

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 312

Cape Town

12 June 1991

No. 13305

THE PRESIDENCY

No. 1340

12 June 1991

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

No. 81 of 1991: Deposit-taking Institutions Amendment Act, 1991.



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GENERAL EXPLANATORY NOTE:

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Deposit-taking Institutions Act, 1990, so as to abrogate the limitation on overlapping directorships between a deposit-taking institution and an individual shareholder therein and to substitute therefor a provision setting out the duties and responsibilities attaching to the fiduciary relationship in which a director of a deposit-taking institution or a controlling company stands to that deposit-taking institution or controlling company; and to increase the permissible amount of a deposit-taking institution's transactions in respect of investments in immovable property and shares and in respect of loans and advances to certain subsidiaries; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 5 June 1991.)

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

Substitution of section 60 of Act 94 of 1990

1. The following section is hereby substituted for section 60 of the Deposit-taking Institutions Act, 1990 (hereinafter referred to as the principal Act):

“Directors of deposit-taking institution or controlling company

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

(2) Without derogating from the generality of the expression ‘fiduciary relationship’ in subsection (1), the provisions of that subsection imply that a director—

(a) shall, in relation to the deposit-taking institution or controlling company of which he is a director, act honestly and in good faith and, in particular, shall exercise such powers as he may have to manage or represent the deposit-taking institution or controlling company, exclusively in the best interests and for the benefit of the deposit-taking institution and its depositors or of the controlling company, as the case may be; and

(b) shall, in the performance of his functions as director of such deposit-taking institution or controlling company, observe such guide-lines and comply with such requirements as may be prescribed under section 90 (1) (b).

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

(a) a deposit-taking institution shall be employees of that institution or of its controlling company;

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

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

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

(5) Every deposit-taking institution and every controlling company shall, at least 14 days prior to the appointment of a new director (whether for the purpose of the filling of a casual vacancy or in any other circumstances) to its board of directors becoming effective, in writing furnish the Registrar with the name and *curriculum vitae* of the proposed new director.

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

Amendment of section 76 of Act 94 of 1990

2. Section 76 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon paragraph (c), of the following words:

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

Short title

3. This Act shall be called the Deposit-taking Institutions Amendment Act, 1991.