beherende maatskappye

51. (1) 'n Maatskappy wat as 'n depositonemende instelling of as 'n beherende maatskappy geregistreer is, bly voortbestaan as 'n maatskappy ingevolge die Maatskappywet, en die bepalinge van daardie Wet bly, behoudens die bepalinge van subartikel (2), op so 'n maatskappy van toepassing vir sover hulle nie met 'n bepaling van hierdie Wet onbestaanbaar is nie: Met dien verstande dat—

- (a) die bepalinge van die Maatskappywet wat die omskepping van publieke maatskappye in ander vorms van maatskappye reël, nie op so 'n maatskappy van toepassing is nie; en 35
 - (b) by die toepassing, uit hoofde van die bepalinge van hierdie subartikel, van die bepalinge van artikel 171 (1) van die Maatskappywet ten opsigte van 'n maatskappy bedoel in hierdie subartikel, die verwysing in genoemde artikel 171 (1)—
 - (i) na "direkteur" geag word 'n verwysing te wees slegs na 'n direkteur 40
wie se naam verskyn in die betrokke maatskappy se register van
direkteure en beamptes beoog in artikel 215 van die Maatskappywet;
en
 - (ii) na "besigheidsbrief" geag word nie ook 'n verwysing na enige ge-
drukte adviesvorm in te sluit nie. 45
- (2) Die Minister kan met die instemming van die Minister van Handel en Nywerheid en Toerisme by kennisgewing in die *Staatskoerant* verklaar dat 'n bepaling van die Maatskappywet in die kennisgewing vermeld—
- (a) nie van toepassing is nie op 'n maatskappy wat as 'n depositonemende instelling of as 'n beherende maatskappy geregistreer is; 50
 - (b) slegs behoudens die aanpassings en kwalifikasies in die kennisgewing vermeld, op so 'n maatskappy van toepassing is; of
 - (c) waarvan die uitvoering by die Registrateur van Maatskappye berus, ten opsigte van maatskappye wat as depositonemende instellings of as beherende maatskappye geregistreer is, by die Registrateur berus. 55

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date on which the controlling company concerned is notified of such confirmation;

- (b) in the case of a registration in respect of which the court has granted an order under section 46 cancelling the registration, upon the date on which that order comes into force; or
- 5 (c) in the case of a registration cancelled by the Registrar in terms of section 47, upon such date as may be determined by the Registrar.

Investments by controlling companies**50. A controlling company investing money—**

- 10 (a) in undertakings other than deposit-taking institutions, institutions which conduct business similar to the business of a deposit-taking institution in a country other than the Republic, controlling companies or companies of which the main object is the holding or development of property which is used or intended to be used mainly for the purpose of conducting the
- 15 business of a deposit-taking institution; or
- (b) in fixed property which is not used or intended to be used mainly for the purpose of conducting the business of a deposit-taking institution,
- shall manage its transactions in such investments in such a way that the amount of such investments does not at any time exceed 40 per cent of the sum of its share
- 20 capital and reserve funds.

CHAPTER V**FUNCTIONING OF DEPOSIT-TAKING INSTITUTIONS AND CONTROLLING COMPANIES WITH REFERENCE TO COMPANIES ACT****Application of Companies Act to deposit-taking institutions and controlling companies**

- 25 **51. (1)** A company registered as a deposit-taking institution or as a controlling company shall continue to be a company in terms of the Companies Act, and the provisions of that Act shall, subject to the provisions of subsection (2), continue to apply to any such company to the extent to which they are not inconsistent with any provision of this Act: Provided that—

- 30 (a) the provisions of the Companies Act governing the conversion of public companies into other forms of companies shall not apply to any such company; and
- (b) in the application, by virtue of the provisions of this subsection, of the provisions of section 171 (1) of the Companies Act in respect of a company referred to in this subsection, the reference in the said section 171 (1)—
- 35 (i) to “director”, shall be deemed to be a reference only to a director whose name appears in the relevant company’s register of directors and officers contemplated in section 215 of the Companies Act; and
- (ii) to “business letter”, shall be deemed not to include a reference to any
- 40 printed form of advice.

(2) The Minister may with the concurrence of the Minister of Trade and Industry and Tourism by notice in the *Gazette* declare that a provision of the Companies Act specified in such notice—

- 45 (a) shall not apply to any company registered as a deposit-taking institution or as a controlling company;
- (b) shall only apply to any such company subject to such adjustments and qualifications as may be specified in the notice; or
- (c) the administration of which vests in the Registrar of Companies, shall in respect of companies registered as deposit-taking institutions or as controlling
- 50 companies vest in the Registrar.

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(3) Die Minister moet 'n afskrif van 'n kennisgewing kragtens subartikel (2) in die Parlement ter Tafel lê binne 14 dae na die publikasie daarvan, indien die Parlement dan in gewone sessie byeen is, of, indien die Parlement nie dan in gewone sessie byeen is nie, binne 14 dae na die aanvang van sy eersvolgende gewone sessie, en so 'n kennisgewing hou op om van krag te wees indien elke Huis van die Parlement gedurende die sessie waartydens sodanige kennisgewing aldus ter Tafel gelê is, daardie kennisgewing by besluit afkeur: Met dien verstande dat niks wat in hierdie subartikel vervat is die bevoegdheid van die Minister raak nie om 'n nuwe kennisgewing kragtens subartikel (2) uit te vaardig aangaande die onderwerp van die kennisgewing wat aldus opgehou het om van krag te wees.

Filiale, takkantore, ander belange en verteenwoordigende kantore van depositonemende instellings en beheerende maatskappye

52. (1) 'n Depositonemende instelling mag nie sonder die vooraf verkreeë skriftelike goedkeuring van die Registrateur of anders as ooreenkomstig voorwaardes deur die Registrateur skriftelik goedgekeur—

- (a) 'n filiaal binne of buite die Republiek stig of 'n ooreenkoms aangaan wat die uitwerking het dat die een of ander maatskappy binne of buite die Republiek sy filiaal word nie;
- (b) 'n takkantoor buite die Republiek open nie;
- (c) 'n belang in 'n onderneming wat buite die Republiek sake doen, verkry nie;
- (d) buite die Republiek—
 - (i) 'n trust waarvan die depositonemende instelling 'n hoofbegunstigde is, stig nie; of
 - (ii) 'n finansiële of ander sake-onderneming onder sy direkte of indirekte beheer oprig nie; of

(e) 'n verteenwoordigende kantoor buite die Republiek open nie.

(2) Vir die verkryging van goedkeuring van die Registrateur soos bedoel in subartikel (1) moet by die Registrateur 'n skriftelike aansoek ingelewer word waarin volle besonderhede verstrek word van die voorgename handelings, met inbegrip van, in die geval van 'n voorgename opening van 'n verteenwoordigende kantoor buite die Republiek soos beoog in paragraaf (e) van genoemde subartikel—

- (a) die land waarin die verteenwoordigende kantoor geopen staan te word;
- (b) die naam van die depositonemende instelling se beoogde hoof- verteenwoordigende beampte in daardie land; en
- (c) die adres van die beoogde verteenwoordigende kantoor in daardie land.

(3) Die Registrateur kan van 'n aansoeker beoog in subartikel (2) vereis om benewens besonderhede ingevolge daardie subartikel deur die aansoeker verstrek, die verdere inligting aan die Registrateur te verstrek wat hy nodig ag.

(4) Na die opening ingevolge hierdie artikel van 'n verteenwoordigende kantoor buite die Republiek, moet die betrokke depositonemende instelling die Registrateur skriftelik in kennis stel van—

- (a) enige vervanging van sy hoof- verteenwoordigende beampte in die betrokke land;
- (b) enige verandering van die adres van die betrokke verteenwoordigende kantoor; of
- (c) die sluiting van die verteenwoordigende kantoor,

sodra dit plaasvind.

(5) Die bepalings van subartikel (1) (a), (c) en (d), en van subartikels (2) en (3) vir sover hulle ter sake is, is *mutatis mutandis* van toepassing ten opsigte van 'n beheerende maatskappy.

Openbaarmaking deur depositonemende instellings en beheerende maatskappye van belang in filiale, trusts en ander ondernemings

53. 'n Depositonemende instelling of 'n beheerende maatskappy moet op die vorm en by die tussenpose wat voorgeskryf word die Registrateur voorsien van die besonderhede wat voorgeskryf word betreffende sy aandeelhouding of ander belang in—

- (a) sy filiale beoog in artikel 52 (1) (a);
- (b) 'n onderneming beoog in artikel 52 (1) (c); of

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(3) The Minister shall lay a copy of a notice under subsection (2) upon the Tables in Parliament within 14 days after the publication thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session, and any such notice shall
5 cease to be in force if every House of Parliament by resolution passed during the session in which such notice has been so laid upon the Tables, disapproves thereof: Provided that nothing contained in this subsection shall affect the power of the Minister to issue a new notice under subsection (2) as to the subject matter of the notice which has so ceased to be in force.

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

52. (1) A deposit-taking institution shall not without the prior written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing—

- 15 (a) establish a subsidiary within or outside the Republic or enter into an agreement having the effect that any company becomes its subsidiary within or outside the Republic;
- (b) open a branch office outside the Republic;
- 20 (c) acquire an interest in any undertaking conducting business outside the Republic;
- (d) outside the Republic—
- (i) create a trust of which the deposit-taking institution is a major beneficiary; or
- 25 (ii) establish any financial or other business undertaking under its direct or indirect control; or
- (e) establish a representative office outside the Republic.

(2) To obtain the prior approval of the Registrar as contemplated in subsection (1), there shall be lodged with the Registrar a written application in which full particulars of the proposed action are furnished, including, in the case of a proposed
30 establishment of a representative office outside the Republic as contemplated in paragraph (e) of the said subsection—

- (a) the country in which the representative office is to be established;
- (b) the name of the proposed chief representative officer, in that country, of the deposit-taking institution; and
- 35 (c) the address of the proposed representative office in that country.

(3) The Registrar may require an applicant contemplated in subsection (2) to furnish him with such information, in addition to particulars furnished by the applicant in terms of that subsection, as the Registrar may deem necessary.

(4) After the establishment in terms of this section of a representative office
40 outside the Republic, the deposit-taking institution concerned shall in writing notify the Registrar of—

- (a) any substitution of its chief representative officer in the country concerned;
- (b) any change of the address of the representative office in question; or
- 45 (c) the closing down of the representative office,
- as soon as it occurs.

(5) The provisions of subsection (1) (a), (c) and (d), and of subsections (2) and (3) in so far as they are relevant, shall *mutatis mutandis* apply in respect of any controlling company.

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

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

- 55 (a) its subsidiaries contemplated in section 52 (1) (a);
- (b) an undertaking contemplated in section 52 (1) (c); or

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- (c) enige trust of finansiële of ander sake-onderneming beoog in artikel 52 (1) (d).

Skikkings, amalgamasies, reëlings en oornames

54. (1) Geen skikking, amalgamasie, 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. 5
- (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 15 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. 20
- (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— 25
- (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; 30
- (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 verpligtings 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; 35
- (c) bly alle ooreenkomste, aanstellings, transaksies en stukke aangegaan, gedoen, opgestel of verly met, deur of ten gunste van enigen 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 40
- (d) bly enige verband, verpanding, waarborg of stuk ter dekking van toekomstige voorskotte, fasiliteite of dienste deur enigen 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 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. 45
- (4) 'n Skikking, amalgamasie, 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 aandeelhouders 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. 50 55 60

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- (c) any trust or financial or other business undertaking contemplated in section 52 (1) (d).

Compromises, amalgamations, arrangements and take-overs

54. (1) No compromise, amalgamation, arrangement or take-over referred to in Chapter XII of the Companies Act and which involves a deposit-taking institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of a deposit-taking institution to another person, shall have legal force unless the consent of the Minister, conveyed in writing through the Registrar, to the transaction in question has been obtained beforehand.

(2) The Minister shall not grant his consent referred to in subsection (1) unless—

- (a) he is satisfied that the transaction in question will not be detrimental to the public interest;
- (b) in the case of an amalgamation or a take-over referred to in subsection (1), the amalgamation is an amalgamation of deposit-taking institutions only or the take-over involves only the acquisition of shares in a deposit-taking institution by another deposit-taking institution or its controlling company; or
- (c) in the case 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 prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated institution or, as the case may be, the institution taking over such assets and liabilities, as security for future advances, facilities or services by that institution.

(4) Any compromise, amalgamation, arrangement or take-over, or any arrangement for the transfer of assets and liabilities, referred to in subsection (1), excluding a transfer other than a transfer referred to in subsection (2) (c), shall be subject to confirmation at a general meeting of shareholders of each of the deposit-taking institutions concerned, and the notice convening such a meeting shall contain or have attached to it the terms and conditions of the relevant agreement or arrangement.

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(5) 'n Kennisgewing dat 'n besluit ter bekragtiging, soos beoog in subartikel (4), van 'n skikking, amalgamasie, reëling of oorname, of van 'n reëling vir die oordrag van bates en laste, geneem is, moet deur elkeen van die betrokke deponisionemende 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 deponisionemende instelling gesertifiseer is, en die Registrateur moet nadat hy sodanige kennisgewings ontvang het van al die deponisionemende instellings wat partye by die betrokke ooreenkoms of reëling is, daardie kennisgewings registreer. 5 10

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

(a) van 'n amalgamasie van twee of meer deponisionemende instellings, word die registrasie van die individuele instellings wat partye by die amalgamasie was, geag gerojêer 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 deponisionemende instelling registreer; of 15

(b) van 'n reëling vir die oordrag van al die bates en laste van 'n deponisionemende instelling, word so 'n deponisionemende instelling se registrasie geag gerojêer te wees en moet dit deur die Registrateur ingetrek word. 20

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

(a) in die geval waar al die partye by die betrokke amalgamasie op daardie tydstop finaal as deponisionemende instellings geregistreer was, 'n finale registrasie as 'n deponisionemende instelling wees; 25

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

(c) in die geval waar sommige van die partye by die amalgamasie op daardie tydstop finaal en ander voorlopig as deponisionemende instellings geregistreer was, 'n finale of 'n voorlopige registrasie, na goeddunke van die Registrateur, wees, 30

en die Registrateur moet by sodanige registrasie die toepaslike sertifikaat van registrasie aan die betrokke instelling uitreik. 35

(8) Die Registrateur van Maatskappye, elke Meester van die Hooggeregshof en elke beampste 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 40

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

'n deponisionemende instelling wat met 'n ander sodanige instelling geamalgameer het of 'n deponisionemende instelling wat al sy bates en laste aan 'n ander sodanige instelling oorgedra het, moet—

(i) indien hy daarvan oortuig is dat die Minister ingevolge subartikel (1) tot die amalgamasie of oordrag toegestem het; en 45

(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 veranderinge 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. 50

(9) Die bepalings van hierdie artikel raak nie die regte nie van 'n skuldeiser van 'n deponisionemende 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. 55

(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), (vA) of (w) of 19 (5A) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), by die oordraggewende deponisionemende instelling bly, ondanks so 'n oordrag van 60

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(5) Notice of the passing of the resolution confirming, as contemplated in subsection (4), any compromise, amalgamation, arrangement or take-over, or any arrangement for the transfer of assets and liabilities, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the chairman of the meeting at which such resolution was passed and by the secretary of the deposit-taking institution concerned, shall be sent to the Registrar by each of the deposit-taking institutions involved, and the Registrar shall, after having received such notices from all the deposit-taking institutions which are parties to the relevant agreement or arrangement, register such notices.

(6) Upon the registration by the Registrar of the notices referred to in subsection (5)—

- (a) of any amalgamation of two or more deposit-taking institutions, the registration of the individual institutions which were parties to the amalgamation shall be deemed to be cancelled and the Registrar shall withdraw those registrations and, on payment by the institution created by the amalgamation of the prescribed registration fee, register such institution, subject to the provisions of subsection (7), as a deposit-taking institution; or
- (b) of any arrangement for the transfer of all the assets and liabilities of a deposit-taking institution, the registration of such deposit-taking institution shall be deemed to be cancelled and shall be withdrawn by the Registrar.

(7) A registration by the Registrar in terms of subsection (6) shall—

- (a) in the case where all the parties to the relevant amalgamation were finally registered as deposit-taking institutions at the time, be a final registration as a deposit-taking institution;
- (b) in the case where all the parties to the relevant amalgamation were provisionally registered as deposit-taking institutions at the time, be a provisional registration as a deposit-taking institution; or
- (c) in the case where some of the parties to the amalgamation were finally registered and some were provisionally registered as deposit-taking institutions at the time, be a final or a provisional registration as a deposit-taking institution, in the discretion of the Registrar,

and the Registrar shall upon such registration issue the applicable certificate of registration to the institution concerned.

(8) The Registrar of Companies, every Master of the Supreme Court and every officer in charge of a deeds registry or any other office in which—

- (a) is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by; or
- (b) has been issued any licence to or in favour of, any deposit-taking institution which has amalgamated with any other such institution or any deposit-taking institution which has transferred all its assets and liabilities to any other such institution, shall—

(i) if he is satisfied that the Minister has in terms of subsection (1) consented to the amalgamation or transfer; and

(ii) that such amalgamation or transfer has been duly effected, and upon the production to him of any relevant deed, bond, certificate, letter of appointment, licence or other document, make such endorsements thereon and effect such alterations in his registers as may be necessary to record the transfer thereof and of any rights thereunder to the amalgamated institution or, as the case may be, the institution which has so taken over the said assets and liabilities.

(9) The provisions of this section shall not affect the rights of any creditor of a deposit-taking institution which has amalgamated with or transferred all its assets and liabilities to any other such institution or taken over all the 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), (vA) 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

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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.

Rekonstruksie binne groep maatskappye

5

55. Geen rekonstruksie van maatskappye binne 'n groep—

- (a) ten opsigte waarvan groeps- finansiële jaarstate opgestel moet word ingevolge artikel 288 (1) van die Maatskappywet; en
 - (b) waarvan 'n depositonemende instelling of 'n beherende maatskappy of filiaal van 'n depositonemende instelling 'n lid is, 10
- mag sonder die vooraf verkreeë skriftelike goedkeuring van die Registrateur bewerkstellig word nie.

Wysiging van akte van oprigting of statute, en verandering van naam**56. (1) Geen—**

- (a) wysiging, ingevolge artikel 55, 56 of 62 van die Maatskappywet, van die akte van oprigting of statute van 'n maatskappy wat as 'n depositonemende instelling geregistreer is; of 15
 - (b) verandering, ingevolge artikel 44 van die Maatskappywet, van die naam van so 'n maatskappy, 20
- het vir die doeleindes van hierdie Wet of enige ander wet regsrag nie tensy daardie wysiging of verandering skriftelik deur die Registrateur goedgekeur is voor die registrasie daarvan deur die Registrateur van Maatskappye.
- (2) 'n Aansoek om die Registrateur se goedkeuring ingevolge subartikel (1) moet by die Registrateur ingelewer word voordat die voorgestelde spesiale besluit waarby die betrokke wysiging of verandering gemagtig word, aan 'n algemene vergadering van die maatskappy voorgelê word, en so 'n aansoek moet vergesel gaan van— 25
- (a) twee afskrifte van die voorgestelde spesiale besluit; en
 - (b) 'n verduideliking van die redes vir die besluit.
- (3) Die Registrateur mag nie 'n aansoek bedoel in subartikel (2) toestaan nie indien hy van oordeel is— 30
- (a) dat die voorgestelde wysiging met 'n bepaling van hierdie Wet onbestaanbaar is of, sover dit die bedrywighede van depositonemende instellings betref, ongewens is; of
 - (b) dat die voorgestelde nuwe naam onaanvaarbaar is op enige van die gronde vermeld in subparagrafe (i), (ii), (iii) en (iv) van artikel 17 (2) (e). 35
- (4) 'n Depositonemende instelling moet binne 21 dae na die registrasie deur die Registrateur van Maatskappye van 'n wysiging van sy akte van oprigting of statute of 'n verandering van sy naam, aan die Registrateur 'n gewaarmerkte afskrif verstrek van die spesiale besluit waarin die wysiging of naamsverandering, na gelang van die geval, uiteengesit word. 40
- (5) By ontvangs, uit hoofde van die bepalings van subartikel (4), van 'n afskrif van 'n spesiale besluit, en teen betaling deur die betrokke depositonemende instelling van die voorgeskrewe gelde, moet die Registrateur—
- (a) in die geval van 'n spesiale besluit betreffende 'n wysiging van 'n akte van oprigting of van statute, die betrokke wysiging registreer en aan die betrokke depositonemende instelling 'n sertifikaat uitreik ten effekte dat genoemde wysiging deur die Registrateur geregistreer is met ingang van 'n datum in die sertifikaat vermeld; of 45
 - (b) in die geval van 'n spesiale besluit betreffende 'n naamsverandering, die naam van die betrokke depositonemende instelling in sy register van depositonemende instellings verander en aan die betrokke instelling 'n sertifikaat van sodanige naamsverandering uitreik. 50
- (6) 'n Wysiging bedoel in subartikel (5) (a) is nie van krag nie totdat dit ingevolge daardie subartikel geregistreer is.
- (7) Die bepalings van subartikels (1), (2) en (3) is nie van toepassing nie met betrekking tot 'n wysiging van 'n depositonemende instelling se akte van oprigting of statute ooreenkomstig 'n lasgewing deur die Registrateur kragtens hierdie Wet. 55

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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.

Reconstruction within group of companies

- 5 55. No reconstruction of companies within a group—
- (a) in respect of which annual financial statements are required to be made out in terms of section 288 (1) of the Companies Act; and
 - (b) of which a deposit-taking institution or a controlling company or subsidiary of a deposit-taking institution is a member,
- 10 shall be effected without the prior written approval of the Registrar.

Alteration of memorandum of association or articles of association, and change of name

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

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(8) Die bepalings van subartikel (1) (a), en van subartikels (2), (3), (4), (5) en (6) vir sover hulle ter sake is, is *mutatis mutandis* van toepassing ten opsigte van 'n beherende maatskappy.

Wysiging van akte van oprigting of statute ooreenkomstig lasgewing van Registrateur

57. (1) Die Registrateur kan te eniger tyd 'n depositonemende instelling skriftelik 5
gelas om die wysiging, wat nie met 'n bepaling van hierdie Wet onbestaanbaar is nie,
aan sy akte van oprigting of statute aan te bring wat die Registrateur wenslik ag ten
einde ongerymdhede of ongewenste afwykings in die bedrywighede van verskillende
depositonemende instellings te verwyder.

(2) 'n Wysiging kragtens subartikel (1) deur die Registrateur gelas, moet voor of 10
op die dag van die eerste algemene jaarvergadering, bedoel in artikel 179 van die
Maatskappywet, wat volg op die datum van sodanige lasgewing, aan die aandeel-
houers van die depositonemende instelling vir ooreenkomstig voorgelê word.

(3) Indien 'n depositonemende instelling weier of versuim om sy akte van 15
oprigting of statute te wysig ooreenkomstig 'n lasgewing van die Registrateur
kragtens subartikel (1), kan die Registrateur 'n afskrif van daardie lasgewing aan die
Registrateur van Maatskappye voorlê, waarop daardie Registrateur met die voor-
gestelde wysiging daarin vervat ooreenkomstig die Maatskappywet moet handel asof
dit vervat is in 'n spesiale besluit wat deur die betrokke depositonemende instelling 20
aangeneem en deur daardie instelling ooreenkomstig daardie Wet aan hom voorgelê
is.

Inligting aangaande direkteure en beamptes

58. 'n Depositonemende instelling moet binne 30 dae na sy voorlopige registrasie
as sodanig, en 'n beherende maatskappy moet binne 30 dae na sy registrasie as
sodanig, die Registrateur voorsien van 'n afskrif van sy register van direkteure en 25
beamptes bedoel in artikel 215 van die Maatskappywet.

Opgawes aangaande aandeelhouders

59. (1) 'n Depositonemende instelling moet binne 90 dae vanaf sy voorlopige
registrasie as sodanig, en 'n beherende maatskappy moet binne 90 dae vanaf sy
registrasie as sodanig, en jaarliks daarna binne 30 dae vanaf die een-en-dertigste dag 30
van Desember van elke jaar, 'n opgawe met betrekking tot sy aandeelhouders soos op
die datum van bedoelde registrasie of soos op bedoelde een-en-dertigste dag van
Desember, na gelang van die geval, aan die Registrateur verstrek.

(2) 'n Opgawe bedoel in subartikel (1) moet uit afsonderlike lyste van binnelandse
en buitelandse aandeelhouders bestaan, waarvan elk in alfabetiese volgorde volgens 35
die name van die aandeelhouders opgestel moet word met vermelding teenoor elke
naam van—

- (a) die adres van die aandeelhouer;
- (b) die getal en soort aandele op sy naam geregistreer;
- (c) die totale nominale waarde van daardie aandele; 40
- (d) die persentasie wat die totale nominale waarde van daardie aandele
verteenvoerdig van die totale nominale waarde van al die uitgereikte
aandele van die depositonemende instelling of beherende maatskappy; en
- (e) indien die aandeelhouer 'n depositonemende instelling of beherende 45
maatskappy is of, in die geval van 'n buitelandse aandeelhouer, 'n instelling
is wat 'n bedryf soortgelyk aan die bedryf van 'n depositonemende
instelling uitoefen, die feit dat dit so 'n depositonemende instelling,
beherende maatskappy of instelling, na gelang van die geval, is;

Met dien verstande—

- (i) dat twee of meer binnelandse aandeelhouders wat geassosieerdes is, as 'n 50
groep onder die naam van een van die geassosieerdes, in alfabetiese
volgorde volgens hul name, in die lys opgeneem moet word met vermelding
van, benewens die besonderhede bedoel in paragrafe (a) tot en met (e)—
(aa) die feit dat hulle geassosieerdes is;
- (bb) die totale nominale waarde van al die aandele op hul onderskeie name 55
geregistreer; en

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(8) The provisions of subsection (1) (a), and of subsections (2), (3), (4), (5) and (6) in so far as they are relevant, shall *mutatis mutandis* apply in respect of any controlling company.

5 **Alteration of memorandum of association or articles of association in accordance with direction of Registrar**

57. (1) The Registrar may at any time in writing direct a deposit-taking institution to effect such alteration, not contrary to a provision of this Act, to its memorandum of association or articles of association as the Registrar may deem desirable in order to remove anomalies or undesirable divergences in the activities of different deposit-taking institutions.

(2) An alteration directed by the Registrar under subsection (1) shall on or before the day of the first annual general meeting, referred to in section 179 of the Companies Act, following upon the date of such direction, be submitted for consideration to the shareholders of the deposit-taking institution concerned.

15 (3) If a deposit-taking institution refuses or fails to alter its memorandum of association or articles of association in accordance with a direction of the Registrar under subsection (1), the Registrar may submit a copy of that direction to the Registrar of Companies, who shall thereupon deal with the proposed alteration contained therein in accordance with the Companies Act as if it were contained in a special resolution adopted by the deposit-taking institution concerned and submitted to him by that institution in accordance with that Act.

Information regarding directors and officers

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

Returns regarding shareholders

59. (1) A deposit-taking institution shall within 90 days of its provisional registration as such, and a controlling company shall within 90 days of its registration as such, and annually thereafter within 30 days of the thirty-first day of December of each year, furnish the Registrar with a return regarding its shareholders as at the date of the said registration or as on the said thirty-first day of December, as the case may be.

(2) A return referred to in subsection (1) shall comprise separate lists of domestic and foreign shareholders, each of which shall be compiled in alphabetical order according to the names of the shareholders and stating opposite each name—

- (a) the address of the shareholder;
- (b) the number and class of shares registered in his name;
- (c) the total nominal value of those shares;
- 40 (d) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
- (e) if the shareholder is a deposit-taking institution, controlling company or, in the case of a foreign shareholder, an institution conducting business similar to the business of a deposit-taking institution, the fact that it is such a deposit-taking institution, controlling company or institution, as the case may be;

Provided—

- 50 (i) that two or more domestic shareholders who are associates shall in alphabetical order according to their names be included in the list as a group under the name of one of the associates, stating, in addition to the particulars referred to in paragraphs (a) to (e), inclusive—
 - (aa) the fact that they are associates;
 - 55 (bb) the total nominal value of all the shares registered in their respective names; and

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- (cc) die persentasie wat die totale nominale waarde van daardie aandeel verteenwoordig van die totale nominale waarde van al die uitgereikte aandeel van die depositonemende instelling of beherende maatskappy; en
- (ii) dat die naam van 'n aandeelhouer en die besonderhede bedoel in paragraaf (a) tot en met (e), behoudens subartikel (3), nie in so 'n lys opgeneem word nie indien die totale nominale waarde van die aandeel wat op sy naam geregistreer is—
- (aa) in die geval van 'n binnelandse aandeelhouer, minder is as een persent van die totale nominale waarde van al die uitgereikte aandeel van die depositonemende instelling of beherende maatskappy; of
- (bb) in die geval van 'n buitelandse aandeelhouer, minder is as die kleinste van R100 000 of een persent van die totale nominale waarde van al sodanige uitgereikte aandeel.
- (3) 'n Opgawe bedoel in subartikel (1) moet voorts vermeld—
- (a) die getal binnelandse en die getal buitelandse aandeelhouders wie se name en individuele besonderhede uit hoofde van paragraaf (ii) van die voorbehoudsbepaling by subartikel (2) nie in die lys opgeneem is nie, en teenoor die onderskeie getalle—
- (i) die getal aandeel op naam van die betrokke aandeelhouders geregistreer;
- (ii) die totale nominale waarde van sodanige aandeel; en
- (iii) die persentasie wat die totale nominale waarde van sodanige aandeel verteenwoordig van die totale nominale waarde van al die uitgereikte aandeel van die depositonemende instelling of beherende maatskappy; en
- (b) die totale nominale waarde van aandeel wat op naam van, onderskeidelik, alle binnelandse en alle buitelandse aandeelhouders geregistreer is.
- (4) Indien die totale nominale waarde van die aandeel in 'n depositonemende instelling of 'n beherende maatskappy wat op die naam van 'n aandeelhouer geregistreer is, minder is as die kleinste van R100 000 of een persent van die totale nominale waarde van al die uitgereikte aandeel van die betrokke instelling of maatskappy, kan so 'n instelling of maatskappy by die toepassing van hierdie artikel sonder meer aanvaar, tensy hy van die teendeel bewus is, dat die betrokke aandeelhouer—
- (a) 'n binnelandse aandeelhouer is, indien die adres wat ten opsigte van so 'n aandeelhouer in die lederegister bedoel in artikel 105 van die Maatskappijwet aangeteken is, 'n adres in die Republiek is; en
- (b) nie 'n geassosieerde van enige ander aandeelhouer van die instelling of maatskappy is nie.
- (5) By die toepassing van hierdie artikel beteken "geassosieerde" 'n geassosieerde soos omskryf in artikel 36 (10).

Direkteure van depositonemende instelling of beherende maatskappy

60. (1) Ondanks andersluidende bepalinge van enige wet of die gemene reg, mag nie meer as 49 persent, afwaarts afgerond tot die naaste heeltal, van die direkteure van—
- (a) 'n depositonemende instelling of beherende maatskappy ook direkteure wees nie van—
- (i) dieselfde individuele aandeelhouer (uitgesonderd, in die geval van 'n depositonemende instelling, so 'n individuele aandeelhouer wat 'n depositonemende instelling is waarvan eersgenoemde depositonemende instelling 'n volfiliaal is) in daardie depositonemende instelling of beherende maatskappy;
- (ii) 'n houermaatskappy van so 'n individuele aandeelhouer;
- (iii) 'n maatskappy waarvan so 'n houermaatskappy 'n filiaal is;
- (iv) 'n medefiliaal van so 'n individuele aandeelhouer; of
- (v) 'n filiaal (uitgesonderd 'n sub-filiaal) van so 'n individuele aandeelhouer of medefiliaal; of
- (b) 'n depositonemende instelling, werknemers van daardie instelling wees nie: Met dien verstande dat die totale getal persone wat ingevolge paragraaf (a) en (b) die ampte van direkteure van 'n depositonemende instelling beklee nie 49 persent, afwaarts afgerond tot die naaste heeltal, van die direkteure van daardie depositonemende instelling mag oorskry nie.
- (2) Geen persoon wat op die datum van inwerkingtreding van hierdie Wet 'n direkteur van 'n depositonemende instelling of beherende maatskappy is, mag by die verstryking van sy ampstermyn weer as so 'n direkteur aangestel word nie tensy of

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

Directors of deposit-taking institution or controlling company

60. (1) Notwithstanding anything to the contrary in any law or the common law contained, not more than 49 per cent, rounded off to the next lower integral number,
- 40 of the directors of—
- (a) a deposit-taking institution or controlling company shall be directors also of—
- (i) the same individual shareholder (excluding, in the case of a deposit-taking institution, such an individual shareholder which is a deposit-taking institution of which the first-mentioned deposit-taking institution is a wholly owned subsidiary) in that deposit-taking institution or controlling company;
- 45 (ii) a holding company of such individual shareholder;
- (iii) a company of which such holding company is a subsidiary;
- 50 (iv) a fellow subsidiary of such individual shareholder; or
- (v) a subsidiary (excluding a sub-subsidiary) of such individual shareholder or fellow subsidiary; or
- (b) a deposit-taking institution, shall be employees of that institution:
- Provided that the aggregate number of persons holding office as directors of a
- 55 deposit-taking institution in terms of paragraphs (a) and (b) shall not exceed 49 per cent, rounded off to the next lower integral number, of the directors of that deposit-taking institution.
- (2) No person who on the date of commencement of this Act is a director of a deposit-taking institution or controlling company shall on the expiration of his term

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totdat hy ingevolge die bepalings van subartikel (1) vir sodanige aanstelling kwalifiseer.

(3) Elke direkteur van 'n depositonemende instelling is by die verrigting van sy werksaamhede as so 'n direkteur onderworpe aan die riglyne, en moet by die verrigting daarvan voldoen aan die vereistes, wat kragtens artikel 90 (1) (b) 5 voorgeskryf word.

(4) By die toepassing van hierdie artikel beteken "subfiliaal", met betrekking tot 'n individuele aandeelhouer of medefiliaal, 'n maatskappy wat 'n filiaal van daardie individuele aandeelhouer of medefiliaal is uit hoofde daarvan dat hy 'n filiaal van 'n filiaal van daardie aandeelhouer of medefiliaal is. 10

Aanstelling van ouditeur

61. (1) Ondanks die bepalings van Hoofstuk X van die Maatskappywet—

(a) beklee niemand die amp van ouditeur van 'n depositonemende instelling nie tensy die Registrateur sy aanstelling as so 'n ouditeur goedgekeur het; en 15

(b) moet 'n depositonemende instelling waarvan die totale bates aan die einde van sy jongste voorafgaande finansiële jaar R10 000 000 000 oorskry het, minstens twee ouditeure wat onafhanklik van mekaar is, aanstel.

(2) 'n Depositonemende instelling moet binne 30 dae na die aanstelling ooreenkomstig die bepalings van Hoofstuk X van die Maatskappywet van iemand as ouditeur van daardie instelling, by die Registrateur op die voorgeskrewe vorm 20 aansoek doen om sy goedkeuring van sodanige aanstelling.

(3) Die Registrateur kan, sonder dat hy enige redes daarvoor hoef te verstrek—

(a) 'n aansoek kragtens subartikel (2) om sy goedkeuring van die aanstelling van 'n ouditeur weier; of 25

(b) enige goedkeuring van die aanstelling van 'n ouditeur wat voorheen kragtens hierdie artikel deur die Registrateur verleen is, intrek, en daarop ontruim die betrokke ouditeur sy amp.

(4) Indien die Registrateur kragtens paragraaf (a) van subartikel (3) 'n aansoek om sy goedkeuring van die aanstelling van 'n ouditeur weier of kragtens paragraaf 30 (b) van daardie subartikel 'n goedkeuring voorheen deur hom verleen, intrek, moet die raad van direkteure van die betrokke depositonemende instelling iemand anders as ouditeur aanstel en is die bepalings van subartikels (1) en (2) *mutatis mutandis* ten opsigte van laasgenoemde aanstelling van toepassing.

(5) Iemand wat kragtens subartikel (4) as ouditeur van 'n depositonemende 35 instelling aangestel word, word by die toepassing van Hoofstuk X van die Maatskappywet geag op die onmiddellik voorafgaande algemene jaarvergadering van die depositonemende instelling aldus as ouditeur aangestel te gewees het.

Aanstelling van ouditeur deur Registrateur

62. (1) Indien 'n depositonemende instelling om enige rede nalaat om 'n ouditeur 40 aan te stel, kan die Registrateur, ondanks die bepalings van artikels 269 (4) en 271 (1) van die Maatskappywet, die nodige aanstelling doen.

(2) 'n Persoon kragtens subartikel (1) as ouditeur van 'n depositonemende instelling aangestel, word geag aldus deur daardie instelling aangestel te gewees het.

Werksaamhede van ouditeur met betrekking tot Registrateur

45

63. (1) Ondanks andersluidende bepalings van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951 (Wet No. 51 van 1951), of die Maatskappywet, maar behoudens die bepalings van subartikels (2) en (3) van hierdie artikel—

(a) moet die ouditeur bedoel in artikel 61 of 62, wanneer hy ingevolge artikel 26 (3) (b) van eersgenoemde Wet aan die Raad op Openbare Rekenmeesters en Ouditeurs afskrifte van die verslag, erkenning van ontvangs en 50 antwoord en die ander besonderhede bedoel in daardie artikel verstrek met betrekking tot 'n onreëlmatigheid of vermeende onreëlmatigheid by die bedryf van die sake van die depositonemende instelling waarvoor hy as ouditeur aangestel is, ook aan die Registrateur sodanige afskrifte en 55 besonderhede verstrek; en

(b) kan hy die Registrateur skriftelik verwittig van enige aangeleentheid met betrekking tot die sake van 'n depositonemende instelling—

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of office be eligible for reappointment as such a director unless or until he qualifies for such appointment in terms of the provisions of subsection (1).

(3) Every director of a deposit-taking institution shall in the performance of his functions as such a director be subject to such guidelines and comply with such requirements as may be prescribed under section 90 (1) (b).

(4) For the purposes of this section "sub-subsidiary", in relation to an individual shareholder or fellow subsidiary, means a company which is a subsidiary of such individual shareholder or fellow subsidiary by virtue of its being a subsidiary of a subsidiary of that shareholder or fellow subsidiary.

10 Appointment of auditor

61. (1) Notwithstanding the provisions of Chapter X of the Companies Act—

(a) no person shall hold office as auditor of a deposit-taking institution unless his appointment as such an auditor has been approved by the Registrar; and
(b) a deposit-taking institution of which the total assets as at the close of its last preceding financial year exceeded R10 000 000 000 shall appoint not less than two auditors who are independent of each other.

(2) A deposit-taking institution shall within 30 days of the appointment in accordance with the provisions of Chapter X of the Companies Act of a person as auditor of that institution, apply to the Registrar on the prescribed form for his approval of such appointment.

(3) The Registrar may, without being required to furnish any reasons therefor—

(a) refuse an application under subsection (2) for his approval of the appointment of an auditor; or
(b) withdraw any approval of the appointment of an auditor previously granted by the Registrar under this section, and thereupon the auditor concerned shall vacate his office.

(4) If the Registrar under paragraph (a) of subsection (3) refuses an application for his approval of the appointment of an auditor or under paragraph (b) of that subsection withdraws an approval previously granted by him, the board of directors of the deposit-taking institution concerned shall appoint another person as auditor and the provisions of subsections (1) and (2) shall apply *mutatis mutandis* in respect of the last-mentioned appointment.

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

Appointment of auditor by Registrar

62. (1) If a deposit-taking institution for any reason fails to appoint an auditor the Registrar may, notwithstanding the provisions of sections 269 (4) and 271 (1) of the Companies Act, make the necessary appointment.

(2) A person appointed under subsection (1) as auditor of a deposit-taking institution shall be deemed to have been so appointed by that institution.

Functions of auditor in relation to Registrar

63. (1) Notwithstanding anything to the contrary contained in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or the Companies Act, but subject to the provisions of subsections (2) and (3) of this section, the auditor referred to in section 61 or 62—

(a) shall, whenever he furnishes, in terms of section 26 (3) (b) of the first-mentioned Act, the Public Accountants' and Auditors' Board with copies of the report, acknowledgement of receipt and reply and with the other particulars referred to in that section, relating to an irregularity or suspected irregularity in the conduct of the affairs of the deposit-taking institution for which he has been appointed as auditor, also furnish the Registrar with such copies and particulars; and

(b) may in writing inform the Registrar of any matter relating to the affairs of a deposit-taking institution—

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- (i) waarvan sodanige ouditeur bewus geword het in die loop van die verrigting van sy werksaamhede as ouditeur van daardie instelling; en
 - (ii) wat, na die oordeel van daardie ouditeur, van belang vir die Registrateur mag wees met inagneming van die Registrateur se toesighoudende werksaamhede, ingevolge hierdie Wet, ten opsigte van die betrokke depositonemende instelling; en
 - (c) moet hy, indien hy deur die Registrateur daarom versoek word, skriftelik aan hom inligting verstrek aangaande 'n aangeleentheid bedoel in paragraaf (b) wat deur die Registrateur gespesifiseer word.
- (2) Wanneer 'n ouditeur uit hoofde van die bepalings van subartikel (1) (b) of (c) skriftelike inligting aan die Registrateur verstrek, kan hy terselfdertyd 'n afskrif van die tersaaklike stuk verstrek aan die hoof- uitvoerende beampte van die depositonemende instelling waarop die inligting betrekking het.
- (3) Die verstrekking te goeder trou deur 'n ouditeur van inligting ingevolge subartikel (1) (b) of (c) word in geen omstandighede geag 'n oortreding van 'n regsbeeping of 'n verbreking van enige bepaling van 'n professionele gedragkode waaraan so 'n ouditeur onderworpe mag wees, uit te maak nie, en so 'n ouditeur loop geen aanspreeklikheid teenoor enigeemand op op grond daarvan dat hy aldus sodanige inligting verstrek het nie.

Ouditkomitee

20

64. (1) Behoudens die bepalings van subartikels (3) en (4) moet die raad van direkteure van 'n depositonemende instelling ten minste drie van sy lede aanstel om 'n ouditkomitee uit te maak.
- (2) Die werksaamhede van die ouditkomitee is om—
- (a) die raad van direkteure by te staan by sy beoordeling van die toereikendheid en doelmatigheid van die interne beheerstelsels, rekeningkundige praktyke, inligtingstelsels en ouditpraktyke wat in daardie depositonemende instelling toegepas word in die daaglikse bestuur van sy sake;
 - (b) gedagtewisseling, aangaande die aangeleenthede bedoel in paragraaf (a) of enige ander verbandhoudende aangeleentheid, tussen die raad van direkteure en die uitvoerende beamptes van, die ouditeur aangestel kragtens artikel 61 of 62 vir, en die werknemer belas met die interne ouditering van die transaksies van, die depositonemende instelling te vergemaklik en te bevorder; en
 - (c) die maatreëls in te voer wat na die oordeel van die komitee kan dien om die geloofwaardigheid en objektiwiteit van finansiële state en verslae wat met betrekking tot die sake van die depositonemende instelling voorberei word, te verhoog.
- (3) Al die lede van die ouditkomitee kan, en die meerderheid van sodanige lede moet, persone wees wat nie werknemers van die depositonemende instelling is nie.
- (4) Die raad van direkteure van 'n depositonemende instelling is vrygestel van die verpligting om 'n ouditkomitee aan te stel indien dié instelling 'n lid is van 'n groep maatskappye ten opsigte waarvan groeps- finansiële jaarstate opgestel moet word ingevolge artikel 288 (1) van die Maatskappywet, mits 'n ouditkomitee vir die houermaatskappy in daardie groep aangestel is en sodanige ouditkomitee verantwoordelikhede van 'n ouditkomitee aanvaar het ten opsigte van al die depositonemende instellings in daardie groep.

Versending van sekere kennisgewings, verslae, opgawes en finansiële state aan Registrateur

65. (1) Wanneer 'n depositonemende instelling of beherende maatskappy—
- (a) 'n kennisgewing van 'n vergadering of van die verklaring van 'n dividend of 'n verslag oor sy werksaamhede gedurende 'n finansiële jaar of 'n gedeelte van so 'n jaar aan sy aandeelhouders stuur;
 - (b) ingevolge artikel 170 (2) van die Maatskappywet kennis aan die Registrateur van Maatskappye gee van enige beoogde verandering in die ligging van sy geregistreeerde kantoor of van sy posadres;
 - (c) ingevolge artikel 216 (2) van die Maatskappywet 'n opgawe in daardie artikel bedoel betreffende sy direkteure aan die Registrateur van Maatskappye stuur; of

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- (i) of which such auditor became aware in the performance of his functions as auditor of that institution; and
- (ii) which, in the opinion of such auditor, may be of concern to the Registrar having regard to the Registrar's supervisory functions, in terms of this Act, in respect of the deposit-taking institution concerned; and
- (c) shall, if requested by the Registrar to do so, furnish him with written information relating to a matter referred to in paragraph (b), specified by the Registrar.
- (2) Whenever an auditor by virtue of the provisions of subsection (1) (b) or (c) furnishes the Registrar with written information, he may at the same time furnish the chief executive officer of the deposit-taking institution to which such information relates with a copy of the relevant document.
- (3) The furnishing in good faith by an auditor of information in terms of subsection (1) (b) or (c) shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of a code of professional conduct to which such auditor may be subject, nor shall such auditor incur any liability to any person in consequence of having so furnished such information.

Audit committee

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

45 Forwarding of certain notices, reports, returns and financial statements to Registrar

65. (1) Whenever a deposit-taking institution or controlling company—
- (a) forwards a notice of a meeting or of the declaration of a dividend or a report on its activities during a financial year or part of such year to its shareholders;
- (b) gives notice to the Registrar of Companies in terms of section 170 (2) of the Companies Act of any intended change in the situation of its registered office or of its postal address;
- (c) forwards in terms of section 216 (2) of the Companies Act a return referred to in that section regarding its directors to the Registrar of Companies; or

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(d) ingevolge artikel 302 (4) van die Maatskappywet finansiële state aan die Registrateur van Maatskappye stuur, moet hy terselfdertyd 'n afskrif van sodanige kennisgewing, verslag, opgawe of state aan die Registrateur stuur.

(2) 'n Depositonemende instelling of beherende maatskappy moet binne 30 dae na 'n algemene vergadering van aandeelhouders 'n afskrif van die notule wat ingevolge artikel 204 van die Maatskappywet ten opsigte van daardie vergadering gehou moet word, aan die Registrateur stuur.

Openbaarmaking van uitgereikte aandeelkapitaal

66. Indien 'n depositonemende instelling 'n verklaring publiseer of 'n stuk uitreik waarin die bedrag van sy gemagtigde aandeelkapitaal vermeld word, moet die bedrag van sy uitgereikte aandeelkapitaal ook in die verklaring of stuk vermeld word.

Openbaarmaking van name van sekere aandeelhouders

67. Indien, in die geval van 'n individuele aandeelhouer in 'n depositonemende instelling wat meer as 25 persent hou van al die uitgereikte aandele in daardie instelling waaraan stemregte verbonde is, die som van die bedrae van daardie depositonemende instelling se beleggings by of lenings of voorskotte of ander blootstellings aan dié individuele aandeelhouer die totale nominale waarde van genoemde aandele oorskry wat aldus deur daardie individuele aandeelhouer gehou word, moet die depositonemende instelling die naam van dié individuele aandeelhouer in sy finansiële state vermeld.

Besondere bepalings met betrekking tot likwidasië of geregtelike bestuur van depositonemende instelling

68. (1) Ondanks andersluidende bepalings van die Maatskappywet—

(a) is die Registrateur bevoeg om by 'n bevoegde hof aansoek te doen om die likwidasië van enige depositonemende instelling of om 'n bevel waarby so 'n instelling onder geregtelike bestuur geplaas word ingevolge genoemde Wet, en is die Registrateur bevoeg om so 'n aansoek wat deur iemand anders gedoen word, te bestry; en

(b) word niemand anders as 'n persoon wat deur die Registrateur aanbeveel is, deur 'n Meester van die Hooggeregshof as voorlopige likwidateur, voorlopige geregtelike bestuurder, likwidateur of geregtelike bestuurder van 'n depositonemende instelling aangestel nie.

(2) Gedurende die vrywillige likwidasië van 'n depositonemende instelling moet die likwidateur elke opgawe of staat aan die Registrateur verstrek wat die betrokke instelling verplig sou gewees het om aan die Registrateur ingevolge hierdie Wet te verstrek indien die instelling nie in likwidasië was nie.

(3) By die toepassing, met betrekking tot die likwidasië van 'n maatskappy wat 'n depositonemende instelling is—

(a) van artikel 346 van die Maatskappywet, word subartikel (4) van daardie artikel geag gewysig te gewees het om soos volg te lui:

“(4) (a) Voordat 'n aansoek om die likwidasië van 'n maatskappy wat 'n depositonemende instelling is, aan die Hof voorgelê word, moet 'n afskrif van die aansoek en van elke beëdigde verklaring ter bevestiging van dié feite wat daarin genoem word, by die Registrateur van Depositonemende Instellings en die Meester ingedien word of, as daar geen Meester by die setel van die Hof is nie, by 'n beampte in die staatsdiens deur die Meester by kennisgewing in die *Staatskoerant* vir dié doel aangewys.

(b) Die Registrateur van Depositonemende Instellings of die Meester of so 'n beampte kan aan die Hof verslag doen oor enige feite deur hom vasgestel waarop, na dit vir hom voorkom, die Hof geregverdig sou wees om die verhoor van die aansoek uit te stel of dit af te wys, en stuur 'n afskrif van daardie verslag aan die aansoeker of sy agent en aan genoemde maatskappy.”; en

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(d) forwards in terms of section 302 (4) of the Companies Act financial statements to the Registrar of Companies, it shall simultaneously forward a copy of such notice, report, return or statements to the Registrar.

- 5 (2) A deposit-taking institution or controlling company shall within 30 days after a general meeting of shareholders forward to the Registrar a copy of the minutes to be kept in respect of such meeting in terms of section 204 of the Companies Act.

Disclosure of issued share capital

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

Disclosure of names of certain shareholders

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

20 Special provisions relating to winding-up or judicial management of deposit-taking institution

68. (1) Notwithstanding anything to the contrary contained in the Companies Act—

- 25 (a) the Registrar shall have the right to apply to a competent court for the winding-up of any deposit-taking institution or for an order placing any such institution under judicial management in terms of the said Act, and the Registrar shall have the right to oppose any such application made by any other person; and

- 30 (b) no person other than a person recommended by the Registrar shall be appointed by a Master of the Supreme Court as provisional liquidator, provisional judicial manager, liquidator or judicial manager of a deposit-taking institution.

- 35 (2) During the voluntary winding-up of any deposit-taking institution the liquidator shall furnish the Registrar with every return or statement which the institution concerned would have been obliged to furnish to the Registrar in terms of this Act, were such institution not being wound up.

(3) In the application, in relation to the winding-up of a company which is a deposit-taking institution—

- 40 (a) of section 346 of the Companies Act, subsection (4) of that section shall be deemed to have been amended to read as follows:

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

- 50 (b) The Registrar of Deposit-taking Institutions or the Master or any such officer may report to the court any facts ascertained by him which appear to him to justify the Court in postponing the hearing or dismissing the application, and shall transmit a copy of that report to the applicant or his agent and to the said company.”; and

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- (b) van artikel 357 van die Maatskappywet, word subartikel (3) van daardie artikel geag gewysig te gewees het om soos volg te lui:

“(3) ’n Afskrif van elke spesiale besluit vir die vrywillige likwidasië van ’n maatskappy wat ’n depositonemende instelling is, geneem kragtens artikel 349, en van elke hofbevel ter wysiging of tersydestelling van die verrigtinge met betrekking tot die likwidasië, moet binne veertien dae na die besluit ingevolge artikel 200 geregistreer is of die bevel gegee is, deur daardie maatskappy aan die beamptes en registrateurs in paragrawe (a), (b) en (c) van subartikel (1) vermeld, deurgestuurd word, sowel as aan die Registrateur van Depositonemende Instellings.”.

- (4) By die toepassing van artikel 427 van die Maatskappywet met betrekking tot die geregtelike bestuur van ’n maatskappy wat ’n depositonemende instelling is, word die verwysing in subartikel (2) van daardie artikel na artikel 346 (4) (a) van genoemde Wet geag ’n verwysing te wees na genoemde artikel 346 (4) (a) soos geag gewysig te wees ingevolge subartikel (3) (a) van hierdie artikel.

Aanstelling van kurator oor depositonemende instelling

69. (1) Indien ’n depositonemende instelling na die oordeel van die Registrateur in finansiële moeilikheid verkeer, kan die Minister, as hy dit in die openbare belang wenslik ag, na raadpleging met en met die skriftelike instemming van daardie instelling, ’n kurator oor die instelling aanstel, en daarna is die bepalings van paragrawe (b) tot en met (g) en (i) tot en met (l) van artikel 433, en artikels 434 (2), 436, 437 en 440, van die Maatskappywet *mutatis mutandis*, vir sover daardie bepalings nie onbestaanbaar met die bepalings van hierdie artikel is nie, ten opsigte van die instelling en die kurator van toepassing: Met dien verstande dat by die toepassing van hierdie artikel die bevoegdhede en pligte wat eersgenoemde bepalings onderskeidelik aan die hof, die Meester en die geregtelike bestuurder verleen en hulle oplê, oorgaan op, onderskeidelik, die Minister, die Registrateur en die kurator.

(2) Die Minister stel ’n kurator per aanstellingsbrief aan waarin uiteengesit word—

- (a) die naam van die depositonemende instelling ten opsigte waarvan die kurator aangestel word en die adres van daardie instelling se hoofkantoor;
- (b) voorskrifte met betrekking tot die sekuriteit wat die kurator moet stel vir die behoorlike uitvoering van sy pligte;
- (c) voorskrifte betreffende die vergoeding van die kurator; en
- (d) die ander voorskrifte wat die Minister nodig ag aangaande die bestuur van die betrokke instelling of ’n aangeleentheid wat daarmee in verband staan, met inbegrip van voorskrifte in verband met die opneem van geld deur daardie instelling.

(3) Die Minister kan, in die aanstellingsbrief of te eniger tyd daarna, aan die kurator die bevoegdheid verleen om na goëddunke, maar behoudens enige voorwaarde wat die Minister oplê—

- (a) die reg van krediteure van die betrokke instelling om rente te vorder of te ontvang op geld wat deur daardie instelling aan hulle verskuldig is, op te skort of te verminder vanaf die datum van sy aanstelling as kurator of enige later datum;
- (b) aan enige krediteur of krediteure van die betrokke instelling betalings te doen, hetsy ten opsigte van kapitaal of rente, op die tyd, in die volgorde en op die wyse wat hy goed ag; of
- (c) ’n ooreenkoms tussen die betrokke instelling en enige ander persoon om geld voor te skiet wat betaalbaar word na die datum van sy aanstelling as kurator, of ’n ooreenkoms om bestaande fasiliteite te verleng, op te sê indien, na die oordeel van die kurator, so ’n voorskot of ’n lening uit hoofde van sodanige fasiliteite nie voldoende versekureer sal wees nie of nie terugbetaalbaar sal wees op voorwaardes wat vir die kurator aanneemlik is nie of indien die instelling nie oor die nodige fondse beskik om sy verpligtinge uit hoofde van enige sodanige ooreenkoms na te kom nie of indien dit andersins nie in belang van die instelling sal wees nie.

(4) Die Minister kan te eniger tyd en op enige wyse die voorskrifte in die aanstellingsbrief, en die bevoegdhede deur hom kragtens subartikel (3) aan die kurator verleen, wysig of intrek.

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(b) of section 357 of the Companies Act, subsection (3) of that section shall be deemed to have been amended to read as follows:

“(3) A copy of every special resolution for the voluntary winding-up of any company which is a deposit-taking institution, passed under section 349, and of every order of court amending or setting aside the proceedings in relation to the winding-up shall, within fourteen days after the registration of the resolution in terms of section 200 or the making of the order, be transmitted by that company to the officers and registrars referred to in paragraphs (a), (b) and (c) of subsection (1), as well as to the Registrar of Deposit-taking Institutions.”.

(4) In the application of section 427 of the Companies Act in relation to the judicial management of a company which is a deposit-taking institution, the reference in subsection (2) of that section to section 346 (4) (a) of the said Act shall be deemed to be a reference to the said section 346 (4) (a) as deemed to have been amended in terms of subsection (3) (a) of this section.

Appointment of curator to deposit-taking institution

69. (1) If any deposit-taking institution is in the opinion of the Registrar in financial difficulties, the Minister may, if he deems it desirable in the public interest, after consultation with and with the written consent of that institution, appoint a curator to the institution, and thereupon the provisions of paragraphs (b) to (g), inclusive, and (i) to (l), inclusive, of section 433, and sections 434 (2), 436, 437 and 440, of the Companies Act shall apply *mutatis mutandis*, in so far as such provisions are not inconsistent with the provisions of this section, in relation to the institution and to the curator: Provided that for the purposes of this section the powers conferred and the duties imposed by the first-mentioned provisions upon the court, the Master and the judicial manager, respectively, shall devolve upon the Minister, the Registrar and the curator, respectively.

(2) The Minister shall appoint a curator by letter of appointment which shall set out—

- (a) the name of the deposit-taking institution in respect of which the curator is appointed and the address of its head office;
- (b) directions in regard to the security which the curator has to furnish for the proper performance of his duties;
- (c) directions in regard to the remuneration of the curator; and
- (d) such other directions as to the management of the institution concerned or any matter incidental thereto, including directions in regard to the raising of money by that institution, as the Minister may deem necessary.

(3) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion, but subject to any condition which the Minister may impose—

- (a) to suspend or reduce, as from the date of his appointment as curator or any subsequent date, the right of creditors of the institution concerned to claim or receive interest on any money owing to them by that institution;
- (b) to make payments, whether in respect of capital or interest, to any creditor or creditors of the institution concerned at such time, in such order and in such manner as he may deem fit; or
- (c) to cancel any agreement between the institution concerned and any other party to advance moneys due after the date of his appointment as curator, or to cancel any agreement to extend any existing facility, if, in the opinion of the curator, such advance or any loan under such facility would not be adequately secured or would not be repayable on terms satisfactory to the curator or if the institution lacks the necessary funds to meet its obligations under any such agreement or if it would not otherwise be in the interests of the institution.

(4) The Minister may, at any time and in any manner, amend or withdraw the directions in the letter of appointment, and the powers granted by him under subsection (3) to the curator.

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- (5) By die aanstelling van 'n kurator—
- (a) gaan die bestuur van die betrokke depositonemende instelling oor op die kurator, onderworpe aan die toesig van die Registrateur, en word enige ander persoon by wie die bestuur van die sake van daardie instelling berus, daarvan ontdoen; en 5
 - (b) moet die kurator al die bates van die instelling opvorder en in besit neem.
- (6) Terwyl so 'n depositonemende instelling onder kuratele is—
- (a) word alle gedinge, geregtelike verrigtinge, die tenuitvoerlegging van alle lasbriewe, dagvaardings en ander regsproses teen daardie instelling opgeskort en nie sonder toestemming van die hof ingestel of voortgesit nie; en 10
 - (b) word die werking van skuldvergelyking ten opsigte van enige bedrag deur 'n krediteur aan die instelling verskuldig, opgeskort.
- (7) Die Registrateur moet die aanstelling van 'n kurator en die bevoegdhede aan hom verleen by sy aanstelling, en enige wysiging of intrekking van daardie bevoegdhede, so spoedig doenlik by kennisgewing in die *Staatskoerant* bekend 15 maak.

HOOFSTUK VI

VOORSORGSVEREISTES

Minimum aandeelkapitaal en onaangetaste reserwefondse

70. (1) By die toepassing van hierdie Wet beteken— 20
- “primêre aandeelkapitaal” kapitaal verkry deur die uitreiking van gewone aandele of nie-aflosbare nie-kumulatiewe voorkeuraandele;
 - “primêre onaangetaste reserwefondse” fondse verkry uit werklike verdienstes of by wyse van invorderings, premies op die uitreiking van aandele of 'n oorskot by die tegeldemaking van kapitale bates, en wat as 'n algemene of 25 besondere reserwe opsygesit is, as so 'n reserwe in die finansiële state van die betrokke depositonemende instelling aangetoon word en beskikbaar is vir die nakoming van verpligtinge van of die bestryding van verliese gelyk deur die depositonemende instelling, maar nie ook enige fonds wat ingevolge 'n ander wet in stand gehou moet word nie; 30
 - “sekondêre aandeelkapitaal” kapitaal verkry deur die uitreiking, met die vooraf verkreeë skriftelike goedkeuring van die Registrateur en ooreenkomstig voorwaardes skriftelik deur die Registrateur goedgekeur, van kumulatiewe voorkeuraandele, en ook leningskapitaal verkry by wyse van skuldbriewe uitgereik onderworpe aan— 35
 - (a) die voorwaarde dat die skuldbriewe vir 'n minimum termyn van vyf jaar uitgereik word;
 - (b) die voorwaarde dat die skuldbriewe voor die vervaldatum terugbetaal kan word slegs na die keuse van die betrokke depositonemende instelling en met die vooraf verkreeë skriftelike goedkeuring van die Registrateur; 40
 - (c) die voorwaarde dat, ondanks die bepalinge van enige ander wet, by likwidasië van die betrokke depositonemende instelling die kapitaalbedrag van die skuldbriewe nie terugbetaal mag word nie voordat die eise van ander skuldeisers ten volle bevredig is; en
 - (d) die verdere voorwaardes, as daar is, wat voorgeskryf word; 45
- “sekondêre onaangetaste reserwefondse” fondse verkry en opsygesit soos beoog in die omskrywing van “primêre onaangetaste reserwefondse” in hierdie subartikel, en wat beskikbaar is vir die doeleindes beoog in daardie omskrywing, maar wat nie as 'n algemene of besondere reserwe in die finansiële state van die betrokke depositonemende instelling aangetoon 50 word nie, en ook—
- (a) 50 persent van die bedrag van enige oorskot wat voortspruit uit 'n herwaardering van bates en wat vasgestel word soos in subartikel (4) voorgeskryf; en
 - (b) algemene voorsienings gehou teen ongeïdentifiseerde en onvoorsiene ver- 55 lieze,
- maar nie ook enige fonds wat ingevolge 'n ander wet in stand gehou moet word nie.

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- (5) On the appointment of a curator—
 (a) the management of the deposit-taking institution concerned shall vest in the curator, subject to the supervision of the Registrar, and any other person vested with the management of the affairs of that institution shall be divested thereof; and
 (b) the curator shall recover and take possession of all the assets of the institution.
- (6) While such deposit-taking institution is under curatorship—
 (a) all actions, legal proceedings, the execution of all writs, summonses and other legal process against that institution shall be stayed and not be instituted or proceeded with without the leave of the court; and
 (b) the operation of set-off in respect of any amount owing by a creditor to the institution shall be suspended.
- (7) The Registrar shall as soon as is practicable announce the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the *Gazette*.

CHAPTER VI

PRUDENTIAL REQUIREMENTS

Minimum share capital and unimpaired reserve funds

70. (1) For the purposes of this Act—
 “primary share capital” means capital obtained through the issue of ordinary shares or non-redeemable non-cumulative preference shares;
 “primary unimpaired reserve funds” means funds obtained from actual earnings or by way of recoveries, premiums on the issue of shares or a surplus on the realization of capital assets, and which have been set aside as a general or special reserve, are disclosed as such a reserve in the financial statements of the deposit-taking institution concerned and are available for the purpose of meeting liabilities of or losses suffered by the deposit-taking institution, but does not include any fund required to be maintained in terms of any other law;
 “secondary share capital” means capital obtained through the issue, with the prior written approval of the Registrar and in accordance with conditions approved by the Registrar in writing, of cumulative preference shares, and includes loan capital obtained by way of debentures issued subject to—
 (a) the condition that the debentures are issued for a minimum period of five years;
 (b) the condition that the debentures may be redeemed before maturity only at the option of the deposit-taking institution concerned and with the prior written approval of the Registrar;
 (c) the condition that, notwithstanding the provisions of any other Act, in the event of the winding-up of the deposit-taking institution concerned, the capital amount of the debentures shall not be repaid until the claims of other creditors have been fully satisfied; and
 (d) such further conditions, if any, as may be prescribed;
 “secondary unimpaired reserve funds” means funds obtained and set aside as contemplated in the definition of “primary unimpaired reserve funds” in this subsection and which are available for the purpose contemplated in that definition, but which are not disclosed as a general or special reserve in the financial statements of the deposit-taking institution concerned, and includes—
 (a) 50 per cent of the amount of any surplus resulting from a revaluation of assets and determined as prescribed in subsection (4); and
 (b) general provisions held against unidentified and unforeseen losses, but does not include any fund required to be maintained in terms of any other law.

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(2) 'n Depositonemende instelling moet sy sake so bestuur dat, behoudens die bepalings van subartikels (3) en (5) (a), die som van sy uitgereikte primêre en sekondêre aandeelkapitaal en sy primêre en sekondêre onaangetaste reserwefondse in die Republiek op geen tydstip minder bedra nie as die grootste van—

(a) R10 000 000 of, in die geval van 'n depositonemende instelling wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet as 'n bankinstelling of 'n bouvereniging geregistreer was kragtens 'n wet wat deur hierdie Wet herroep word, R1 000 000; of

(b) 'n bedrag wat 'n voorgeskrewe persentasie verteenwoordig van die som van bedrae bereken deur die gemiddelde van die bedrae (soos aangetoon in die opgawes ingevolge artikel 75 (1) (a) (ii) aan die Registrateur verstrek) van die verskillende kategorieë—

(i) bates; en

(ii) ander risikoblootstellings in die uitoefening van sy bedryf, wat voorgeskryf word, te vermenigvuldig met die risikobeladings, uitgedruk as persentasies, voorgeskryf ten opsigte van sodanige verskillende kategorieë bates en ander risikoblootstellings.

(3) Ondanks die bepalings van subartikel (2)—

(a) moet die bedrag verkry by wyse van die uitreiking, na die datum van inwerkingtreding van hierdie Wet, van skuldbriewe en wat ingevolge hierdie artikel as sekondêre aandeelkapitaal gereken kan word (behalwe in die geval van sodanige skuldbriewe wat in voorkeuraandele omskep staan te word), gedurende die vyfde jaar wat die vervaldatum van die skuldbriewe voorafgaan, verminder word met 'n bedrag gelyk aan 20 persent van die bedrag aldus verkry, en jaarliks daarna met 'n bedrag wat in elke opeenvolgende jaar met 20 persent van die bedrag aldus verkry, vermeerder word; en

(b) mag die som van die uitgereikte sekondêre aandeelkapitaal en die sekondêre onaangetaste reserwefondse soos omskryf in subartikel (1) nie te eniger tyd 'n bedrag te bowe gaan nie gelyk aan 50 persent van die totale bedrag wat 'n depositonemende instelling ingevolge subartikel (2) in stand moet hou by wyse van uitgereikte primêre en sekondêre aandeelkapitaal en primêre en sekondêre onaangetaste reserwefondse.

(4) Die vasstelling van enige oorskot bedoel in paragraaf (a) van die omskrywing van "sekondêre onaangetaste reserwefondse" in subartikel (1) word gedoen—

(a) op die tye wat voorgeskryf word; en

(b) deur die boekwaarde van bates te vergelyk met hul markwaarde soos op die tydstip van sodanige vasstelling.

(5) (a) Die som van die uitgereikte primêre en sekondêre aandeelkapitaal en primêre en sekondêre onaangetaste reserwefondse van 'n depositonemende instelling word vir die doeleindes van subartikel (2) bereken deur van die bedrag daarvan af te trek—

(i) waardevermindering van bates en oninbare of twyfelagtige skulde;

(ii) bedryfs- en opgehoopte verliese, met inbegrip van opgehoopte waardevermindering en oninbare skulde wat nog nie afgeskryf is nie;

(iii) oprichtingskoste, koste ten opsigte van organisasie en uitbreiding van sake en die aankoop van 'n saak of klandisiewaarde, en onderskrywingskommissie;

(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;

(v) die bedrag waarmee die bedrag van die uitgereikte primêre en sekondêre aandeelkapitaal en primêre en sekondêre onaangetaste reserwefondse wat uit hoofde van die bepalings van subartikel (6) deur 'n filiaal bedoel in daardie subartikel in stand gehou moet word, die bedrag van die uitgereikte primêre en sekondêre aandeelkapitaal en primêre en sekondêre onaangetaste reserwefondse van daardie filiaal oorskry;

(vi) 'n bedrag gelyk aan die boekwaarde van aandele wat deur die depositonemende instelling in enige ander depositonemende instelling gehou word; en

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(2) A deposit-taking institution shall manage its affairs in such a way that, subject to the provisions of subsections (3) and (5) (a), the sum of its issued primary and secondary share capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—

- 5 (a) R10 000 000 or, in the case of a deposit-taking institution which immediately prior to the date of commencement of this Act was registered as a banking institution or a building society under a law repealed by this Act, R1 000 000; or
- 10 (b) an amount which represents a prescribed percentage of the sum of amounts calculated by multiplying the average of the amounts (as shown in the returns furnished to the Registrar in terms of section 75 (1) (a) (ii)) of such different categories of—
- (i) assets; and
- 15 (ii) other risk exposures in the conduct of its business, as may be prescribed, by the risk weights, expressed as percentages, prescribed in respect of such different categories of assets and other risk exposures.

(3) Notwithstanding the provisions of subsection (2)—

- 20 (a) the amount obtained by way of the issue, after the date of commencement of this Act, of debentures and which may in terms of this section rank as secondary share capital shall (except in the case of such debentures which are to be converted into preference shares) during the fifth year preceding the maturity of such debentures be reduced by an amount equal to 20 per cent of the amount so obtained and annually thereafter by an amount which
- 25 in each successive year is increased by 20 per cent of the amount so obtained; and
- (b) the sum of the issued secondary share capital and the secondary unimpaired reserve funds as defined in subsection (1) shall not at any time exceed an amount equal to 50 per cent of the aggregate amount which a deposit-taking institution is in terms of subsection (2) required to maintain by way of issued primary and secondary share capital and primary and secondary unimpaired reserve funds.
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(4) The determination of any surplus referred to in paragraph (a) of the definition of "secondary unimpaired reserve funds" in subsection (1) shall be effected—

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- (a) at such times as may be prescribed; and
- (b) by comparing the book value of assets with their market value as at the time of such determination.

(5) (a) The sum of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of a deposit-taking institution shall for the purposes of subsection (2) be calculated by deducting from the amount thereof—

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- (i) depreciation of assets and bad or doubtful debts;
- 45 (ii) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;
- (iii) establishment costs, costs in respect of organization and extension of business and the purchase of a business or goodwill, and underwriting commission;
- 50 (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;
- 55 (v) the amount by which the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds required to be maintained by virtue of the provisions of subsection (6) by a subsidiary referred to in that subsection, exceeds the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of that subsidiary;
- 60 (vi) an amount equal to the book value of shares held by the deposit-taking institution in any other deposit-taking institution; and

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- (vii) 'n bedrag wat deur die depositonemende instelling beskikbaar gestel word vir die permanente fundering van die kapitaalvereistes van enige buitelandse tak daarvan.
- (b) 'n Depositonemende instelling moet ooreenkomstig algemeen aanvaarde rekeningkundige praktyk voorsiening maak in sy rekeningkundige aantekeninge bedoel in artikel 284 van die Maatskappywet vir die items vermeld in paragraaf (a).
- (6) Die bepalinge van subartikel (2) is *mutatis mutandis* van toepassing op die bedrywighede van 'n filiaal deur middel waarvan 'n depositonemende instelling die bedryf van 'n depositonemende instelling buite die Republiek uitoefen.
- (7) 'n Depositonemende instelling, of 'n filiaal bedoel in subartikel (6), wat op die datum van inwerkingtreding van hierdie Wet nie aan die bepalinge van subartikel (2) voldoen nie, moet die tekort regstel binne die tydperk en ooreenkomstig die voorwaardes wat die Registrateur bepaal.

Minimum reserwesaldo

71. (1) 'n Depositonemende instelling moet by die Reserwebank 'n rekening in stand hou waarin hy van tyd tot tyd minstens die bedrae moet stort wat nodig is om aan die vereistes van subartikel (2) te voldoen en waaruit hy van tyd tot tyd, behoudens daardie subartikel, bedrae kan onttrek.
- (2) Die kredietsaldo in 'n rekening wat ingevolge subartikel (1) deur 'n depositonemende instelling in stand gehou word, tesame met die gemiddelde daaglikse bedrag van daardie instelling se Reserwebanknote en pasmunt, bereken volgens die totale bedrae van daardie bates wat die instelling voorhande gehad het op al die dae van die jongste maand ten opsigte waarvan hy ingevolge artikel 75 (1) (a) (i) 'n opgawe aan die Registrateur verstrek het, mag op geen tydstip gedurende 'n maand minder bedra nie as 'n bedrag gelyk aan die som van bedrae wat die persentasies, ooreenkomstig die bepalinge van subartikel (3) deur die President van die Reserwebank vasgestel, verteenwoordig van die bedrae van die verskillende kategorieë van die depositonemende instelling se verpligtings wat by regulasie gespesifiseer word met verwysing na die tydstip waarop sodanige verpligtings opeisbaar word of met verwysing na enige ander aspek wat op daardie verpligtings betrekking het.
- (3) (a) Die persentasies wat ingevolge subartikel (2) deur die President van die Reserwebank vasgestel word, is die persentasies wat genoemde President, met inagneming van die nasionale ekonomiese belang en met die instemming van die Minister, wenslik ag om van tyd tot tyd vas te stel.
- (b) Wanneer die President van die Reserwebank 'n vasstelling kragtens paragraaf (a) gedoen het, moet hy die Registrateur skriftelik daarvan in kennis stel, en die Registrateur moet so gou doenlik elke depositonemende instelling skriftelik van die vasstelling in kennis stel en die vasstelling by kennisgewing in die *Staatskoerant* laat afkondig.
- (c) So 'n vasstelling word van krag op 'n datum vermeld in die kennisgewing waarby die vasstelling ingevolge paragraaf (b) in die *Staatskoerant* afgekondig word.
- (4) 'n Depositonemende instelling se verpligtings bedoel in subartikel (2) moet bereken word op die wyse en bepaal word op die tye wat voorgeskryf word.

Minimum likwiede bates

72. (1) 'n Depositonemende instelling moet in die Republiek likwiede bates hou wat in waarde nie minder bedra nie as die som van bedrae, bereken as persentasies, wat voorgeskryf word, maar wat in geen geval 20 persent mag oorskry nie, van die verskillende kategorieë van sy verpligtings wat by regulasie gespesifiseer word met verwysing na die tydstip waarop sodanige verpligtings opeisbaar word of met verwysing na enige ander aspek wat op daardie verpligtings betrekking het.
- (2) Die bedrae van die likwiede bates en van die verpligtings bedoel in subartikel (1) word bereken op die wyse en bepaal op die tye wat voorgeskryf word.
- (3) 'n Depositonemende instelling mag nie enige deel van die likwiede bates wat hy ter voldoening aan die bepalinge van subartikel (1) hou, verpand of andersins beswaar nie: Met dien verstande dat die Registrateur, indien hy dit nodig ag op grond van buitengewone omstandighede waarin 'n depositonemende instelling

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

Minimum reserve balance

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

Minimum liquid assets

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

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homself mag bevind, dié instelling van die verbod in hierdie subartikel vervat, kan vrystel op die voorwaardes en in die mate en vir die tydperk wat hy bepaal.

(4) By die toepassing van hierdie artikel word sekuriteite gewaardeer teen hul markwaarde soos deur die Openbare Beleggingskommissarisse gesertifiseer.

Groot blootstellings

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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 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 daardie instelling van voorneme is om met 'n individuele persoon 'n 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 dat dit die depositonemende instelling blootstel tot 'n bedrag wat 'n bedrag oorskry wat 'n voorgeskrewe persentasie van sy kapitaal en reserwes verteenwoordig.

Versuim of onvermoë om aan voorsorgsvereistes te voldoen

74. (1) Indien 'n depositonemende instelling versuim om aan 'n bepaling van artikel 70, 71 of 72 te voldoen of nie in staat is om aan so 'n bepaling te voldoen nie, moet hy onverwyld die Registrateur skriftelik in kennis stel van sy versuim of onvermoë, met vermelding van die redes vir sodanige versuim of onvermoë.

(2) Die Registrateur kan sonder meer teen 'n depositonemende instelling bedoel in subartikel (1) kragtens hierdie Wet optree of, indien hy in die omstandighede dit goedvind om dit te doen, die versuim of onvermoë kondoneer en die betrokke instelling 'n geleentheid gee om behoudens die voorwaardes wat die Registrateur bepaal, binne 'n bepaalde tydperk aan die betrokke bepaling te voldoen.

(3) Ongeag of enige strafregtelike stappe ingevolge hierdie Wet ten opsigte van 'n versuim of onvermoë in subartikel (1) bedoel teen 'n depositonemende instelling gedoen is of gedoen kan word, kan die Registrateur, behoudens enige kondonasie kragtens subartikel (2) verleen, daardie instelling by wyse van 'n skriftelike kennisgewing 'n boete ten opsigte van so 'n versuim of onvermoë ople—

(a) in die geval van 'n versuim of onvermoë om aan die bepalings van artikel 70 of 71 te voldoen, van hoogstens een tiende van een persent van die bedrag van die tekort vir elke dag waarop die versuim of onvermoë voortduur; of

(b) in die geval van 'n versuim of onvermoë om aan die bepalings van artikel 72 te voldoen, van hoogstens drie persent van die bedrag van die tekort.

(4) 'n Boete kragtens subartikel (3) opgelê, moet aan die Registrateur betaal word binne die tydperk in die tersaaklike kennisgewing vermeld, en indien die betrokke depositonemende instelling versuim om die boete binne die vermelde tydperk te betaal, kan die Registrateur die bedrag van die boete of die gedeelte daarvan wat hy onder die omstandighede geregverdig ag, by wyse van 'n siviele aksie in 'n bevoegde hof op daardie instelling verhaal.

Opgawes

75. (1) 'n Depositonemende instelling moet, ten einde die Registrateur in staat te stel om—

(a) te bepaal of die depositonemende instelling voldoen aan die bepalings van—

(i) artikels 71 en 72; of

(ii) artikel 70; of

(b) die aard en bedrae van die depositonemende instelling se bates en laste vas te stel,

aan die Registrateur, behoudens die bepalings van subartikel (2), 'n opgawe verstrek op die voorgeskrewe vorm en ten opsigte van die voorgeskrewe tydperk.

(2) 'n Opgawe bedoel in subartikel (1) moet ooreenkomstig algemeen aanvaarde rekeningkundige praktyk opgestel word en moet aan die Registrateur verstrek word

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

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

5 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 to make such investments or to grant such loans, advances or other credit.

(2) A deposit-taking institution shall in such manner and on such a form as may be prescribed report to the Registrar if it proposes to enter into a transaction with any individual person which, either alone or together with any previous transaction or transactions entered into by it with that person, would result in the deposit-taking institution being exposed up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.

Failure or inability to comply with prudential requirements

74. (1) If a deposit-taking institution fails to comply with a provision of section 70, 71 or 72, or is unable to comply with any such provision, it shall forthwith in writing report its failure or inability to the Registrar, stating the reasons for such failure or inability.

(2) The Registrar may summarily take action under this Act against a deposit-taking institution referred to in subsection (1) or, if in the circumstances he deems it fit to do so, condone the failure or inability and afford the institution concerned an opportunity, subject to such conditions as the Registrar may determine, to comply with the relevant provision within a specified period.

(3) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a deposit-taking institution in respect of any failure or inability referred to in subsection (1), the Registrar may, subject to any condonation granted under subsection (2), by way of a written notice impose upon that institution, in respect of such failure or inability, a fine—

- (a) in the case of any failure or inability to comply with the provisions of section 70 or 71, not exceeding one-tenth of one per cent of the amount of the shortfall for each day on which such failure or inability continues; or
- (b) in the case of any failure or inability to comply with the provisions of section 72, not exceeding three per cent of the amount of the shortfall.

(4) A fine imposed under subsection (3) shall be paid to the Registrar within such period as may be specified in the relevant notice, and if the deposit-taking institution concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from that institution the amount of the fine or any portion thereof which he may in the circumstances consider justified.

Returns

75. (1) A deposit-taking institution shall, in order to enable the Registrar to determine—

- (a) whether the deposit-taking institution is complying with the provisions of—
 - (i) sections 71 and 72; or
 - (ii) section 70; or
- (b) the nature and amounts of the deposit-taking institution's assets and liabilities,

furnish the Registrar, subject to the provisions of subsection (2), with a return on the prescribed form and in respect of the prescribed period.

(2) A return referred to in subsection (1) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar not

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nie later nie as die vyftiende besigheidsdag wat volg op die laaste besigheidsdag van die tydperk waarop die opgawe betrekking het.

(3) 'n Depositonemende instelling moet, benewens die opgawes bedoel in subartikel (1), ten opsigte van die tydperk, op die tye en op die vorm wat voorgeskrif word, aan die Registrateur die voorgeskrewe opgawes verstrek, met inbegrip van opgawes wat betrekking het op die omvang en die bestuur van risikoblootstellings by die uitoefening van sy bedryf. 5

(4) Die regulasies beoog in subartikels (1) en (3) kan ook—

(a) voorskryf dat 'n depositonemende instelling wat buite die Republiek die bedryf van 'n depositonemende instelling uitoefen deur middel van 'n filiaal, takkantoor, agentskap of ander onderneming, in die opgawes wat hy ingevolge subartikels (1) en (3) moet verstrek, die vereiste inligting ten opsigte van sodanige bedryf moet inlyf, en ook dat sodanige inligting afsonderlik deur die depositonemende instelling verstrek moet word op 'n aldus voorgeskrewe vorm; en 15

(b) voorskryf dat in die geval van 'n groep depositonemende instellings die houermaatskappy in daardie groep, benewens die opgawes wat ingevolge subartikels (1) en (3) deur elke depositonemende instelling in die groep verstrek word, die inligting wat in daardie opgawes verstrek moet word, by wyse van 'n gekonsolideerde opgawe, op 'n voorgeskrewe vorm, wat betrekking het op al die maatskappye in daardie groep asook op enige bedryf, as daar is, bedoel in paragraaf (a), aan die Registrateur moet verstrek. 20

(5) Van die opgawes wat ingevolge subartikel (1) (b) deur 'n depositonemende instelling aan die Registrateur verstrek word, moet daardie een wat die naaste saamval met die einde van die finansiële jaar van die instelling vergesel gaan van 'n verslag 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, vereis dat enige ander van daardie opgawes wat gedurende die finansiële jaar verstrek word, van so 'n ouditeursverslag vergesel gaan. 25 30

(6) 'n Depositonemende instelling moet op die voorgeskrewe tye die verdere voorgeskrewe inligting aangaande sy bates en laste aan die Registrateur verstrek.

HOOFSTUK VII

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BEPALINGS BETREFFENDE ASPEKTE VAN DIE UITOEFENING VAN DIE BEDRYF
VAN 'N DEPOSITONEMENDE INSTELLING

Beperking op beleggings in onroerende goed en aandele, en op lenings en voorskotte aan sekere filiale

76. (1) Behoudens die bepalinge van subartikel (2) moet 'n depositonemende instelling wat geld in onroerende goed of in aandele belê, of geld leen of voorskiet aan enige van sy filiale waarvan die hoofdoelstelling die verkryging en hou of ontwikkeling van onroerende eiendom is, sy transaksies in sodanige beleggings, lenings of voorskotte so reël dat die som van die bedrae— 40

(a) deur hom in onroerende goed belê, bereken teen die boekwaarde daarvan; 45

(b) deur hom in aandele belê (uitgesonderd voorkeuraandele wat nie in gewone aandele omskepbaar is nie), bereken teen die prys waarteen hulle verkry is; en

(c) aan hom deur so 'n filiaal verskuldig ten opsigte van 'n lening of voorskot deur hom toegestaan, 50

op geen tydperk die bedrag van sy uitgereikte primêre aandeelkapitaal en primêre onaangetaste reserwefondse bedoel in artikel 70 oorskry nie: Met dien verstande dat indien onroerende goed of 'n onderneming deur 'n depositonemende instelling ingekoop word om 'n belegging (met inbegrip van 'n lening of 'n voorskot) te beskerm, die bedrag van sodanige belegging vir 'n tydperk van vyf jaar vanaf die datum van die inkoop nie vir die doeleindes van hierdie subartikel in berekening gebring word nie. 55

(2) 'n Depositonemende instelling kan met die skriftelike goedkeuring van die Minister en onderworpe aan die voorwaardes wat hy bepaal, beleggings bedoel in

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later than the fifteenth business day following upon the last business day of the period to which the return relates.

(3) A deposit-taking institution shall, in addition to the returns referred to in subsection (1), in respect of such period, at such times and on such form as may be prescribed, furnish the Registrar with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.

(4) The regulations contemplated in subsections (1) and (3) may also—

(a) prescribe that a deposit-taking institution which carries on the business of a deposit-taking institution through the medium of a subsidiary, branch office, agency or other undertaking outside the Republic, shall incorporate in the returns which it is required to furnish in terms of subsections (1) and (3) the required information in respect of such business, and also that such information shall be furnished separately by the deposit-taking institution on a form so prescribed; and

(b) prescribe that in the case of a group of deposit-taking institutions the holding company in such group shall, in addition to the returns furnished in terms of subsections (1) and (3) by each deposit-taking institution in the group, furnish the Registrar by means of a consolidated return, on a form prescribed, relating to all the companies in that group as well as to any business, if any, referred to in paragraph (a), with the information required to be furnished in such first-mentioned returns.

(5) Of the returns furnished in terms of subsection (1) (b) to the Registrar by a deposit-taking institution that one which most nearly coincides with the end of the financial year of the institution shall be accompanied by a report by the auditor of the institution in which is stated whether or not that return fairly and in conformity with generally accepted accounting practice presents those affairs of the institution to which the return relates, and the Registrar may, if he deems it necessary, require that any other of those returns furnished during the financial year be accompanied by such an auditor's report.

(6) A deposit-taking institution shall, at such times as may be prescribed, furnish the Registrar with the further prescribed information regarding its assets and liabilities.

CHAPTER VII

PROVISIONS RELATING TO ASPECTS OF THE CONDUCT OF THE BUSINESS
OF A DEPOSIT-TAKING INSTITUTION

Restriction on investments in immovable property and shares, and on loans and advances to certain subsidiaries

76. (1) Subject to the provisions of subsection (2), a deposit-taking institution which invests money in immovable property or in shares, or which lends or advances money to any of its subsidiaries of which the main object is the acquisition and holding or development of immovable property, shall manage its transactions in such investments, loans or advances in such a way that the sum of the amounts—

- (a) invested by it in immovable property, taken at the book value thereof;
- (b) invested by it in shares (excluding preference shares which are not convertible into ordinary shares), taken at the price at which they were acquired; and
- (c) owing to it by any such subsidiary in respect of a loan or an advance granted by it,

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

(2) A deposit-taking institution may with the written approval of the Minister and subject to such conditions as he may determine, make investments and grant loans

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subartikel (1) doen en lenings en voorskotte toestaan tot 'n totale bedrag wat die bedrag waartoe hy ingevolge subartikel (1) beperk is, oorskry.

Beperking op beleggings by, en lenings en voorskotte aan, sekere geassosieerdes

77. (1) 'n Depositonemende instelling wat geld belê in skuldbriewe of voorkeuraandeel van enige van sy geassosieerdes (uitgesonderd so 'n geassosieerde wat 'n filiaal bedoel in artikel 76 (1), 'n depositonemende instelling of 'n onderlinge bouvereniging is), of wat geld aan so 'n geassosieerde leen of voorskiet, of wat waarborge verskaf ten opsigte van verpligtings van sodanige geassosieerdes, moet sy transaksies in sodanige beleggings, lenings, voorskotte of waarborge so reël dat die som van die bedrae—

- (a) deur hom in skuldbriewe of voorkeuraandeel van sodanige geassosieerdes belê (uitgesonderd skuldbriewe of voorkeuraandeel wat in gewone aandeel omskepbaar is), bereken teen die prys waarteen hulle verkry is;
- (b) aan hom deur sodanige geassosieerdes verskuldig ten opsigte van lenings of voorskotte deur hom toegestaan; en
- (c) van sodanige waarborge,

op geen tydstop meer bedra nie as tien persent van sy verpligtings.

(2) Die som van die bedrae bedoel in paragrawe (a), (b) en (c) van subartikel (1) word vir die doeleindes van daardie subartikel bereken deur daarvan af te trek die bedrag waarmee die som van die uitgereikte primêre aandeelkapitaal en primêre onaangetaste reserwefondse, bedoel in artikel 76 (1), van die depositonemende instelling die som van die bedrae bedoel in paragrawe (a), (b) en (c) van artikel 76 (1) oorskry.

(3) By die toepassing van hierdie artikel beteken "geassosieerde" 'n geassosieerde soos omskryf in artikel 36 (10).

Ongewenste praktyke

78. (1) 'n Depositonemende instelling—

- (a) mag nie aandeel hou nie in 'n maatskappy waarvan so 'n depositonemende instelling 'n filiaal is;
- (b) mag nie geld teen sekerheid van sy eie aandeel aan iemand leen nie;
- (c) mag nie, ten einde die verkoop van sy eie aandeel te bevorder, lenings sonder onderpand of lenings teen onderpand wat na die oordeel van die Registrateur onvoldoende is, toestaan nie;
- (d) moet al sy bates op sy eie naam hou, uitgesonderd enige bate—
 - (i) wat *bona fide* verhipotekeer is om 'n werklike of potensiele verpligting te verseker;
 - (ii) ten opsigte waarvan die Registrateur op aansoek van die betrokke depositonemende instelling skriftelik goedgekeur het dat sodanige bate op naam van 'n ander persoon gehou mag word; of
 - (iii) wat in 'n kategorie bates val wat die Registrateur by kennisgewing in die *Staatskoerant* aangewys het as 'n kategorie bates wat op naam van 'n ander persoon gehou mag word;
- (e) mag nie in sy finansiële state of in enige opgawe bedoel in artikel 75 (1) (b) as 'n bate aantoon nie enige bedrag wat die koste van organisasie of uitbreiding of die aankoop van 'n saak of 'n verlies (met inbegrip van 'n verlies wat uit die verkoop van 'n bate ontstaan) of oninbare skulde verteenwoordig;
- (f) mag nie alvorens uit winste vir die items bedoel in paragraaf (e) voorsiening gemaak is—
 - (i) enige tak of agentskap of verdere tak of agentskap open nie; of
 - (ii) dividende op sy aandeel betaal nie;
- (g) mag nie, vir die doel van die bewerkstelling van 'n geldleningstransaksie regstreeks tussen 'n uitlener en 'n lener, enige handeling in die hoedanigheid van 'n agent verrig nie;
- (h) mag nie in sy rekeningkundige aantekeninge enige bate teen 'n waarde aanteken nie wat verhoog is met die bedrag van 'n verlies gelyk by die tegeldemaking van 'n ander bate;
- (i) mag nie 'n terugkoop-ooreenkoms ten opsigte van 'n fiktiewe bate of 'n bate geskep deur middel van 'n gesimuleerde transaksie aangaan nie; en

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and advances, referred to in subsection (1), to an aggregate amount which exceeds the sum to which it is limited in terms of subsection (1).

Restriction on investments with, and loans and advances to, certain associates

77. (1) A deposit-taking institution which invests money in debentures or preference shares of any of its associates (excluding any such associate which is a subsidiary referred to in section 76 (1), a deposit-taking institution or a mutual building society), or which lends or advances money to any such associate, or which provides guarantees in respect of liabilities of such associates, shall manage its transactions in such investments, loans, advances or guarantees in such a way that the sum of the amounts—

- (a) invested by it in debentures or preference shares of such associates (excluding debentures or preference shares which are convertible into ordinary shares), taken at the price at which they were acquired;
- (b) owing to it by such associates in respect of loans or advances granted by it; and
- (c) of such guarantees,

does not at any time exceed ten per cent of its liabilities.

(2) The sum of the amounts referred to in paragraphs (a), (b) and (c) of subsection (1) shall be calculated for the purposes of that subsection by deducting therefrom the amount by which the sum of the issued primary share capital and primary unimpaired reserve funds, referred to in section 76 (1), of the deposit-taking institution exceeds the sum of the amounts referred to in paragraphs (a), (b) and (c) of section 76 (1).

(3) For the purposes of this section "associate" means an associate as defined in section 36 (10).

Undesirable practices

78. (1) A deposit-taking institution—

- (a) shall not hold shares in any company of which such deposit-taking institution is a subsidiary;
- (b) shall not lend money to any person against security of its own shares;
- (c) shall not, for the purpose of furthering the sale of its own shares, grant unsecured loans or loans against security which in the opinion of the Registrar is inadequate;
- (d) shall hold all its assets in its own name, excluding any asset—
 - (i) *bona fide* hypothecated to secure an actual or potential liability;
 - (ii) in respect of which the Registrar has, on application of the deposit-taking institution concerned, approved in writing that such asset may be held in the name of another person; or
 - (iii) falling within a category of assets designated by the Registrar by notice in the *Gazette* as a category of assets which may be held in the name of another person;
- (e) shall not show in its financial statements or in any return referred to in section 75 (1) (b) as an asset any amount representing the cost of organization or extension or the purchase of a business or a loss (including a loss originating from the sale of an asset) or bad debts;
- (f) shall not before provision has been made out of profits for the items referred to in paragraph (e)—
 - (i) open any branch or agency or any further branch or agency; or
 - (ii) pay out dividends on its shares;
- (g) shall not, for the purpose of effecting a money lending transaction directly between a lender and a borrower, perform any act in the capacity of an agent;
- (h) shall not in its accounting records record any asset at a value increased by the amount of a loss incurred upon the realization of another asset;
- (i) shall not conclude a repurchase agreement in respect of a fictitious asset or an asset created by means of a simulated transaction; and

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- (j) mag nie voorgee 'n terugkoop-ooreenkoms aan te gegaan het nie sonder dat—
- (i) sodanige ooreenkoms gestaaf word deur 'n geskrewe stuk wat deur die ander party daarby onderteken is; en
 - (ii) die besonderhede van sodanige ooreenkoms geboekstaaf is in die rekeninge van die depositonemende instelling sowel as in die rekeninge, as daar is, wat deur die depositonemende instelling op die naam van sodanige ander party gehou word.

(2) Die Registrateur kan—

- (a) 'n depositonemende instelling skriftelik in kennis stel dat 'n praktyk wat deur daardie instelling toegepas word en wat in die kennisgewing vermeld word, 'n ongewenste praktyk vir daardie instelling uitmaak; of
- (b) by kennisgewing in die *Staatskoerant* 'n praktyk wat in daardie kennisgewing vermeld word, tot 'n ongewenste praktyk verklaar vir depositonemende instellings in die kennisgewing vermeld of vir alle depositonemende instellings,

en 'n depositonemende instelling wat, na die verstryking van 'n tydperk van 21 dae vanaf die datum van 'n kennisgewing wat uit hoofde van paragraaf (a) deur hom ontvang is of wat ingevolge paragraaf (b) op hom van toepassing is, 'n praktyk toepas wat uit hoofde van so 'n kennisgewing 'n ongewenste praktyk vir hom uitmaak, is aan 'n misdryf skuldig.

(3) 'n Depositonemende instelling moet, by ontvangs vanaf die Registrateur van 'n skriftelike versoek te dien effekte, die publikasie of uitreiking staak van enige advertensie, brosjure, prospektus of dergelike stuk wat in die versoek vermeld word en wat inligting bevat wat nie 'n juiste feiteweergawe is nie of waarvan die publikasie of uitreiking na die oordeel van die Registrateur nie in die openbare belang is nie.

Aandele, skuldbriewe, verhandelbare depositosertifikate en aandelebewyse**79. (1) 'n Depositonemende instelling mag nie—**

- (a) ondanks artikels 74 en 75 van die Maatskappywet, aandele sonder pari-waarde uitreik of enige van sy aandele in aandele sonder pari-waarde omskep nie;
- (b) sonder die skriftelike goedkeuring van die Registrateur of anders as ooreenkomstig voorwaardes skriftelik deur die Registrateur goedgekeur—
 - (i) enige voorkeuraandele of skuldbriewe uitreik nie;
 - (ii) enige van sy aandele in voorkeuraandele of skuldbriewe omskep nie; of
 - (iii) enige van sy voorkeuraandele van 'n bepaalde klas in voorkeuraandele van 'n ander klas omskep nie;
- (c) verhandelbare depositosertifikate anders as ooreenkomstig voorwaardes wat voorgeskryf word, uitreik nie; of
- (d) ondanks artikel 101 van die Maatskappywet, aandelebewyse aan toonder ooreenkomstig die bedoeling van daardie artikel uitreik nie.

(2) Die totaalbedrag wat die waarde verteenwoordig van skuldbriewe en verhandelbare depositosertifikate wat ingevolge, onderskeidelik, paragrafe (b) (i) en (c) van subartikel (1) deur 'n depositonemende instelling uitgereik is, mag op geen tyd 'n bedrag oorskry nie wat die voorgeskrewe persentasie verteenwoordig van die totaalbedrag van die depositonemende instelling se verpligtings ten opsigte van deposito's by hom gedoen en ten opsigte van sodanige skuldbriewe en verhandelbare depositosertifikate.

Beperking op sekere bedrywighede van depositonemende instellings

80. (1) 'n Depositonemende instelling wat 'n takstelsel het, wat geld op deposito neem wat deur middel van tjeks opvraagbaar is en wat tot 'n verrekeningshuis toegelaat is, mag nie in die Republiek sake doen deur iemand wat nie heeltyds in sy diens staan nie, behalwe met die skriftelike verlof van die Registrateur en onderworpe aan die voorwaardes wat die Registrateur bepaal: Met dien verstande dat so 'n depositonemende instelling deposito's deur 'n agent kan werf en aan so 'n agent kommissie ten opsigte daarvan kan betaal.

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- (j) shall not purport to have concluded a repurchase agreement without—
- (i) such agreement being substantiated by a written document signed by the other party thereto; and
 - (ii) the details of such agreement being recorded in the accounts of the deposit-taking institution as well as in the accounts, if any, kept by the deposit-taking institution in the name of such other party.
- 5
- (2) The Registrar may—
- (a) in writing notify a deposit-taking institution that a practice employed by that institution and specified in the notice constitutes an undesirable practice for that institution; or
 - 10 (b) by notice in the *Gazette* declare a practice specified in that notice to be an undesirable practice for deposit-taking institutions specified in that notice or for all deposit-taking institutions,
- and a deposit-taking institution which, after the expiry of a period of 21 days as from the date of a notice received by it by virtue of paragraph (a) or applicable to it in terms of paragraph (b), employs a practice which constitutes an undesirable practice for it by virtue of such a notice, shall be guilty of an offence.
- 15
- (3) A deposit-taking institution shall, upon receipt from the Registrar of a written request to that effect, discontinue the publication or issue of any advertisement, brochure, prospectus or similar document, specified in the request, which contains information which is not a correct statement of fact, or the publication or issue of which is, in the opinion of the Registrar, not in the public interest.
- 20

Shares, debentures, negotiable certificates of deposit and share warrants

- 25 79. (1) A deposit-taking institution shall not—
- (a) sections 74 and 75 of the Companies Act notwithstanding, issue shares of no par value or convert any of its shares into shares of no par value;
 - (b) without the written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing—
 - 30 (i) issue any preference shares or debentures;
 - (ii) convert any of its shares into preference shares or debentures; or
 - (iii) convert any of its preference shares of a particular class into preference shares of any other class;
 - (c) issue negotiable certificates of deposit otherwise than in accordance with such conditions as may be prescribed; or
 - 35 (d) section 101 of the Companies Act notwithstanding, issue share warrants to bearer within the meaning of that section.
- (2) The aggregate amount representing the value of debentures and negotiable certificates of deposit issued by a deposit-taking institution in terms of paragraphs
- 40 (b) (i) and (c), respectively, of subsection (1), shall at no time exceed an amount representing the prescribed percentage of the aggregate amount of the deposit-taking institution's liabilities in respect of deposits made with it and in respect of such debentures and negotiable certificates of deposit.

Limitation on certain activities of deposit-taking institutions

- 45 80. (1) A deposit-taking institution which has a branch system, which accepts money on deposit which is withdrawable by cheque and which has been admitted to a clearing house, shall not carry on any business in the Republic through a person who is not its full-time employee, except with the written permission of the Registrar and subject to such conditions as the Registrar may determine: Provided that such a
- 50 deposit-taking institution may raise deposits through an agent and pay commission to such agent in respect thereof.

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(2) 'n Depositionemende instelling mag nie sonder die skriftelike verlof van die Registrateur geld op deposito aanneem wat deur middel van tjeks opvraagbaar is nie tensy hy voor die datum van inwerkingtreding van hierdie Wet daardie fasiliteit aangebied het.

(3) Geen depositionemende instelling en geen geassosieerde van 'n depositionemende instelling mag, hetsy gesamentlik of afsonderlik, aandele in 'n geregistreerde versekeraar soos omskryf in artikel 1 van die Versekeringwet, 1943 (Wet No. 27 van 1943), hou nie vir sover die nominale waarde van dié aandele 49 persent van die nominale waarde van al die uitgereikte aandele van die versekeraar oorskry.

(4) Waar in 'n bepaalde geval by die inwerkingtreding van hierdie Wet die verhouding bedoel in subartikel (3) oorskry word, kan die depositionemende instelling en sy geassosieerdes die betrokke aandele behou, maar solank sodanige verhouding aldus oorskry word, mag hulle geen verdere aandele in daardie versekeraar verkry nie.

(5) By die toepassing van hierdie artikel beteken—

- (a) "geassosieerde", met betrekking tot 'n depositionemende instelling—
 - (i) 'n houermaatskappy van daardie depositionemende instelling;
 - (ii) 'n maatskappy waarvan so 'n houermaatskappy 'n filiaal is;
 - (iii) 'n medefiliaal van daardie depositionemende instelling; of
 - (iv) 'n filiaal (uitgesonderd 'n sub-filiaal) van daardie depositionemende instelling of van so 'n medefiliaal; en
- (b) "sub-filiaal", met betrekking tot 'n depositionemende instelling of sy medefiliaal, 'n maatskappy wat 'n filiaal van so 'n depositionemende instelling of medefiliaal is uit hoofde daarvan dat hy 'n filiaal van 'n filiaal van daardie depositionemende instelling of medefiliaal is.

HOOFSTUK VIII

BEHEER VAN SEKERE BEDRYWIGHED VAN ONGEREGISTREERDE PERSONE

Bevel waarby verwagte of werklike oortredings van sekere bepalings van Wet verbied word

81. (1) Indien die Registrateur rede het om te vermoed dat 'n persoon wat nie voorlopig of finaal ingevolge hierdie Wet as 'n depositionemende instelling geregistreer is nie—

- (a) waarskynlik die bedryf van 'n depositionemende instelling gaan uitoefen in stryd met die bepalings van artikel 11 (1); of
- (b) aldus die bepalings van artikel 11 (1) oortree het, of die bepalings van artikel 22 (4) of (5) oortree het, of dat so 'n oortreding waarskynlik voortgesit of herhaal gaan word,

kan die Registrateur by 'n afdeling van die Hooggeregshof wat regsbevoegdheid het (hieronder in hierdie artikel die hof genoem), aansoek doen om 'n bevel—

- (i) waarby die verwagte oortreding bedoel in paragraaf (a) verbied word;
- (ii) waarby die voortsetting of herhaling van 'n oortreding bedoel in paragraaf (b) verbied word; of
- (iii) waarby die betrokke persoon verbied word om enige van sy bates te vervaem of andersins daarmee te handel terwyl die oortreding wat na vermoede gepleeg is of voortgesit word, ondersoek word.

(2) Indien daar ten genoë van die hof bewys gelewer word, in die geval van 'n aansoek bedoel in—

- (a) subartikel (1) (i), dat dit op redelike gronde waarskynlik is dat die bepalings van artikel 11 (1) deur 'n betrokke persoon oortree gaan word soos beoog in subartikel (1) (a);
 - (b) subartikel (1) (ii), dat dit op redelike gronde waarskynlik is dat 'n oortreding voortgesit of herhaal gaan word soos beoog in subartikel (1) (b); of
 - (c) subartikel (1) (iii), dat dit op redelike gronde waarskynlik is dat 'n oortreding gepleeg is of voortgesit word soos beoog in subartikel (1) (b),
- kan die hof die tersaaklike bevel waarom aansoek gedoen word, uitreik.

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(2) A deposit-taking institution shall not without the written permission of the Registrar accept deposits of money withdrawable by cheque unless it offered that facility prior to the date of commencement of this Act.

(3) No deposit-taking institution and no associate of a deposit-taking institution shall, either jointly or individually, hold shares in any registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), to the extent to which the nominal value of those shares exceeds 49 per cent of the nominal value of all the issued shares of such insurer.

(4) Where in any particular case at the commencement of this Act the ratio contemplated in subsection (3) is exceeded, the deposit-taking institution and its associates may retain the shares in question, but they shall not acquire any further shares in such insurer as long as such ratio is so exceeded.

(5) For the purposes of this section—

- (a) "associate", in relation to a deposit-taking institution, means—
- (i) a holding company of that deposit-taking institution;
 - (ii) a company of which such holding company is a subsidiary;
 - (iii) a fellow subsidiary of that deposit-taking institution; or
 - (iv) a subsidiary (excluding a sub-subsidiary) of that deposit-taking institution or of such fellow subsidiary; and
- (b) "sub-subsidiary", in relation to a deposit-taking institution or its fellow subsidiary, means a company which is a subsidiary of such deposit-taking institution or fellow subsidiary by virtue of its being a subsidiary of a subsidiary of that deposit-taking institution or fellow subsidiary.

CHAPTER VIII

25

CONTROL OF CERTAIN ACTIVITIES OF UNREGISTERED PERSONS

Order prohibiting anticipated or actual contraventions of certain provisions of Act

81. (1) If the Registrar has reason to suspect that any person who is not provisionally or finally registered as a deposit-taking institution in terms of this Act—

- (a) is likely to conduct the business of a deposit-taking institution in contravention of the provisions of section 11 (1); or
- (b) has so contravened the provisions of section 11 (1) or has contravened the provisions of section 22 (4) or (5), or that such a contravention is likely to be continued or repeated,
- the Registrar may apply to a division of the Supreme Court having jurisdiction (hereinafter in this section referred to as the court) for an order—
- (i) prohibiting the anticipated contravention referred to in paragraph (a);
 - (ii) prohibiting the continuation or repetition of a contravention referred to in paragraph (b); or
 - (iii) prohibiting the person concerned from disposing of or otherwise dealing with any of his or its assets while the contravention suspected of having been committed or of being continued is investigated.

(2) If it is proved to the satisfaction of the court, in the case of an application for an order referred to in—

- (a) subsection (1) (i), that there is a reasonable likelihood that the provisions of section 11 (1) will be contravened by a person concerned as contemplated in subsection (1) (a);
- (b) subsection (1) (ii), that there is a reasonable likelihood that a contravention will be continued or repeated as contemplated in subsection (1) (b); or
- (c) subsection (1) (iii), that there is a reasonable likelihood that a contravention has been committed or is being continued as contemplated in subsection (1) (b),

the court may make the relevant order applied for.

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Registrateur se bevoegdheid om inligting van ongeregistreerde persone te vorder

82. (1) Indien die Registrateur rede het om te vermoed dat 'n persoon wat nie voorlopig of finaal as 'n depositonemende instelling ingevolge hierdie Wet geregistreer is nie, die bedryf van 'n depositonemende instelling uitoefen, kan die Registrateur daardie persoon by skriftelike kennisgewing gelas om aan hom die stuk 5 of inligting aangaande sy sake wat die Registrateur in die kennisgewing vermeld en waaroor daardie persoon beskik, aan hom voor te lê of te verstrek.

(2) 'n Stuk of inligting bedoel in subartikel (1) moet voorgelê of verstrek word binne die tydperk wat die Registrateur in die betrokke kennisgewing bepaal of binne die verlengde tydperk wat die Registrateur toelaat op aansoek deur die betrokke 10 persoon gedoen voor die verstryking van die tydperk aanvanklik in die aansoek bepaal.

(3) 'n Persoon wat weier om te voldoen, of wat versuim om binne die bepaalde of verlengde tydperk bedoel in subartikel (2) te voldoen, aan 'n lasgewing kragtens subartikel (1) deur die Registrateur uitgereik, is aan 'n misdryf skuldig. 15

Terugbetaling van geld wat onwettig verkry is

83. (1) Indien as gevolg van 'n inspeksie wat kragtens artikel 12 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), uitgevoer is, die Registrateur daarvan oortuig is dat 'n persoon geld verkry het deur die bedryf van 'n depositonemende instelling uit te oefen sonder dat hy voorlopig of finaal as 'n 20 depositonemende instelling geregistreer is, kan die Registrateur daardie persoon skriftelik gelas om, behoudens die bepalings van artikel 84 en ooreenkomstig die voorskrifte en binne die tydperk in die lasgewing vermeld, alle geld aldus deur hom verkry, in soverre dit nog nie terugbetaal is nie, met inbegrip van enige rente of 25 ander bedrae wat deur hom daarop verskuldig mag wees, terug te betaal.

(2) 'n Persoon wat uit hoofde van die bepalings van subartikel (1) geld in daardie subartikel bedoel, terugbetaal voor die vervaldatum vir die terugbetaling daarvan waaromtrent ooreengekom is deur daardie persoon en die persoon van wie die geld verkry is, is nie verplig nie om rente of enige ander bedrae te betaal wat vir die tydperk vanaf die datum van sodanige terugbetaling tot dié vervaldatum ten opsigte 30 van daardie geld betaalbaar sou gewees het.

(3) 'n Persoon wat weier of versuim om aan 'n lasgewing kragtens subartikel (1) te voldoen—

(a) is aan 'n misdryf skuldig; en

(b) word, by die toepassing van 'n wet met betrekking tot die likwidasië van 35 regspersone of die sekwestrasie van insolvente boedels, geag nie in staat te wees om sy skulde te betaal nie of 'n daad van insolvensie te begaan het, na gelang van die geval, en die Registrateur is, ondanks andersluidende bepalings van die een of ander wet, bevoeg om by 'n hof wat regsbevoegdheid het, aansoek te doen om die likwidasië van so 'n regspersoon of die 40 sekwestrasie van die boedel van so 'n persoon, na gelang van die geval.

(4) Die bepalings van hierdie artikel word nie so uitgelê nie dat dit iemand onthef van strafregtelike aanspreeklikheid wat ontstaan uit die oortreding van enige bepaling van hierdie Wet of 'n wet wat deur hierdie Wet herroep is.

Bestuur en beheer van terugbetaling van geld wat onwettig verkry is

84. (1) Gelyktydig met die uitreiking van 'n lasgewing kragtens artikel 83 (1), of so spoedig doenlik daarna, moet die Registrateur per aanstellingsbrief deur hom onderteken 'n persoon (hieronder in hierdie artikel die bestuurder genoem) aanstel om die terugbetaling van geld ooreenkomstig die lasgewing deur die persoon daaraan onderworpe, te bestuur en te beheer. 50

(2) Die Registrateur moet 'n afskrif van die aanstellingsbrief bedoel in subartikel (1) aan die persoon wat aan die betrokke lasgewing onderworpe is, beteken, en dit is met ingang van die datum van die aanstellingsbrief vir so 'n persoon verbode om die deel van sy bates wat in die aanstellingsbrief gespesifiseer word, te vervreem of andersins daarmee te handel, behalwe met die skriftelike verlof van die bestuurder. 55

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Registrar's power to exact information from unregistered persons

82. (1) If the Registrar has reason to suspect that any person who is not provisionally or finally registered as a deposit-taking institution in terms of this Act is carrying on the business of a deposit-taking institution, the Registrar may by notice in writing direct that person to submit to him such document or to furnish him with such information, relating to the affairs of that person, as the Registrar may specify in the notice and as may be available to that person.

(2) A document or information referred to in subsection (1) shall be submitted or furnished within such period as the Registrar may specify in the relevant notice or within such extended period as the Registrar may allow on application made by the person concerned before the expiration of the period initially specified in the notice.

(3) Any person who refuses to comply, or fails to comply within the specified or extended period referred to in subsection (2), with a direction issued by the Registrar under subsection (1) shall be guilty of an offence.

15 Repayment of money unlawfully obtained

83. (1) If as a result of an inspection conducted under section 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar is satisfied that any person has obtained money by carrying on the business of a deposit-taking institution without being provisionally or finally registered as a deposit-taking institution, the Registrar may in writing direct that person to repay, subject to the provisions of section 84 and in accordance with such requirements and within such period as may be specified in the direction, all money so obtained by him in so far as such money has not yet been repaid, including any interest or any other amounts owing by him in respect of such money.

(2) Any person who by virtue of the provisions of subsection (1) repays any money referred to in that subsection before the due date for the repayment thereof agreed upon by that person and the person from whom the money was obtained, shall not be obliged to pay any interest or any other amounts which would have been payable in respect of such money for the period from the date of such repayment up to such due date.

(3) Any person who refuses or fails to comply with a direction under subsection (1)—

- (a) shall be guilty of an offence; and
- (b) shall for the purposes of any law relating to the winding-up of juristic persons or to the sequestration of insolvent estates, be deemed not to be able to pay his debts or to have committed an act of insolvency, as the case may be, and the Registrar shall, notwithstanding anything to the contrary contained in any law, be competent to apply for the winding-up of such a juristic person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction.

(4) The provisions of this section shall not be construed as relieving any person from liability to criminal proceedings arising out of a contravention of any provision of this Act or any law repealed by this Act.

Management and control of repayment of money unlawfully obtained

84. (1) Simultaneously with the issuing of a direction under section 83 (1), or as soon thereafter as may be practicable, the Registrar shall by a letter of appointment signed by him appoint a person (hereinafter in this section referred to as the manager) to manage and control the repayment of money in compliance with the direction by the person subject thereto.

(2) The Registrar shall serve a copy of the letter of appointment referred to in subsection (1) upon the person subject to the relevant direction, and such person shall, with effect from the date of the letter of appointment, be prohibited from disposing of or otherwise dealing with such of his assets as are specified in the letter of appointment, except with the written permission of the manager.

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(3) Die bestuurder handel onder die toesig van die Registrateur, en hy kan van tyd tot tyd van die Registrateur opdragte aanvra aangaande enige aangeleentheid wat uit of in verband met die verrigting van sy pligte ingevolge subartikel (4) ontstaan.

(4) Dit is die plig van die bestuurder—

(a) om na die sake of enige deel van die sake van die persoon wat aan die lasgewing onderworpe is, die verdere ondersoek in te stel wat die bestuurder nodig ag ten einde—

(i) die werklike bedrag te kan bepaal van geld wat onwettig deur daardie persoon verkry is soos beoog in artikel 83 (1);

(ii) die identiteit te kan bepaal van alle persone van wie sodanige geld aldus onwettig verkry is;

(iii) te kan bepaal waar sodanige geld of enige bates waarin sodanige geld omgesit is, gehou word of opgespoor kan word; of

(iv) enige ander feit te kan vasstel wat na die oordeel van die Registrateur of die bestuurder vasgestel moet word ten einde die terugbetaling van sodanige geld ingevolge die betrokke lasgewing te vergemaklik;

(b) om alle redelike stappe (met inbegrip van die tegeldemaking van bates waarin geld wat onwettig verkry is soos beoog in artikel 83 (1), omgesit is) te doen wat daartoe kan bydra om die terugbetaling van geld ooreenkomstig die voorskrifte van en binne die tydperk bepaal in die betrokke lasgewing, te bespoedig en te verseker;

(c) om die vermoedelike pleging deur enige persoon van 'n misdryf waarvan hy bewus word in die loop van die verrigting van sy pligte as bestuurder ingevolge hierdie artikel, mee te deel aan die prokureur-generaal wat regsbevoegdheid het in die gebied waarin sodanige misdryf aldus na vermoede gepleeg is; en

(d) om enige ander werksaamheid te verrig wat die Registrateur aan hom opdra in verband met die afhandeling van die terugbetaling van geld ooreenkomstig die tersaaklike lasgewing.

(5) Vir die doeleindes van die verrigting van sy pligte soos in subartikel (4) uiteengesit, het die bestuurder, met betrekking tot die persoon wat aan die tersaaklike lasgewing onderworpe is en met betrekking tot die sake van daardie persoon, die bevoegdhede wat by artikel 4 (1), (2), (3) en (4) van die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), aan 'n inspekteur beoog in daardie artikel verleen word, asof die bestuurder 'n inspekteur en die persoon wat aan die lasgewing onderworpe is 'n finansiële instelling was soos in daardie artikel beoog.

(6) Daar word aan die bestuurder ten opsigte van die dienste ingevolge hierdie artikel deur hom gelewer, die vergoeding deur die Registrateur betaal wat die Minister bepaal, en die Registrateur kan 'n bedrag gelyk aan die vergoeding aldus betaal, op die persoon wat aan die lasgewing onderworpe is, verhaal.

(7) Die bestuurder bekleë sy amp totdat die tersaaklike lasgewing ten volle nagekom is, maar die Registrateur kan by aanvoering van goeie gronde die aanstelling van die bestuurder te eniger tyd skriftelik intrek, waarop die bestuurder sy amp ontruim.

(8) 'n Persoon wat—

(a) wanneer hy deur die bestuurder versoek word om 'n eed af te lê of bevestiging te doen, weier om dit te doen;

(b) sonder wettige verskoning weier of versuim om na sy beste vermoë 'n vraag wat deur die bestuurder by die uitoefening van sy bevoegdhede of die verrigting van sy pligte aan hom gestel word, te beantwoord, selfs al sou die antwoord daardie persoon aan strafregtelike vervolging kan blootstel;

(c) opsetlik vals inligting aan die bestuurder verstrek;

(d) weier of versuim om na sy beste vermoë te voldoen aan 'n redelike versoek wat deur die bestuurder by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte aan hom gerig is;

(e) opsetlik die bestuurder by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte hinder; of

(f) enige ander handeling verrig wat daarop gerig is om die terugbetaling van geld soos vereis deur 'n lasgewing kragtens artikel 83 (1), te dwarsboom of enige persoon in staat te stel om sodanige terugbetaling te ontduik,

is aan 'n misdryf skuldig.

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(3) The manager shall act under the control of the Registrar, and he may from time to time apply to the Registrar for instructions in regard to any matter arising out of or in connection with the performance of his duties in terms of subsection (4).

(4) It shall be the duty of the manager—

- 5 (a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the manager may deem necessary in order to establish—
- 10 (i) the true amount of money unlawfully obtained by that person as contemplated in section 83 (1);
- (ii) the identities of all persons from whom such money was so unlawfully obtained;
- (iii) where any such money or any assets into which such money was converted, is kept or can be located; or
- 15 (iv) any other fact which in the opinion of the Registrar or the manager needs to be established in order to facilitate the repayment of such money in terms of the relevant direction;
- (b) to take all reasonable steps (including the liquidation of assets into which money unlawfully obtained as contemplated in section 83 (1) has been converted) which may serve to expedite and ensure the repayment of
- 20 money in accordance with the requirements of and within the period specified in the relevant direction;
- (c) to report the suspected commission by any person of any offence of which he becomes aware in the course of the performance of his duties as manager in terms of this section, to the attorney-general having jurisdiction in
- 25 the area in which such offence is so suspected of having been committed; and
- (d) to perform any other function assigned to him by the Registrar in connection with the finalization of the repayment of money in accordance with the relevant direction.

30 (5) For the purposes of the performance of his duties as set out in subsection (4), the manager shall, in relation to the person subject to the relevant direction and in relation to the affairs of that person, have the powers conferred by section 4 (1), (2), (3) and (4) of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), upon an inspector contemplated in that section, as if the manager were an inspector

35 and the person subject to the direction were a financial institution contemplated in that section.

(6) The manager shall in respect of the services rendered by him in terms of this section be paid such remuneration by the Registrar as the Minister may determine, and the Registrar may recover an amount equal to the remuneration so paid from the

40 person subject to the direction.

(7) The manager shall hold office until the relevant direction has been fully complied with, but the Registrar may at any time in writing withdraw the appointment of the manager on good cause shown, whereupon the manager shall vacate his office.

45 (8) Any person who—

- (a) when requested by the manager to take an oath or to make an affirmation, refuses to do so;
- (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to him by the manager in the exercise of his powers or the
- 50 performance of his duties, even though the answer may tend to incriminate that person;
- (c) wilfully furnishes the manager with any false information;
- (d) refuses or fails to comply to the best of his ability with any reasonable request made to him by the manager in the exercise of his powers or the
- 55 performance of his duties;
- (e) wilfully hinders the manager in the exercise of his powers or the performance of his duties; or
- (f) commits any other deed designed to obstruct, or to enable any person to evade, the repayment of money as required by a direction under section
- 60 83 (1),

shall be guilty of an offence.

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HOOFSTUK IX

ALGEMENE BEPALINGS

Sertifisering van opgawes en ander stukke

85. 'n Opgawe of ander stuk wat ingevolge 'n voorskrif van hierdie Wet deur 'n depositonemende instelling of beherende maatskappy aan die Registrateur verstrekk moet word, moet deur die hoof- uitvoerende beampte en, in die geval van so 'n opgawe, ook deur die hoofrekenmeester van die depositonemende instelling of beherende maatskappy as juis gesertifiseer wees en deur sodanige hoof- uitvoerende beampte geëndosseer wees met die datum waarop dit aldus gesertifiseer is. 5

Insae in en afskrifte en hou van stukke 10

86. (1) 'n Persoon kan teen betaling van die voorgeskrewe gelde—

- (a) 'n stuk vermeld in subartikel (2) wat deur die Registrateur ingevolge hierdie Wet gehou word, insien;
- (b) 'n sertifikaat van die Registrateur verkry aangaande die inhoud of enige deel van die inhoud van so 'n stuk; of 15
- (c) 'n afskrif van of uittreksel uit so 'n stuk verkry.

(2) Die stukke bedoel in subartikel (1) is—

- (a) sertifikate van voorlopige of finale registrasie of van die registrasie van 'n wysiging van die akte van oprigting of statute of van 'n naamsverandering van depositonemende instellings en van beherende maatskappye; 20
- (b) aktes van oprigting en statute van depositonemende instellings en van beherende maatskappye; en
- (c) opgawes en afskrifte van kennisgewings, verslae, opgawes, state of notules wat by die Registrateur ingevolge artikel 59, 65 of 75 ingelewer is, uitgesonderd 'n opgawe of staat aldus ingelewer deur middel of onder dekking van 'n voorgeskrewe vorm wat ingevolge die regulasie waarby dit voorgeskryf word, behandel moet word as vertroulik en nie beskikbaar vir insae deur die publiek nie. 25

(3) Die Registrateur moet die stukke vermeld in paragraaf (c) van subartikel (2) vir 'n tydperk van minstens 10 jaar hou: Met dien verstande dat die Registrateur nie verplig is om bedoelde stukke wat betrekking het op 'n depositonemende instelling of beherende maatskappy waarvan die registrasie verval het of ingetrek is, vir 'n tydperk van langer as vyf jaar na die beëindiging van die registrasie te hou nie. 30

(4) Indien die Registrateur van oordeel is dat 'n persoon insae of 'n sertifikaat, afskrif of uittreksel bedoel in subartikel (1) verlang om die een of ander openbare belang te bevorder, kan hy daardie persoon vrystel van die verpligting om die voorgeskrewe gelde ten opsigte van sodanige insae, sertifikaat, afskrif of uittreksel te betaal. 35

Minderjariges en getroude vroue as deposante

87. (1) Ondanks andersluidende bepalings van enige wet of van die gemene reg en tensy die akte van oprigting of statute van 'n depositonemende instelling anders bepaal, kan 'n minderjarige bo die ouderdom van 16 jaar of 'n getroude vrou, hetsy onder maritale mag al dan nie, 'n deposant wees by 'n depositonemende instelling en sonder die toestemming of bystand van sy voog of haar eggenoot, na gelang van die geval, alle nodige stukke verly, alle nodige kwitansies gee en sy of haar deposito 45 sedeer of verpand, teen sy of haar deposito leen en in die algemeen met sy of haar deposito handel soos hy of sy goetvind, en geniet hy of sy al die voorregte en is hy of sy onderworpe aan al die verpligtings en voorwaardes wat vir deposante geld.

(2) Die eggenoot van 'n vrou wat 'n deposant by 'n depositonemende instelling is, is nie, behalwe met haar skriftelike instemming, geregtig om van die depositonemende instelling enige besonderhede betreffende die deposito's wat sy by daardie instelling het, te eis of te ontvang nie. 50

Beperking van aanspreeklikheid

88. Die Suid-Afrikaanse Reserwebank of, hetsy in sy amptelike of persoonlike hoedanigheid, 'n lid van die raad van direkteure van genoemde Bank, die Registra- 55

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CHAPTER IX

GENERAL PROVISIONS

Certification of returns and other documents

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

10 Inspection, copies and keeping of documents

86. (1) Any person may upon payment of the prescribed fee—

- (a) inspect any document specified in subsection (2) and kept by the Registrar in terms of this Act;
- (b) obtain a certificate from the Registrar as to the contents or any part of the contents of any such document; or
- (c) obtain a copy of or extract from any such document.

(2) The documents referred to in subsection (1) are—

- (a) certificates of provisional or final registration or of the registration of an alteration of the memorandum of association or articles of association or of a change of name of deposit-taking institutions and of controlling companies;
- (b) memorandums of association and articles of association of deposit-taking institutions and of controlling companies; and
- (c) returns and copies of notices, reports, returns, statements or minutes lodged with the Registrar in terms of section 59, 65 or 75, excluding any return or statement so lodged by means or under cover of a prescribed form which, in terms of the regulation prescribing it, is to be treated as confidential and not available for inspection by the public.

(3) The Registrar shall keep the documents specified in paragraph (c) of subsection (2) for a period of at least 10 years: Provided that the Registrar shall not be required to keep the said documents which relate to a deposit-taking institution or a controlling company of which the registration has lapsed or been cancelled, for a period longer than five years as from the date of termination of such registration.

(4) If the Registrar is of the opinion that a person requires an inspection or any certificate, copy or extract referred to in subsection (1) to promote any public interest, he may exempt that person from the obligation to pay the prescribed fee in respect of such inspection, certificate, copy or extract.

Minors and married women as depositors

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

(2) The husband of a woman who is a depositor with a deposit-taking institution shall, save with her written consent, not be entitled to demand or receive from the deposit-taking institution any particulars concerning the deposits she holds with that institution.

Limitation of liability

88. No liability shall attach to the South African Reserve Bank or, either in his official or personal capacity, any member of the board of directors of the said Bank,

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teur of 'n ander beampte of werknemer van genoemde Bank is nie aanspreeklik nie vir enige verlies gelyk deur of skade berokken aan enige persoon ten gevolge van enigiets gedoen of nagelaat deur so 'n lid, die Registrateur of so 'n ander beampte of werknemer by die verrigting te goeder trou van 'n werksaamheid of plig kragtens hierdie Wet.

5

Verstreking van inligting deur Registrateur

89. Ondanks die bepalings van artikel 33 (1) van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), kan die Registrateur inligting wat hy ingewin het soos beoog in daardie artikel, verstrek—

- (a) aan enige persoon wat belas is met die verrigting van 'n werksaamheid 10 kragtens enige wet, mits die Registrateur daarvan oortuig is dat die besit van sodanige inligting deur daardie persoon noodsaaklik is vir die behoorlike verrigting van daardie werksaamheid deur daardie persoon; of
- (b) aan 'n gesag in 'n ander land as die Republiek ten einde daardie gesag in staat te stel om werksaamhede soortgelyk aan dié van die Registrateur 15 kragtens hierdie Wet te verrig ten opsigte van 'n depositonemende instelling wat in daardie ander land sake doen.

Regulasies

90. (1) Die Minister kan regulasies uitvaardig—

- (a) betreffende enige aangeleentheid wat kragtens hierdie Wet by regulasie 20 voorgeskryf moet of kan word;
- (b) behoudens die bepalings van die Maatskappywet, waarby riglyne verstrekkend word betreffende die optrede van, en vereistes voorgeskryf word waaraan voldoen moet word deur, 'n lid van die raad van direkteure van 'n depositonemende instelling by die verrigting van sy werksaamhede as so 'n 25 direkteur;
- (c) waarby aangeleenthede voorgeskryf word, benewens dié in enige ander bepaling van hierdie Wet beoog, ten opsigte waarvan gelde betaal moet word, en die geld wat ten opsigte van elke sodanige aangeleentheid betaalbaar is; 30
- (d) wat die wyse voorskryf waarop 'n betaling ingevolge hierdie Wet aan die Registrateur gedoen moet word;
- (e) wat die verdere opgawes voorskryf wat die Minister raadsaam ag, benewens dié in enige ander bepaling van hierdie Wet beoog, en wat deur depositonemende instellings aan die Registrateur verstrekkend moet word; 35
- (f) waarby voorgeskryf word dat die finansiële state van 'n depositonemende instelling ooreenkomstig algemeen aanvaarde rekeningkundige praktyk opgestel moet word;
- (g) wat die bedrag van die gelde wat ten opsigte van 'n lisensie bedoel in artikel 35 betaalbaar is of die grondslag waarop so 'n bedrag bereken moet word, 40 die tydperk waarbinne sodanige gelde betaal moet word en 'n boete ten opsigte van laat betaling van sodanige gelde, voorskryf;
- (h) wat die grondslag voorskryf waarop enige roerende of onroerende bates by die toepassing van hierdie Wet gewaardeer moet word; of
- (i) waarby, oor die algemeen, enige aangeleentheid voorgeskryf word, hetsy 45 dit met 'n aangeleentheid vermeld in paragrawe (a) tot en met (h) in verband staan al dan nie, wat hy nodig of raadsaam ag om voor te skryf sodat die oogmerke en doeleindes van hierdie Wet beter verwesenlik kan word.

(2) 'n Persoon wat ingevolge 'n bepaling van hierdie Wet verplig is om 'n opgawe 50 of staat in 'n voorgeskrewe vorm te verstrek, word geag nie daardie opgawe of staat te verstrek het nie tensy hy alle besonderhede waarvoor in die voorgeskrewe vorm voorsiening gemaak word, daarin uiteengesit het.

(3) 'n Regulasie kragtens subartikel (1) uitgevaardig, kan ten opsigte van 'n oortreding daarvan of versuim om daaraan te voldoen 'n straf voorskryf wat 'n boete 55 van R2 000 of gevangenisstraf vir 'n tydperk van ses maande nie te bowe gaan nie.

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the Registrar or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Registrar or such other officer or employee in the *bona fide* performance of any function or duty under this Act.

5 Furnishing of information by Registrar

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

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

Regulations

90. (1) The Minister may make regulations—

- 20 (a) as to any matter which is required or permitted to be prescribed by regulation under this Act;
- (b) subject to the provisions of the Companies Act, providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a deposit-taking institution in the performance of his functions as such a director;
- 25 (c) prescribing matters in addition to those contemplated in any other provision of this Act, in respect of which fees shall be payable, and the fee payable in respect of each such matter;
- (d) prescribing the manner in which any payment in terms of this Act shall be made to the Registrar;
- 30 (e) prescribing such further returns as the Minister may deem expedient, in addition to those contemplated in any other provision of this Act, to be furnished by deposit-taking institutions to the Registrar;
- (f) prescribing that the financial statements of a deposit-taking institution shall be prepared in conformity with generally accepted accounting practice;
- 35 (g) prescribing the amount of the fee payable in respect of a licence referred to in section 35 or the basis on which such amount shall be calculated, the period within which such fee shall be paid and a fine in respect of late payment of such a fee;
- 40 (h) prescribing the basis on which any movable or immovable assets shall for the purposes of this Act be valued; or
- (i) prescribing, generally, any matter, whether or not connected with any matter specified in paragraphs (a) to (h), inclusive, which he may deem it necessary or expedient to prescribe in order that the objects and purposes
- 45 of this Act may be better achieved.

(2) A person who is obliged in terms of any provision of this Act to render a return or statement in a prescribed form, shall be deemed not to have rendered that return or statement unless he has set forth therein all the particulars for which provision is made in the prescribed form.

- 50 (3) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of R2 000 or imprisonment for a period of six months.

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Misdrywe en strawwe**91. (1) 'n Persoon wat—**

- (a) versuim om aan 'n lasgewing kragtens artikel 7 te voldoen; of
- (b) 'n bepaling van artikel 34, 35, 36 (1), (6) of (7), 37 (1), 38 (1), 39, 41, 42 (1), 52 (1) of (4), 53, 55, 58, 59, 61 (2), 65, 66, 67, 70 (2), 71, 72, 73, 75, 76, 77, 78 (1) of (3), 79, 80 of 84 (2) oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig.

(2) 'n Direkteur of werknemer van 'n deponisemende instelling of beherende maatskappy, of enige maatskappy waarin so 'n direkteur of werknemer 'n regstreekse belang het, wat—

- (a) 'n voordeel van enige persoon aanneem vir of in verband met enige voorskot toegestaan deur daardie deponisemende instelling of deur die deponisemende instelling ten opsigte waarvan daardie beherende maatskappy geregistreer is; of
- (b) behalwe met die skriftelike toestemming van die Registrateur of op 'n behoorlik geadverteerde openbare veiling onroerende goed koop wat die eiendom is van of verhipotekeer is aan daardie deponisemende instelling of die deponisemende instelling ten opsigte waarvan daardie beherende maatskappy geregistreer is, en wat deur of in opdrag van die betrokke deponisemende instelling, of by 'n geregtelike verkoping in opdrag van enige ander persoon, verkoop word, is aan 'n misdryf skuldig.

(3) 'n Deponisemende instelling wat, terwyl 'n tekort bedoel in artikel 74 (3) ten opsigte van sy bedryf bestaan, enige dividende uitkeer, is aan 'n misdryf skuldig.

(4) 'n Persoon wat skuldig bevind word aan 'n misdryf ingevolge—

- (a) artikel 11 (2) of 22 (4), is strafbaar met 'n boete van hoogstens R100 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf; of
- (b) artikel 17 (6), 21, 22 (3) of (8), 32 (4) (a), 78 (2), 82 (3), 83 (3) (a), 84 (8) of subartikel (1), (2) of (3) van hierdie artikel, is strafbaar met 'n boete van hoogstens R10 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met daardie boete sowel as daardie gevangenisstraf.

(5) Iemand wat 'n voordeel in stryd met die bepalings van subartikel (2) (a) aanneem, moet aan die betrokke deponisemende instelling die bedrag of waarde van die voordeel betaal.

(6) Indien 'n persoon versuim om enige opgawe, staat, verslag of ander stuk of inligting ooreenkomstig 'n voorskrif van hierdie Wet binne die tydperk deur of kragtens hierdie Wet bepaal of, indien daardie tydperk kragtens artikel 8 (2) (a) deur die Registrateur verleng is, binne die verlengde tydperk, aan die Registrateur voor te lê of te verstrek, kan die Registrateur hom deur middel van 'n skriftelike kennisgewing 'n boete oplê van hoogstens R100 vir elke dag waarop die versuim voortduur.

(7) 'n Boete kragtens subartikel (6) opgelê, moet aan die Registrateur betaal word binne die tydperk wat in die kennisgewing vermeld word, en indien die betrokke persoon versuim om die boete binne die vermelde tydperk te betaal, kan die Registrateur deur middel van 'n siviele regsgeding in 'n bevoegde hof die bedrag van die boete of die gedeelte daarvan wat hy in die omstandighede geregverdig ag, op daardie persoon verhaal.

Hersiening van Wet

92. (1) Die Minister moet 'n vaste komitee aanstel om hierdie Wet van tyd tot tyd in oënskou te neem, en die komitee bestaan uit die bekleders van ampte en ander lede wat die Minister van tyd tot tyd bepaal.

(2) 'n Lid van die vaste komitee bekleë sy amp vir die tydperk wat die Minister bepaal, en kan by verstryking van sy ampstermyn weer aangestel word.

(3) Die vaste komitee kan van tyd tot tyd aanbevelings by die Minister doen aangaande wysigings van hierdie Wet wat, na die oordeel van die komitee, raadsaam geword het as gevolg van veranderde omstandighede of wat die administrasie van hierdie Wet as raadsaam aangetoon het.

(4) 'n Komitee wat ingevolge die bepalings van artikel 53 van die Bankwet, 1965 (Wet No. 23 van 1965), deur die Minister aangestel is en op die datum onmiddellik

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Offences and penalties

91. (1) Any person who—

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

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

- (a) accepts from any person any benefit for or in connection with any advance granted by that deposit-taking institution or by the deposit-taking institution in respect of which that controlling company is registered; or
(b) otherwise than with the written consent of the Registrar or at a duly advertised public auction purchases any immovable property owned by or mortgaged to that deposit-taking institution or the deposit-taking institution in respect of which that controlling company is registered, and which is sold by or at the instance of the deposit-taking institution in question or is sold at a judicial sale at the instance of any other person,
20 shall be guilty of an offence.

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

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

- (a) section 11 (2) or 22 (4), shall be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or
(b) section 17 (6), 21, 22 (3) or (8), 32 (4)(a), 78 (2), 82 (3), 83 (3) (a), 84 (8) or subsection (1), (2) or (3) of this section, shall be liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding six
30 months or to both such fine and such imprisonment.

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

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

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

45 Review of Act

92. (1) The Minister shall appoint a standing committee to review this Act from time to time, and such committee shall consist of such incumbents of offices and other members as the Minister may from time to time determine.

(2) A member of the standing committee shall hold office for such period as the
50 Minister may determine, and shall be eligible for reappointment on the expiration of his term of office.

(3) The standing committee may from time to time make recommendations to the Minister with regard to amendments to this Act which, in the opinion of the committee, have become advisable owing to changed circumstances or which the
55 administration of this Act has shown to be advisable.

(4) A committee appointed by the Minister in terms of the provisions of section 53 of the Banks Act, 1965 (Act No. 23 of 1965), and which exists on the date

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voor die datum van inwerkingtreding van hierdie Wet bestaan, bly voortbestaan totdat 'n nuwe komitee ingevolge hierdie artikel deur die Minister aangestel word, en eersgenoemde komitee word, solank dit aldus voortbestaan, geag deur die Minister ingevolge hierdie artikel aangestel te gewees het.

Uitleg van sekere verwysings in bestaande wette

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93. 'n Verwysing in 'n wet wat onmiddellik voor die inwerkingtreding van hierdie Wet van krag is na—

- (a) 'n bank, diskontohuis, bankinstelling, bankinstelling geregistreer kragtens of ingevolge die Bankwet, 1965 (Wet No. 23 van 1965), of bouvereniging geregistreer ingevolge die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), word, tensy dit met die samehang onbestaanbaar of andersins duidelik onvanpas is, uitgelê as 'n verwysing na 'n depositonemende instelling;
- (b) die Registrateur van Banke of die Registrateur van Bouverenigings, word uitgelê as 'n verwysing na die Registrateur:

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Met dien verstande dat—

- (i) enige sodanige verwysing in artikel 10 (1) (i) (xii) (bb), (xiiA) of (xiii) (bb), 10 (1) (v) of (vA) of 19 (5A) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), na 'n bouvereniging, aldus uitgelê word as 'n verwysing na 'n depositonemende instelling wat, onmiddellik voor sy registrasie as 'n depositonemende instelling ingevolge artikel 33, 'n bouvereniging was wat as sodanig geregistreer was ingevolge die Wet op Bouverenigings, 1986; en
- (ii) enige sodanige verwysing in artikel 10 (1) (w) van die Inkomstebelastingwet, 1962, na 'n bankinstelling, aldus uitgelê word as 'n verwysing na 'n depositonemende instelling wat, onmiddellik voor sy registrasie as 'n depositonemende instelling ingevolge artikel 33, 'n bankinstelling was wat as sodanig geregistreer was ingevolge die Bankwet, 1965.

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Wysiging van artikel 3 van Wet 61 van 1973, soos gewysig deur artikel 106 van Wet 82 van 1986

94. Artikel 3 van die Maatskappywet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

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- “(b) met betrekking tot 'n maatskappy of buitelandse maatskappy of vereniging wat onderworpe is aan die bepalings van 'n wet aangaande [banke of] versekeringsmaatskappye of -verenigings vir sover daardie bepalings in stryd is met die bepalings van hierdie Wet; of”.

35

Herroeping van wette, en voorbehoude

95. (1) Behoudens die bepalings van subartikel (2), word die wette vermeld in die Bylae hierby herroep in die mate uiteengesit in die derde kolom van die Bylae.

(2) 'n Regulasie uitgevaardig, lasgewing, bevel of voorskrif uitgereik, versoek gerig of vereiste voorgeskryf, en enigiets anders gedoen kragtens 'n bepaling van 'n wet wat deur subartikel (1) herroep word, en wat kragtens 'n bepaling van hierdie Wet uitgevaardig, uitgereik, gerig, voorgeskryf of gedoen sou kon word, word geag kragtens laasgenoemde bepaling uitgevaardig, uitgereik, gerig, voorgeskryf of gedoen te gewees het.

45

Kort titel en inwerkingtreding

96. (1) Hierdie Wet heet die Wet op Depositonemende Instellings, 1990, 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 die verskillende bepalings van hierdie Wet bepaal word.

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(3) 'n Verwysing in hierdie Wet na die datum van inwerkingtreding daarvan word uitgelê as 'n verwysing na die toepaslike datum wat aldus bepaal is.

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

5 Interpretation of certain references in existing laws

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

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

15 Provided that—

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

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

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

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

Repeal of laws, and savings

- 35 95. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

- (2) Any regulation made, direction, order or directive issued, request made or requirement laid down, and any other thing done under any provision of any law repealed by subsection (1), and which could be made, issued, laid down or done under a provision of this Act, shall be deemed to have been made, issued, laid down or done under the last-mentioned provision.

Short title and commencement

- 45 96. (1) This Act shall be called the Deposit-taking Institutions Act, 1990, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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

- 50 (3) Any reference in this Act to the date of commencement thereof shall be construed as a reference to the applicable date so fixed.

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Bylae

WETTE HERROEP

No. en jaar van wet	Kort titel	In hoeverre herroep
Wet No. 23 van 1965	Bankwet, 1965	Die geheel
Wet No. 80 van 1969	Wysigingswet op Finansiële Instellings, 1969	Artikel 2
Wet No. 23 van 1970	Wysigingswet op Finansiële Instellings, 1970	Artikels 3, 4, 5 en 6
Wet No. 89 van 1972	Wysigingswet op Inkomstewette, 1972	Artikel 8
Wet No. 91 van 1972	Wysigingswet op Finansiële Instellings, 1972	Artikels 12 tot en met 17
Wet No. 67 van 1973	Wysigingswet op Finansiële Instellings, 1973	Artikel 4
Wet No. 101 van 1976	Wysigingswet op Finansiële Instellings, 1976	Artikels 37 tot en met 53
Wet No. 94 van 1977	Wysigingswet op Finansiële Instellings, 1977	Artikels 17 tot en met 21
Wet No. 80 van 1978	Wysigingswet op Finansiële Instellings, 1978	Artikels 18 tot en met 21
Wet No. 103 van 1979	Wysigingswet op Finansiële Instellings, 1979	Artikels 27 tot en met 31
Wet No. 99 van 1980	Wysigingswet op Finansiële Instellings, 1980	Artikels 45 tot en met 49
Wet No. 36 van 1981	Wysigingswet op Finansiële Instellings, 1981	Artikels 23 tot en met 25
Wet No. 82 van 1982	Wysigingswet op Finansiële Instellings, 1982	Artikels 16 en 17
Wet No. 86 van 1984	Wysigingswet op Finansiële Instellings, 1984	Artikels 22 tot en met 33
Wet No. 106 van 1985	Wysigingswet op Finansiële Instellings, 1985	Artikels 10 tot en met 36
Wet No. 82 van 1986	Wet op Bouverenigings, 1986	Die geheel
Wet No. 6 van 1987	Wysigingswet op Finansiële Instellings, 1987	Artikels 3 tot en met 7, en 10 tot en met 12
Wet No. 96 van 1988	Wysigingswet op die Suid-Afrikaanse Reserwebank, Bankinstellings, Onderlinge Bouverenigings en Bouverenigings, 1988	Artikels 2 tot en met 16, en 32 tot en met 51
Wet No. 13 van 1989	Wysigingswet op Bankinstellings, Onderlinge Bouverenigings en Bouverenigings, 1989	Artikels 1 tot en met 6, en 11 tot en met 14

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Schedule

LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act No. 23 of 1965	Banks Act, 1965	The whole
Act No. 80 of 1969	Financial Institutions Amendment Act, 1969	Section 2
Act No. 23 of 1970	Financial Institutions Amendment Act, 1970	Sections 3, 4, 5 and 6
Act No. 89 of 1972	Revenue Laws Amendment Act, 1972	Section 8
Act No. 91 of 1972	Financial Institutions Amendment Act, 1972	Sections 12 to 17, inclusive
Act No. 67 of 1973	Financial Institutions Amendment Act, 1973	Section 4
Act No. 101 of 1976	Financial Institutions Amendment Act, 1976	Sections 37 to 53, inclusive
Act No. 94 of 1977	Financial Institutions Amendment Act, 1977	Sections 17 to 21, inclusive
Act No. 80 of 1978	Financial Institutions Amendment Act, 1978	Sections 18 to 21, inclusive
Act No. 103 of 1979	Financial Institutions Amendment Act, 1979	Sections 27 to 31, inclusive
Act No. 99 of 1980	Financial Institutions Amendment Act, 1980	Sections 45 to 49, inclusive
Act No. 36 of 1981	Financial Institutions Amendment Act, 1981	Sections 23 to 25, inclusive
Act No. 82 of 1982	Financial Institutions Amendment Act, 1982	Sections 16 and 17
Act No. 86 of 1984	Financial Institutions Amendment Act, 1984	Sections 22 to 33, inclusive
Act No. 106 of 1985	Financial Institutions Amendment Act, 1985	Sections 10 to 36, inclusive
Act No. 82 of 1986	Building Societies Act, 1986	The whole
Act No. 6 of 1987	Financial Institutions Amendment Act, 1987	Sections 3 to 7, inclusive, and 10 to 12, inclusive
Act No. 96 of 1988	South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988	Sections 2 to 16, inclusive, and 32 to 51, inclusive
Act No. 13 of 1989	Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1989	Sections 1 to 6, inclusive, and 11 to 14, inclusive

