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STATE PRESIDENT'S OFFICE

No. 1291.

23 July 1993

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

No. 124 of 1993: Mutual Banks Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1291.

23 Julie 1993

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

No. 124 van 1993: Wet op Onderlinge Banke, 1993.

ACT

To provide for the regulation and supervision of the activities of juristic persons doing business as mutual banks; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 9 July 1993.)

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

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CHAPTER I

Interpretation of Act

Definitions

- 1. (1) In this Act, unless the context otherwise indicates— 40
 - (i) "agency" means a right granted to a person by a mutual bank to receive on behalf of such bank 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; (ii)
 - (ii) "articles" means the articles of association, contemplated in section 10(2)(a), of a mutual bank; (xxxv) 45
 - (iii) "associate" means—
 - (a) a subsidiary of a mutual bank;

- (b) any person in accordance with whose directions or instructions the board of directors of a mutual bank is accustomed to act;
- (c) any juristic person the board of directors of which or, in the case of such juristic person that is not a company, the governing body of which is accustomed to act in accordance with the directions or instructions of a mutual bank, 5
and includes any trust controlled or administered by such mutual bank; (xi)
- (iv) "bank" means a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); (iv) 10
- (v) "board" means the board of directors, referred to in section 37(1), of a mutual bank; (xxviii)
- (vi) "board of appeal" means the board of appeal established by section 9(2) of the Banks Act, 1990 (Act No. 94 of 1990); (iii)
- (vii) "chief executive officer" 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 a mutual bank for the conduct of the business of the mutual bank; (xiv) 15
- (viii) "Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973); (xx) 20
- (ix) "company" means a company as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973); (xix)
- (x) "deposit" means a deposit as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990); (vii)
- (xi) "director" includes an alternate director; (viii) 25
- (xii) "executive officer" includes any general manager or deputy general manager of a mutual bank; (xxxviii)
- (xiii) "financial statements" means the annual financial statements referred to in section 43(4); (x)
- (xiv) "financial year" means the financial year determined as contemplated in section 43; (vi) 30
- (xv) "Land Bank" means the Land and Agricultural Bank of South Africa; (xv)
- (xvi) "liquid assets" means liquid assets as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990): Provided that, in the application of that definition for the purposes of this Act, the reference in paragraph (a) of that definition to a minimum reserve balance required to be maintained by a bank shall be construed as a reference to a minimum reserve balance required to be maintained by a mutual bank; (xviii) 35 40
- (xvii) "liquidator" means a person appointed to conduct the winding-up of a mutual bank; (xvii)
- (xviii) "member" means a shareholder in a mutual bank; (xvi)
- (xix) "Minister" means the Minister of Finance; (xxi)
- (xx) "mutual bank" means a juristic person— 45
- (a) the members of which—
- (i) qualify as such by virtue of their being shareholders in that juristic person; and
- (ii) are entitled to participate in the exercise of control in a general meeting of that juristic person; and 50
- (b) that is provisionally or finally registered as a mutual bank in terms of this Act; (xxii)
- (xxi) "officer" means any director, alternate director, local board member, general manager, deputy general manager, manager, secretary, clerk or other employee of a mutual bank; (v) 55
- (xxii) "paid-up share" means a share paid for in full at the time of application therefor; (xxiv)

- (xxiii) "permanent interest-bearing share" means a share—
 (a) issued by a mutual bank in terms of section 57;
 (b) which shall not be redeemable but shall be transferable; and
 (c) in respect of which interest may be paid by the mutual bank that
 has issued such a share; (xxv) 5
- (xxiv) "person" includes any partnership; (xxvi)
 (xxv) "prescribed" means prescribed by regulation; (xxxix)
 (xxvi) "public" includes a juristic person and, in relation to a mutual bank,
 also an associate of that mutual bank; (xxvii)
- (xxvii) "registered" means provisionally or finally registered under this 10
 Act as a mutual bank; (xii)
- (xxviii) "Registrar" means the Registrar of Banks designated under section
 4 of the Banks Act, 1990 (Act No. 94 of 1990); (xxix)
- (xxix) "Registrar of Companies" means the Registrar of Companies
 appointed under section 7 of the Companies Act, 1973 (Act No. 61 15
 of 1973); (xxx)
- (xxx) "regulation" means a regulation made and in force under this Act;
 (xxxi)
- (xxxi) "Reserve Bank" means the South African Reserve Bank; (xxxii)
 (xxxii) "secretary" includes any executive officer, manager, deputy man- 20
 ager or assistant manager of a mutual bank; (xxxiii)
- (xxxiii) "shareholder" means a person who holds shares in a mutual bank
 whether fully or partly paid and whether or not held by the mutual
 bank as security for an advance or a loan; (i)
- (xxxiv) "special resolution" means a resolution— 25
 (a) passed by not less than three-fourths of those members who are
 personally present or represented by proxy and vote in
 accordance with the articles of the mutual bank at a special
 general meeting called for that purpose; and
 (b) the terms and effect of which and the reasons for which have 30
 been fully set out in the notice convening that meeting; (xxxiv)
- (xxxv) "subscription share" means a share subscribed for by periodical
 contributions of a fixed amount; (xxxvi)
- (xxxvi) "subsidiary" means another juristic person that would have been a
 subsidiary as contemplated in section 1(3) of the Companies Act, of 35
 a mutual bank had both the mutual bank and that other juristic
 person been companies; (ix)
- (xxxvii) "terminating mutual building society" means a society referred to in
 section 4(2)(b) or (3) of the Mutual Building Societies Act, 1965
 (Act No. 24 of 1965), as kept in force in terms of section 95(1); 40
 (xxxvii)
- (xxxviii) "this Act" includes the regulations; (xiii)
 (xxxix) "undesirable practice" means any act prohibited, or any failure to
 perform any act enjoined, by section 59(1), and, in relation to a
 particular mutual bank or mutual banks specified in a notice 45
 referred to in section 59(2)(b) or all mutual banks, includes any act
 which in terms of a notice referred to in section 59(2) constitutes an
 undesirable practice for such particular mutual bank, such specified
 mutual banks or all mutual banks, as the case may be; (xxiii)
- (xl) "value of share" means the amount standing to the credit of a share 50
 in the books of a mutual bank. (xl)

(2) In order to determine, for the purposes of this Act, whether a particular
 person is a fit and proper person to hold the office of a director or an executive
 officer of a mutual bank, the Registrar shall proceed, *mutatis mutandis*, as
 prescribed in section 1(1A) of the Banks Act, 1990 (Act No. 94 of 1990). 55

CHAPTER II*Administration of Act***Functions of Registrar**

2. Subject to the provisions of section 7, the Registrar shall perform, under the control of the Reserve Bank and in accordance with the directions issued by the said Bank from time to time, the functions assigned to the Registrar by or under this Act. 5

Delegation of powers and assignment of duties by Registrar

3. (1) The Registrar may with the approval of the Reserve Bank—
(a) delegate to any officer or employee of the Reserve Bank any power conferred upon the Registrar by or under this Act; or 10
(b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this Act.
(2) Any delegation under subsection (1)(a) shall not prevent the exercise of the relevant power by the Registrar himself. 15

Powers of inspection of, and guidelines by, Registrar

4. (1) In addition to the powers and duties conferred or imposed upon him by this Act, the Registrar shall, for the purposes of the performance of his functions under this Act, have powers and duties in all respects corresponding to the powers and duties conferred or imposed by the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), upon a registrar contemplated in the last-mentioned Act. 20

(2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made in accordance with the provisions of the Inspection of Financial Institutions Act, 1984. 25

(3) Neither the provisions of this section nor any other provision of this Act shall be construed as prohibiting the Registrar from holding discussions, from time to time, with the chief executive officer of any mutual bank, or with any employee of that mutual bank designated by such chief executive officer, with a view to achieving effective supervision of such mutual bank by the Registrar. 30

(4) The Registrar may from time to time by means of a circular furnish mutual banks with guidelines regarding the application and interpretation of the provisions of this Act.

Furnishing of information by mutual banks

5. (1) The Registrar may by notice in writing— 35
(a) direct a mutual bank or the holder of any interest in a mutual bank to furnish the Registrar, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as may be specified in the notice and as the Registrar may reasonably require for the performance of his functions under this Act; or 40
(b) direct such mutual bank or such holder of any interest in a mutual bank to furnish the Registrar with a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), or by any other person with appropriate professional skill, on any matter, or any aspect of any matter, about which the Registrar has directed or may direct under paragraph (a) the mutual bank or the holder of any interest in a mutual bank to furnish information. 45
(2) The public accountant or other person appointed by a mutual bank or the holder of any interest in a mutual bank to make a report required under subsection 50

(1)(b), shall be a person designated or approved by the Registrar, and the Registrar may require the relevant report to be in such form as may be specified in the notice referred to in subsection (1).

Power of Registrar to extend certain periods

6. (1) Any person who is required to submit to the Registrar or to furnish the Registrar with any return, statement, report or other document or information within a period determined by or under this Act, may before or after the expiry of that period apply to the Registrar in writing for an extension of that period. 5

(2) The Registrar may, after consideration of an application referred to in subsection (1)— 10

(a) grant the application and extend by such period as he may determine the period within which the return, statement, report or other document or information had to be submitted or furnished; or

(b) refuse the application, and shall in writing notify the person who lodged the application of his decision. 15

Appeal against decisions of Registrar

7. Any person aggrieved by a decision taken by the Registrar under a provision of this Act may within the prescribed period and in the prescribed manner and upon payment of the prescribed fee appeal against such decision to the board of appeal. 20

Annual report by Registrar

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

(2) The Minister shall lay a copy of the report referred to in subsection (1) upon the Table in Parliament within 14 days after receipt of such report, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session. 25

CHAPTER III

Authorization to Establish, and Registration and Cancellation of Registration of, Mutual Banks

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Registration a prerequisite

9. (1) No person shall hold himself out to be a mutual bank unless such person is provisionally or finally registered as a mutual bank in terms of this Act.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence. 35

Authorization to establish mutual bank

10. (1) A mutual bank may only be established if the Registrar has, in pursuance of an application for authorization to establish such a mutual bank, made to him in accordance with the provisions of subsection (2), granted such authorization.

(2) An application contemplated in subsection (1)— 40

(a) shall be made by an applicant on behalf of at least seven persons (hereinafter referred to as the founders) who have subscribed their names to proposed articles of association agreed to by them for the government of the mutual bank;

(b) shall be made in the prescribed manner and on the prescribed form; and 45

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

(3) The Registrar may require an applicant contemplated in subsection (2) to furnish him with—

- (a) such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2); or
- (b) a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), or by any other knowledgeable person approved by the Registrar, on such aspects relating to the application in question,

as the Registrar may deem necessary.

Granting or refusal of application for authorization

11. (1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and reports furnished to him for the purposes of an application under section 10, grant or refuse the relevant application or grant the application subject to such conditions as he may determine, including conditions requiring the applicant to obtain an undertaking from a bank (hereinafter in this Act referred to as a guardian bank) to assist the applicant, with effect from its registration as a mutual bank under this Act and subject to such conditions as may be agreed upon by the applicant and such guardian bank, in respect of technological infrastructure, management advice and such other matters as may be prescribed.

(2) The Registrar shall not grant an application made under section 10 unless he is satisfied—

- (a) that the establishment of the proposed mutual bank will not be detrimental to the public interest;
- (b) that the founders will be able to successfully establish the proposed mutual bank;
- (c) that sufficient financial means are or will be available to enable the proposed mutual bank to comply, in its capacity as a mutual bank, with the requirements of this Act;
- (d) that the business of the proposed mutual bank will be conducted in a prudent manner;
- (e) that every person who is to be a director or an executive officer of the proposed mutual bank is, as far as can reasonably be ascertained, a fit and proper person to hold the office of such director or executive officer;
- (f) that every person who is to be an executive officer of the proposed mutual bank has sufficient experience of the management of the kind of business it is intended to conduct; and
- (g) that the composition of the board of the proposed mutual bank will be appropriate having regard to the nature and scale of the business it is intended to conduct.

(3) When the Registrar grants or refuses an application made under section 10, he shall give written notice of that fact to the applicant concerned.

Revocation of authorization

12. (1) The Registrar may at any time prior to the provisional registration, in terms of section 14, of a mutual bank revoke the authorization granted for the establishment of such mutual bank if the Registrar is satisfied that—

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

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

Application for provisional registration as mutual bank

13. (1) An applicant to whom the Registrar has under section 11 granted authorization for the establishment of a mutual bank (hereinafter in this Chapter referred to as the institution) may at any time during the period of 12 months commencing on the date of the granting of the said authorization apply to the Registrar for the provisional registration of the institution as a mutual bank, provided such authorization has not been revoked in terms of section 12(1). 5

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

- (a) be made in the prescribed manner and on the prescribed form; and
 - (b) be accompanied by—
 - (i) two copies of the institution's articles;
 - (ii) a written statement in which is set out—
 - (aa) the full and the abbreviated name of the institution as well as the literal translations thereof;
 - (bb) the address of the institution's head office as well as its postal address;
 - (cc) full particulars of the business the proposed mutual bank will conduct and of the manner in which such business will be conducted; and
 - (dd) the full names and the addresses of the chairman, the other directors and the executive officers of the institution; and
 - (iii) a list of proposed shareholders in the institution, setting out the full name, occupation and residential or business address of the subscriber, the number and type of shares he takes and the nominal value of such shares.
- 10 15 20 25

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

(4) The application and every document lodged in terms of subsection (2) or (3) shall be signed by the chairman or the chief executive officer of the institution. 30

Granting or refusal of application for provisional registration

14. (1) Subject to the provisions of subsection (2), the Registrar shall, after considering all information and documents furnished to him in terms of section 13 for the purposes of an application under that section, grant such application if he is satisfied— 35

- (a) that, according to its articles, the institution will be a mutual bank;
- (b) that the methods of conducting the business of the proposed mutual bank, as laid down in its articles, are not undesirable; and
- (c) that the articles of the institution are consistent with this Act and not undesirable for any reason. 40

(2) Notwithstanding the provisions of subsection (1), the Registrar may refuse an application for the provisional registration of an institution as a mutual bank if he is of the opinion—

- (a) that any of the requirements specified in section 11(2) is no longer being complied with by or in respect of the institution concerned;
- (b) that the institution concerned, when provisionally or finally registered as a mutual bank, will probably not be able to comply with a provision of this Act, or is likely to pursue a practice contrary to a provision of this Act;
- (c) that an interest which any person has in the institution concerned is inconsistent with a provision of this Act;
- (d) that the interests of potential depositors with or borrowers from the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason; 50 55

- (e) that the name of the institution concerned—
- (i) is identical with a name under which an existing mutual bank, terminating mutual building society or bank has already been provisionally or finally registered;
 - (ii) so closely resembles the name of an existing mutual bank, terminating mutual building society or bank that the one is likely to be mistaken for the other;
 - (iii) is identical with, or closely resembles, the name under which any mutual bank, bank or terminating mutual building society or any institution that was registered under any law repealed by this Act, was previously registered and that there is reasonable ground for objection against the use of that name by the institution concerned; or
 - (iv) is likely to mislead the public; or
- (f) that the application does not comply with a requirement of this Act.
- (3) When the Registrar in terms of this section grants or refuses an application for provisional registration, he shall give written notice of that fact to the applicant concerned.
- (4) If the Registrar in terms of this section grants an application for provisional registration he shall, subject to the provisions of section 15, and on payment by the applicant of the prescribed registration fee, provisionally register the institution concerned as a mutual bank and issue to the institution, on the prescribed form, a certificate of provisional registration as a mutual bank.
- (5) An institution that is for the first time provisionally registered as a mutual bank shall not commence doing business in that capacity until it has furnished proof to the Registrar that it complies with the provisions of section 48.
- (6) An institution that contravenes the provisions of subsection (5) shall be guilty of an offence.

Conditions, duration and renewal of provisional registration

15. (1) The provisional registration under section 14 of an institution as a mutual bank shall be for a period of 12 months and shall be subject to such conditions as the Registrar may determine.
- (2) The Registrar may in his discretion and subject to the same or any other or further conditions, from time to time before its expiration renew such provisional registration for periods not exceeding 12 months at a time: Provided that—
- (a) no mutual bank shall remain provisionally registered as such for an aggregate period exceeding five years; and
 - (b) without derogating from the Registrar's discretion in terms of this subsection to grant or refuse the renewal of such provisional registration, the Registrar may accept the fact that the institution concerned has not, during the period of six months expiring on the last day of the period of 12 months referred to in subsection (1), conducted any business as a mutual bank, as a conclusive ground for the refusal of such a renewal.
- (3) In addition to any other condition which the Registrar may impose under subsection (1) or (2), he may impose a condition requiring the institution concerned to take within a specified period such steps as may be necessary to alter its articles in accordance with the requirements of the Registrar.
- (4) (a) An appeal in terms of section 7 by a mutual bank against the Registrar's refusal to renew or further renew its provisional registration shall, notwithstanding the provisions of section 7, be lodged before such provisional registration or renewed provisional registration expires.
- (b) If the provisional registration or renewed provisional registration expires while an appeal referred to in paragraph (a) is being considered, such provisional registration or renewed provisional registration, as the case may be, shall be deemed to have been renewed or further renewed until the appellant is notified of the board of appeal's decision on the appeal.

Application for final registration as mutual bank

16. (1) An institution that is provisionally registered as a mutual bank may at any time while it is provisionally registered apply to the Registrar in the prescribed manner and on the prescribed form for final registration as a mutual bank.

(2) An institution applying in terms of subsection (1) for final registration as a mutual bank shall furnish such additional information in connection with its application as the Registrar may require. 5

Granting or refusal of application for final registration

17. (1) The Registrar may in his discretion grant or refuse an application under section 16 for final registration, or may grant such application subject to such conditions as he may determine, but the Registrar shall not grant an application unless he is satisfied that— 10

- (a) the institution concerned has satisfied all the conditions subject to which it was provisionally registered;
- (b) the institution concerned has complied and will be able to continue to comply with all the other requirements of this Act that are applicable to it in its capacity as a provisionally or finally registered mutual bank; 15
- (c) the board of directors and the executive management of the institution concerned have during the period preceding the application for final registration demonstrated their integrity and their ability to conduct the business of a mutual bank successfully; and 20
- (d) the business conducted by the mutual bank concerned is conducted in a prudent manner and without resort to undesirable practices.

(2) When the Registrar in terms of this section grants or refuses an application for final registration, he shall give written notice of that fact to the applicant concerned. 25

(3) If the Registrar in terms of this section grants an application for final registration he shall, on payment by the applicant of the prescribed registration fee, finally register the institution concerned as a mutual bank and issue to the institution, on the prescribed form, a certificate of final registration as a mutual bank. 30

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

- (a) shall, subject to the provisions of section 15(2)(a), not affect the provisional registration of the institution concerned as a mutual bank; and 35
- (b) shall not prevent the institution concerned, while its provisional registration is in force, from reapplying under section 16 for final registration as a mutual bank.

Untrue information in connection with applications

18. Any person who in or in connection with— 40

- (a) an application for authorization to establish a mutual bank;
 - (b) an application for provisional or final registration as a mutual bank; or
 - (c) an application for the renewal of such a provisional registration, 45
- furnishes the Registrar with any information that to the knowledge of such person is untrue or misleading in any material respect, shall be guilty of an offence.

Juristic personality of mutual bank

19. (1) A mutual bank shall be a juristic person.

(2) Whenever a juristic person registered under the Companies Act is for the first time provisionally registered as a mutual bank in terms of this Act, the Registrar shall in writing notify the Registrar of Companies of such registration, and upon receipt by the Registrar of Companies of such notice he shall remove the name of such juristic person from the register of companies. 50

Use of name of mutual bank

20. (1) Subject to the provisions of subsection (2), an institution that is provisionally or finally registered as a mutual bank 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 that has been approved by the Registrar. 5
- (2) An institution referred to in subsection (1) may, with the consent of the Registrar, in conjunction with its registered name use, or refer to itself by, the name of another mutual bank with which it has amalgamated or all the assets and liabilities of which have, as contemplated in section 71, been transferred to it or, in the case of a change of name, the name by which it was previously known. 10
- (3) An institution that contravenes the provisions of subsection (1) shall be guilty of an offence.
- (4) Any person who, in connection with any business conducted by him uses, or refers to himself by, any name, description or symbol indicating, or calculated to lead persons to infer, that he is a mutual bank provisionally or finally registered as such under this Act, while he is not so registered as a mutual bank, shall be guilty of an offence. 15
- (5) No person shall use in respect of any business a name or description that includes the words "building society", or any derivative thereof, unless the business concerned is a mutual bank, a bank or a terminating mutual building society. 20
- (6) Any person who contravenes the provisions of subsection (5) shall be guilty of an offence.
- (7) Every mutual bank shall display in easily legible letters on every statement, notice, advertisement or letter published or issued to any member of the public by or on behalf of the mutual bank, the name of the mutual bank and a statement of the fact that it is registered as a mutual bank under this Act. 25

Cancellation or suspension of registration by Registrar

21. (1) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank that is provisionally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional registration if the institution has not conducted any business as a mutual bank during the period of six months commencing on the date on which the institution was for the first time provisionally registered as a mutual bank. 30 35
- (2) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank that is provisionally or finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such provisional or final registration if it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 18. 40
- (3) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank that is finally registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct business as a mutual bank or is no longer in operation. 45

Notice by Registrar of intention to cancel or suspend registration

22. (1) The Registrar shall, before cancelling or suspending under section 21 the provisional or final registration of a mutual bank, in a written notice addressed to the chairman or chief executive officer of the institution concerned— 50

- (a) inform the institution of his intention to cancel or suspend, as the case may be, such registration;
 - (b) furnish the institution with the reasons for the intended cancellation or suspension; and
 - (c) call upon the institution to show cause within a period specified in the notice, which shall not be less than 30 days as from the date of the notice, why its provisional or final registration, as the case may be, should not be so cancelled or suspended. 5
- (2) After considering any representations received within the specified period from the institution concerned by virtue of the provisions of subsection (1)(c), the Registrar may in his discretion— 10
- (a) proceed with the cancellation or suspension, in terms of section 21, of the relevant registration; or
 - (b) refrain from taking any further steps in terms of section 21, 15
- and the Registrar shall in writing inform the chairman or chief executive officer of the institution concerned of his decision in terms of this subsection. 15

Cancellation or suspension of registration by court

23. (1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling or suspending the provisional or final registration of a mutual bank if in the opinion of the Registrar there are grounds, other than the grounds referred to in section 21, justifying such cancellation or suspension. 20

(2) A competent court for the purposes of subsection (1) shall be any provincial or local division of the Supreme Court of South Africa within the area of jurisdiction of which the head office, referred to in section 40, of the mutual bank concerned is situated. 25

(3) The court entertaining an application made under subsection (1) 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 that 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 mutual bank, such an order may be granted if the institution concerned— 30

- (a) or any of its directors or executive officers has been convicted of any offence in terms of this Act; 35
- (b) does not satisfactorily carry on business as a mutual bank;
- (c) has failed to comply with a requirement of this Act that is applicable to it in its capacity as a provisionally or finally registered mutual bank;
- (d) continues to employ an undesirable practice; or
- (e) has in a material respect misrepresented the facilities which it offers to the general public, 40

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

Restriction by Registrar of activities of mutual bank 45

24. (1) The Registrar may, in lieu of an application under section 23(1), by written notice to a provisionally or finally registered mutual bank in respect of which, in the opinion of the Registrar, any of the circumstances mentioned in section 23(4) is present, restrict the activities of the institution concerned as a mutual bank in such respects and on such conditions as the Registrar may specify in the notice. 50

(2) The provisions of section 22 shall *mutatis mutandis* apply in respect of the restriction of the activities of a mutual bank by the Registrar under subsection (1).

Cancellation of registration at request of mutual bank

25. The Registrar shall cancel the provisional or final registration, as the case may be, of a mutual bank upon submission to him by the institution concerned of a special resolution by its members authorizing such cancellation.

Withdrawal of suspension or restriction

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26. (1) The Registrar may on the written application of a mutual bank of which—

- (a) the provisional or final registration was suspended under section 21; or
- (b) the activities were restricted under section 24,

by written notice to the institution concerned withdraw such suspension or restriction, as the case may be, provided the Registrar is satisfied that the institution has complied with all requirements for such withdrawal imposed by the Registrar in the conditions of suspension or restriction.

(2) Application for an order discharging an order under section 23 whereby the provisional or final registration of a mutual bank has been suspended, may be made to the competent court referred to in section 23(2).

Publication of information relating to mutual banks

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

- (a) provisional or final registration of an institution as a mutual bank;
- (b) cancellation or suspension of such a registration;
- (c) expiration of such a provisional registration;
- (d) restriction of the activities of a mutual bank;
- (e) withdrawal of such suspension or restriction; or
- (f) change of the name of a mutual bank,

that is effected or that takes place in terms of this Act.

Date on which registration lapses

28. An institution registered as a mutual bank shall cease to be registered as such—

- (a) in the case of a provisional registration of which the period or, if such registration was renewed under section 15(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) in the case of a registration cancelled by the Registrar under section 21, upon expiry of 30 days after the date of the notice referred to in subsection (1), (2) or (3) of that section or, if an appeal against such cancellation was lodged with the board of appeal in terms of section 7 before the expiry of the said 30 days and the board of appeal has confirmed such cancellation, upon the date on which the institution concerned is notified of such confirmation;
- (c) in the case of a registration in respect of which the court has granted an order under section 23 cancelling the registration, upon the date on which that order comes into force; or
- (d) in the case of a registration cancelled by the Registrar in terms of section 25, upon such date as may be determined by the Registrar.

Repayment of deposits upon lapse of registration

29. (1) Whenever an institution that is provisionally or finally registered as a mutual bank 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 may be specified in the order, all money due by it to members of the

public in respect of deposits accepted by it while registered as a mutual bank, including any interest or any other amounts owing by it in respect of such money; and

- (b) to change its name and its articles within the period and in the manner required by the Registrar. 5

(2) Different directions and periods may under subsection (1) be determined in respect of different kinds of deposits: Provided that in determining such directions and periods no preference shall be given to any such member of the public that he does not in law enjoy.

(3) An institution which by virtue of the provisions of subsection (1) repays a deposit before the due date agreed for the repayment thereof, shall not be bound to pay any interest or any other amounts which would have been payable in respect of such deposit for the period from the date of such repayment up to such due date. 10

(4) Any institution which fails to comply with an order under subsection (1) shall— 15

- (a) be guilty of an offence; and
(b) for the purposes of sections 344 and 345 of the Companies Act, as applied by section 75 of this Act, be deemed not to be able to pay its debts.

Reregistration in terms of this Act

30. (1) Every institution that on the date of commencement of this Act is under the provisions of any law repealed by this Act provisionally or finally registered as a permanent mutual building society shall, in accordance with and subject to subsections (2) and (3), 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 the said repealed law) by the Registrar as a mutual bank in terms of this Act. 25

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

(3) The reregistration of an institution in terms of this section shall in the case of a provisional registration be for the unexpired portion of the period of the institution's provisional registration under the repealed law referred to in subsection (1). 30

(4) Upon the reregistration of an institution in terms of this section its previous registration under the said repealed law shall be deemed to have lapsed and any certificate of registration issued in respect thereof shall be deemed to have been cancelled. 35

(5) No fee shall be payable in respect of a reregistration in terms of this section.

Annual licence

31. A mutual bank shall obtain from the receiver of revenue of the district in which its head office is situated a mutual bank licence in respect of each year ending on the thirty-first day of December against payment of the prescribed licence fee. 40

CHAPTER IV

Administration of Mutual Banks

45

Matters to be set forth in articles

32. (1) The articles of a mutual bank shall set forth—

- (a) the name of the mutual bank and the situation of its head office;
(b) the principal objects of the mutual bank;
(c) the manner in which the funds of the mutual bank are to be raised, the purposes to which they are to be applied and the manner in which surplus funds are to be invested; 50

- (d) the manner in which membership is to be acquired and to cease;
 - (e) the types of shares to be issued, the conditions of redemption or repayment thereof and the preferential and other special rights attaching thereto;
 - (f) the manner in which advances upon the security of the mortgage of immovable property or against other security are to be made and repaid; 5
 - (g) whether the mutual bank intends to accept deposits and to borrow money other than by way of deposit, and, if deposits are to be accepted, the conditions of acceptance and repayment;
 - (h) measures for the establishment of bodies to represent the interests of persons who have provided funds to the mutual bank in excess of specified amounts, and the relationship between such bodies and the board of directors and the management of the mutual bank; 10
 - (i) the fees, fines and charges that may be demanded from or imposed upon shareholders, depositors and borrowers; 15
 - (j) the manner of making an annual or more frequent audit of the accounts, and the inspection by the auditors of the mortgage bonds and other securities belonging to the mutual bank;
 - (k) the manner in which profits or losses are to be ascertained and dealt with or provided for; 20
 - (l) the manner of altering and rescinding the articles of the mutual bank and of adopting additional articles;
 - (m) the manner of electing, appointing, removing and fixing the remuneration of directors, and their qualifications, powers and duties, and the manner of appointing, removing and fixing the remuneration of members of local boards or committees and officers of the mutual bank; 25
 - (n) the manner of calling the annual general meeting and special general meetings of members, measures for the representation of members at such meetings through the medium of members' delegates, the quorum necessary for the transaction of business at such meetings, and the manner of voting thereat; 30
 - (o) whether disputes between the mutual bank and any of its members, or between the mutual bank and any persons claiming under the articles or whose claims are derived from members, shall be settled by the court or by arbitration; 35
 - (p) how contracts or other documents binding the mutual bank shall be executed;
 - (q) how custody shall be kept of the mortgage bonds, title deeds and other securities belonging to or held by the mutual bank;
 - (r) subject to the provisions of this Act, the manner in which the mutual bank shall be wound up; 40
 - (s) subject to the provisions of sections 71 and 72, the manner in which any amalgamation with or transfer of assets and liabilities to or from another mutual bank shall be effected;
 - (t) the forms of record to be issued to every person to whom a share is allotted by or who is allowed to make deposits with the mutual bank, and the conditions subject to which certified copies of such forms of record will be issued by the mutual bank in the event of the loss or destruction of the originals; and 45
 - (u) such other matters as the Registrar may approve. 50
- (2) The objects of a mutual bank set forth in its articles under subsection (1)(b) shall confer upon it only the capacity—
- (a) to carry on business as a mutual bank in accordance with this Act; and
 - (b) in addition to the business referred to in paragraph (a), to carry on such other business as in the opinion of the Registrar is not inconsistent with a provision of this Act. 55

Alteration of articles

33. (1) A mutual bank may in the manner directed by its articles alter or rescind

any article or adopt any additional article; but no such alteration, rescission or addition shall be valid—

- (a) if it purports to affect any right of a creditor of the mutual bank who is not a member thereof; or
- (b) if it is directed against any particular individual; or
- (c) if it purports to alter the rights of members in a winding-up.

(2) Within 14 days from the date of passing a resolution for the alteration or rescission of any article or the making of any additional article, two copies of such resolution shall be transmitted by the secretary of the mutual bank to the Registrar together with a certificate signed by the chairman of the board and the secretary of the mutual bank that the provisions of the articles of the mutual bank governing the alteration or rescission of or addition to any article have been complied with.

(3) If the Registrar finds that such alteration, rescission or addition is in conformity with this Act, and is satisfied that it is financially sound and that the methods of transacting the business of the mutual bank as laid down therein are not undesirable, he shall register the resolution and return one of the copies to the secretary of the mutual bank with the date of registration endorsed thereon, and any such alteration, rescission or addition shall take effect as from the date of the registration.

Alteration of articles in accordance with direction of Registrar

34. (1) Notwithstanding anything contained in this Act but subject to the limitations laid down in section 33(1), the Registrar may at any time in writing direct any mutual bank to effect such alteration to its articles not in conflict with the provisions of this Act as the Registrar may deem desirable in order to remove anomalies or undesirable divergencies in the articles of different mutual banks, and the board of such mutual bank shall thereupon submit the proposed amendments to its members at or before the next annual general meeting of the mutual bank and notify the Registrar of the decision thereon not more than 14 days thereafter.

(2) If adoption of the required alteration is decided upon, the provisions of section 33(2) shall *mutatis mutandis* apply.

(3) If a mutual bank refuses or fails to alter its articles in accordance with a direction of the Registrar under subsection (1), the Registrar may deal with the alteration contained in the direction as if it were contained in a resolution adopted by the mutual bank in accordance with its articles and submitted to him in terms of section 33(2).

Change of name of mutual bank

35. (1) A mutual bank may, with the approval of the Registrar, by special resolution change its name.

(2) Any application for the Registrar's approval in terms of subsection (1) shall be lodged with the Registrar before the proposed special resolution authorizing such change is laid before a general meeting of members of the mutual bank, and any such application shall be accompanied by—

- (a) two copies of such proposed special resolution; and
- (b) an explanation of the reasons for the resolution.

(3) The Registrar shall not grant any application referred to in subsection (2) if he is of the opinion that the proposed new name is unacceptable on any of the grounds mentioned in section 14(2)(e).

(4) When the name of a mutual bank is changed in terms of subsection (1) the Registrar shall enter the new name in his records in place of the former name and shall issue a new certificate of registration of the mutual bank under its new name, provided the certificate previously issued by him is delivered to him for cancellation.

(5) The change of name shall not affect any right or obligation of the mutual bank or any member thereof or any other person concerned or render defective any legal proceedings by or against the mutual bank, and any legal proceedings that may or could have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

(6) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or any immovable property belonging to the mutual bank shall, upon production to him by the mutual bank of such bond or of the title deed of such immovable property and a certificate by the Registrar of the registration of the mutual bank under its new name, and upon payment of the fee that may be payable in terms of any law relating to deeds registries, make such endorsements upon such bond or title deed and such entries in his registers as may be necessary by reason of the change of name. 5

(7) If the Registrar has certified in writing that in his opinion the new name of the mutual bank is so similar to its former name that both names obviously refer to the same mutual bank, any mortgage bond or title deed registered in the former name of the mutual bank shall, unless and until it is sought to endorse such bond or title deed regarding any transaction other than a cancellation, be deemed to have been registered in the name of the mutual bank as changed. 10

Binding force of articles

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36. (1) The articles of a mutual bank shall when registered be binding upon the mutual bank and the members and officers thereof, and upon all persons claiming under the articles or whose claims are derived from a member.

(2) A mutual bank shall make a copy of its articles available for inspection by members of the public during the normal business hours of the mutual bank. 20

(3) Any member shall be entitled upon request to obtain from the mutual bank free of charge a copy of the articles of the mutual bank, and every depositor shall similarly be entitled to extracts from such of the articles as relate to deposits.

Directors of mutual bank

37. (1) The business of a mutual bank shall be managed by a board of directors that may, subject to such conditions as the board may determine, delegate any of its powers to any person. 25

(2) Each director of a mutual bank shall stand in a fiduciary relationship to the mutual bank of which he is a director.

(3) Without derogating from the generality of the expression "fiduciary relationship" in subsection (2), the provisions of that subsection imply that a director— 30

(a) shall, in relation to the mutual bank 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 mutual bank, exclusively in the best interests and for the benefit of the mutual bank, its members and its depositors; and 35

(b) shall, in the performance of his functions as a director of such a mutual bank, observe such guidelines and comply with such requirements as may be prescribed under section 91(1)(b). 40

(4) A director shall be elected for a period not exceeding three years but shall be eligible for re-election upon the termination of any period for which he has been elected.

(5) Whenever a casual vacancy occurs on the board of a mutual bank, the remaining directors may appoint a person to fill the vacancy until the next annual general meeting, and the person elected at that meeting shall fill the vacancy for the unexpired period of office of the vacating director. 45

(6) Save as provided in subsection (5), vacancies on the board of a mutual bank shall be filled at the annual general meeting by election by a majority of the members voting in accordance with the articles. 50

(7) A mutual bank shall within 14 days of the appointment under subsection (5) or the election under subsection (6) of a director, send to the Registrar a notice of the appointment or election signed by the director appointed or elected and by the secretary of the mutual bank.

(8) A mutual bank shall with the notice referred to in subsection (7) furnish the Registrar with the name and address of each of its directors and the date upon which the period of office of such director is normally due to expire.

(9) If the remaining directors fail to fill a casual vacancy in accordance with subsection (5) or the members of the mutual bank assembled in annual general meeting fail to fill any vacancy in accordance with subsection (6), the Registrar may in his discretion, and upon the submission to him of a sworn statement in writing made by any seven members and the secretary of the mutual bank or by two directors and the secretary of the mutual bank, setting forth the fact that such a failure has occurred, appoint a duly qualified member of the mutual bank to fill the vacancy until the next annual general meeting.

(10) The board of directors shall cause minutes of all its meetings to be kept, and such minutes shall be confirmed and signed by the chairman at the next ensuing ordinary meeting of the board.

(11) For the purposes of election to the board of a mutual bank, a person appointed by the remaining directors in terms of subsection (5) shall not be regarded as a retiring director.

(12) 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 mutual bank shall be employees of that mutual bank: Provided that in respect of any matter put to the vote at a meeting of the board of directors of a mutual bank such directors who are employees of that mutual bank 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.

(13) Notwithstanding the provisions of subsections (4) and (5), a director of a mutual bank who is an executive officer of that mutual bank shall vacate his office as such a director when he ceases to be such an officer.

Disqualifications of directors

38. Any of the following persons shall be disqualified from being appointed or holding the office of a director of a mutual bank, namely—

- (a) a minor or any other person under legal disability;
- (b) save under the authority of the court—
 - (i) an unrehabilitated insolvent;
 - (ii) any individual who has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury, and has been sentenced in respect thereof to a period of imprisonment without the option of a fine or to a fine exceeding one hundred rand;
 - (iii) any person who has been removed from an office of trust on account of misconduct;
- (c) any auditor of the mutual bank or any person in his employment.

Disclosure by directors of interest in contracts with mutual bank

39. (1) A director of a mutual bank who is in any way, whether directly or indirectly, interested in any contract or proposed contract with the mutual bank or participates in the profits of any contract with the mutual bank, or is a director, office-bearer or officer of any company or a member of any firm entering into any contract with the mutual bank, shall declare the nature and extent of his interest as provided in subsection (2).

(2) The declaration required by subsection (1) shall be made at the meeting of the directors of the mutual bank at which the question of entering into the contract is first taken into consideration, if the director concerned is present at such meeting, or otherwise at the next meeting of the directors following his receipt of notification in writing of such contract, or, if the director was not at the date of the meeting interested in the proposed contract, at the first meeting after he became

so interested, and, where a director becomes interested in a contract after it is made, at the first meeting of the directors held after the director became so interested.

(3) A director having an interest as set out in subsection (1), shall not take part in the discussion of any such contract or any matter arising from it, nor shall he vote in respect thereof. 5

Head office of mutual bank

40. (1) Every mutual bank shall have its head office in the Republic.

(2) If a mutual bank moves its head office to another place it shall within 14 days of such moving of its head office submit in writing to the Registrar particulars of the place to which its head office was moved. 10

Branch offices and agencies

41. (1) The board of any mutual bank may in its discretion establish one or more branch offices or agencies of the mutual bank at such place or places as it may determine. 15

(2) The board may place any such branch office or agency under the management of a local board and may determine the powers and duties of any such local board.

(3) Every local board and every officer appointed to any such branch office or agency shall be under the control of the board of the mutual bank. 20

Accounting records

42. Every mutual bank shall keep in one of the official languages of the Republic such accounting records as are necessary—

- (a) to fairly present the state of affairs and business of the mutual bank;
- (b) to explain the transactions and financial position of the business of the mutual bank; and
- (c) to enable the Registrar to determine whether the mutual bank has complied with the provisions of this Act, 25

and shall preserve every such record in a safe place for a period of at least 15 years as from the date of the last entry therein. 30

Annual financial statements

43. (1) The financial year of a mutual bank shall be its annual accounting period, the commencing date of which and the date on which it ends in the next succeeding calendar year shall be determined upon the incorporation of the mutual bank and recorded in its articles: Provided that the first financial year of a mutual bank shall, where the commencing date so determined— 35

- (a) is a date more than three months after such incorporation, be the period commencing on such incorporation and ending on the date immediately preceding the commencing date so determined; or
- (b) is a date not more than three months after such incorporation, be the period commencing on such incorporation and ending on the date so determined as the end of the financial year in the next calendar year. 40

(2) For the purposes of the proviso to subsection (1), the date on which a mutual bank is in terms of section 14(4) provisionally registered as a mutual bank shall be deemed to be the date of its incorporation. 45

(3) If a mutual bank wishes to change the date of the end of its financial year, such change shall be effected by way of an alteration of its articles in accordance with the provisions of section 33.

(4) The board of a mutual bank shall after the end of each financial year prepare in respect of that financial year the prescribed annual financial statements in the prescribed form. 50

(5) Each financial statement prepared in terms of subsection (4) shall be certified as correct by two directors and the chief accounting officer of the mutual bank.

(6) The auditor of a mutual bank shall make a report to the members of the mutual bank on the annual financial statements referred to in subsection (4) or on such particular one of such statements as may be prescribed.

(7) A copy of each annual financial statement referred to in subsection (4) and a copy of the auditor's report referred to in subsection (6) shall be sent by the mutual bank to the Registrar within 14 days after the annual general meeting at which they are presented or within four months after the expiration of the financial year to which they relate, whichever period expires first.

General meetings

44. (1) A general meeting of the members of every mutual bank shall be held within four months after the close of every financial year of the mutual bank in order that its financial position, the financial statements and auditor's report referred to in section 43 and the report of the board may be considered and dealt with, directors may be elected and general business may be transacted.

(2) The meeting in question shall be designated the annual general meeting and shall be held at the head office of the mutual bank or at such other convenient place and at such time as may be prescribed by its articles.

(3) A special general meeting may be convened by three or more directors and shall be convened by the board upon receipt of a requisition signed by one hundred members or, if the membership is less than one thousand, by not less than one-tenth of the whole body of members or such smaller number or proportion of members as the articles of the mutual bank may prescribe.

(4) If within 14 days after the receipt of such a requisition a special general meeting of the mutual bank is not convened by the board, it may be convened by the requisitionists or a majority of them.

(5) Notice of annual and special general meetings of a mutual bank shall be given to all members, and to the Registrar and the auditors of the mutual bank in the form and manner prescribed by the articles, and shall specify the day, hour and place and the objects of the meeting, and shall if any alteration or rescission of or addition to the articles is intended to be proposed, contain a copy of every such alteration, rescission or addition: Provided that in the case of the intended adoption of a new set of articles it shall be sufficient compliance with the foregoing provisions of this subsection and with any provision in the articles of a mutual bank if the notice of the meeting contains a statement to the effect that copies of the proposed new articles are available for inspection at every branch office and agency of the mutual bank and available to members on request.

(6) The period of notice of any annual or special general meeting shall be not less than 21 days.

(7) Every mutual bank shall cause minutes of all proceedings of annual or special general meetings to be entered in one of the official languages of the Republic in one or more books kept for that purpose.

(8) The secretary of the mutual bank shall transmit to the Registrar a copy of the minutes of the proceedings of any annual or special general meeting, certified by himself and two directors, within 14 days after the meeting, regardless of whether the minutes have or have not been confirmed, and if at any time any alteration of any such minutes is approved, shall transmit to the Registrar a copy of the minutes so altered, certified as aforesaid, within 14 days after the date on which the alteration was approved.

Appointment of auditor

45. (1) (a) Every mutual bank shall have one or more auditors.

(b) Any such auditor shall be an accountant and auditor registered as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), who is engaged in public practice, and no officer of a mutual bank and no firm of which such an officer is a member or employee, shall be appointed as an auditor of that mutual bank.

(2) The board shall within 30 days from the date of registration of the mutual bank appoint one or more auditors, who shall retire at the conclusion of the mutual bank's first annual general meeting following his or their appointment unless previously removed from office by a resolution of the members of the mutual bank at a general meeting or unless he is or they are reappointed. 5

(3) The board or the main auditors acting with the consent of the board may appoint a branch auditor to any branch of the mutual bank, who shall retire at the conclusion of the mutual bank's first annual general meeting following his appointment unless previously removed from office by a resolution of the members of the mutual bank at a general meeting or unless he is reappointed. 10

(4) Every auditor, however appointed, shall, if not previously removed from office by a resolution of the members of the mutual bank at a general meeting, be deemed to be reappointed until the conclusion of the next annual general meeting without any resolution being passed to that end, unless—

(a) he is not qualified for reappointment; or 15

(b) a resolution is passed at the first-mentioned meeting appointing somebody else in his place or providing expressly that he is not being reappointed; or

(c) he has given the mutual bank notice in writing of his unwillingness to be reappointed: 20

Provided that where notice is given of an intended resolution to appoint a person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, such retiring auditor shall not be deemed to be automatically reappointed by virtue of this subsection. 25

(5) The members of a mutual bank may at any general meeting remove from office any auditor appointed or reappointed under this section and appoint another auditor in his place, and the auditor so appointed shall, subject to subsection (4), retire at the conclusion of the mutual bank's first annual general meeting following his appointment. 30

(6) A resolution at any general meeting—

(a) appointing as auditor a person other than a retiring auditor;

(b) providing expressly that a retiring auditor shall not be reappointed; or

(c) removing an auditor from office in terms of subsection (5),

shall not be effective unless notice of intention to move such a resolution has been given to the mutual bank not less than 14 days before the meeting at which it is moved. 35

(7) A mutual bank shall give notice to its members of such intended resolution at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice at least seven days before the date of the general meeting either by advertisement in one or more newspapers circulating in the place where the head office of the mutual bank is situated and in such other centres as the board may deem desirable, or in any other appropriate manner. 40

(8) On receipt of the notice of an intended resolution referred to in subsection (6) the board shall forthwith send a copy thereof to the retiring auditor or the auditor whom it is intended to remove from office, as the case may be. 45

(9) Whenever for any reason other than that referred to in subsection (5) an auditor vacates his office prior to the expiration of the period for which he has been appointed, the board shall within 30 days appoint or cause to be appointed in his place another auditor, who shall, subject to subsection (4), retire at the conclusion of the mutual bank's first annual general meeting following his appointment. 50

(10) Where the auditor of a mutual bank is a partnership, the appointment of such auditor shall not lapse by reason of a change in the composition of the partnership, provided not less than half of the partners of the reconstituted partnership are persons who were, as at the date when the appointment of the partnership was last approved by the Registrar, partners therein. 55

(11) If a mutual bank or its board fails to appoint any auditor required to be

appointed in terms of this section, the Registrar shall make such appointment, and the auditor so appointed shall, subject to subsection (4), retire at the conclusion of the mutual bank's first annual general meeting following his appointment.

(12) In the event of an appointment in terms of subsection (11) the Registrar shall, after consultation with the auditor, determine the remuneration to be paid to the auditor by the mutual bank for his services, and if the mutual bank fails to pay the remuneration the Registrar shall pay such remuneration and recover from the mutual bank an amount equal to that remuneration. 5

(13) Every auditor appointed under this section shall have a right of access to the securities, books, accounts and vouchers of the mutual bank and may require from its officers and agents such information as may be necessary for the performance of his duties as auditor: Provided that in the case of a branch auditor the aforementioned provisions shall apply only in respect of matters pertaining to the branch of which he has been appointed auditor. 10

(14) Every auditor of a mutual bank shall report to the board of that mutual bank any material irregularity or undesirable practice in the conduct of the business of the mutual bank which has come to his notice, and if that irregularity or undesirable practice is not rectified or discontinued within a period of one month from the date upon which it was reported to the board, the auditor shall report it to the Registrar. 15 20

(15) Every branch auditor shall report to the board on the returns made up annually by the branch in respect of which he has been appointed auditor and shall state in his report whether or not in his opinion the returns contain the necessary information relating to the operations of the branch to enable the main auditors of the mutual bank to report in terms of section 43(6). 25

(16) A copy of every report submitted to the board by a branch auditor, whether dealing with an irregularity or undesirable practice or with any other matter, shall be transmitted forthwith by such auditor to the main auditors of the mutual bank.

(17) Any auditor of a mutual bank, however appointed, shall be entitled to attend any meeting of members of such mutual bank and to make thereat any statement that he desires to make in relation to any return or financial statement examined by him or report made by him or to make representations in relation to any matter affecting his appointment, removal or remuneration. 30

(18) A mutual bank shall within 30 days of the appointment of any auditor under this section apply to the Registrar for his approval of the appointment. 35

(19) The Registrar may without being required to furnish any reasons therefor, refuse to approve any such appointment or withdraw any approval previously granted by him and thereupon the auditor concerned shall vacate his office as auditor.

(20) When the Registrar has refused to approve or has withdrawn his approval of the appointment of an auditor in terms of subsection (19), the board shall appoint or cause steps to be taken for the appointment of some other person as auditor, but again subject to the approval of the Registrar. 40

(21) For the purpose of the exercise of his powers under subsections (18), (19) and (20) the Registrar may call for such information as he may deem necessary with regard to the experience or qualifications of an auditor, and such information shall be furnished by such auditor in such form as the Registrar may direct. 45

(22) If a mutual bank or its board fails to comply with any requirement of this section it shall be guilty of an offence.

Functions of auditor in relation to Registrar

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46. (1) Notwithstanding anything to the contrary contained in the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), but subject to subsections (2) and (3) of this section, the auditor referred to in section 45 shall—

(a) whenever he furnishes, in terms of section 20(5)(b) of the said Act, the

Public Accountants' and Auditors' Board with copies of the report, acknowledgement of receipt and reply and with the other particulars referred to in that section, relating to an irregularity or suspected irregularity in the conduct of the affairs of the mutual bank for which he has been appointed as auditor, also furnish the Registrar with such copies and particulars; 5

- (b) in writing inform the Registrar of any matter relating to the affairs of a mutual bank—
 - (i) of which such auditor became aware in the performance of his functions as auditor of that mutual bank; and 10
 - (ii) which, in the opinion of such auditor, may be of concern to depositors of the mutual bank concerned; and
- (c) if requested by the Registrar to do so, furnish him with written information relating to a matter referred to in paragraph (b), specified by the Registrar. 15

(2) Whenever an auditor by virtue of the provisions of subsection (1)(b) or (c) furnishes the Registrar with written information, he may at the same time furnish the chief executive officer of the mutual bank to which such information relates with a copy of the relevant document.

(3) The furnishing in good faith by an auditor of information in terms of subsection (1)(b) or (c) shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of a code of professional conduct to which such auditor may be subject. 20

(4) Nothing in subsection (1) contained shall be construed as conferring upon any person any right of action against an auditor that, but for the provisions of that subsection, he would not have had. 25

Audit committee

47. (1) Subject to the provisions of subsection (3), the board of a mutual bank shall appoint at least three of its members to form an audit committee.

(2) The functions of the audit committee shall be to— 30

- (a) assist the board in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within that mutual bank in the day-to-day management of its business;
- (b) facilitate and promote communication, regarding the matters referred to in paragraph (a) or any other related matter, between the board and the executive officers of, the auditor appointed under section 45 for, and the employee charged with the internal auditing of the transactions of, the mutual bank; and 35
- (c) introduce such measures as in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the mutual bank. 40

(3) All of the members of the audit committee may be, and the majority of such members shall be, persons who are not employees of the mutual bank.

CHAPTER V

45

Prudential requirements

Minimum share capital and unimpaired reserve funds

48. (1) For the purposes of this Act—
 "primary share capital" means such percentage as the Registrar may determine from time to time by notice in the *Gazette* of capital obtained through the issue of permanent interest-bearing shares or other non-redeemable debt instruments; 50

"primary unimpaired reserve funds" means funds obtained—

- (a) from actual earnings;
- (b) by way of recoveries;
- (c) by way of premiums on the issue of permanent interest-bearing shares or debt instruments issued in accordance with the provisions of the definition of "secondary share capital", provided no interest is payable on such premiums; or
- (d) by way of a surplus on the realization of capital assets, and which have been set aside as a general or special reserve, are disclosed as such a reserve in the financial statements of the mutual bank concerned and are available for the purpose of meeting liabilities of or losses suffered by the mutual bank, but does not include any fund required to be maintained in terms of any other law;

"secondary share capital" means loan capital obtained by way of the issue, with the prior written approval of the Registrar, of debt instruments issued subject to—

- (i) the condition that the debt instruments are issued for a minimum period of five years;
- (ii) the condition that the debt instruments may be redeemed before maturity only at the option of the mutual bank concerned and with the prior written approval of the Registrar;
- (iii) the condition that, notwithstanding the provisions of any other law, in the event of the winding-up of the mutual bank concerned, the capital amount of the debt instruments shall not be repaid until the claims of other creditors have been fully satisfied; and
- (iv) 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 (except such funds obtained by way of premiums referred to in paragraph (c) of that definition), 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 mutual bank concerned, and includes—

- (a) 50 per cent of the amount of any surplus resulting from a revaluation of assets and determined as prescribed in subsection (4);
- (b) general provisions held against unidentified and unforeseen losses; and
- (c) funds obtained by way of premiums (on which interest is payable) on the issue of permanent interest-bearing shares or debt instruments issued in accordance with the provisions of the definition of "secondary share capital", whether or not such funds are disclosed as a general or special reserve in the financial statements of the mutual bank concerned, but does not include any fund required to be maintained in terms of any other law.

(2) Subject to the provisions of subsections (3), (5)(a) and (7), a mutual bank shall manage its affairs in such a way that the sum of its issued primary and secondary share capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—

- (a) R10 000 000 or, in the case of a mutual bank that was registered as a permanent mutual building society prior to the date of commencement of this Act and was reregistered as a mutual bank in terms of the provisions of section 30 of this Act, 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 53) of such different categories of—
 - (i) assets; and
 - (ii) other risk exposures in the conduct of its business, as may be prescribed, by the risk weights, expressed as percentages, prescribed in respect of such different categories of assets and other risk exposures.

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

- (a) the amount obtained by way of the issue, after 5 March 1993, of debt instruments and which may in terms of this section rank as secondary share capital shall (except in the case of such debt instruments that are to be converted into permanent interest-bearing shares or other non-redeemable debt instruments) during the fifth year preceding the maturity of such debt instruments be reduced by an amount equal to 20 per cent of the amount 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 mutual bank's issued secondary share capital and secondary unimpaired reserve funds may, in the calculation of the aggregate amount which the mutual bank 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 a percentage, determined from time to time by the Registrar by notice in the *Gazette*, of the above-mentioned aggregate amount.

(4) The determination of any surplus referred to in paragraph (a) of the definition of "secondary unimpaired reserve funds" in subsection (1) shall be effected—

- (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 mutual bank 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; and
- (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 mutual bank in terms of this Act.

(b) A mutual bank shall, in conformity with generally accepted accounting practice, make provision in its accounting records referred to in section 42 for the items specified in paragraph (a).

(6) An institution that—

- (a) was registered as a permanent mutual building society prior to the date of commencement of this Act and is reregistered as a mutual bank in terms of the provisions of section 30 of this Act; and
- (b) does not, on the date of such reregistration, 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.

(7) Notwithstanding the provisions of subsection (2), the Registrar may, on the written application of a mutual bank, in writing exempt such mutual bank from the provisions of that subsection, subject to such conditions, including conditions relating to—

- (a) the expiration of the exemption;
- (b) the manner in which and sources from which capital or other funds may be obtained by the mutual bank; and
- (c) the utilization by the mutual bank of the funds under its control,

as the Registrar may determine: Provided that an exemption under this subsection—

- (i) may be granted only to a mutual bank that has obtained an undertaking from a guardian bank as contemplated in section 11(1); and
- (ii) shall not be granted for a period exceeding two years.

Minimum reserve balance

49. The provisions of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), relating to the maintenance by a bank of a minimum reserve balance in an account with the South African Reserve Bank, shall *mutatis mutandis* apply to any mutual bank.

Minimum liquid assets

50. (1) A mutual bank shall hold in the Republic liquid assets to a value which does not amount to less than the sum of amounts, calculated as prescribed percentages but which in no instance may exceed 20 per cent, of such different categories of its liabilities as may be specified by regulation with reference to the time when such liabilities fall due or with reference to any other feature 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 shall be determined at such times as may be prescribed.

(3) A mutual bank 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 mutual bank may find itself, exempt such mutual bank 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 prices as quoted in a list of quotations of prices—

- (a) of securities, as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), issued for publication on the authority of a licensed stock exchange, as so defined; or
- (b) of financial instruments, as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), issued for publication on the authority of the executive committee of a financial exchange, as so defined,

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

Large exposures

51. (1) A mutual bank shall not make investments with, or grant loans or advances or other credit to, any person, to an aggregate amount exceeding an amount representing a prescribed percentage of such mutual bank's capital and reserves, without first having obtained the permission of its board, or of a committee appointed for such purpose by its board (at least one of the members of which committee shall be a non-executive director of the mutual bank), to make such investments or to grant such loans, advances or other credit.

(2) A mutual bank shall in such manner and on such a 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 person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that person, results in the mutual bank being exposed to that person up to an amount exceeding an amount representing a prescribed percentage of its capital and reserves.

(3) For the purposes of this section "person" includes—

- (a) two or more persons, whether natural or juristic persons, the respective exposures to whom constitute a single exposure because of the fact that one of them directly or indirectly exercises control over the other or others; and

- (b) two or more persons, whether natural or juristic persons, between whom there exists no relationship of control as contemplated in paragraph (a), but the respective exposures to whom are to be regarded as a single exposure because of the fact that they are so interconnected that should one of them experience financial difficulties another one or all of them would be likely to experience a lack of liquidity. 5

Failure or inability to comply with prudential requirements

52. (1) If a mutual bank fails to comply with a provision of section 48 or 50, or is unable to comply with any such provision, it shall forthwith in writing report its failure or inability to the Registrar, stating the reasons for such failure or inability. 10
- (2) The Registrar may summarily take action under this Act against a mutual bank referred to in subsection (1) or, if in the circumstances he deems it fit to do so, condone the failure or inability and afford the mutual bank an opportunity, subject to such conditions as the Registrar may determine, to comply with the relevant provision within a specified period. 15
- (3) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a mutual bank in respect of any failure or inability referred to in subsection (1), the Registrar may, subject to any condonation granted under subsection (2), by way of a written notice impose upon that mutual bank, in respect of such failure or inability, a fine— 20
- (a) in the case of any failure or inability to comply with the provisions of section 48, not exceeding one-tenth of one per cent of the amount of the shortfall for each day on which such failure or inability continues; or
- (b) in the case of any failure or inability to comply with the provisions of section 50, not exceeding three per cent of the amount of the shortfall. 25
- (4) A fine imposed under subsection (3) shall be paid to the Registrar within such period as may be specified in the relevant notice, and if the mutual bank concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from that mutual bank the amount of the fine or any portion thereof which he may in the circumstances consider 30 justified.

Returns

53. (1) A mutual bank shall, in order to enable the Registrar to determine—
- (a) whether the mutual bank is complying with the provisions of sections 48 and 50; or 35
- (b) the nature and amounts of the mutual bank's assets, liabilities and contingent liabilities,
- furnish the Registrar, subject to the provisions of subsection (2), with a return on the prescribed form and in respect of the prescribed period.
- (2) A return referred to in subsection (1) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar not later than the fifteenth business day following upon the last business day of the period to which the return relates. 40
- (3) A mutual bank shall, in addition to the returns referred to in subsection (1), in respect of such period, at such times and on such a form as may be prescribed, furnish the Registrar with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business. 45
- (4) A mutual bank shall, within such period as the Registrar may on the application of such mutual bank 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 mutual bank, with a report by the auditor of 50

the mutual bank in which is stated whether or not that return fairly and in conformity with generally accepted accounting practice presents those affairs of the mutual bank to which the return relates, and the Registrar may, if he deems it necessary, require the mutual bank so to furnish him with such a report in respect of any other of those returns furnished during the financial year. 5

(5) A mutual bank shall, at such times as may be prescribed, furnish the Registrar with the further prescribed information regarding its assets, liabilities and contingent liabilities.

CHAPTER VI

Provisions relating to Aspects of the Conduct of the Business of a Mutual Bank 10

Acceptance of deposits and granting of loans, advances or other credit

54. (1) A mutual bank may, subject to the provisions of this Act and such directives as may from time to time be issued by the Registrar—

- (a) accept deposits and grant loans, advances or other credit in the Republic; and 15
- (b) with the written approval of the Registrar accept deposits and grant loans, advances or other credit in any state the territory of which formerly formed part of the Republic.

(2) A mutual bank shall not issue negotiable certificates of deposit otherwise than in accordance with such conditions as may be prescribed. 20

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

55. (1) Subject to subsection (2), a mutual bank that invests money in immovable property or in shares, or that lends or advances money to any of its subsidiaries the main object of which 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— 25

- (a) invested by it in immovable property, taken at the book value thereof;
- (b) invested by it in shares (excluding preference shares that are not convertible into ordinary shares), taken at the price at which they were acquired; and 30
- (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 48, 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 48 does not rank as secondary unimpaired reserve funds: Provided that if immovable property or an undertaking is bought in by a mutual bank 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. 40

(2) The Registrar may in writing exempt a mutual bank from the provisions of subsection (1) on such conditions and to such extent and for such a period as he may determine. 45

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

56. (1) A mutual bank that invests money in debt instruments or preference shares of any of its associates (excluding any such associate that is a subsidiary referred to in section 55(1), a mutual bank or a bank), or that lends or advances 50

money to any such associate, or that 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 debt instruments or preference shares of such associates (excluding debt instruments or preference shares that are convertible into ordinary shares), taken at the price at which they were acquired; 5
 - (b) owing to it by such associates in respect of loans or advances granted by it; and
 - (c) of such guarantees, 10
- does not at any time exceed 10 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 55(1), of the mutual bank exceeds the sum of the amounts referred to in paragraphs (a), (b) and (c) of section 55(1). 15

Shares

57. (1) A mutual bank shall not issue any shares other than—

- (a) shares for an indefinite period, which shall be paid-up shares of which the shareholder shall not be entitled at any time to demand redemption, and which the mutual bank shall, subject to the provisions of this section, be entitled to redeem after six months' notice to the shareholder; 20
- (b) fixed period shares, which shall be—
 - (i) paid-up shares issued for periods of not less than five years; 25
 - (ii) subscription shares calculated to mature after the expiry of a period of not less than three years, and of which the shareholder shall not be entitled to demand redemption and which the mutual bank shall not be entitled to redeem before the period of issue has expired or the share has matured; and 30
- (c) permanent interest-bearing shares. 30

(2) Subject to the provisions of this section, a mutual bank may issue any or all of the classes of shares described in subsection (1).

(3) No mutual bank shall purport to undertake to give more than six months' notice of its intention to redeem any indefinite share, and any undertaking so given shall not bind the mutual bank. 35

(4) A mutual bank shall not give notice of its intention to redeem any indefinite share before the expiration of a period of one year from the date of issue of that share.

(5) Whenever the period of issue of a paid-up fixed period share expires the mutual bank shall redeem that share. 40

(6) (a) Whenever the period after which a subscription share is calculated to mature, expires, the mutual bank shall redeem that share unless the shareholder requests that it be not redeemed.

(b) Where a subscription share is by virtue of the provisions of paragraph (a) not redeemed— 45

- (i) the mutual bank may pay out monthly dividends on that share;
- (ii) the shareholder may upon giving three months' notice to the mutual bank obtain redemption of that share;
- (iii) the mutual bank may upon giving six months' notice to the shareholder redeem that share. 50

(7) Notwithstanding anything contained in this section, but subject to section 58(4), the registered owner of any share, except a permanent interest-bearing share, in a mutual bank may upon giving three months' notice obtain redemption

of that share if the mutual bank then agrees to redeem it: Provided that no such share shall be redeemed before the expiration of a period of 18 months from the date of acquisition of that share by the shareholder: Provided further that the period of 18 months and the requirement in regard to notice shall not apply—

- (a) where the share forms part of the assets in an insolvent or a deceased estate; 5
- (b) where the registered owner has been notified of the intended reduction of the dividend rate in terms of section 58(3) and he applies for redemption during the period of notice mentioned in the said section;
- (c) where the shareholder has been placed under curatorship; 10
- (d) where the shareholder has been placed under judicial management or in liquidation;
- (e) in the case of a share ceded to the mutual bank or another mutual bank or a bank as collateral security for a mortgage loan, if the cessionary of such share requires its redemption; or 15
- (f) in such other cases as the Registrar may approve either generally or in any particular case.

(8) Notwithstanding the provisions of subsection (1)(b), the board of a mutual bank may in its discretion, and in the manner and under the circumstances set forth in the articles of the mutual bank, repay before the date of maturity the aggregate amount of the periodical contributions made in respect of a subscription share and any accrued dividends. 20

(9) No mutual bank shall issue any share with a right to a cumulative dividend except where such right is limited to the seven years immediately succeeding the first registration of the mutual bank and any claim to such accumulated dividends is limited to the available profits of the said seven years. 25

(10) No mutual bank shall issue any paid-up share, except a permanent interest-bearing share, at a price other than its nominal or face value nor shall it redeem any such share at an amount which exceeds the nominal or face value of such share. 30

(11) No mutual bank shall issue any share conferring a preferent claim to the assets of the mutual bank in the case of its winding-up.

(12) No mutual bank shall issue any share which confers upon the holder thereof any voting rights more favourable than those conferred by any of the other shares issued by it. 35

(13) No mutual bank shall grant a loan against the security of any share issued by it at a rate of interest which is not at least one per cent on the amount of such loan higher than the rate of dividend payable on such share.

Dividends

58. (1) A mutual bank shall not pay any dividend or bonus on the shares issued by it otherwise than out of the available profits of the mutual bank. 40

(2) Where shares have been issued on condition that for the seven years immediately succeeding the registration of the mutual bank concerned its members shall be entitled to a cumulative dividend, and the profits available during the said period of seven years are insufficient to extinguish such cumulative dividend, the holders of such shares shall have no claim in respect of any shortfall in the amount so payable. 45

(3) Where a mutual bank has, in terms of its articles, at the time of issue of any indefinite or fixed period share fixed the rate of dividend payable in respect of that share, the mutual bank shall, notwithstanding the terms on which the share has been issued, have the right from time to time to reduce the fixed rate of dividend so payable after giving the shareholder not less than one month's written notice of the intended reduction. 50

(4) Where a mutual bank issued a fixed period share with the specific undertaking that the dividend rate during the full currency of the share will remain unaltered, the provisions of subsection (3) shall not apply: Provided that— 55

- (a) such a share shall not be redeemed by the mutual bank before the expiry of the period of issue except—
 - (i) where the share forms part of the assets in an insolvent or a deceased estate;
 - (ii) where the shareholder has been placed under curatorship or judicial management or in liquidation; 5
 - (iii) in the case of a share that has been ceded to the mutual bank, another mutual bank or a bank as collateral security for a mortgage loan, if the cessionary of such share requires its redemption; or
 - (iv) in such other cases as the Registrar may approve either generally or in any particular case; and 10
- (b) the mutual bank shall not grant a loan against the security of such a share.

Undesirable practices

59. (1) A mutual bank—
- (a) shall not effect any transaction as an undisclosed principal or in any other manner otherwise than in its own name; 15
 - (b) 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 approved in writing that it may be held in the name of another person; or 20
 - (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;
 - (c) shall not show in its annual financial statements contemplated in section 43 or in any return referred to in section 53(1)(b) as an asset any amount representing the cost of organization or extension or the purchase of a business or a loss (including a loss originating from the sale of an asset) or bad debts; 25
 - (d) shall not before provision has been made out of profits for the items referred to in paragraph (c)— 30
 - (i) open any branch or agency or any further branch or agency; or
 - (ii) pay out dividends on its shares;
 - (e) 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 except where the funds to be lent in terms of the money lending transaction are entrusted by the lender to the mutual bank subject to a written contract of agency in which, in addition to any other terms thereof, at least the following matters shall be recorded: 35
 - (i) Confirmation by the lender that the mutual bank acts as his agent;
 - (ii) that the lender assumes, except in so far as he may in law have a right of recovery against the mutual bank, all risks connected with the placing by the mutual bank of the funds entrusted to it by the lender; and 40
 - (iii) that no express or implied guarantee regarding the payment of any amount of money owing by one person to another in pursuance of the relevant money lending transaction is furnished by the mutual bank; 45
 - (f) 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;
 - (g) shall not conclude a repurchase agreement in respect of a fictitious asset or an asset created by means of a simulated transaction; and 50
 - (h) shall not purport to have concluded a repurchase agreement without—

- (i) such agreement being substantiated by a written document signed by the other party thereto; and
- (ii) the details of such agreement being recorded in the accounts of the mutual bank as well as in the accounts, if any, kept by the mutual bank in the name of such other party.

(2) The Registrar may—

- (a) in writing notify a mutual bank that a practice employed by that mutual bank and specified in the notice constitutes an undesirable practice for that mutual bank; or
- (b) by notice in the *Gazette* declare a practice specified in the notice to be an undesirable practice for mutual banks specified in the notice or for all mutual banks,

and a mutual bank that, 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 that constitutes an undesirable practice for it by virtue of such a notice, shall be guilty of an offence.

(3) A mutual bank shall, upon receipt from the Registrar of a written request to that effect, discontinue the publication or issue of any advertisement, brochure, prospectus or similar document, specified in the request, that 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.

Shareholding in insurer

60. Except with the prior written approval of the Registrar, no mutual bank and no associate of a mutual bank shall, either jointly or individually, hold shares in any registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), to the extent to which the nominal value of those shares exceeds 49 per cent of the nominal value of all the issued shares of such insurer.

CHAPTER VII

Conversion of Mutual Banks

Definitions

61. (1) In this Chapter, unless the context otherwise indicates—
- “applicable date”, in relation to a conversion of a mutual bank into a bank, means the date of such conversion or, if any other date is specified in the conversion scheme relating to such conversion as the applicable date for purposes of such conversion, that other date;
 - “conversion into a bank” means a conversion into a public company that is in terms of section 69(1) deemed to be registered as a bank;
 - “conversion scheme” means a scheme regulating the conversion of a mutual bank into a bank and governing the reciprocal rights and obligations of the parties to the conversion, and in particular—
 - (a) specifying the basis, terms and conditions on which the conversion is effected;
 - (b) providing for the issue of shares or all the shares in the public company established by the conversion to a public company (if any) registered in the circumstances mentioned in section 66(1) as a controlling company in respect of the bank; and

- (c) providing, subject to subsections (2) and (3), for an offer, either to persons who immediately before the applicable date are holders of a qualifying interest in the mutual bank or to such persons and to members of the public, to take up shares—
- (i) if no controlling company referred to in paragraph (b) is contemplated, in the public company established by the conversion; or
 - (ii) if such a controlling company is contemplated, in such controlling company or in both such controlling company and the company to be established by the conversion;

“qualifying interest”, in relation to a mutual bank that is converted into a bank, means any share in such a mutual bank issued in terms of section 57, to the extent to which such share immediately before the applicable date is paid up in accordance with the conditions attaching to the paying-up of such share, but excludes any share, other than a permanent interest-bearing share, issued by the mutual bank during the 12 months (or such shorter period as may be determined by the mutual bank with the approval of the Registrar) immediately preceding the applicable date to the extent to which that share has not been paid for out of the proceeds of a share in such mutual bank which has been redeemed during the said period.

(2) Any person who immediately before the applicable date is the holder of a qualifying interest in the mutual bank which is converted into a bank shall, notwithstanding any provision to the contrary, not be entitled to any shares contemplated in paragraph (c)(i) or (ii) of the definition of “conversion scheme” if he—

- (a) is not resident in the Republic; or
- (b) is a juristic person that has not been incorporated in the Republic.

(3) Shares contemplated in paragraph (c)(i) or (ii) of the definition of “conversion scheme” may be offered to members of the public to the extent only to which they are not taken up by persons holding immediately before the applicable date a qualifying interest in the mutual bank concerned.

Conversion of mutual banks into banks

62. (1) A mutual bank that is finally registered as a mutual bank in terms of this Act and that desires to carry on business as a bank may with the approval of the Registrar and under the authority of a special resolution adopted at a special general meeting of members of the mutual bank be converted into such a bank in accordance with the provisions of this Chapter.

(2) A special resolution referred to in subsection (1) may be adopted by a mutual bank notwithstanding the provisions of its articles or the provisions of this Act.

Application for Registrar's approval

63. (1) A mutual bank contemplating to hold a general meeting of members for the purpose of adopting a special resolution referred to in section 62, shall before it convenes such a meeting apply to the Registrar on the prescribed form for his approval contemplated in that section.

(2) An application referred to in subsection (1) shall be accompanied by the following documents in duplicate, namely—

- (a) an exposition of the reasons for the proposed conversion and of the manner in which it is proposed to effect the conversion;
- (b) a proposed conversion scheme;
- (c) a proposed memorandum and articles of association for the public company to be established by the conversion;
- (d) the memorandum and articles of association of any public company (if any) intending to apply for registration as a controlling company in respect of the proposed bank in the circumstances mentioned in section 66(1) or, if such company is yet to be formed, the proposed memorandum and articles of association; and
- (e) a proposed special resolution—
 - (i) authorizing in accordance with the conversion scheme the conversion of the mutual bank into a bank;
 - (ii) approving the provisions of the proposed conversion scheme;

- (iii) adopting the proposed memorandum and articles of association referred to in paragraph (c);
 - (iv) approving, if a controlling company for the bank is contemplated, the memorandum and articles of association or the proposed memorandum and articles of association, as the case may be, referred to in paragraph (d);
 - (v) designating persons to act as the first directors of the proposed bank; and
 - (vi) providing for any such other matters in connection with the conversion as may be regarded necessary.
- (3) A mutual bank that applied in terms of subsection (1) for the Registrar's approval shall furnish such additional particulars in connection with its application as the Registrar may require.

Consideration of application

64. (1) The Registrar shall not grant his approval for the conversion of a mutual bank into a bank if he is of the opinion—
- (a) that any of the documents mentioned in section 63(2) is inconsistent with a provision of the Banks Act, 1990 (Act No. 94 of 1990), or contains a provision that is undesirable;
 - (b) that the basis or conditions on which it is contemplated to offer shares in the company to be established by the conversion or in any proposed controlling company, to persons referred to in paragraph (c) of the definition of "conversion scheme" in section 61, or to such persons and to members of the public, are not reasonable and fair or may otherwise have the effect that a person will acquire an interest in the proposed company or in any proposed controlling company which is inconsistent with a provision of the Banks Act, 1990; or
 - (c) that the application does not comply with a requirement of the Banks Act, 1990.
- (2) (a) For the purposes of considering the basis and conditions on which it is contemplated to offer shares in the proposed company or in any proposed controlling company to persons referred to in paragraph (c) of the definition of "conversion scheme" in section 61, or to such persons and to members of the public, the Registrar may, after consultation with the mutual bank, designate a person to investigate and advise him, independently of the mutual bank, on the reasonableness and fairness of the proposed basis and conditions.
- (b) The costs of an investigation in terms of paragraph (a) shall be paid by the mutual bank.
- (3) The Registrar shall not refuse any application on the ground of subsection (1)(a) or (b) without having afforded the mutual bank a reasonable opportunity to adjust the relevant document in accordance with his requirements.

Special general meeting to authorize conversion

65. (1) As soon as the Registrar has granted approval for the conversion of a mutual bank into a bank, the mutual bank may convene a special general meeting of members in accordance with this Act and its articles for the purpose of adopting the special resolution referred to in section 62.
- (2) The documents laid before any such meeting shall consist of—
- (a) the documents mentioned in section 63(2) or, if the Registrar has refused to grant approval for the conversion unless any of such documents are adjusted in accordance with his requirements, the said documents as so adjusted; and
 - (b) any additional documents that the board of directors of the mutual bank may find necessary.
- (3) If such meeting adopts the proposed special resolution submitted to it by virtue of subsection (2)(a), the Registrar shall, at the request of the mutual bank, issue a certificate to it to the effect that he has granted approval for the proposed conversion.

Registration of controlling company in respect of bank established by conversion

66. (1) A public company intending to acquire control over a bank established by a conversion in terms of this Chapter may, notwithstanding section 43(1) of the Banks Act, 1990, apply in terms of that section for registration as a controlling company in respect of such bank at any time after the special resolution referred to in section 62 authorizing the conversion has been adopted. 5

(2) A company that applied for registration as a controlling company in the circumstances mentioned in subsection (1) shall not be registered as such a controlling company before the bank in respect of which it applied is established.

(3) In addition to any other condition which the Registrar may impose under section 44(1) of the Banks Act, 1990, in respect of a company applying for registration as a controlling company in the circumstances mentioned in subsection (1), he may impose a condition requiring the company— 10

(a) to acquire control over the bank within a specified period after the establishment of the bank; 15

(b) to make an offer, within a specified period, to persons referred to in paragraph (c) of the definition of "conversion scheme" in section 61(1), or to such persons and to members of the public, to take up shares in it in accordance with the relevant conversion scheme.

(4) No registration fee and additional fee referred to in section 63(2) of the Companies Act shall be payable in respect of the registration in terms of the Companies Act of the memorandum and articles of association of a public company formed specifically for the purpose of obtaining registration in terms of this section as a controlling company: Provided that the said fee shall become payable if such a company fails to apply for, or is unable to obtain, registration as such a controlling company. 20 25

Registration of memorandum and articles of association by Registrar of Companies

67. (1) A mutual bank shall be converted into a bank upon registration by the Registrar of Companies in terms of section 63 of the Companies Act, of the memorandum and articles of association of the public company that is established by the conversion. 30

(2) The Registrar of Companies shall, notwithstanding the Companies Act, be competent to register the memorandum and articles of association of a public company established by the conversion of a mutual bank into a bank, but shall not register such a memorandum and articles of association unless the application is accompanied by a certificate issued in terms of section 65(3). 35

(3) For the purposes of the registration of the memorandum and articles of association of any such company in terms of the Companies Act—

(a) the persons referred to in section 63(2)(e)(v) shall, if they accept their appointment as the first directors of the company, sign the memorandum and articles of association as if they were the subscribers of the memorandum and articles of association of such company as contemplated in section 54(2) of the Companies Act; and 40

(b) no registration fee and additional fee referred to in section 63(2) of the Companies Act shall be payable. 45

Notice in Gazette of conversion

68. (1) Within 14 days of any conversion in terms of section 67, the company established by the conversion shall forward two certified copies of its certificate of incorporation and its memorandum and articles of association to the Registrar, and upon receipt of such documents the Registrar shall, against payment of the prescribed registration fee, issue to it a certificate of final registration as a bank. 50

(2) The Registrar shall give notice in the *Gazette* of any conversion in terms of this Chapter.

Effects of conversion

69. (1) The juristic person that existed as a mutual bank before the conversion shall, notwithstanding the conversion, continue to exist as a juristic person, but in the form of a public company deemed to be registered finally as a bank in terms of the Banks Act, 1990, and as from such conversion— 5

- (a) the provisions of the Banks Act, 1990, shall apply to it;
- (b) the provisions of this Act shall cease to apply to it;
- (c) a reference in any document to the former mutual bank shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to the bank; 10
- (d) the persons who immediately before the conversion were directors of the former mutual bank shall vacate their offices as such directors and the persons referred to in section 63(2)(e)(v) shall become the directors of the bank; 15
- (e) the persons who immediately before the conversion were shareholders or members of the former mutual bank shall cease to be such shareholders or members;
- (f) all investments in the form of shares, excluding permanent interest-bearing shares, issued by the former mutual bank and which immediately before the conversion were not yet redeemed shall be deemed to be fixed deposits with the bank; and 20
- (g) all investments in the form of permanent interest-bearing shares issued by the former mutual bank shall be deemed to be debt instruments issued by the bank in terms of paragraphs (i) to (iv), inclusive, of the definition of "secondary share capital" in section 70(1) of the Banks Act, 1990. 25

(2) The conditions and any tax benefit that were immediately before the date of conversion applicable to an investment in the form of shares referred to in subsection (1)(f) shall, notwithstanding the provisions of the said subsection but subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), continue to apply to the investment for a period of 10 years or until it is redeemed, whichever period expires first. 30

(3) A conversion of a mutual bank into a bank shall not affect anything lawfully done by the mutual bank before its conversion. 35

(4) Profits which accrued to a mutual bank prior to its conversion into a bank, and to the extent to which such profits are used for the declaration and payment of a dividend to a controlling company registered in respect of it in terms of section 66, shall for the purposes of paragraph 48 of Schedule 4 to the Companies Act, not be deemed to be pre-acquisition profits. 40

Issue of shares to persons who were members of former mutual bank

70. (1) An offer to persons referred to in paragraph (c) of the definition of "conversion scheme" in section 61 to take up shares in a company established by a conversion in terms of this Chapter or in any company registered or to be registered as a controlling company in respect of any such company, shall be made in writing to each individual person, and any such offer shall be accompanied by a statement issued by the company concerned and containing such particulars in connection with the offer, the conversion, the company's profit and business prospects and general state of affairs and the other affairs of the company required in terms of the Companies Act to be specified in a prospectus, as the Registrar may require. 50

(2) The provisions of the Companies Act with respect to the issue of a prospectus or regulating any other requirements with which an offer of shares is required to comply, shall not apply to any offer of shares referred to in subsection (1). 55

(3) (a) An investment deemed in terms of section 69(1)(f) to be a fixed deposit with a bank, or any portion of such an investment, may, notwithstanding the conditions attached thereto, be made immediately repayable upon a request in writing by the depositor to the bank to apply the proceeds of such investment, or the said portion thereof, towards the payment for shares in the bank, or in any company registered or to be registered as a controlling company in respect of such bank, that may be allocated to the depositor in pursuance of an offer referred to in subsection (1). 5

(b) Any condition or benefit attached to an investment deemed in terms of section 69(1)(f) to be a fixed deposit, shall lapse in respect of such investment to the extent to which such investment was applied towards the payment for shares in accordance with paragraph (a) of this subsection. 10

(4) No stamp duty in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), shall be payable in respect of—

(a) the issue of shares in the public company established by such conversion, to a controlling company registered in respect of it in terms of section 66; 15

(b) the issue of shares in pursuance of any offer referred to in subsection (1): Provided that this paragraph shall not be construed as exempting from stamp duty any issue of shares to a person referred to in subsection (1) where such shares are issued to such person in pursuance of a public offer of shares contemplated in section 61(3); or 20

(c) the registration of the transfer of shares in the public company established by such conversion or in its subsidiary, which shares were sold or otherwise disposed of by that public company to a controlling company registered in respect of it in terms of section 66, if such sale or disposal has been approved by the Registrar. 25

(5) No amount in terms of section 75(3) of the Companies Act shall be payable in respect of an increase of the share capital of a controlling company registered in terms of section 66 to the extent to which such increase of the share capital is necessary to make an offer of shares referred to in subsection (1) of this section: Provided that if fewer shares than the number representing such increase in the share capital are taken up in pursuance of such an offer, the amount referred to above shall be payable on that portion of the increase represented by the shares not taken up, and such amount shall be payable within 30 days from the date on which the share offer closed. 30 35

(6) Shares referred to in subsection (1) shall not be offered, allocated or issued to persons holding a qualifying interest of lesser value than an amount determined in the conversion scheme, but such shares shall, subject to section 61(2), be offered, allocated or issued to a trustee appointed for such persons by the bank with the approval of the Registrar, which trustee shall as soon as may be practicable sell such shares, or the rights thereto, and distribute the net proceeds among those persons. 40

CHAPTER VIII

Amalgamation, Winding-up and Dissolution

Amalgamation and transfer of assets and liabilities

71. (1) Two or more mutual banks may with the written approval of the Registrar amalgamate and become one mutual bank, and a mutual bank may with like approval transfer all or part of its assets and liabilities to another mutual bank or to a bank finally registered as such in terms of the Banks Act, 1990 (Act No. 94 of 1990). 50

(2) The proposed terms and conditions of an amalgamation or transfer in terms of subsection (1) shall be submitted in advance to the Registrar, who shall, subject to paragraphs (a) and (b) of subsection (3), approve the proposal concerned as drafted or with such modifications as he may deem necessary.

(3) No transaction involving the amalgamation of mutual banks or the transfer of assets and liabilities from one mutual bank to another mutual bank or to a bank shall be of any force or effect unless—

- (a) the Registrar is satisfied that such transaction will not be detrimental to the public interest or cause undue hardship to the members of any of the mutual banks concerned or of the mutual bank or bank concerned, as the case may be; 5
 - (b) in the case of an amalgamation of two or more mutual banks or the transfer of assets and liabilities from one mutual bank to another mutual bank, the agreement specifically provides that there shall be no division of the profits or of any of the reserves of the mutual banks concerned among their members, but nothing in this paragraph shall be construed as preventing the making of reasonable provision out of the profits of a mutual bank for compensation to its officers (other than directors, alternate directors or members of local boards) for any resulting loss of office or for payment in recognition of past services rendered by such officers; 10
 - (c) the provisions of the agreement for the contemplated amalgamation or transfer are confirmed by special resolution by each of the mutual banks concerned or by the mutual bank concerned and the bank concerned, as the case may be. 15
- (4) The notice convening a special general meeting for the confirmation of any such amalgamation or transfer shall contain or have attached to it the complete terms and conditions of the relevant agreement. 20
- (5) Notice of the passing of the special resolution concerning such amalgamation or transfer, together with a copy of such resolution and the full terms and conditions of the proposed amalgamation or transfer duly certified by two directors and the secretary of each of the parties concerned, shall be sent by each of the parties affected to the Registrar and shall be registered by him. 25
- (6) The amalgamation or transfer shall take place upon the terms and conditions set forth in such resolution. 30
- (7) Upon registration by the Registrar of the appropriate notices—
- (a) of any amalgamation, the individual mutual banks that were parties to the transaction shall be deemed to be dissolved and the Registrar shall cancel their registration and at the same time and in their stead register the new mutual bank in terms of this Act; 35
 - (b) of any such transfer of all the assets and liabilities of a mutual bank, the mutual bank whose assets and liabilities are subject to transfer shall be deemed to be dissolved and its registration shall be cancelled by the Registrar. 40
- (8) The liquidator of a mutual bank that is being wound up voluntarily or by the court; or the judicial manager of a mutual bank, may transfer all the assets and liabilities of the mutual bank being wound up or under judicial management to another mutual bank or a bank: Provided that subsection (3)(c) and subsection (4) shall not apply to a mutual bank that is being wound up. 45
- (9) Upon the registration by the Registrar of the notice of the amalgamation of two or more mutual banks or of the transfer of the assets and liabilities of any mutual bank to another mutual bank or a bank, all the assets and liabilities of the mutual banks so amalgamated shall become assets and liabilities of the mutual bank registered in their stead, or, as the case may be, all, or, in the case of the transfer of only part of the assets and liabilities of a mutual bank, that part of, the assets and liabilities of the mutual bank transferring assets and liabilities shall become assets and liabilities of the mutual bank or the bank to which they are transferred. 50
- (10) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or any immovable property which is transferred in accordance with subsection (9) shall, upon production to him by the mutual bank or bank concerned of such bond or of the title deed of such immovable property and a 55

certificate by the Registrar of the registration by him of the notice of amalgamation or transfer, as the case may be, make such endorsements upon such bond or title deed and such entries in his registers as are necessary by reason of such amalgamation or transfer.

(11) The amalgamation of mutual banks or transfer of assets and liabilities of a mutual bank under the provisions of this section shall not affect the rights of any creditor of any of the mutual banks concerned or of the mutual bank or bank concerned. 5

(12) In the case of a transfer of assets and liabilities of a mutual bank to a bank, provision may, subject to subsection (14), be made in the relevant transfer agreement for compensation to members of the mutual bank, taking into account the unimpaired reserves of the mutual bank, by way of either a cash payment or a right to take up shares in the transferee institution or its controlling company, and provision may be so made for compensation to officers of the mutual bank *mutatis mutandis* in accordance with subsection (3)(b). 10 15

(13) The basis on which and conditions subject to which compensation contemplated in subsection (12) to members shall take place, and also the amount of the unimpaired reserves of the mutual bank on the date of the latest return submitted to the Registrar in terms of section 53(1), and, in the case of cash payments, also the estimated total amount of such payments, shall be furnished in the relevant agreement for the transfer. 20

(14) A resolution to offer compensation referred to in subsection (12) to members, must be approved by both parties to the agreement for the transfer of assets and liabilities, by separate special resolution, and shall provide that—

- (a) only a member who on the day immediately prior to the date determined for the transfer of assets and liabilities held shares in the transferor mutual bank and which shares had been issued to such a member at least 12 months prior to that date, or which had been paid for out of the proceeds of shares redeemed by that mutual bank during the said 12 months, shall qualify for such compensation; 25 30
- (b) such a member shall nevertheless not be entitled to the compensation if he—
 - (i) is not resident in the Republic; or
 - (ii) is a body corporate that is not incorporated in the Republic; and
- (c) such a member who is the holder of subscription shares in the transferor mutual bank shall qualify for such compensation only to the extent to which such shares are paid up on the day referred to in paragraph (a). 35

(15) Upon the transfer of assets and liabilities from a mutual bank to a bank, all investments in the form of shares, excluding permanent interest-bearing shares, issued by the mutual bank and which prior to the date of the transfer of its assets and liabilities have not yet been redeemed, shall be deemed to be fixed deposits with the transferee bank. 40

(16) The conditions and any tax benefit which immediately prior to the date of transfer of assets and liabilities were applicable in respect of an investment in the form of shares referred to in subsection (15) shall, notwithstanding the provisions of that subsection but subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), continue to apply to the investment for a period of 10 years or until it is redeemed, whichever period expires first. 45

Transfer of part of a mutual bank's business

72. (1) A mutual bank may, with the written consent of the Registrar and on the conditions determined by him, transfer that part of its business which is conducted in a particular area and which constitutes a minor portion of its total business, to another mutual bank or to any other institution approved for the purpose by the Minister. 50

(2) When a mutual bank proposes to transfer part of its business in terms of subsection (1), it shall furnish to the Registrar a return setting forth to the satisfaction of the Registrar all its assets and liabilities and, separately, those assets 55

and liabilities which it proposes to transfer, and also a copy of the agreement setting out the proposed terms and conditions of the transfer.

(3) The provisions of subsections (2), (3), (4), (5), (6), (10) and (11) of section 71 shall *mutatis mutandis* apply in relation to the assets and liabilities transferred in terms of subsection (1) of this section.

(4) For the purposes of the transfer of assets and liabilities in terms of this section a mutual bank which takes transfer of part of the assets and liabilities of another mutual bank may issue debt instruments on the conditions approved by the Registrar, and the last-mentioned mutual bank may invest in such debt instruments and in shares of the first-mentioned mutual bank.

(5) The Registrar shall not give his consent to the transfer of part of the assets and liabilities of a mutual bank unless—

(a) he is satisfied, having regard to all the circumstances, including any statutory requirements in regard to liquid assets and minimum capital and reserves, that a reasonable and fair division of the assets, reserves and other liabilities of the mutual bank concerned has been made with regard to the transfer of the relevant part of its business; and

(b) the agreement referred to in subsection (2) provides that the mutual bank transferring part of its assets and liabilities shall from time to time invest in stock, debt instruments or shares issued by the transferee mutual bank or institution, as the case may be, in order that such mutual bank or institution may repay deposits which the first-mentioned mutual bank transferred to it and which are withdrawn on the first maturity date subsequent to the date of the said transfer of assets and liabilities and may redeem, during such period as the Registrar may approve and on the conditions set out in the said agreement, any shares in it so transferred.

(6) Upon the registration by the Registrar of the notice of the transfer of part of the assets and liabilities of any mutual bank to another mutual bank or other institution, the assets and liabilities transferred shall become assets and liabilities of the transferee mutual bank or institution, as the case may be.

Judicial management

73. (1) Subject to the provisions of this Act, the provisions relating to the judicial management of companies contained in the Companies Act, shall *mutatis mutandis* apply to a mutual bank.

(2) A judicial management order may be granted in respect of a mutual bank by the court on the application of the Registrar or of the mutual bank.

Voluntary winding-up of mutual bank

74. (1) A mutual bank may be wound up voluntarily if the members so decide by special resolution.

(2) Subject to the provisions of this section, the provisions of the Companies Act relating to the voluntary winding-up of companies shall *mutatis mutandis* apply to any mutual bank.

(3) In the application by virtue of the provisions of subsection (2), in relation to the winding-up of a mutual bank, of section 357 of the Companies Act, subsection (3) of that section shall be deemed to have been amended to read as follows:

“(3) A copy of every special resolution for the voluntary winding-up of any mutual bank, passed under section 349, and of every order of court amending or setting aside the proceedings in relation to the winding-up shall, within 14 days after the registration of the resolution in terms of section 200 or the making of the order, be transmitted by that mutual bank to the officers and registrars referred to in paragraphs (a), (b) and (c) of subsection (1), as well as to the Registrar of Banks.”.

(4) During the voluntary winding-up of any mutual bank the liquidator shall furnish the Registrar with every return or statement that the mutual bank concerned would have been obliged to furnish to the Registrar in terms of this Act, were such mutual bank not being wound up.

(5) The liquidator of the mutual bank shall forward to the Registrar a copy of every notice or account that, in terms of the provisions of the Companies Act as applied by subsection (2), he is required to furnish to the Master of the Supreme Court. 5

Winding-up by court

75. (1) Subject to the provisions of this section, the provisions of the Companies Act relating to the winding-up of companies by the court shall *mutatis mutandis* apply to every mutual bank. 10

(2) An order for the winding-up of a mutual bank may be granted by the court on the application of any creditor or of the Registrar or of the judicial manager of the mutual bank: Provided that the Registrar shall have the right to oppose any such application made by any other person. 15

(3) The court may give to the liquidator any directions which to it may appear to be suitable in the circumstances, due regard being had to the interests of members and creditors of the mutual bank.

(4) An order for the winding-up of a mutual bank by the court shall not be made unless the court is satisfied that it is not desirable that the mutual bank be placed under judicial management. 20

(5) The provisions of subsections (3), (4) and (5) of section 74 shall *mutatis mutandis* apply in the case of the winding-up of a mutual bank by the court.

(6) In the application, by virtue of the provisions of subsection (1), in relation to the winding-up of a mutual bank, of section 346 of the Companies Act, subsection (4) of that section shall be deemed to have been amended to read as follows: 25

“(4) (a) Before an application for the winding-up of a mutual bank 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 Banks and with the Master. 30

(b) The Registrar of Banks 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 mutual bank.”. 35

Appointment of judicial manager and liquidator

76. Notwithstanding the provisions of the Companies Act, as applied by sections 73, 74 and 75 of this Act, no person other than a person recommended by the Registrar shall be appointed by the Master of the Supreme Court as judicial manager, provisional judicial manager, liquidator or provisional liquidator of a mutual bank. 40

Dissolution of mutual bank

77. (1) When the affairs of a mutual bank have been completely wound up as contemplated in section 419(1) of the Companies Act, as applied by sections 74 and 75 of this Act, the responsible Master of the Supreme Court shall transmit to the Registrar a certificate to that effect and the Registrar shall upon receipt of such certificate cancel the provisional or final registration, as the case may be, of the mutual bank concerned. 45

(2) A mutual bank referred to in subsection (1) shall be dissolved with effect from the date of the cancellation, in terms of subsection (1), of its registration. 50

(4) The applicants shall give security for the costs of the proposed investigation before the inspector is appointed.

(5) All expenses of and incidental to the investigation shall be recovered by the Registrar from the applicants or from the mutual bank or from the members or officers or former members or officers of the mutual bank, in such proportions as the Registrar may direct. 5

(6) An inspector appointed under this section may require the production of all or any of the books, accounts, securities and documents of the mutual bank, and may examine on oath or affirmation any person who is or formerly was an officer, auditor, member or agent in relation to its business and may administer an oath or accept an affirmation accordingly. 10

(7) The court may, whenever application is made to it for the winding-up of a mutual bank or for the placing of a mutual bank under judicial management, direct the Registrar to exercise the powers conferred upon him by this section.

(8) An inspector appointed under this section shall report to the Registrar and the Registrar shall transmit copies of the report to the applicants (if any) and to the mutual bank. 15

Investigation by inspector appointed by mutual bank

83. (1) The members of a mutual bank may by special resolution appoint an inspector to investigate the affairs of the mutual bank. 20

(2) The inspector so appointed shall have the same powers and be subject to the same duties as an inspector appointed under section 82 and shall report in such manner and to such persons as the mutual bank has by its resolution directed and shall send a copy of the report to the Registrar.

Information to be furnished to inspectors

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84. (1) Any person who is or formerly was an officer, auditor, member or agent of a mutual bank whose affairs are being investigated under section 82 or 83 shall produce to the inspector all the securities, accounts, books and documents in his custody and give all information relating to the mutual bank that may be available to him and that the inspector may require. 30

(2) Any such person who is or formerly was an officer, auditor, member or agent of the mutual bank and who refuses to be sworn or to make an affirmation or to produce any such securities, accounts, books or documents or to answer any question put to him by such inspector relating to the affairs of the mutual bank, shall, whether or not the answer may tend to incriminate him, be guilty of an offence. 35

(3) Any person who, having been sworn by or made an affirmation to any such inspector, knowingly makes any false statement in relation to any matter which is the subject of the investigation, shall be guilty of an offence and liable on conviction to the penalties applicable in respect of the crime of perjury. 40

Application for shares or for leave to make deposits

85. (1) No person shall be permitted to become a member of or a depositor with a mutual bank unless he has signed a form applying for shares in the mutual bank or applying to be allowed to make deposits with the mutual bank, as the case may be. 45

(2) Every person signing any such form shall upon request be furnished by the mutual bank with a copy thereof.

(3) Every such form shall have printed or written thereon the whole of section 78.

Certification of returns and other documents

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86. Any return or other document to be furnished to the Registrar by a mutual bank in terms of a requirement of this Act, shall be certified as correct by the chief

executive officer and, in the case of such a return, also by the chief accounting officer of the mutual bank and be endorsed by such chief executive officer with the date on which it is so certified.

Inspection, copies and keeping of documents

87. (1) Any person may upon payment of the prescribed fee— 5

(a) inspect any document specified in subsection (2) and kept by the Registrar in terms of this Act;

(b) obtain a certificate from the Registrar as to the contents or any part of the contents of any such document; or

(c) obtain a copy of or extract from any such document. 10

(2) The documents referred to in subsection (1) are—

(a) certificates of provisional or final registration or of the registration of an alteration of the articles or of a change of name of mutual banks;

(b) articles of mutual banks;

(c) copies of notices, reports, returns, statements or minutes lodged with the Registrar in terms of section 43, 44 or 53, excluding any return or statement so lodged by means or under cover of a prescribed form that, in terms of the regulation prescribing it, is to be treated as confidential and not available for inspection by the public. 15

(3) The Registrar shall keep the documents specified in paragraph (c) of subsection (2) for a period of at least 10 years: Provided that the Registrar shall not be required to keep the said documents which relate to a mutual bank the registration of which has lapsed or been cancelled, for a period longer than five years as from the date of termination of such registration. 20

(4) If the Registrar is of the opinion that a person requires an inspection or any certificate, copy or extract referred to in subsection (1) to promote any public interest, he may exempt that person from the obligation to pay the prescribed fee in respect of such inspection, certificate, copy or extract. 25

Minors and married women

88. (1) Notwithstanding anything to the contrary contained in any law or the common law, and unless otherwise provided by the articles of a mutual bank, a minor over the age of 16 years or a married woman, whether or not subject to the marital power, may without the consent or assistance of his guardian or her husband, as the case may be, execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with his or her share in or deposit with the mutual bank as he or she thinks fit, and shall enjoy all the privileges (except that a minor shall not hold office) and be liable to all the obligations attaching to members or depositors. 30 35

(2) Save with her written consent, the husband of a married woman who has become a member of or depositor with a mutual bank in terms of subsection (1), shall not be entitled to demand or receive from the mutual bank particulars concerning the shares she holds in or deposits she has with that mutual bank. 40

Limitation of liability

89. No liability shall attach to the South African Reserve Bank, or, either in his official or personal capacity, any member of the board of directors of the said Bank, the Registrar or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Registrar or such other officer or employee in the *bona fide* performance of any function or duty under this Act. 45

Furnishing of information by Registrar

90. Notwithstanding the provisions of section 33(1) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar may furnish information acquired by him as contemplated in that section to any person charged with the performance of a function under any law, provided the Registrar is satisfied that possession of such information by that person is essential for the proper performance of such function by that person. 5

Regulations

91. (1) The Minister may make regulations—

- (a) as to any matter which is required or permitted to be prescribed by regulation under this Act; 10
- (b) providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a mutual bank in the performance of his functions as such a director;
- (c) prescribing matters, in addition to those contemplated in any other provision of this Act, in respect of which fees shall be payable, and the fee payable in respect of each such matter; 15
- (d) prescribing the manner in which any payment in terms of this Act shall be made to the Registrar;
- (e) prescribing such further returns as the Minister may deem expedient, in addition to those contemplated in any other provision of this Act, to be furnished by mutual banks to the Registrar; 20
- (f) prescribing that the financial statements of a mutual bank shall be prepared in conformity with generally accepted accounting practice;
- (g) prescribing the amount of the fee payable in respect of a licence referred to in section 31 or the basis on which such amount shall be calculated, the period within which such fee shall be paid and a fine in respect of late payment of such a fee; 25
- (h) prescribing the basis on which any movable or immovable assets shall for the purposes of this Act be valued; or 30
- (i) prescribing, generally, any matter, whether or not connected with any matter specified in paragraphs (a) to (h), inclusive, which he may deem it necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved.

(2) A person who is obliged in terms of any provision of this Act to render a return or statement in a prescribed form, shall be deemed not to have rendered that return or statement unless he has set forth therein all the particulars for which provision is made in the prescribed form. 35

(3) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine, or imprisonment for a period not exceeding six months. 40

Offences and penalties

92. (1) Any person who—

- (a) fails to comply with a directive under section 5(1) or 54(1);
- (b) contravenes or fails to comply with a provision of section 20(7), 31, 40(2), 44(8), 48(2), 50(1) or (3), 51, 53, 54(2), 55(1), 56(1), 58(1), 59(1) or (3) or 60; or 45
- (c) in any return, statement, questionnaire or other document (other than a document in or in connection with an application referred to in section 18) under this Act furnishes information or makes a statement that to the knowledge of such person is untrue or misleading in any material respect, 50

shall be guilty of an offence.

(2) A director or employee of a mutual bank, or any juristic person in which such director or employee has a direct interest, that—

(a) accepts from any person any benefit for or in connection with any advance granted by that mutual bank; or

(b) otherwise than with the written consent of the Registrar or at a duly advertised public auction purchases any immovable property owned by or mortgaged to that mutual bank and which is sold by or at the instance of the mutual bank concerned or is sold at a judicial sale at the instance of any other person,

shall be guilty of an offence.

(3) A mutual bank that, while a shortfall referred to in section 52(3) exists in respect of its business, pays any dividends, shall be guilty of an offence.

(4) Any person convicted of an offence in terms of—

(a) section 9(2) or 20(4), shall be liable to a fine, or to imprisonment for a period not exceeding five years; or

(b) section 14(6), 18, 20(3) or (6), 29(4)(a), 45(22), 59(2) or 84(2) or subsection (1), (2) or (3) of this section, shall be liable to a fine, or to imprisonment for a period not exceeding six months.

(5) Any person who accepts any benefit in contravention of the provisions of subsection (2)(a), shall pay to the mutual bank 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 Act within the period determined by or under this Act or, if that period has been extended by the Registrar under section 6(2)(a), within the extended period, the Registrar may impose upon him by way of a notice in writing a fine not exceeding R100 for every day during which such failure continues.

(7) A fine imposed under subsection (6) shall be paid to the Registrar within such period as may be specified in the notice, and if the person concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified.

Review of Act

93. The standing committee appointed under section 92 of the Banks Act, 1990 (Act No. 94 of 1990), shall have the same powers in respect of recommendations with regard to amendments to this Act as the powers conferred upon that committee by subsection (3) of the said section 92 in respect of recommendations with regard to amendments to the Banks Act, 1990.

Interpretation of certain references in existing laws

94. A reference in any law in force immediately prior to the commencement of this Act to a mutual building society as defined in section 1 of, or registered under, the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), shall, in so far as it is a reference to a permanent mutual building society and unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a mutual bank registered as such in terms of this Act: Provided that any such reference in section 10(1)(i)(xii)(aa), (xiiA) or (xiii)(aa) or 19(5A) of the Income Tax Act, 1962 (Act No. 58 of 1962), to a mutual building society shall, in so far as it is a reference to a permanent mutual building society, be so construed as a reference to a mutual bank that, immediately prior to its registration as a mutual bank in terms of section 30, was a permanent mutual building society registered as such in terms of the Mutual Building Societies Act, 1965.

Repeal of laws, and savings

95. (1) Subject to subsections (2), (3) and (4), the laws specified in the Schedule

are, except in so far as they relate to terminating mutual building societies, hereby repealed to the extent set out in the third column of the Schedule.

(2) Notwithstanding subsection (1), the provisions of Chapter IVA of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), as those provisions existed immediately prior to the repeal thereof by subsection (1), shall be applicable to the issue of permanent interest-bearing shares by an institution reregistered as a mutual bank in terms of section 30. 5

(3) For the purposes of subsection (2), any reference in any of the provisions referred to in subsection (2) to a permanent society shall be deemed to be a reference to a mutual bank referred to in subsection (2). 10

(4) 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 have been made, issued, laid down or done under a provision of this Act, shall be deemed to have been made, issued, laid down or done under the last-mentioned provision. 15

Short title and commencement

96. This Act shall be called the Mutual Banks Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule**LAWS REPEALED**

(Except in so far as the provisions thereof relate to
terminating mutual building societies)

No. and year of law	Short title	Extent of repeal
Act No. 24 of 1965	Mutual Building Societies Act, 1965	The whole
Act No. 99 of 1967	Financial Institutions Amendment Act, 1967	Sections 3 and 4
Act No. 64 of 1968	Building Societies Amendment Act, 1968	The whole
Act No. 91 of 1969	Building Societies Amendment Act, 1969	The whole
Act No. 23 of 1970	Financial Institutions Amendment Act, 1970	Sections 7 to 10, inclusive
Act No. 91 of 1972	Financial Institutions Amendment Act, 1972	Sections 18 and 19
Act No. 67 of 1973	Financial Institutions Amendment Act, 1973	Sections 5 to 13, inclusive
Act No. 101 of 1976	Financial Institutions Amendment Act, 1976	Sections 54 to 56, inclusive
Act No. 94 of 1977	Financial Institutions Amendment Act, 1977	Sections 22 and 23
Act No. 80 of 1978	Financial Institutions Amendment Act, 1978	Sections 22 to 31, inclusive
Act No. 103 of 1979	Financial Institutions Amendment Act, 1979	Sections 32 and 33
Act No. 99 of 1980	Financial Institutions Amendment Act, 1980	Sections 50 to 55, inclusive
Act No. 36 of 1981	Financial Institutions Amendment Act, 1981	Sections 26 to 31, inclusive
Act No. 82 of 1982	Financial Institutions Amendment Act, 1982	Sections 18 and 19
Act No. 86 of 1984	Financial Institutions Amendment Act, 1984	Sections 34 to 37, inclusive
Act No. 106 of 1985	Financial Institutions Amendment Act, 1985	Sections 37 to 41, inclusive
Act No. 81 of 1986	Mutual Building Societies Amendment Act, 1986	The whole
Act No. 6 of 1987	Financial Institutions Amendment Act, 1987	Sections 8 and 9
Act No. 96 of 1988	South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988	Sections 17 to 31, inclusive
Act No. 13 of 1989	Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1989	Sections 7 to 10, inclusive
Act No. 96 of 1990	Mutual Building Societies Amendment Act, 1990	The whole
Act No. 6 of 1993	Mutual Building Societies Amendment Act, 1993	The whole