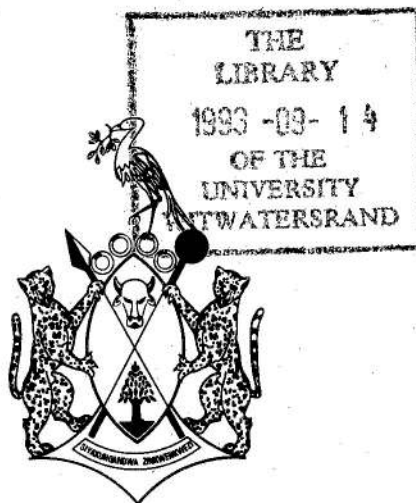


LAW

**IRIPHABLIKI  
YECISKEI**



**REPUBLIC OF  
CISKEI**

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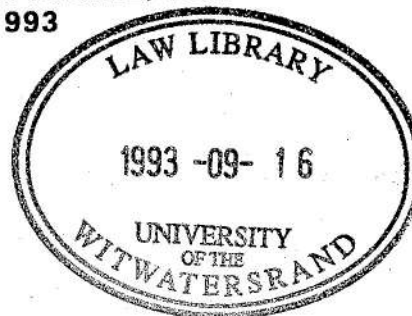
**DEPARTMENT OF THE COUNCIL OF STATE**

**GOVERNMENT NOTICE No. 67 OF 1993**

**It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-**

**DEPOSIT-TAKING INSTITUTIONS DECREE, 1993**

**Decree No. 16 of 1993**



# COUNCIL OF STATE — REPUBLIC OF CISKEI

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

### DECREE

To provide for the registration, regulation and supervision of the business of public companies taking deposits from the public and to provide for incidental matters.

*[English text signed by the Chairman of the Council of State. Assented to on 12 August 1993.]*

### ARRANGEMENT OF DECREE

Chapter 1	: Interpretation and application (sections 1 and 2)
Chapter 2	: Administration (sections 3 to 10)
Chapter 3	: Establishment and registration of deposit-taking institution (sections 11 to 35)
Chapter 4	: Shareholding in, and registration of controlling company in respect of deposit-taking institution (sections 36 to 50)
Chapter 5	: Functioning of deposit-taking institution and controlling company with reference to Companies Act (sections 51 to 69)
Chapter 6	: Prudential requirements (sections 70 to 75)
Chapter 7	: Provisions relating to the conducting of certain business by a deposit-taking institution (sections 76 to 80)
Chapter 8	: Control of certain activities of unregistered person (sections 81 to 84)
Chapter 9	: General (sections 84 to 95)
Schedule	: Part 1, Laws repealed Part 2, Law amended

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

### CHAPTER 1

#### INTERPRETATION AND APPLICATION

**1. Definitions.** — (1) In this decree unless the context indicates otherwise -

“**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;

“**chief executive officer**”, in relation to a deposit-taking institution, means a person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the board of directors of the deposit-taking institution for the conduct of the business of the deposit-taking institution;

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

“**Ciskei**” means the Republic of Ciskei;

“**close relative**”, in relation to any person, means -

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

“**Companies Act**” means the Companies Act, 1973 (Act 61 of 1973);

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

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

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

**"co-operative"** means a co-operative incorporated in terms of any law and includes a co-operative society or co-operative company;

**"department"** means the department of the Minister;

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

- (a) an equal amount or any part thereof will be conditionally or unconditionally repaid, with or without a premium, on demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it, and
- (b) no 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 on such amount *mutatis mutandis* as contemplated in paragraph (b) is issued in respect of such amount, but does not include an amount of money -

- (i) which is paid as an advance, or as part payment, in terms of a contract for the sale, letting and hiring or other provision of movable or immovable property or of services and which is repayable only in the event of -
  - (aa) that property or those services not in fact being sold or let and hired or otherwise provided;
  - (bb) the fulfilment of a resolutive condition forming part of that contract; or
  - (cc) the non-fulfilment of a suspensive condition forming part of that contract;
- (ii) which is paid as security for the performance of a contract or as security in respect of any loss which may result from the non-performance of a contract;
- (iii) which, without derogation from the provisions of subparagraph (ii), is 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) which is paid by a holding company to its subsidiary or by a subsidiary to its holding company or by one subsidiary to another subsidiary of the same holding company;
- (v) which is 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) which is paid by any person to a registered insurer as defined in section 1(1) of the Insurance Act, 1943 (Act 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 decree, no longer be of force or effect; or
- (vii) which is paid to a fund registered or provisionally registered under section 4 of the Pension Funds Act, 1956 (Act 24 of 1956) as a contribution by or on behalf of a member of that fund;

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

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

**"deposit-taking institution"** means a public company registered provisionally or finally as a deposit-taking institution;

**"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 Southern Africa;
- (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 Southern Africa or, in the case of a juristic person or persons, was or were formed, established or incorporated by or under any law;
- (c) which is a juristic person other than a company and was formed, established or incorporated by or under a law excluding a pension fund registered in terms of the Pension Funds Act, 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 Southern Africa; or
- (d) that is a person belonging to a category of persons recognized by the Registrar as domestic shareholders for the purposes of this decree;

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

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

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

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

**"general public"** includes in relation to a particular deposit-taking institution, any persons in its employ, but does not include a deposit-taking institution;

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

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

**"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 after the date of commencement of this decree) 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;
- (e) negotiable loan levy certificates issued by the Treasury in respect of any loan levy on companies levied in terms of any law and with a maturity of not more than three years to their redemption dates;
- (f) stocks issued under section 21(1)(b) of the Exchequer and Audit Act, 1985 (Act 28 of 1985) with a maturity of not more than three years to the last redemption date;



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (g) acceptances of deposit-taking institutions which are discountable with the Reserve Bank;
- (h) 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
- (i) securities of the Reserve Bank with a maturity of not more than three years to the last redemption date thereof;

**"Minister"** means the Minister of Finance and Economic Development;

**"mutual building society"** means a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act 24 of 1965);

**"person"** includes any partnership;

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

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

**"public accountant"** means a public accountant within the meaning of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951);

**"registered"** means registered or deemed to be registered in terms of this decree and "registration" shall be construed accordingly;

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

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

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

**"repealed law"** means any law repealed by section 94(1);

**"representative office"**, in relation -

- (a) to a foreign institution referred to in section 34(1) means premises situated within Ciskei and from which the business referred to in the said section 34(1) and conducted by such foreign institution in the other country referred to in that section, is promoted or assisted in any way; or
- (b) to the establishment by a deposit-taking institution of a representative office outside Ciskei as contemplated in section 52(1)(e), means premises situated outside Ciskei and from which the business conducted by such deposit-taking institution within Ciskei in terms of this decree is promoted or assisted in any way;

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

**"Southern Africa"** in relation to a domestic shareholder as herein defined, means Ciskei and the Republic of South Africa and includes any other territory which formerly formed part of that Republic;

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

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

- (a) the acceptance of deposits from the general public as a regular feature of the business in question;
- (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

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (iii) for the financing, wholly or to any material extent, by any person or 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 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 law and designated by the Minister by notice in the *Gazette*; or
  - (ii) performed in terms of any scheme authorized and controlled by, and conducted in accordance with the provisions of, any applicable law and so designated by the Minister,provided such activity is performed in accordance with such conditions as the Minister may determine in the relevant notice;
- (ee) the acceptance, subject to such conditions as the Registrar may from time to time determine by notice in the *Gazette*, of money against debentures, bills of exchange, promissory notes or other similar financial instruments, provided the money so accepted is not used in the case of such acceptance of money by a person other than a deposit-taking institution for the granting of money loans or credit (other than customary credit in respect of the sale of goods or the provision of services by the issuer of such financial instruments) to the general public; or
- (ff) the effecting, subject to such conditions as the Registrar may from time to time determine by notice in the *Gazette*, of a money lending transaction directly between a lender and a deposit-taking institution as borrower through the intermediation of a third party who does not act as a principal to the transaction, provided such money lending transaction is so effected on the day on which the third party concerned receives from the lender the funds to be lent in terms of the money lending transaction;

"this Act" includes the regulations;

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

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

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

(2) The Minister may, on the recommendation of the Registrar and after consultation with the Reserve Bank, by regulations amend the definitions of "deposit", "deposit-taking institution" and "the business of a deposit-taking institution" for the purposes of the application of any or all the provisions of this decree.

**2. Exclusions from application of decree.** — Except where expressly stated otherwise, the provisions of this decree, in so far as they impose requirements with which any institution must comply -

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

shall not apply to -

- (i) the Reserve Bank;
- (ii) the Development Bank of Southern Africa;
- (iii) any mutual building society; or
- (iv) any other institution or body designated by the Minister by notice in the *Gazette*.

## CHAPTER 2

### ADMINISTRATION

**3. Office for Deposit-taking Institutions.** — For the registration of institutions as deposit-taking institutions and for the other purposes of this decree there is hereby established in the department an office called the Office for Deposit-taking Institutions and at the head of such office shall be a person styled the Registrar of Deposit-taking Institutions.

**4. Registrar and Deputy Registrar of Deposit-taking Institutions.** — (1) The Minister shall, subject to the laws governing the public service, designate an officer or employee of the department as Registrar of Deposit-taking Institutions who shall perform, under the control of the Minister and in accordance with the directions issued by him from time to time, the functions assigned to the Registrar by or under this decree.

(2) The Minister may also designate an officer or employee of the department as Deputy Registrar of Deposit-taking Institutions who shall, subject to the control and directions of the Registrar, be competent to perform any function which the Registrar is permitted or required to perform.

**5. Delegation of powers and assignment of functions by Registrar.** — (1) The Registrar may with the approval of the Minister -

- (a) delegate to any officer or employee of the department any power conferred on the Registrar by or under this decree; or
- (b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this decree.

(2) Any delegation under subsection (1)(a) shall not prevent the exercise of the relevant power by the Registrar himself.

**6. Registrar may inspect and furnish guidelines to institutions.** — (1) In addition to the powers and duties conferred or imposed on him by this decree the Registrar shall, for the performance of his functions, have powers and duties corresponding in all respects to the powers and duties of a registrar in terms of the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984).

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

(2) Any reference in this decree 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 said Inspection of Financial Institutions Act, 1984.

(3) Nothing in this decree contained 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 that deposit-taking institution by the Registrar.

(4) The Registrar may from time to time, by circular, furnish deposit-taking institutions with guide-lines regarding the application and interpretation of the provisions of this decree.

**7. Furnishing of information by deposit-taking institution. —** (1) The Registrar may by notice in writing -

- (a) direct a deposit-taking institution or a controlling company or a subsidiary of a deposit-taking institution or controlling company to furnish him, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as may be specified in the notice and as the Registrar may reasonably require for the performance of his functions;
- (b) direct such institution, controlling company or subsidiary to furnish him with a report by a public accountant or by any other person with appropriate professional skill on any matter or any aspect of any matter mentioned in such information as aforesaid subject to the provisions of subsection (2).

(2) The public accountant or other person contemplated in subsection (1)(b) shall be a person acceptable to the Registrar who may also require the relevant report to be in such form as he may specify.

**8. Power of Registrar to extend certain periods. —** (1) Any person who is required to submit to the Registrar or to furnish the Registrar with any return, statement, report or other document or information within a fixed period may, before or after the expiry of that period, apply to the Registrar in writing for an extension.

(2) The Registrar may, after consideration of any such application -

- (a) extend the period, or
- (b) refuse the application,

and he shall in writing notify the applicant of his decision.

**9. Appeal against decision of Registrar. —** (1) Except as provided in section 13(4) any person who is aggrieved by any decision of the Registrar under any provision of this decree may, within the prescribed period and in the manner and upon payment of the prescribed fee, appeal against such decision to the Minister.

(2) Before considering any appeal the Minister may direct the Director-General of the department, or such other competent officer as he may designate, to investigate and report on the subject matter of the appeal within such period as the Minister may fix.

- (3) (a) After the Minister has considered the appeal made to him and any report thereon under subsection (2), he may, at his discretion, confirm or set aside or vary the relevant decision of the Registrar.
- (b) The decision of the Minister, which shall be final, shall be made known to the appellant and to the Registrar and effect shall be given to that decision without delay.

(4) If the Minister sets aside the decision of the Registrar *in toto* the fee paid by the appellant shall be refunded to him and if the Minister varies any such decision, he may at his discretion direct that the whole or any part of such fee be refunded to the appellant.

**10. Annual report by Registrar. —** (1) The Registrar shall each year submit to the Minister a report on his activities during the year under review.

(2) The Minister shall lay a copy of the report referred to in subsection (1) upon the Table of the Council of State within 14 days after receipt of such report.

# DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

## CHAPTER 3

### ESTABLISHMENT AND REGISTRATION OF DEPOSIT-TAKING INSTITUTION

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

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

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

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

(2) An application under subsection (1) -

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

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

(3) The Registrar may require an applicant to furnish him -

(a) with such additional information or documents as he may deem necessary; or

(b) with a report by a public accountant or by some other knowledgeable person acceptable to the Registrar on any aspect of the application.

**13. Grant or refusal of application for authorization. —** (1) Subject to the provisions of subsection (2) the Registrar may, after considering the information, documents and report furnished to him under section 12, grant the application for authorization on such conditions as he may prescribe or refuse the application.

(2) The Registrar shall not grant any such application unless he is satisfied -

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

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

(c) that the proposed business of a deposit-taking institution will be conducted as a public company incorporated and registered under the Companies Act;

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

(e) that the proposed business will have the financial means to comply, as a deposit-taking institution, with the requirements of this decree;

(f) that such business will be conducted in a prudent manner;

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

(3) When the Registrar grants or refuses an application made under section 12 he shall notify the applicant accordingly in writing.

(4) No appeal shall lie against a refusal of any such application by the Registrar.

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

(a) that false or misleading information was furnished in the application for the authorization; or



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (b) that success has not been achieved, within the period of six months following the granting of the authorization, with the formation of the proposed deposit-taking institution in accordance with the proposals contained in the said application.

(2) When the Registrar revokes an authorization in terms of subsection (1) he shall notify the holder thereof accordingly in writing.

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

(1) No public company shall be formed in terms of the Companies Act to conduct the business of a deposit-taking institution except with the prior approval in writing of the Registrar.

(2) The Registrar shall grant no such approval unless he is of the opinion that the proposed company will, having regard to the provisions of section 17, be eligible for provisional registration as a deposit-taking institution.

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

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

(1) The holder of a valid authorization for the establishment of a deposit-taking institution (hereinafter in this Chapter referred to as the institution) may at any time within the period of twelve months after the date of the granting of the authorization apply to the Registrar for the provisional registration of the institution as a deposit-taking institution.

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

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

- (b) be accompanied by -

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

- (ii) a written statement setting out -

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

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

- (cc) full particulars of the business which the applicant proposes to conduct and of the proposed manner of conducting such business; and

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

- (iii) a list of the shareholders of the institution as at the date of the application, which complies with the requirements of the return contemplated in section 59.

(3) The Registrar may require the applicant to furnish him with such additional information or documents as he may deem necessary.

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

**17. Grant or refusal of application for provisional registration. —** (1) Subject to the provisions of subsection (2) the Registrar shall, after considering the information and documents submitted to him under section 16, grant such application if he is satisfied -

- (a) that the proposed business is that of a deposit-taking institution;

- (b) that it is not the intention of the applicant to adopt improper methods of business; and

- (c) that the memorandum and articles of association of the institution are not inconsistent with this decree or undesirable for any other reason.



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

(2) Notwithstanding the provisions of subsection (1) the Registrar may refuse an application for the provisional registration of an institution if he is of the opinion -

- (a) that the applicant or the proposed institution no longer complies with the requirements specified in section 13(2);
- (b) that the institution if it were to be provisionally or finally registered as a deposit-taking institution will probably not be able to comply with, or is likely to pursue a practice contrary to, a provision of this decree;
- (c) that an interest which any person has in the institution is inconsistent with a provision of this decree;
- (d) that the interests of potential depositors with the institution will be detrimentally affected by the manner in which the institution proposes to conduct its business or for any other reason;
- (e) that the proposed name of the institution -
  - (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; or
  - (ii) so closely resembles the name of an existing deposit-taking institution or mutual building society that it is likely to mislead; or
  - (iii) is identical with, or closely resembles, the name under which a deposit-taking institution or other institution or a mutual building society was registered under a repealed law and that reasonable grounds exist for objection against the use of that name by the institution; or
  - (iv) is otherwise likely to mislead the public; or
- (f) that the application does not comply with a requirement of this decree.

(3) When the Registrar grants or refuses an application for provisional registration he shall notify the applicant appropriately in writing.

(4) If the Registrar 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, register the institution provisionally as a deposit-taking institution and issue to the institution, in the prescribed form, a certificate of such provisional registration.

(5) An institution provisionally registered for the first time as a deposit-taking institution shall not commence the business of a deposit-taking institution until it has furnished proof to the Registrar that it complies with the provisions of section 70.

(6) An institution which contravenes the provisions of subsection (5) shall be guilty of an offence.

**18. Conditions, duration and renewal of provisional registration. —** (1) The provisional registration of an institution under section 17 shall be for a period of twelve months and shall be subject to such conditions as the Registrar may have specified.

(2) The Registrar may at his discretion and on the same or any new conditions renew any provisional registration before its expiry for periods not exceeding twelve months at a time: Provided that -

- (a) no deposit-taking institution shall remain provisionally registered as such for longer than five years in the aggregate; and
- (b) without derogation from the Registrar's discretion in terms of this subsection to grant or to refuse the renewal of any provisional registration, the Registrar may accept as sufficient reason for the refusal of renewal, the fact that the institution has not, at any time during the last six months of any period of provisional registration, conducted any business as a deposit-taking institution.

(3) The Registrar may under subsection (1) or (2) also impose a condition requiring the institution to alter its memorandum or articles of association in such manner and within such period as he may specify.

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (4) (a) An appeal in terms of section 9 by a deposit-taking institution against the Registrar's refusal to renew its provisional registration on any occasion shall, notwithstanding the provisions of section 9, be lodged before such provisional registration expires.
- (b) If any provisional registration expires while an appeal referred to in paragraph (a) is being considered, the provisional registration shall be deemed to have been renewed until the appellant is notified of the result of the appeal.

**19. Application for final registration as deposit-taking institution.** — An institution, which is provisionally registered as a deposit-taking institution, may at any time apply to the Registrar in the prescribed manner and form for final registration as a deposit-taking institution.

**20. Grant or refusal of application for final registration.** — (1) The Registrar may at his discretion grant or refuse any application for final registration of an institution and may prescribe the conditions on which any such final registration is granted: Provided that the Registrar shall not grant an application unless he is satisfied -

- (a) that the institution has satisfied all the conditions subject to which it was provisionally registered;
- (b) that the institution has complied, and will be able to continue to comply, with all applicable requirements of this decree;
- (c) that the board of directors and the executive management of the institution have at all relevant times demonstrated their integrity as well as their ability to conduct the business of a deposit-taking institution with success; and
- (d) that the business of the institution is conducted in a prudent manner and without resort to any undesirable practices.

(2) When the Registrar grants or refuses an application for final registration, he shall notify the applicant accordingly in writing.

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

(4) Refusal 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 remains in force, from reapplying under section 19 for final registration.

**21. False or misleading information in application for authorization or registration.** - Any person who in or in connection with any application -

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

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

**22. Use of name of deposit-taking institution.** — (1) Subject to the provisions of subsection (2) an institution which is provisionally or finally registered as a deposit-taking institution shall not use, or refer to itself by, a name other than the name under which it is so registered or any literal translation or abbreviation thereof which has been approved by the Registrar.

(2) An institution so registered may, with the consent of the Registrar, use in conjunction with its registered name, 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, if it has changed its name, the name by which it was previously known.

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(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 or such business by, any name, description or symbol indicating, or calculated to lead persons to infer, that he or such business is a deposit-taking institution provisionally or finally registered as such, or

(b) in any other manner holds himself or such business out to be a deposit-taking institution provisionally or finally registered as such,

while he or such business 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) such business is registered as a controlling company in respect of a deposit-taking institution and the name or description 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 to use such name or description.

(6) Notwithstanding the provisions of 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 twelve months referred to in that section or if its application for such registration is refused under section 17; and

(b) in the case of a company referred to in paragraph (b) of that subsection, if it fails to comply, within a reasonable time after its application for provisional registration has been granted under section 17, with the conditions on 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 decree was lawfully so used in terms of any repealed law.

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

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

- (a) in the opinion of the Registrar, it was obtained by means of untrue or misleading information furnished by any person and such person has, on account of having furnished such information, been convicted of an offence under 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 Ciskei, the authorization under 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 competent authority in such other country.

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

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

(1) Before cancelling or suspending the provisional or final registration of a deposit-taking institution in terms of section 23 the Registrar shall, by notice in writing addressed to the chairman or chief executive officer of the institution -

- (a) inform the institution of his intention to cancel or to suspend such registration, as the case may be;
- (b) furnish the institution with the reasons for such proposed 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 cancelled or suspended.

(2) After considering any representations received from the institution the Registrar may at his discretion -

- (a) cancel or suspend the relevant registration, or
- (b) take no further steps in the matter,

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

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

(2) The competent court for the purposes of subsection (1) shall be a court of the general division of the Supreme Court of Ciskei.

(3) The court shall enquire into and consider the matter and shall grant or refuse the application and may make such order as to costs as it may deem fit.

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

- (a) has, or any of its directors or executive officers has, been convicted of any offence under this decree;
- (b) does not carry on satisfactorily the business of a deposit-taking institution,
- (c) has failed to comply with a requirement of this decree which applies in its case,
- (d) continues to follow any undesirable practice, or
- (e) has in a material respect misrepresented the facilities which it offers to the general public,



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or if, on any other ground advanced by the Registrar in the application, the court is of the opinion that it is not in the public interest to allow the institution to continue its activities as a deposit-taking institution.

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

(1) The Registrar may, in lieu of making an application under section 25(1), by notice in writing addressed 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) of section 25(4) are present, restrict the activities of such institution as a deposit-taking institution in such respects and on such conditions as the Registrar may specify in the notice.

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

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

28. Cancellation of registration upon winding-up. — When the affairs of a deposit-taking institution have been completely wound up, as contemplated in section 419(1) of the Companies Act, the Master of the Supreme Court shall transmit to the Registrar a copy of the certificates 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 such deposit-taking institution.

29. Withdrawal of suspension or restriction. — (1) The Registrar may on the application in writing of a deposit-taking institution -

- (a) of which the provisional or final registration was suspended under section 23, or
- (b) whose activities have been restricted under section 26,

by notice in writing withdraw such suspension or restriction, as the case may be, if he is satisfied that the institution has complied with all the requirements for such withdrawal imposed by him in the conditions of suspension or restriction.

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

30. Publication of information relating to deposit-taking institutions. — The Registrar shall by notice in the *Gazette* make known -

- (a) the provisional or final registration of any institution as a deposit-taking institution,
- (b) the cancellation or suspension of any such registration,
- (c) the expiration of any such provisional registration,
- (d) the restriction of the activities of any deposit-taking institution,
- (e) the withdrawal of any such suspension or restriction, or
- (f) any change of name of a deposit-taking institution,

which is effected or which takes place in terms of this decree.

31. Date on which registration lapses. — An institution registered as a deposit-taking institution shall cease to be registered as such -

- (a) where such registration is provisional registration of which the period has expired, or if such registration was renewed under section 18(2) the period of such renewed registration has expired, and such registration has not been renewed or further renewed under that section, upon the expiry of that period;
- (b) where the registration has been 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 in terms of section 9 before the expiry of the said 30 days and the Minister has confirmed such cancellation, upon the date on which the institution is notified of such confirmation;

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- (c) in the case where the court has granted an order under section 25 cancelling the registration, upon the date on which that order comes into force; or
- (d) in the case where the registration has been cancelled by the Registrar in terms of section 27 or 28, upon such date as may be determined by the Registrar.

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

- (a) to repay, in accordance with such directions and within such period as he may specify, all money due by it to members of the public in respect of deposits accepted by it while registered as a deposit-taking institution, including any interest or other amounts owing by it in respect of such money; and
- (b) to change its name and its memorandum and articles of association within the period and in the manner required by the Registrar.

(2) Different directions and periods may be determined under subsection (1) in respect of different kinds of deposits: Provided that in determining such directions and periods the Registrar shall not accord to any person any preference to which he is not entitled under any law.

(3) An institution, which by virtue of the provisions of subsection (1) repays a deposit before the due date agreed upon for the repayment thereof, shall not be bound to pay any interest or other amounts which would have been payable in respect of the deposit for any period subsequent to the date of such repayment.

(4) Any institution which fails to comply with an order under subsection (1) shall -

- (a) be guilty of an offence; and
- (b) for the purposes of sections 344 and 345 of the Companies Act, be deemed not to be able to pay its debts.

**33. Reregistration in terms of this decree.** — (1) Every institution which on the date of commencement of this decree is under any repealed law -

- (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) and as soon as is practicable after such date of commencement, be either provisionally or finally registered (according to whether the institution is provisionally or finally registered under a repealed law) by the Registrar as a deposit-taking institution in terms of this decree.

(2) The Registrar shall, when complying with the provisions of subsection (1), issue to the institution a certificate of provisional or of final registration as a deposit-taking institution, as the case may be.

(3) The reregistration of an institution in terms of this section shall in the case of a provisional registration be for the unexpired portion of the period of the institution's provisional registration under the repealed law.

(4) Upon the reregistration of an institution in terms of this section its previous registration under the 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 reregistration in terms of this section.

**34. Representative offices of foreign institutions.** — (1) Subject to the provisions of any relevant agreement between the Government of Ciskei and the Government of the Republic of South Africa an institution established in a country other than Ciskei 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 Ciskei without having previously obtained the consent in writing of the Registrar.



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(2) The consent referred to in subsection (1) shall be obtained by way of application in writing to the Registrar in which is specified -

- (a) the name of the foreign institution,
- (b) the country in which it is established,
- (c) the name of its proposed chief representative officer; and
- (d) the address of its proposed representative office in Ciskei,

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 is by or under the laws of that other country authorised to conduct a business there which is 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 shall in writing notify the Registrar, as soon as it occurs, of -

- (a) any change of the name of the institution;
- (b) any substitution of its chief representative officer in Ciskei;
- (c) any change of the address of the representative office; or
- (d) the closing down of the representative office.

(4) A representative office contemplated in this section may not conduct the business of a deposit-taking institution in Ciskei.

**35. Annual licence.** — A deposit-taking institution shall obtain, from the receiver of revenue of the district in which its registered office referred to in section 170 of the Companies Act is situated, a deposit-taking institution's licence in respect of each year ending on 31 December against payment of the prescribed licence fee.

### CHAPTER 4

#### SHAREHOLDING IN, AND REGISTRATION OF CONTROLLING COMPANY IN RESPECT OF, DEPOSIT-TAKING INSTITUTION

**36. Restriction on shareholding in deposit-taking institution and controlling company.** — (1) Notwithstanding the provisions of the Companies Act but subject to the provisions of section 37, no deposit-taking institution or controlling company shall, except as provided in 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 person or of any associate of such 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 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 Ciskei.

(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

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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 decree or any other law be limited to 49 per cent of the voting rights attached to all the issued shares of the deposit-taking institution or controlling company concerned.

(5) If the nominal value of shares in a deposit-taking institution or controlling company which are to be allotted or issued to, or are 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 smaller 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 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, acting in conjunction with the deposit-taking institution or controlling company shall, within 45 days from the date on which such excess of that percentage arose, furnish the Registrar with particulars of the case and within six months from such date submit to him a scheme whereby the shareholdings in question will, within a period acceptable to the Registrar and in accordance with such conditions as he may determine, be reduced to such an extent that the requirements of subsection (1) relating to such percentage will be complied with.

(7) Whenever 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 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 number of 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 shall, notwithstanding anything to the contrary contained in any other law, as from the commencement of this decree be limited to 49 per cent (divided amongst 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.

(8) (a) If at the commencement of this decree and -

- (i) by virtue of an authorization granted by the Minister under the provisions of section 28D(2) of the Banks Act, 1965 (Act 23 of 1965), or
- (ii) in terms of an exemption granted by the Minister under the provisions of any law relating to building societies,

as those provisions existed immediately prior to the commencement of this decree, any person holds shares in a deposit-taking institution or controlling company with a total nominal value in excess of the percentage mentioned

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in subsection (1), the deposit-taking institution or controlling company shall, within a period of 45 days as from the date of such commencement, apply to the Minister for exemption under subsection (2) in respect of such excess shareholding.

- (b) If on the expiration of the period of 45 days referred to in paragraph (a) no application in terms of that paragraph has been received by the Minister in respect of a particular excess shareholding, the relevant authorization or exemption referred to in that paragraph, as the case may be, 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, 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;

(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;  
(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;  
(iii) which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person -  
(aa) had such first-mentioned juristic person been a company; or  
(bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;  
(iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act; and

(c) in relation to any person -

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

**37. Permission for acquisition of shares in deposit-taking institution or controlling company.** - (1) Subject to the provisions of subsection (6) no person shall acquire in a deposit-taking institution or controlling company shares -

- (a) of which the total nominal value, or  
(b) of which the total nominal value together with the total nominal value 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 15 per cent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company, without first having obtained permission in accordance with the provisions of subsection (2) of such acquisition.

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- (2) (a) If, subject to the provisions of paragraph (c) -
- (i) any person has for a period of 12 months or such shorter period as the Registrar may deem appropriate 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 him permission in writing, acquire more than 15 per cent but not exceeding 24 per cent of those shares as contemplated in the said subsection;
  - (ii) the said person has for a period of 12 months or such shorter period as the Registrar may deem appropriate held 24 per cent of those shares as so contemplated he may, if the Registrar has granted him permission in writing, acquire more than 24 per cent but not exceeding 49 per cent of those shares as contemplated in the said subsection (1);
  - (iii) the said person has for a period of 12 months or such shorter period as the Minister may deem appropriate held 49 per cent of those shares as so contemplated he may, if the Minister has, through the Registrar, granted him permission in writing, acquire more than 49 per cent but not exceeding 74 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 appropriate held 74 per cent of those shares as contemplated in the said subsection (1) he may, if the Minister has through the Registrar granted him permission in writing, acquire more than 74 per cent of those shares as contemplated in the said subsection.
- (b) Permission in terms of paragraph (a) shall only be granted on application in the prescribed form and after consultation with the Competition Board (if any) established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979).
- (c) Notwithstanding the provisions of paragraph (a), the Registrar or the Minister, as the case may be, may, if in a particular case he deems it fit to do so grant permission for the acquisition of shares as contemplated in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) without the applicant for such permission having held shares for the period of 12 months or any shorter period as required in any of the said subparagraphs.
- (3) If any person at the commencement of this decree already holds more than 15 per cent of the shares in a deposit-taking institution or controlling company as contemplated in subsection (1), he may not acquire more of those shares before he has obtained 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 -
- (a) will not be contrary to the public interest; and
  - (b) will also not be contrary to the interests of the deposit-taking institution or its depositors or of the controlling company, as the case may be.
- (5) If, in the case of a shareholding contemplated in -
- (a) subsection (2)(a)(i) and (ii), the Registrar, or
  - (b) subsection (2)(a)(iii) and (iv), the Minister,
- is of the opinion that the retention of such shareholding in a deposit-taking institution or controlling company by a particular shareholder will be to the detriment of that deposit-taking institution or controlling company, he may apply to the Supreme Court 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 15 per cent of the total nominal value of all the issued shares of that deposit-taking institution or controlling company; and
  - (ii) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his shareholding to 15 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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(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.

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

**38. Registration of shares in name of nominee.** — (1) Notwithstanding the provisions of the Companies Act no deposit-taking institution or controlling company shall without the prior approval in writing of the Registrar -

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

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

- (a) in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trust Control Act, 1981 (Act 54 of 1981) or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;
- (b) in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances mentioned in section 103(3) of the Companies Act;
- (c) for a period of not more than six months, in the name of a stock-broker or of a company established by him for a purpose similar to that mentioned in section 12(3) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985) of the Republic of South Africa or of a company controlled by the deposit-taking institution or of an employee of the deposit-taking institution, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares or where the beneficiary is not known; or
- (d) in the name of a person in any other special circumstances determined by the Minister by notice in the *Gazette*.

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

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

**40. Absence of wrongful intent.** — If a deposit-taking institution or a controlling company or any director, officer, employee or agent of a deposit-taking institution or controlling company acting in good faith and on information reasonably obtained takes certain action or fails to do so and thereby unknowingly contravenes the provisions of section 36 or 38, such act or failure to act shall not constitute an offence.

**41. Effects of registration of shares contrary to legal provisions.** — (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,

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any share in a deposit-taking institution or controlling company allotted or issued to him or registered in his name in contravention of any provision of this decree.

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

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

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

(2) For the purposes of this decree 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 influence decisively the outcome of the voting at a general meeting of the deposit-taking institution, or
- (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 to 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 is an inevitable consequence of 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 the person so first-mentioned.

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

**43. Application for registration as controlling company. —** (1) A public company -

- (a) which desires to exercise control over a 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 in 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 under subsection (1) shall be accompanied by such information and documents as may be prescribed.

(3) A public company which makes application 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.



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

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

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

- (a) that the registration of the applicant as a controlling company will not be contrary to the public interest;
- (b) that, in the case of an applicant applying for registration in the circumstances referred to in section 43(1)(a), the applicant will be able to establish control as contemplated in section 42(2) over the deposit-taking institution;
- (c) that no provision of the memorandum or articles of association of the applicant is inconsistent with a provision of this decree or is generally undesirable;
- (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 office as such director or executive officer and that every such executive officer has sufficient knowledge and experience to manage the affairs of the applicant in its capacity of a controlling company;
- (e) that the applicant is financially sound;
- (f) that any interest which any person has in the applicant is not inconsistent with a provision of this decree; and
- (g) that the application complies otherwise with the requirements of this decree.

(3) When the Registrar grants or refuses an application for registration as a controlling company in terms of this section he shall notify the applicant accordingly in writing.

(4) (a) If the Registrar in terms of this section grants an application, he shall on compliance by the applicant with the conditions on which the application was granted and on payment of the prescribed registration fee, register the applicant as a controlling company in respect of the deposit-taking institution concerned and, in the prescribed form, issue to the applicant a certificate of registration as a controlling company in respect of that deposit-taking institution.

(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 unless the company in respect of which it made the application is registered as a deposit-taking institution.

(5) In addition to any conditions which he may impose under subsection (1), the Registrar may impose a condition requiring an applicant which has applied for registration as a controlling company in the circumstances referred to in section 43(1)(a) -

- (a) to furnish within a specified period proof to his satisfaction that it will, immediately after its registration as a controlling company, establish control over the deposit-taking institution in question; or
- (b) to make an offer, within a specified period and on a basis and on conditions regarded by the Registrar as fair and reasonable, 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.

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- (6) (a) Whenever the Registrar has imposed a condition contemplated in subsection (5)(b) he may, after consultation with the applicant, designate a person to investigate (independently of the applicant) and to advise him whether the basis and conditions on which the applicant intends to make a share offer in compliance with that condition are fair and reasonable.

(b) The costs of such an investigation shall be paid by the applicant.

(7) A public company which immediately prior to the commencement of this decree is, in terms of any repealed law, registered as -

(a) a bank controlling company in respect of a banking institution as defined in such repealed law, or

(b) a control company in respect of a building society as defined in such repealed law,

shall with effect from the commencement of this decree be deemed to be a controlling company registered as such in respect of the deposit-taking institution registered in terms of section 33 in relation to that banking institution or building society, as the case may be.

**45. Cancellation of registration of controlling company. —** (1) If a controlling company has failed to establish control over the deposit-taking institution in respect of which it is registered or no longer exercises any such control, the Registrar may subject to the provisions of subsection (2), by notice in writing directed to such controlling company, cancel its registration in respect of that deposit-taking institution.

(2) No such registration shall be cancelled under subsection (1) unless the Registrar has previously by notice in writing called upon the controlling company to show cause within a specified period, not being less than 30 days, why its registration should not be cancelled and has duly considered any representations made by the company.

**46. Cancellation by court of registration of controlling company. —** (1) The Registrar may make application to the Supreme Court for an order cancelling the registration of a controlling company if in his opinion there exists 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) An order cancelling the registration of a controlling company may also be granted by the court on the ground -

(a) that the controlling company has furnished the Registrar in or in connection with its application for registration with information which is in a material respect untrue, or

(b) that such company has contravened or failed to comply with a provision of or a requirement under this decree,

or if, on any other ground advanced by the Registrar in the 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 such.

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

**48. Lapse of registration of controlling company upon cancellation of registration of deposit-taking institution. —** (1) If the provisional or the 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 relation to that deposit-taking institution shall be deemed to have been cancelled at the same time.

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

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**49. Date on which registration of controlling company lapses.** — A controlling company shall cease to be registered as such -

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

**50. Investments by controlling company.** — A controlling company which invests money -

- (a) in undertakings other than deposit-taking institutions, institutions which conduct business similar to the business of a deposit-taking institution in a country other than a country in Southern Africa, controlling companies or companies of which the main object is the holding or development of property which is used or intended to be used mainly for the purpose of conducting the business of a deposit-taking institution, or
- (b) 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 capital and reserve funds.

### CHAPTER 5

#### FUNCTIONING OF DEPOSIT-TAKING INSTITUTION AND CONTROLLING COMPANY WITH REFERENCE TO COMPANIES ACT

**51. Application of Companies Act to deposit-taking institution and controlling company.** — (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 in so far as they are not inconsistent with any provision of this decree: Provided that -

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

(2) The Minister may, by notice in the *Gazette*, declare that a provision of the Companies Act specified in such notice -

- (a) shall not apply to any company registered as a deposit-taking institution or as a controlling company; or
- (b) shall only apply to any such company subject to such adjustments and qualifications as may be specified in the notice; or

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- (c) which is ordinarily administered by the Registrar of Companies shall, in respect of companies registered as deposit-taking institutions or as controlling companies, be administered by the Registrar.

(3) The Minister shall lay a copy of a notice under subsection (2) on the Table of the Council of State within 14 days after publication thereof, and any such notice shall cease to be of force or effect if the Council of State by resolution disapproves thereof: Provided that nothing herein contained shall affect the power of the Minister to issue a new notice under subsection (2) in the place of the notice which has so ceased to be of force and effect.

**52. Subsidiary, branch office, other interest or representative office of deposit-taking institution and controlling company. —** (1) A deposit-taking institution shall not without the prior approval in writing of the Registrar or otherwise than in accordance with conditions approved by him, also in writing -

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

(2) To obtain the prior approval of the Registrar as contemplated in subsection (1), the applicant shall lodge with the Registrar an application in which full particulars of the proposed action are furnished, including in the case of a proposed establishment of a representative office outside Ciskei as contemplated in paragraph (e) of the said subsection -

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

(3) The Registrar may require the applicant to furnish him with such additional information as he may deem necessary.

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

- (a) any substitution of its chief representative officer in the country concerned, or
- (b) any change of address of the representative office in question, or
- (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.

**53. Disclosure by deposit-taking institution and controlling company of interest in subsidiary, trust or other undertaking. —** A deposit-taking institution or a controlling company shall in such form and at such intervals as may be prescribed furnish the Registrar with the prescribed particulars relating to its shareholding or other interest in -

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



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### 54. Compromise, amalgamation, arrangement or affected transactions. —

(1) No compromise, amalgamation or arrangement referred to in Chapter XII of the Companies Act and which involves a deposit-taking institution as one of the principal parties to the 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 prior consent in writing of the Minister conveyed through the Registrar to the transaction in question has been obtained.

(2) The Minister shall not grant the consent referred to in subsection (1) unless -

- (a) he is satisfied that the transaction will not be detrimental to the public interest;
- (b) in the case of an amalgamation referred to in subsection (1), the amalgamation is an amalgamation of deposit-taking institutions only; or
- (c) in the case of a transfer of assets and liabilities 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 as contemplated in subsection 2 (b) or a transaction effecting the transfer of assets and liabilities of one deposit-taking institution to another 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 on 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 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 have been subject immediately prior to the amalgamation or transfer;
- (c) all agreements, appointments, transactions and documents which were 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 institutions by which the transfer has been effected and which were 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 which was executed, made or given by any of the amalgamating institutions or, as the case may be, by the institution transferring such assets and liabilities and 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 executed, made or given to or in favour of the amalgamated institution, or as the case may be, the institution taking over such assets and liabilities, as security for future advances, facilities or services by that institution.

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

(5) Notice of the passing of the resolution confirming (as contemplated in subsection (4)) any compromise, amalgamation or arrangement or 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 he shall, after having received all such notices, register the same.

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

- (a) of any amalgamation of two 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 of the prescribed registration fee by the institution created by the amalgamation, 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) 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 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 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 final or provisional registration as a deposit-taking institution, as the case may be, at 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, the Master of the Supreme Court and the officer in charge of the deeds registry or any other office in which -

- (a) there 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) there 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, if he is satisfied -

- (i) 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,

upon the production 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, to 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.

**55. Reconstruction within group of companies.** — No reconstruction of companies within a group -

- (a) in respect of which annual financial statements are required to be made out in terms of section 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,

shall be effected without the prior approval in writing of the Registrar.



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

#### (1) No -

- (a) alteration in terms of section 55, 56 or 62 of the Companies Act of the memorandum 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 or effect for the purposes of this decree 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 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 -

- (a) by two copies of the proposed special resolution; and
- (b) by 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 decree 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 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 of a copy of the special resolution referred to in subsection (4) and on payment by the deposit-taking institution of the prescribed fee, the Registrar shall -

- (a) in the case of a special resolution relating to the alteration of a memorandum or articles of association, register the alteration and issue to the deposit-taking institution a certificate to the effect that the said alteration has been registered by him with effect from a specified date; or
- (b) in the case of a special resolution relating to a change of name, change the name of the deposit-taking institution in his register of deposit-taking institutions and issue to the institution a certificate of such change of name.

(6) An alteration such as is contemplated 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 the memorandum or articles of association of a deposit-taking institution in accordance with a direction by the Registrar under this decree.

(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.

**57. Alteration of memorandum or articles of association in accordance with direction of Registrar. —** (1) The Registrar may at any time in writing direct a deposit-taking institution to effect such alteration to its memorandum or articles of association which is not contrary to any provision of this decree as the Registrar may deem appropriate to remove any anomaly or undesirable divergence in the activities of different deposit-taking institutions.

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(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.

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

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

**59. Returns regarding shareholders.** — (1) A deposit-taking institution shall not later than 90 days after its provisional registration as such, and a controlling company shall not later than 90 days after its registration as such, and thereafter within 30 days of the thirty-first day of December in each year, furnish the Registrar with a return regarding its shareholders as at the date of the said registration or on the said thirty-first day of December, as the case may be.

(2) The return contemplated in subsection (1) shall comprise separate lists of domestic and foreign shareholders, each of which shall be compiled in alphabetical order of the names of shareholders and shall state opposite each shareholder -

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

Provided:

- (i) that two or more domestic shareholders who are associates shall, in alphabetical order as aforesaid, be included in the list as a group under the name of one of the associates, together with a statement stating, in addition to the particulars referred to in paragraphs (a) to (e) -
  - (aa) the fact that they are associates;
  - (bb) the total nominal value of all the shares registered in their respective names; and
  - (cc) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
- (ii) that the name of a shareholder and the particulars referred to in paragraphs (a) to (e) shall, subject to the provisions of subsection (3), not be included in such list if the total nominal value of the shares registered in his name -
  - (aa) in the case of a domestic shareholder, is less than one per cent of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; or
  - (bb) in the case of a foreign shareholder, is less than the lesser of R100 000 or one per cent of the total nominal value of all such issued shares.

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(3) The said return shall further specify -

- (a) the number of domestic and the number of foreign shareholders whose names and individual particulars are by virtue of paragraph (ii) of the proviso to subsection (2) not included in the lists and, opposite those particulars -
  - (i) the number of shares registered in the name of the relevant shareholders;
  - (ii) the total nominal value of such shares; and
  - (iii) the percentage which the total nominal value of such shares represents of the total nominal value of all the issued shares of the deposit-taking institution or controlling company; and
- (b) the total nominal value of shares registered in the name of all domestic and all foreign shareholders, respectively.

(4) If the total nominal value of the shares in a deposit-taking institution or a controlling company which are registered in the name of a shareholder is less than the lesser of R100 000 or one per cent of the total nominal value of all the issued shares of that institution or company, such institution or company may, for the purposes of this section, summarily accept (unless it has knowledge to the contrary) that the shareholder concerned -

- (a) is a domestic shareholder, provided 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 Southern Africa; and
- (b) is not an associate of any other shareholder of the institution or company.

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

**60. Directors of deposit-taking institution or controlling company.** — (1) Each director of a deposit-taking institution or controlling company shall stand in a fiduciary relationship to the deposit-taking institution or controlling company, as the case may be, of which he is a director.

(2) Without derogation from the generality of the expression "fiduciary relationship" in subsection (1), the provisions of that subsection imply that a director -

- (a) shall, in relation to the deposit-taking institution or controlling company of which he is a director, act honestly and in good faith and in particular shall exercise such powers as he may have to manage or represent the deposit-taking institution or controlling company exclusively in the best interests and for the benefit of the deposit-taking institution and its depositors or of the controlling company, as the case may be; and
- (b) shall, in the performance of his functions as director of such deposit-taking institution or controlling company, observe such guide-lines and comply with such requirements as may be prescribed under section 90(1)(b).

(3) Notwithstanding anything to the contrary in any law or the common law or in any agreement contained, not more than 49 per cent, rounded off to the next lower integral number, of the directors of -

- (a) a deposit-taking institution shall be employees of that institution or of its controlling company;
- (b) a controlling company shall be employees of that company or of any deposit-taking institution in respect of which that company is registered as a controlling company:

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

(4) No person, who on the date of commencement of this decree, is a director of a deposit-taking institution or controlling company, shall on the expiration of his term of office be eligible for reappointment as such a director unless or until he qualifies for such appointment in terms of the provisions of subsection (3).

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(5) Every deposit-taking institution and every controlling company shall in writing furnish the Registrar with the name and *curriculum vitae* of any person appointed to its board of directors, whether to fill a casual vacancy or otherwise, at least 14 days before such appointment becomes effective.

(6) The provisions of subsection (5) shall not be construed as rendering the appointment of a director referred to in that subsection subject to the approval of the Registrar.

**61. Appointment of auditor.** — (1) Notwithstanding the provisions of Chapter X of the Companies Act -

- (a) no person shall hold office as auditor of a deposit-taking institution unless his appointment as such has been approved by the Registrar;
- (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 not later than 30 days after appointing an auditor apply to the Registrar in the prescribed form for approval of such appointment.

(3) The Registrar may, without being obliged to furnish reasons -

- (a) refuse an application for his approval of the appointment of an auditor; or
- (b) withdraw his approval of the appointment of an auditor, whereupon the auditor concerned shall vacate that office.

(4) If the Registrar refuses an application for approval of the appointment of an auditor or withdraws approval previously granted by him, the board of directors of the deposit-taking institution shall appoint another person as auditor subject to the provisions of subsections (1) and (2).

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

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

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

**63. Functions of auditor in relation to Registrar.** — (1) Notwithstanding anything in the Public Accountants' and Auditors' Act, 1951 or the Companies Act contained but subject to the provisions of subsections (2) and (3) of this section, the auditor appointed under section 61 or 62 -

- (a) shall, whenever he furnishes the Public Accountants' and Auditors' Board in terms of section 26(3)(b) of the first-mentioned Act with the 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, also furnish the Registrar with such copies and particulars; and
- (b) shall in writing inform the Registrar of any matter relating to the affairs of the deposit-taking institution -
  - (i) of which such auditor became aware in the performance of his duties; and
  - (ii) which in the opinion of such auditor may be of concern to the Registrar in the exercise of his supervisory functions under this decree in relation to the deposit-taking institution concerned; and
- (c) shall, if so requested by the Registrar, furnish him with information relating to any matter specified by the Registrar.



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(2) Whenever an auditor furnishes the Registrar with information, he may at the same time transmit a copy of such information to the chief executive officer of the deposit-taking institution to which the information relates.

(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 law or a breach of any code of professional conduct to which such auditor may be subject.

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

**64. Audit committee.** — (1) Subject to the provisions of subsections (3) and (4) the board of directors of a deposit-taking institution shall appoint at least three of its members to form an audit committee.

(2) The functions of the audit committee shall be -

- (a) to 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) to facilitate and promote communication, as regards the matters referred to in paragraph (a) or any related matter, between the board of directors and the executive officers of the institution, the auditor appointed under section 61 or 62 and the employee charged with the internal auditing of the transactions of that institution; and
- (c) to institute such measures as in the committee's opinion will serve to enhance the credibility and objectivity of financial statements and of reports on the affairs of the deposit-taking institution.

(3) All of the members of the audit committee may, 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 and if there has been appointed for the holding company in that group an audit committee which has assumed the responsibilities of an audit committee in respect of all the deposit-taking institutions in that group.

**65. Forwarding of certain notices, reports, returns and financial statements to Registrar.** — (1) Whenever a deposit-taking institution or controlling company -

- (a) forwards a notice of a meeting or of the declaration of a dividend or a report on its activities during a financial year of part of such year to its shareholders,
- (b) gives notice to the Registrar of Companies in terms of section 170(2) of the Companies Act of any intended change in the situation of its registered office or of its postal address,
- (c) forwards in terms of section 216(2) of the Companies Act a return referred to in that section regarding its directors to the Registrar of Companies, or
- (d) forwards in terms of section 302(4) of the Companies Act financial statements to the Registrar of Companies,

it shall simultaneously forward a copy of such notice, report, return or statements to the Registrar.

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

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

**67. Disclosure of names of certain shareholders.** — If any individual shareholder in a deposit-taking institution holds more than 25 per cent of all the issued shares in that institution to which voting rights are attached and the sum of the amounts of such deposit-taking institution's investment with or loans or advances or other exposures to such individual shareholder exceeds the total nominal value of the said shares held by that individual shareholder, the deposit-taking institution shall in its financial statements mention the name of such individual shareholder.

**68. Special provisions relating to winding-up or judicial management of deposit-taking institution.** — (1) Notwithstanding anything in the Companies Act contained -

- (a) the Registrar shall have the right to apply to the Supreme 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 also have the right to oppose any such application made by any other person; and
- (b) no person other than a person recommended by the Registrar shall be appointed by the Master of the Supreme Court as provisional liquidator, provisional judicial manager, liquidator or judicial manager of a deposit-taking institution.

(2) During the voluntary winding-up of a deposit-taking institution the liquidator shall furnish the registrar with every return or statement which that institution would have been obliged to furnish in terms of this decree if such institution were not being wound up.

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

- (a) subsection (4) of section 346 shall be deemed to have been amended to read as follows:

“(4) (a) Before an application for the winding-up of a company which is a deposit-taking institution is presented to the Court, a copy of the application and of every affidavit confirming the facts stated therein shall be lodged with the Registrar of Deposit-taking Institutions and with the Master.

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

- (b) subsection (3) of section 357 shall be deemed to have been amended to read as follows:

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

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

**69. Appointment of curator to deposit-taking institution.** — (1) (a) 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, with the consent in writing of that institution

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appoint a curator to the institution and thereupon the provisions of paragraphs (b) to (g) and (i) to (1) 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 on the court, the Master and the judicial manager shall devolve upon the Minister, the Registrar and the curator respectively.

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

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

(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 must 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 or any matter incidental thereto, including directions in regard to the raising of money by that institution, as the Minister may deem necessary.

(3) (a) The Minister may, in the letter of appointment or at any time after making such appointment empower the curator acting in his discretion but subject to any condition which the Minister may impose -

(i) to suspend or to reduce, as from the date of his appointment as curator or any subsequent date, the right of creditors of the institution to claim or to receive interest on any money owing to them by that institution;

(ii) to make payments, whether in respect of capital or interest, to any creditor or creditors of the institution at such time, in such order and in such manner as he may deem fit;

(iii) to cancel any agreement between the institution 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;

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

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

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

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- (vii) to cancel any lease of movable or immovable property entered into by the institution concerned prior to its being placed under curatorship: Provided that, notwithstanding the provisions of subsection (6), a claim for damages in respect of such cancellation may be instituted against the institution after the expiration of a period of one year as from the date of such cancellation;
- (viii) to dispose, by public auction, tender or individual negotiation, of any asset of the institution concerned, including -
  - (i) any advance or any loan under a facility contemplated in paragraph (c); and
  - (ii) any asset for the disposal of which an approval contemplated in section 228 of the Companies Act would have been a prerequisite; or
- (ix) to cancel any guarantee issued by the institution concerned prior to its being placed under curatorship, excluding such guarantee which the institution is required to make good within a period of 30 days as from the date of the appointment of the curator: Provided that, notwithstanding the provisions of subsection (6), a claim for damages in respect of any loss sustained by or damage caused to any person as a result of the cancellation of a guarantee in terms of this paragraph, may be instituted against the institution after the expiration of a period of one year as from the date of such cancellation.
- (b) The curator shall duly record the nature of and the reasons for each act performed by him under any power conferred upon him in terms of this subsection and such records shall be examined as part of the normal audit performed in respect of the affairs of the institution concerned.
- (4) The Minister may at any time and in any manner amend or withdraw any directions to the curator appearing in the letter of appointment or any power granted by him to the curator under this section.
- (5) Upon the appointment of a curator -
  - (a) the management of the deposit-taking institution shall vest in him, 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 the deposit-taking institution is under curatorship -
  - (a) all actions and legal proceedings and the execution of all writs, summonses and other legal process against that institution shall be stayed and not be instituted or proceeded with or 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 make known the appointment of a curator and the powers granted to him on his appointment (or any amendment or withdrawal of such powers) by notice in the *Gazette*.

### CHAPTER 6

#### PRUDENTIAL REQUIREMENTS

**70. Minimum share capital and unimpaired reserve funds.** — (1) For the purposes of this decree -

"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 and 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;



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"secondary share capital" means capital obtained through the issue, with the prior approval in writing of the Registrar and in accordance with conditions likewise approved by the Registrar, of cumulative preference shares and includes loan capital obtained by way of debentures which are 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 and with the prior approval in writing of the Registrar;
- (c) the condition that, notwithstanding the provisions of any other law, the capital amount of the debentures shall, in the event of the winding-up of the deposit-taking institution, 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 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) any general provisions held against unidentified and unforeseen losses,

but does not include any fund required to be maintained under any other law.

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

- (a) R10 000 000 or, in the case of a deposit-taking institution which immediately prior to the commencement of this decree was registered as a banking institution or a building society under a repealed law, R1 000 000; or
- (b) an amount which represents a prescribed percentage of the sum of amounts calculated by multiplying the average of the amounts (as shown in the returns furnished to the Registrar in terms of section 75(1)(a)(ii) of such different categories as may be prescribed of -

- (i) assets, and
- (ii) other risk exposures in the conduct of its business,

by the risk weights, expressed as percentages, prescribed in respect of such different categories of assets and other risk exposures.

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

- (a) the amount obtained by way of the issue, after the commencement of this decree, 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 amounts so obtained and annually thereafter by an amount which in each successive year is increased by 20 per cent of the amount so obtained; and
- (b) the sum of a deposit-taking institution's issued secondary share capital and secondary unimpaired reserve funds may, in the calculation of the aggregate amount which such institution is in terms of subsection (2) required to maintain by way of issued primary and secondary share capital and primary and secondary unimpaired reserve funds, be taken into account to an amount not exceeding 50 per cent of the abovementioned aggregate amount.

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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 made -

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

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

- (i) depreciation of assets and bad or doubtful debts;
- (ii) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;
- (iii) establishment costs, costs in respect of organization and extension of business and the purchase of a business or goodwill and underwriting commission;
- (iv) the value of assets lodged or pledged to secure liabilities incurred under any other law where 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 decree;
- (v) the amount by which the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds, required to be maintained by virtue of the provisions of subsection (6) by a subsidiary referred to in that subsection, exceeds the amount of the issued primary and secondary share capital and primary and secondary unimpaired reserve funds of that subsidiary;
- (vi) an amount equal to the book value of -
  - (aa) shares held by the deposit-taking institution in any other deposit-taking institution;
  - (bb) debentures held by the deposit-taking institution, which debentures have been issued by any other deposit-taking institution and the amounts of which may in terms of this section rank as secondary share capital of that other deposit-taking institution; and
- (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 Ciskei.

(7) A deposit-taking institution or a subsidiary referred to in subsection (6) which, on the date of commencement of this decree does not comply with the provisions of subsection (2), shall correct the shortfall within such period and in accordance with such conditions as the Registrar may determine.

**71. Minimum reserve balance. —** (1) A deposit-taking institution shall maintain an account with the Reserve Bank into which it shall from time to time deposit at least such amounts as may be necessary to comply with the requirements of subsection (2) and from which it may, subject to that subsection, from time to time withdraw amounts.

(2) The credit balance in an account maintained in terms of subsection (1) by a deposit-taking institution, together with the average daily amount of that institution's Reserve Bank notes and subsidiary coin calculated according to the total amounts of those assets held by the institution on all the days of the latest month in respect of which it furnished a return to the Registrar in terms of section 75(1)(a)(i), may at no time during any month amount to less than an amount equal to the sum of amounts representing the percentages,

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determined from time to time in accordance with the provisions of subsection (3) by 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 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 in terms of subsection (2) shall be such percentages as the Reserve Bank may, having regard to the national economic interest and with the concurrence of the Minister, deem desirable.

(b) Whenever the Reserve Bank has made a determination under paragraph (a), it shall inform the Registrar thereof in writing, and the Registrar shall as soon as is practicable give like notice of the determination to every deposit-taking institution and also cause the determination to be published by notice in the *Gazette*.

(c) Any such determination shall take effect on a date mentioned in the said notice.

(4) The liabilities of a deposit-taking institution contemplated in subsection (2) shall be calculated in such manner and be determined at such times as may be prescribed.

**72. Minimum liquid assets.** — (1) A deposit-taking institution shall hold liquid assets to a value which amounts to not less than the sum of amounts calculated as prescribed percentages but which in no instance may exceed 20 per cent of such different categories of its liabilities, as may be specified by regulation, with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities.

(2) The amounts of the liquid assets and of the liabilities referred to in subsection (1) shall be calculated in such manner and be determined at such times as may be prescribed.

(3) A deposit-taking institution shall not pledge or otherwise encumber any portion of the liquid assets held by it in compliance with the provisions of subsection (1): Provided that the Registrar may, if he deems it necessary on account of any special circumstances in which a deposit-taking institution may find itself, exempt such institution from the prohibition contained in this subsection on such conditions and to such an extent and for such a period as he may determine.

(4) For the purposes of this section securities shall be valued at their market value as certified by competent authority.

**73. Large exposures.** — (1) A deposit-taking institution shall not make investments with or grant loans or advances or other credit to any individual person, to an aggregate amount exceeding an amount representing a prescribed percentage of such deposit-taking institution's capital and reserves, without first having obtained the consent of its board of directors or of a committee appointed for such purpose by its board of directors (at least one of the members of which committee shall be a director of the deposit-taking institution but not in its employ) to make such investments or to grant such loans, advances or other credit.

(2) A deposit-taking institution shall, in such manner and in such form as may be prescribed, report to the Registrar whenever it makes an investment with or grants a loan or advance or other credit to any individual person, which transaction either alone or together with any previous transaction or transactions entered into by it with that person results in the deposit-taking institution being exposed up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.

**74. Failure or inability of institution to comply with prudential requirements.** —

(1) If a deposit-taking institution fails to comply with any 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 and state the reasons for such failure or inability.

(2) The Registrar may forthwith take action under this decree against a deposit-taking institution which reports to him any failure or inability contemplated in subsection (1) or he may, if he deems it fit to do so, condone such failure or inability and afford the institution concerned an opportunity, subject to such conditions as the Registrar may stipulate, to comply with the relevant provision within a specified period.

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(3) Irrespective of whether criminal proceedings have been or may be instituted against a deposit-taking institution in respect of any failure or inability contemplated in subsection (1), the Registrar may, subject to the terms of any condonation granted by him under subsection (2), by notice in writing impose upon that institution, in respect of such failure or inability, a penalty -

- (a) in the case of any failure or inability to comply with the provisions of section 70 or 71, not exceeding one-tenth 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 penalty imposed under subsection (3) shall be paid to the Registrar within the period specified in the relevant notice and, if the deposit-taking institution fails to pay the penalty within the specified period, the Registrar may by civil action in a competent court recover from that institution the amount of the penalty or such portion thereof as he may in the circumstances consider to be justified.

### 75. Returns. — (1) In order to enable the Registrar to determine -

- (a) whether a 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, liabilities and contingent liabilities,

such deposit-taking institution shall furnish the Registrar, subject to the provisions of subsection (2), with a return in the prescribed form and in respect of the prescribed period.

(2) A return referred to in subsection (1) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar not later than the fifteenth business day following upon the last business day of the period to which the return relates.

(3) A deposit-taking institution shall, in addition to the return referred to in subsection (1) and in respect of such period and at such time and in the appropriate form, furnish the Registrar with such returns as may be prescribed, 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 such an institution through the medium of a subsidiary, branch office, agency or other undertaking at any place outside Ciskei 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 may further prescribe that such information shall be furnished separately by the deposit-taking institution in the appropriate form; 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 in the appropriate form furnish the Registrar with a consolidated return relating to all the companies in that group as well as to any business, if any, referred to in paragraph (a) and containing the information required to be furnished in such first-mentioned returns.

(5) A deposit-taking institution shall, within such period as the Registrar may on the application of such institution approve, furnish the Registrar, in respect of that one of the returns referred to in subsection (1)(b) which most nearly coincides with the end of the financial year of the institution with a report by the auditor of the institution in which is stated whether or not that return fairly and in conformity with generally accepted accounting practice presents those affairs of the institution to which the return relates, and the Registrar may, if he deems it necessary, require the institution so to furnish him with such a report in respect of any of those returns furnished during the financial year.



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

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

### CHAPTER 7

#### PROVISIONS RELATING TO THE CONDUCTING OF CERTAIN BUSINESS BY A DEPOSIT-TAKING INSTITUTION

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

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

does not at any time exceed the amount of its issued primary and secondary share capital and primary and secondary unimpaired reserve funds referred to in section 70, plus that part of the amount of any surplus resulting from a revaluation of assets and which in terms of paragraph (a) of the definition of secondary unimpaired reserve funds in section 70 does not rank as secondary unimpaired reserve funds: Provided that, if immovable property or an undertaking is bought by a deposit-taking institution to protect an investment (including a loan or an advance), the amount of such 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 prior approval in writing of the Minister and subject to such conditions as he may determine, make investments and grant loans and advances, as contemplated in subsection (1), to an aggregate amount which exceeds the sum to which it is limited by subsection (1).

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

- (a) invested by it in debentures or preference shares of such associates (excluding debentures or preference shares which are convertible into ordinary shares), taken at the price at which they are 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 excluding its liabilities in respect of capital and reserves.

(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).

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

### 78. Undesirable practices. — (1) A deposit-taking institution -

- (a) shall not hold shares in any company of which such deposit-taking institution is a subsidiary;
- (b) shall not lend money to any person against security of its own shares;
- (c) shall not, for the purpose of furthering the sale of its own shares, grant unsecured loans or loans against security which in the opinion of the Registrar is inadequate;
- (d) shall hold all its assets in its own name, excluding any asset -
  - (i) *bona fide* hypothecated to secure an actual or potential liability;
  - (ii) in respect of which the Registrar has, on the application of the deposit-taking institution, 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 any loss (including a loss originating from the sale of an asset) or bad debts;
- (f) shall not, before provision has been made out of profits for the items referred to in paragraph (e) -
  - (i) open any branch or agency or any further branch or agency; or
  - (ii) pay out dividends on its shares;
- (g) shall not, for the purpose of effecting a money lending transaction directly between a lender and a borrower, perform any act in the capacity of an agent;
- (h) shall not in its accounting records record any asset at a value increased by the amount of a loss incurred upon the realization of another asset;
- (i) shall not conclude a repurchase agreement in respect of a fictitious asset or an asset created by means of a simulated transaction; and
- (j) shall not give out or pretend to have concluded a repurchase agreement without -
  - (i) such agreement being substantiated by a written document signed by the other party thereto; and
  - (ii) the details of such agreement being recorded in the accounts of the deposit-taking institution as well as in the accounts, if any, kept by the deposit-taking institution in the name of such other party.

### (2) The Registrar may -

- (a) in writing notify a deposit-taking institution that a practice employed by that institution and specified in the notice constitutes an undesirable practice for that institution, or
- (b) by notice in the *Gazette* declare a practice specified in that notice to be an undesirable practice for deposit-taking institutions specified in that notice or for all deposit-taking institutions.

and a deposit-taking institution, which, after the expiry of a period of 21 days as from the date of a notice received by it by virtue of paragraph (a) or applicable to it in terms of paragraph (b), employs a practice which constitutes an undesirable practice for it by virtue of such a notice, shall be guilty of an offence.

(3) A deposit-taking institution, shall, upon receipt from the Registrar of a request in writing 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.

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

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

(1) A deposit-taking institution shall not -

- (a) sections 74 and 75 of the Companies Act notwithstanding, issue shares of no par value or convert any of its shares into shares of no par value;
- (b) without the prior approval in writing of the Registrar or otherwise than in accordance with conditions so approved by him -
  - (i) issue any preference shares or debentures;
  - (ii) convert any of its shares into preference shares or debentures; or
  - (iii) convert any of its preference shares of a particular class into preference shares of any other class;
- (c) issue negotiable certificates of deposit otherwise than in accordance with such conditions as may be prescribed; or
- (d) section 101 of the Companies Act notwithstanding, issue share warrants to bearer within the meaning of that section.

(2) The aggregate amount representing the value of debentures and negotiable certificates of deposit issued by a deposit-taking institution in terms of paragraphs (b)(i) and (c), respectively, of subsection (1), shall at no time exceed an amount representing the prescribed percentage of the aggregate amount of the deposit-taking institution's liabilities in respect of deposits made with it and in respect of such debentures and negotiable certificates of deposit.

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

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

(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 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, at the commencement of this decree, the ratio contemplated in subsection (3) is exceeded in any particular case, 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.

# DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

## CHAPTER 8

### CONTROL OF CERTAIN ACTIVITIES OF UNREGISTERED PERSON

**81. Order prohibiting anticipated or actual contravention of certain provisions of decree.** — (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 decree -

- (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 the Supreme Court (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 whilst the contravention suspected of having been committed or of being continued is being investigated.
- (2) If it is proved to the satisfaction of the court -
- (a) in the case of an application for the order referred to in subsection (1)(i), that there is a reasonable likelihood that the provisions of section 11(1) will be contravened by the person concerned as contemplated in subsection (1)(a), or
  - (b) in relation to an application for an order under subsection (1)(ii), that there is a reasonable likelihood that the contravention will be continued or repeated as contemplated in subsection (1)(b), or
  - (c) in respect of an application for an order under subsection (1)(iii), that there is a reasonable likelihood that a contravention has been committed or that it is being continued as contemplated in subsection (1)(b),

the court may make the order for which application is made.

**82. Registrar's power to exact information from unregistered person.** — (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 decree 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) The document or information contemplated 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 he may allow on application made by the person concerned before the expiration of the specified period.

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

**83. Repayment of money unlawfully obtained.** — (1) If as a result of an inspection conducted under any law 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.



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

(2) Any person, who by virtue of a direction under subsection (1) repays any money referred to in that subsection before the due date for repayment 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 to the Supreme Court 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.

(4) The provisions of this section shall not be construed as relieving any person from liability to prosecution for a contravention of any provision of this decree or any other law, including the common law.

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

(1) Simultaneously with the issuing of a direction under section 83 (1) or as soon thereafter as may be practicable, the Registrar shall by letter of appointment under his hand appoint a person (hereinafter in this section referred to as the manager) to administer and control the repayment of money by the person concerned in compliance with such direction.

(2) The Registrar shall serve a copy of such letter of appointment on the person to whom the direction was made and such person shall, with effect from the date of the letter of appointment, be prohibited from disposing of or otherwise dealing with such assets as are specified in the letter of appointment, except with the prior permission in writing of the manager.

(3) The manager shall act under the control of the Registrar and he may from time to time apply to the Registrar for instructions in regard to any matter arising out of or in connection with the performance of his duties.

(4) It shall be the duty of the manager -

- (a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the manager may deem necessary in order to establish -
  - (i) the actual 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 asset into which such money was converted, is kept or can be located;
  - (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 realization of assets into which money unlawfully obtained as contemplated in section 83(1) has been converted) which may serve to expedite and ensure the repayment of money in accordance with the requirements of and within the period specified in the relevant direction;
- (c) to report to the attorney-general 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; and
- (d) to perform any other function assigned to him by the Registrar.

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

(5) For the performance of the duties set out in subsection (4) the manager shall, in relation to the person subject to the relevant direction and 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 38 of 1984) on an inspector contemplated in that section as if the manager were an inspector and the person subject to the direction were a financial institution contemplated in that section.

(6) The manager shall, in respect of the services rendered by him in terms of this section, be paid such remuneration as the Minister may determine and the Registrar may recover an amount equal to the remuneration so paid from the person subject to the direction.

(7) The manager shall hold office until the relevant direction has been fully discharged but the Registrar may at any time in writing withdraw the appointment of the manager on a good cause shown, whereupon the manager shall vacate that office.

(8) Any person who -

- (a) when requested by the manager to take an oath or to make an affirmation, refuses to do so,
- (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to him by the manager in the exercise of his powers or the performance of his duties, even though the answer may 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 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 act designed to obstruct, or to enable any person to evade, the repayment of money as required by a direction under section 83(1),

shall be guilty of an offence.

### CHAPTER 9

#### GENERAL

**85. Certification of return or other document.** — 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 decree 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 such chief executive officer shall record thereon the date on which it is so certified.

**86. Inspection, availability and preservation of documents.** — (1) Any person may on payment of the prescribed fee -

- (a) inspect any document specified in subsection (2) and kept by the Registrar in terms of this decree;
- (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 contemplated in subsection (1) are -

- (a) certificates of provisional or final registration or of the registration of an alteration of the memorandum or articles of association or of a change of name of deposit-taking institutions and of controlling companies;

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (b) memorandums and articles of association of deposit-taking institutions and 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 is 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 obliged 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 reckoned 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) in order to promote any public interest, he may exempt that person from the obligation to pay the prescribed fee in respect of such inspection, certificate, copy or extract.

**87. Minors and married women as depositors.** — (1) Notwithstanding anything to the contrary contained in any law or the common law and unless otherwise provided in the memorandum 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 the marital power, may be a depositor with a deposit-taking institution and may without the consent or assistance of a guardian or the husband, as the case may be, execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against, and generally deal with such 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 consent in writing, not be entitled to demand or receive from such institution any particulars of any of her deposits.

**88. Limitation of certain liability.** — No liability shall attach to the Registrar or any other officer or employee of the State acting on his behalf for any loss sustained by or damage caused to any person as a result of anything done or omitted by the Registrar or such other officer or employee in the *bona fide* performance of any function or duty under this decree.

**89. Furnishing of information by Registrar.** — Subject to the provisions of this decree the Registrar may furnish information acquired by him in the performance of his functions to any person charged with the performance of any duty under any law, provided he is satisfied that possession of such information by that person is essential for the proper performance of such duty by that person.

**90. Regulations.** — (1) The Minister may make regulations -

- (a) as to any matter which is required or permitted to be prescribed;
- (b) subject to the provisions of the Companies Act, providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a deposit-taking institution in the performance of his functions as such a director.
- (c) prescribing matters in respect of which fees shall be payable and the amount of the fees so payable;
- (d) prescribing the manner in which any payment shall be made to the Registrar;
- (e) prescribing returns to be furnished by deposit-taking institutions to the Registrar;
- (f) prescribing the manner in which the financial statements of a deposit-taking institution shall be prepared so as to conform with generally accepted accounting practice;
- (g) prescribing the fee payable in respect of a licence referred to in section 35 or the basis on which such fee shall be calculated, the period within which such fee shall be paid and any penalty for late payment;

## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

- (h) prescribing the basis on which any movable or immovable assets shall be valued for the purposes of this decree; or
  - (i) prescribing generally any matter, whether or not connected with any matter specified in paragraphs (a) to (h) which he may deem necessary or expedient to prescribe for the purposes of this decree.
- (2) A person, who is obliged 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 relative form.
- (3) A regulation may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of R2 000 or imprisonment for a period of six months.

### 91. Offences and penalties. — (1) Any person who -

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

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

- (a) accepts from any person any benefit for or in connection with any advance granted by that deposit-taking institution or by the deposit-taking institution in respect of which that controlling company is registered, or
- (b) otherwise than with the prior consent in writing 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 or is sold at a judicial sale at the instance of any other person,

shall be guilty of an offence.

(3) A deposit-taking institution which, whilst 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 under -

- (a) section 11(2) or 22(4), shall be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or
- (b) section 17(6), 21, 22(3) or (8), 32(4)(a), 78(2), 82(3), 83(3)(a), 84(8) or subsection (1), (2) or (3) of this section, shall be liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

(6) If any person fails to submit to the Registrar or to furnish the Registrar with any return, statement, report or other document or information in accordance with a requirement of this decree within the period determined by or under this decree, or if that period has been extended by the Registrar under section 8(2)(a) within the extended period, the Registrar shall be competent and is hereby authorized to impose upon him by notice in writing a penalty not exceeding R100 for every day during which such failure continues.



## DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

(7) A penalty imposed under subsection (6) shall be paid to the Registrar within such period as may be specified in the notice and, if the person concerned fails to pay such penalty within the specified period, the Registrar may by way of civil action in a competent court recover from such person the amount of the penalty or any portion thereof which the Registrar may in the circumstances consider justified, plus interest thereon at the standard rate of interest determined in terms of section 28(1) of the Exchequer and Audit Act, 1985 (Act 28 of 1985).

**92. Review of decree.** — (1) The Minister may from time to time appoint a committee to review this decree and such committee shall consist of such incumbents of offices and other members as the Minister may determine.

(2) The committee contemplated in subsection (1) may make recommendations to the Minister with regard to amendments to this decree which have become necessary because of changed circumstances or which experience has shown to be advisable.

**93. Interpretation of certain references in existing laws.** — A reference in any law in force immediately prior to the commencement of this decree to -

- (a) a bank, discount house, banking institution, banking institution registered or deemed to be registered under or in terms of the Banks Act, 1965 (Act 23 of 1965), 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 shall be construed as a reference to the Registrar.

**94. Repeal or amendment of laws and savings.** — (1) Subject to the provisions of subsection (2), the laws specified in Part 1 of the Schedule are hereby repealed to the extent set out in the third column of that Part and the law mentioned in Part 2 of the Schedule is hereby amended as indicated therein.

(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 decree shall be deemed to have been made, issued, laid down or done under the last-mentioned provision.

(3) Any deposit-taking institution registered in the Republic of South Africa which, by virtue of any agreement between the Government of that Republic and the Government of Ciskei, is deemed to be registered in Ciskei shall, notwithstanding the provisions of subsection (1), continue to be deemed to be so registered but without prejudice to any power of the Registrar or other competent authority under this decree.

**95. Short title and commencement.** — (1) This decree shall be called the Deposit-taking Institutions Decree, 1993 and shall come into operation on a date to be fixed by the Head of State by proclamation in the *Gazette*.

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

# DEPOSIT-TAKING INSTITUTIONS DECREE, 1993

## SCHEDULE

### PART 1

#### LAWS REPEALED

No. & Year of Law	Short title	Extent of repeal
Act 23 of 1965	Banks Act, 1965	The whole
Act 80 of 1969	Financial Institutions Amendment Act, 1969	Section 2
Act 23 of 1970	Financial Institutions Amendment Act, 1970	Sections 3, 4, 5, 6
Act 89 of 1972	Revenue Laws Amendment Act, 1972	Section 8
Act 91 of 1972	Financial Institutions Amendment Act, 1972	Sections 12 to 17
Act 67 of 1973	Financial Institutions Amendment Act, 1973	Section 4
Act 101 of 1976	Financial Institutions Amendment Act, 1976	Sections 37 to 53
Act 94 of 1977	Financial Institutions Amendment Act, 1977	Sections 17 to 21
Act 80 of 1978	Financial Institutions Amendment Act, 1978	Sections 18 to 21
Act 103 of 1979	Financial Institutions Amendment Act, 1979	Sections 27 to 31
Act 99 of 1980	Financial Institutions Amendment Act, 1980	Sections 45 to 49
Act 36 of 1981	Financial Institutions Amendment Act, 1981	Sections 23 to 25
Act 82 of 1982	Financial Institutions Amendment Act, 1982	Sections 16 and 17
Act 86 of 1984	Financial Institutions Amendment Act, 1984	Sections 22 to 33

### PART 2

#### LAW AMENDED

Companies Act, 1973 (Act 61 of 1973) amended by the substitution for paragraph (b) of subsection (1) of section 3 of the following paragraph:

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

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