**National Treasury**

## INVITATION FOR PUBLIC COMMENT

## DRAFT DEDICATED BANKS BILL, 2004

The Minister of Finance has released the draft Dedicated Banks Bill for public comment.

The draft Bill aims to improve access to basic banking services for low income and historical disadvantaged communities. The Bill creates the opportunity for companies such as, amongst others, large retail outlets, cellular phone companies; the Post Bank; and existing banks to expand basic banking services to these communities. Companies may provide these services by becoming Savings Banks or Savings and Loans Banks (called dedicated banks in the draft Bill) by lowering the existing requirements provided for in the Banks Act No. 94 of 1990.

The Bill is available on National Treasury's website www.treasury.gov.za.

Written submissions on the draft Bill must be submitted by no later than the close of business on 17 January 2005 via e-mail, post or fax to -

E-Mail: DedicatedBanksBill@treasury.gov.za
Fax No: (012) 325 1048
Post: Dedicated Banks Bill
Director: Banking Development
Office 2057
Private Bag X115
PRETORIA
0001

All submissions received will be regarded as being on public record. An acknowledgement of receipt will be sent in respect of electronic submissions received.

Queries may be directed to Mr. Nkosana Mashiya at (012) 315 5825.

**MEMORANDUM ON THE OBJECTS OF THE DEDICATED BANKS BILL, 2004**

In the Financial Sector Summit held in August 2002, the constituencies of the National Economic and Development Labour Council (Nedlac) agreed on broad the principles on the reform of the South African financial sector. One of the elements of the agreement signed by the principals of the Nedlac constituencies in the said Summit was the need to "Ensure Access to Basic Financial Services".

These agreements triggered debates and discussions within the Policy Board for Financial Services and Regulation ("the Policy Board") and within the Standing Committee for the Revision of the Banks Act ("the Standing Committee") on ways of implementing the Nedlac agreements. Sub-committees were consequently set-up within the Policy Board and the Standing Committee, which respectively produced a policy paper on core and narrow banks and a Dedicated Banks Bill.

The object of the Dedicated Banks Bill is to make banking services available in areas where or to consumers to whom such services have up to the present not been readily available.

The promulgation of this Bill will create an enabling environment for companies interested in entering the banking system as Savings and Savings and Loans Banks (hereinafter referred to as "Dedicated Banks") by lowering the entry requirements as currently prescribed in the Banks Act, (94 of 1990). The licensing of interested companies as Savings and Savings and Loans banks and their consequent provision of financial services will assist the banking industry and the nation with improving access to financial services to a broader market.

In order to create an enabling environment for the Dedicated Banks to operate profitably yet sustainably, the following provisions are proposed:

1. **CHAPTER I: INTERPRETATION OF ACT, Clause 1: Definitions**

   The following clauses explain meanings of the terms used in the Bill and are mainly based on and derided from the Banks Act. Clauses 1 and all its sub-clauses, Clauses 2 and all its sub–clauses and clause 3.

2. **CHAPTER II: OBJECT OF THIS ACT AND NATURE OF DEDICATED BANKS, clauses defining the objects of this Act**

   Given the limited reach of the banking industry in providing financial services to the wider communities in South Africa, this clause (clause 2 (1) seeks to define the objects of this Act, which is to increase widening and deepening of the financial services provided by the banking industry to the wider communities.

   Clause 2 (2) explains that this object will be achieved through creating the medium of banks that, in view of the prescribed nature of the business that such banks are permitted to conduct, are called dedicated banks. The dedicated banks (clause 2(2)), comprise the savings banks and the savings and loans banks, both taking deposits and providing payment services. In contrast to the savings bank, and in addition to providing savings deposit accounts services, the savings and loans bank may also open an account in the name of a depositor from which the depositor may withdraw or pay money by cheque, bill or debit order; open a money-market deposit account in the name of a depositor; provide trust or custody services to clients and grant

secured loans to individuals and small and medium-sized enterprises, provided that an amount equal to 15 per cent of the amount of such loan shall be deposited with the savings and loans bank by the borrower; and the amount of any loan granted in terms of this paragraph shall not exceed 85 per cent of the value of the security furnished in respect of such loan by the borrower.

A savings and loans bank may invest money deposited with it and constituting a liability of such bank with a maturity not exceeding three months, only in securities referred to in clause 3(2) with, as near as possible, a corresponding maturity; and exceeding three months, in loans not exceeding, per individual loan, a prescribed amount, to other borrowers from the public sector or borrowers from the private sector.

## 3. CHAPTER III: POWERS OF THE REGISTRAR

This chapter, and all its constituent clauses explain the functions; duties and powers assigned to the Registrar, such as the powers of inspection, powers of the Registrar to require dedicated banks to furnish to him or her information he mo so require for regulatory purposes and powers of the Registrar to review certain periods. All these clauses are based on, and are derived from the Banks Act.

Clause 10.(1) indicates that 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 fees apply for a review of that decision by the board of review established by section 9(2) of the Banks Act.

## 4. CHAPTER IV: AUTHORIZATION TO ESTABLISH, AND REGISTRATION AND CANCELLATION OF REGISTRATION OF DEDICATED BANKS

Any person that wishes to conduct the business of a dedicated bank is required to obtain a banking licence to do so, in terms of clause 12 of Chaper IV. Clause 13 of this chapter provides a detailed process and conditions by which an application is to be made. This procedure is similar as that required of the banks in the Bank Act. Clause 14 details conditions under which the Registrar may grant or refuse an application for the banking license. It also spells out conditions under which the Registrar can revoke the banking license. All these conditions are based on and derived from the Banks Act.

The rest of the clauses are administrative and in short address the following matters:

Clause 15: **Revocation of authorization.** This clause empowers the Registrar to revoke the authorization granted for the establishment of dedicated bank if such dedicated bank fails to meet certain prescribed conditions or has performed certain prescribed acts which the Registrar may not be satisfied that with, such as false or misleading information furnished by in the application by the said dedicated bank for such authorization or success has not been achieved within a period of twelve months as from the date of the granting of the said authorization

Clause 16: **Formation of certain companies prohibited except with approval of Registrar.** This clause prohibits any other company established in terms of the Companies Act to conduct the business of a bank without the of approval the Registrar.

Clause 18: **Granting or refusal of application for registration.** This clause specifies conditions under which the Registrar may grant or refuse an application for a bank license. For the Registrar to grant approval, these conditions include the fact that the business the applicant proposes to conduct is that of a dedicated bank of the class to which the application relates and that the applicant does not propose to adopt undesirable methods of conducting business. For the Registrar to refuse an application, the conditions include the fact that that the institution concerned, when registered as a dedicated 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; that an interest which any person has in the institution concerned is inconsistent with a provision of this Act and that the interests of potential depositors with the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason.

Clause 20: **Use of name of dedicated bank.** This clause prohibits persons to refer to themselves as "Dedicated Bank", other than those registered in terms of this Act. This clause also compels those entities registered as Dedicated Banks in terms of this Act to disclose to those they interact with that they are Dedicated Banks.

Clause 31: **Repayment of deposits upon lapse of registration.** This clause empowers the Registrar to order that institution to repay all money due by it to members of the public in respect of deposits accepted by it while registered as a dedicated bank, including any interest or any other amounts owing by it in respect of such money; and to change its name and its memorandum of association and articles of association within the period and in the manner required by the Registrar. The Registrar can order such repayments whenever an institution, which is registered as a dedicated bank ceases to be registered as such, regardless of whether the

cancellation was due to the Registrar's orders, or the courts orders or by any other means.

## 6. CHAPTER V: SHAREHOLDING IN, AND REGISTRATION OF CONTROLLING COMPANIES IN RESPECT OF, DEDICATED BANKS

Clause 33: **Permission for acquisition of shares in dedicated bank or controlling company.** This clause prohibits a person (and his associates) to acquire more than 15 per cent of the total nominal shares of a dedicated bank without the Registrar's approval. Any one wishing to obtain more than 15 per cent of the total nominal shares of a dedicated bank shall apply to the Registrar, who grant, or refuse to grant approval on the basis of, amongst other factors, the interests of the public and the interests of the depositors.

Clause 38: **Restriction of right to control bank.** This clause prescribes that any person other than a dedicated bank or a bank wishing to exercise control over a dedicated bank, shall be a public company and be registered as a controlling company in respect of such dedicated bank.

## 7. CHAPTER VI: FUNCTIONING OF DEDICATED BANKS AND CONTROLLING COMPANIES WITH REFERENCE TO COMPANIES ACT

Clause 50: **Compromises, amalgamations, arrangements and affected transactions.** The provisions of section 54 of the Banks Act shall *mutatis mutandis* apply to a dedicated bank but only in so far as those provisions can be so applied having regard to the nature of the business a dedicated bank is permitted to conduct in terms of the provisions of section 3 of this Act in the case of a savings bank, or section

4 of this Act in the case of a savings and loans bank. This implies that a bank wishing to transfer any of its assets and/or liabilities shall get the approval of the Minister prior for that transaction to have legal effect.

Clause 56: **Appointment of auditor.** This clause prescribes that the appointment of an auditor of a dedicated bank or its controlling company shall be approved by the Registrar. It further prescribes that a dedicated bank of which the total assets as at the close of its last preceding financial year exceeded an amount as prescribed shall appoint not less than two auditors who are independent of each other.

## 8. CHAPTER VII: PRUDENTIAL REQUIREMENTS

Clause 66: **Minimum share capital and unimpaired reserve funds.** In terms of this clause, a dedicated bank is expected to maintain a minimum capital such that the sum of its primary and secondary capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time exceed an amount prescribed by regulation, which is to be matched by assets and other risk exposures in the conduct of its business.

Clause 67: **Minimum liquid assets for savings and loans banks.** This clause prescribes that the Minimum liquid assets for savings and loans banks shall prescribed by regulation, but shall not be less than 40 per cent, or such other percentage as may be prescribed from time to time, of the savings and loans bank's total liabilities.

## 9. CHAPTER IX: CONVERSION OF DEDICATED BANKS

**Clause 76: Conversion of savings bank into savings and loans bank or of savings and loans bank into bank.** This Clause empowers

the Registrar with approval powers in respect of the conversion of a Savings bank to a Savings and Loans bank, and not the other way round. This is because a good Svings bank can improve into a Savings and Loans bank. The reversal of this trend will imply a failing bank, which should not be allowed in the banking system as any kind of a bank.

## 10. CONSULTATION AND PARLIAMENTARY PROCESS

### 10.1 Consultation

The provisions of the Bill has been debated by the Standing Committee for the Revision of the Banks Act. Consultation with various stakeholders was undertaken on various of the proposals. The stakeholders include:

- The South African Reserve Bank;
- The Banking Council;
- Individual banks;
- Auditing firms; and
- The Financial Sector Task-Team on NEDLAC
-

### 10.2 Parliamentary process

The Bill should be dealt with in terms of the provisions of section 76 of the Constitution of the Republic of South Africa (Act 108 of 1996).

_____

**BILL**

**To provide for the regulation and supervision of the activities of certain public companies registered as Dedicated Banks; and to provide for matters connected therewith**

---

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

## CHAPTER 1

## INTERPRETATION OF ACT

### Definitions

1. (1) In this Act, unless the context otherwise indicates –

"**bank**" means a bank or a branch as defined in section 1 of the Banks Act and includes a mutual bank ;

"**Banks Act**" means the Banks Act, 1990 (Act No. 94 of 1990);

"**banking institution**" means a bank or a dedicated bank;

"**board of review**" means the board of review established by section 9(2) of the Banks Act;

"**chief executive officer**", in relation to a dedicated bank, means a person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the board of directors of the dedicated bank for the conduct of the business of the dedicated bank;

"**close relative**", in relation to any person, means such person's spouse, child, stepchild, parent or stepparent, or the spouse of any of the afore-mentioned close relatives;

"**Companies Act**" means the Companies Act, 1973 (Act No. 61 of 1973);

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

"**controlling company**" means a public company registered in terms of this Act as a controlling company in respect of a dedicated bank;

"**dedicated bank**" means a public company registered as a dedicated bank in terms of this Act, and any reference in this Act to a dedicated bank shall be construed as a generic reference to both savings banks and savings and loans banks as defined in this subsection;

"**deposit**" means a deposit as defined in section 1(1) of the Banks Act,

"**domestic shareholder**", in relation to a dedicated bank, means a shareholder of the dedicated bank -

(a) who is resident in the Republic;

(b) which is a company controlled, *mutatis mutandis* as contemplated in paragraph (a), (b) or (c) of the definition of 'controlling company' in section 1 of the Companies Act, by a person or persons who is or are resident in

the Republic or, in the case of a juristic person or persons, was or were formed, established or incorporated by or under a law of the Republic;

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

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

"**employee in charge of a risk management function**", in relation to a dedicated bank, means that employee of the dedicated bank who is ultimately responsible for the management of one or more of the following types of risk to which the dedicated bank is exposed, namely-

(a) solvency risk;
(b) liquidity risk;
(c) credit risk;
(d) currency risk;
(e) market risk (position risk);
(f) interest rate risk;
(g) counterparty risk;
(h) technological risk;
(i) operational risk;
(j) compliance risk; or
(k) any other risk regarded as material by that dedicated bank;

"**executive officer**", in relation to any institution –

(a) that is not a dedicated bank, includes any manager, the compliance officer, the secretary of the company and any director who is also an employee of such an institution;

(b) that is a dedicated bank, includes any employee who is a director of the dedicated bank or who is in charge of a risk management function of the dedicated bank, the compliance officer, the secretary of the dedicated bank and any manager of the dedicated bank who is responsible, or reports, directly to the chief executive officer of the dedicated bank;

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

"**foreign shareholder**", in relation to a dedicated bank, means a shareholder of such dedicated bank that is not a domestic shareholder;

"**general public**" does not include a dedicated bank or a bank;

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

"**Inspection of Financial Institutions Act**" means the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998);

"**liquid assets**", in relation to a savings and loans dedicated bank, means liquid assets as defined in section 1(1) of the Banks Act.

"**Minister**" means the Minister of Finance;

"**mutual bank**" means a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

"**person**" includes any partnership;

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

"**primary share capital**" means capital obtained through the issue or ordinary shares, non-redeemable non-cumulative preference shares or prescribed categories of preferred securities, excluding such ordinary shares, non-redeemable non-cumulative preference shares or prescribed categories of preferred securities issued in pursuance of the capitalisation of reserves resulting from a revaluation of assets;

"**primary unimpaired reserve funds**" means funds obtained from actual earnings or by way of recoveries, premiums on the issue of ordinary or non-redeemable non-cumulative preference shares or a surplus on the realisation 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 dedicated bank concerned and are available for the purpose of meeting liabilities of or losses suffered by the dedicated bank, but does not include any fund required to be maintained in terms of any other law;

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

"**Public Accountants' and Auditors' Act**" means the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);

"**Registrar**" means the Registrar of Banks designated under section 4 of the Banks Act;

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

"**regulation**" means a regulation made under section 89;

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

"**savings bank**" means a public company registered as a dedicated bank in terms of this Act, and in respect of which dedicated bank the ambit of the banking business it is permitted to conduct is specified in section 3;

"**savings and loans bank**" means a public company registered as a dedicated bank in terms of this Act, and in respect of which dedicated bank the ambit of the banking business it is permitted to conduct is specified in section 4;

"**secondary capital**" means a prescribed percentage of capital obtained through the issue, with the prior written approval of the Registrar and in accordance with conditions approved by the Registrar in writing and on such further conditions, if any, as may be prescribed, of -

(a) cumulative preference shares;

(b) ordinary shares, or preference shares other than cumulative preference shares, issued in pursuance of the capitalisation of reserves resulting from a revaluation of assets; and

(c) prescribed categories of debt instruments;

"secondary unimpaired reserve funds" means -

(a) such funds, obtained from actual earnings or by way of recoveries, as may be prescribed and which have been set aside, but which are not disclosed as a general or special reserve in the financial statements of the dedicated bank concerned;

(b) a prescribed percentage of the amount of any surplus resulting from a revaluation of assets and determined as prescribed;

(c) a prescribed amount of general provisions held against unidentified and unforeseen losses; and

(d) funds obtained by way of premiums on the issue of cumulative preference shares or debt instruments issued in accordance with the prescribed conditions, whether or not such funds are disclosed as a general or special reserve in the financial statements of the dedicated bank concerned,

but does not include any fund required to be maintained in terms of any other law;

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

"**the business of a dedicated bank**" means -

(a) in the case of a savings bank, the activities set forth in section 3; and

(b) in the case of a savings and loans bank, the activities set forth in section 4;

"**undesirable practice**" means any act prohibited, or any failure to perform any act enjoined, by section 74(1), and, in relation to a particular dedicated bank or dedicated banks specified in a notice referred to in section 74(2)(b) or all dedicated banks, includes any act which in terms of a notice referred to in section

74(2) constitutes an undesirable practice for such particular dedicated bank, such specified dedicated banks or all dedicated banks, as the case may be.

(2) Any reference in this Act to a section of the Banks Act shall be deemed to be a reference to such section as amended from time to time.

## CHAPTER II

## OBJECT OF THIS ACT AND NATURE OF DEDICATED BANKS

### Object of this Act

2. (1) The object of this Act is to make banking services as contemplated by this Act available to consumers.

(2) The object contemplated in subsection (1) is to be achieved through the medium of banks that, in view of the prescribed nature of the business that such banks are permitted to conduct, are called dedicated banks.

(3) Dedicated banks may conduct business only within the Republic and shall be divided into two classes, namely -

(i) savings banks; and
(ii) savings and loans banks.

(4) The distinction between savings banks and savings and loans banks is based thereon that the ambit of the business that savings and loans banks are in terms of this Act allowed to conduct is wider than the business that savings banks are so allowed to conduct.

### Banking business permissible for savings banks

3. (1) A savings bank may -

(a) accept deposits from the general public;

(b) make payments on behalf of a client thereof, provided the client has a credit balance in an account with such bank sufficient to cover such payments;

(c) provide trust or custody services to clients; or

(d) open a savings account on behalf of a depositor into which the depositor may deposit money and from which the depositor may withdraw or transfer money.

(2) A savings bank may invest money deposited with it in liquid assets only.

**Banking business permissible for savings and loans banks**

4. (1) A savings and loans bank may conduct all such banking business as a savings bank is in terms of section 3(1) permitted to conduct, and may in addition –

(a) open a money-market deposit account in the name of a depositor;
(b) grant unsecured loans in a total amount not exceeding its qualifying capital and reserves; and
(c) grant secured loans for prescribed purposes –
  (i) to individual persons; and
  (ii) to business-undertakings of such size as may be prescribed with reference to their annual turn-over or with reference to any other appropriate criterion

Provided that the amount of any loan granted in terms of this paragraph shall not exceed the prescribed percentage of the value of the security furnished in respect of such loan by the borrower.

(2) A savings and loans bank may invest money deposited with it and constituting a liability of such bank with a maturity -

(a) not exceeding three months, only in securities referred to in section 3(2) with, as near as possible, a corresponding maturity; and

(b) exceeding three months, in loans not exceeding, per individual loan, a prescribed amount, to other borrowers from the public sector or borrowers from the private sector.

## CHAPTER III

## ADMINISTRATION OF ACT

### Functions of Registrar

5. Subject to the provisions of section 10, the Registrar shall in respect of dedicated banks perform, under the control of the Reserve Bank and in accordance with the directions issued by the Reserve Bank from time to time, the functions assigned to the Registrar by or under this Act.

### Delegation of powers and assignment of duties by Registrar

6. (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

(b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this Act.

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

### Powers of inspection of, and guidelines by, Registrar

7.(1) In addition to the powers and duties conferred or imposed upon him or her by this Act, the Registrar shall, for the purpose of the performance of his or her 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 upon a registrar contemplated in the last-mentioned Act.

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

(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 dedicated bank, or with any executive officer or employee, designated by such chief executive officer, of that dedicated bank or of any subsidiary or controlling company of that dedicated bank, with a view to achieving effective supervision of such dedicated bank by the Registrar.

(4) The Registrar may from time to time by means of a circular furnish dedicated banks with guidelines regarding the application and interpretation of the provisions of this Act or with such other information as the Registrar may deem necessary.

**Furnishing of information by dedicated banks**

8.(1) The Registrar may by notice in writing -

(a) direct a dedicated bank or a controlling company or a subsidiary of a dedicated bank or controlling company to furnish the Registrar, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as may be specified in the notice and as the Registrar may reasonably require for the performance of his or her functions under this Act; or

(b) direct such dedicated bank, controlling company or subsidiary to furnish the Registrar with a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act 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 dedicated bank, controlling company or subsidiary to furnish information.

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

(3) No due diligence audit of the financial condition of any dedicated bank shall be conducted without the Registrar first having been notified in writing of the intention to do so.

(4) The person at whose request a due diligence audit of the financial condition of a dedicated bank has been conducted shall furnish the Registrar with a copy of the audit report.

(5) No person shall without the written consent of the Registrar disclose to any other person, except to the dedicated bank whose financial condition was the subject of the due diligence audit, any information contained in a report referred to in subsection (4).

(6) A report required by the Registrar under subsection (1)(b) shall be drawn up at the reasonable expense of the bank, controlling company or subsidiary in question.

**Power of Registrar to extend certain periods**

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

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

(a) grant the application and extend by such period as he or she 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 the Registrar's decision.

**Review of decisions of Registrar**

10.(1) 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 fees apply for a review of that decision by the board of review established by section 9(2) of the Banks Act.

(2) The provisions of subsection (2)(a) and subsections (4) to (14), inclusive, of section 9 of the Banks Act shall *mutatis mutandis* apply to a review under subsection (1) of this section.

**Annual report by Registrar**

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

(2) The Minister shall lay a copy of the report referred to in subsection (1) upon the Tables in Parliament within 14 days after receipt of such report, if Parliament is then in

ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

## CHAPTER IV

## AUTHORIZATION TO ESTABLISH, AND REGISTRATION AND CANCELLATION OF REGISTRATION OF, DEDICATED BANKS

**Registration a prerequisite for conducting business of dedicated bank**

12.(1) No person shall conduct the business of a dedicated bank unless such person is a public company and is registered as a dedicated bank in terms of this Act.

(2) Any person who -
contravenes a provision of subsection (1);

(a) being a savings bank, conducts the business of a savings bank outside the scope and ambit of activities permissible for a savings bank in terms of section 3; or

(b) being a savings and loans bank, conducts the business of a savings and loans bank outside the scope and ambit of activities permissible for a savings and loans bank in terms of section 4,

shall be guilty of an offence.

(3) Whenever a director, chief executive officer or executive officer of a dedicated bank, directly or indirectly, was involved or took part in the management of a dedicated bank while the business of the dedicated bank was conducted in a manner as contemplated in subsection (2)(b) or (2)(c), as the case may be -

(a) (a) such director, chief executive officer or executive officer; and

(b) every other director or chief executive officer or executive officer of the designated bank who was aware, or should reasonably have been aware, that the business of the dedicated bank was being conducted in the manner as contemplated in subsection (2)(b) or (2)(c), as the case may be, and who failed to take reasonable steps to prevent the business of the dedicated bank from being conducted in such manner,

shall be personally liable for all the liabilities of the dedicated bank incurred as a result of its business being conducted as so contemplated.

**Application for authorization to establish dedicated bank**

13.(1) Any person who wishes to conduct the business of a dedicated bank of a class contemplated in section 2(3)(a) or (b), may apply to the Registrar for authorization to establish such a bank.

(2) An application under subsection (1) -

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

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

(3) The Registrar may require an applicant contemplated in subsection (1) to furnish him or her 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**

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

(2) The Registrar shall not grant an application made under section 13 unless the Registrar is satisfied -

(a) that the establishment of the proposed dedicated bank will be in the public interest;

(b) that the business the applicant proposes to conduct, is that of a dedicated bank of the class to which the application relates;

(c) that the applicant will conduct the proposed business of a dedicated bank in the capacity of a public company incorporated and registered under the Companies Act;

(d) that the applicant will be able to establish itself successfully as a dedicated bank of the class to which the application relates;

(e) that the applicant will have the financial means to comply, in the capacity of a dedicated bank, with the requirements of this Act;

(f) that the business of the proposed dedicated bank will be conducted in a prudent manner;

(g) that every person who is to be a director or an executive officer of the proposed dedicated bank is, as far as can reasonably be ascertained, a fit and proper person to hold the office of such director or executive officer;

(h) that every person who is to be an executive officer of the proposed dedicated bank has sufficient experience of the management of the kind of business it is intended to conduct; and

(i) that the composition of the board of directors of the proposed dedicated 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 applicant made under section 13, the Registrar shall give written notice of that fact to the applicant concerned.

**Revocation of authorization**

15.(1) The Registrar may at any time prior to the registration, in terms of section 18, of a dedicated bank, revoke the authorization granted for the establishment of such a 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 twelve 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 dedicated bank.

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

**Formation of certain companies prohibited except with approval of Registrar**

16.(1) No public company shall without the written approval of the Registrar be formed in terms of the Companies Act to conduct the business of a dedicated bank in accordance with the provisions of this Act.

(2) The Registrar shall grant the approval referred to in subsection (1) only if the Registrar is of the opinion that the company concerned will probably, having regard to the provisions of section 18, be eligible for registration as a dedicated bank in terms of this Act.

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

**Application for registration as dedicated bank**

17.(1) An applicant to whom the Registrar has under section 14 granted authorization for the establishment of a dedicated 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 registration of the institution as a dedicated bank of the class to which the authorization relates, provided such authorization has not been revoked in terms of section 15(1).

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

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

(b) be accompanied by -

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

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

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

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

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

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

(iii) a list of shareholders in the institution, as at the date of the application, drawn up in accordance with the requirements with which a return referred to in section 54 has to comply.

(3) The Registrar may require an applicant contemplated in subsection (1) to furnish the Registrar 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.

**Granting or refusal of application for registration**

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

(a) that the business the applicant proposes to conduct is that of a dedicated bank of the class to which the application relates;

(b) that the applicant does not propose to adopt undesirable methods of conducting business; and

(c) that the memorandum of association and articles of association of the institution are consistent with this Act and are not undesirable for any reason.

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

(a) that any of the requirements specified in section 14(2) is no longer complied with by or in respect of the institution concerned;

(b) that the institution concerned, when registered as a dedicated 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 the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason;

(e) that the name of the institution concerned -

(i) is identical with a name under which an existing dedicated bank or a bank or mutual bank has already been registered;

(ii) so closely resembles the name of an existing dedicated bank or a bank or mutual bank that the one is likely to be mistaken for the other;

(iii) is identical with, or closely resembles, the name under which any dedicated bank or bank, or any other institution which was registered under any law repealed by the Banks Act, or any mutual bank, was previously registered and that reasonable ground for objection against the use of that name by the institution concerned exists; or

(iv) is likely to mislead the public; or

(f) that the application does not comply with a requirement of this Act.

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

(4) If the Registrar in terms of this section grants an application for registration the Registrar shall, subject to the provisions of section 19, and on payment by the applicant of the prescribed registration fee, register the institution concerned as a dedicated bank of the class to which the application relates and issue to the institution, on the prescribed form, a certificate of registration as such a dedicated bank.

(5) An institution which is for the first time registered as a dedicated bank shall not commence doing the business of a dedicated bank until it has furnished proof to the Registrar that it complies with the provisions of section 66(2).

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

**Conditions of registration**

19.(1) The registration under section 18 of an institution as a dedicated bank shall be subject to the prescribed conditions and to such further conditions, if any, as the Registrar may determine.

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

**Untrue information in connection with applications**

20. Any person who in or in connection with -

(a) an application for authorization to establish a dedicated bank; or

(b) an application for registration as a dedicated bank,

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

**Use of name of dedicated bank**

21.(1) Subject to the provisions of subsection (2), an institution which is registered as a dedicated 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 of such name which has been approved by the Registrar: Provided that—

the Registrar may if the Registrar deems it desirable, authorize the use of a name by which such dedicated bank is otherwise generally known;

(b) an institution registered in terms of this Act shall indicate as part of its name that it is registered as such.

(2) An institution which is registered as a dedicated bank may, with the consent of the Registrar, in conjunction with its registered name or the name of which the use was

authorized by the Registrar under the proviso to subsection (1) use, or refer to itself by, the name of another dedicated bank with which it has amalgamated or all the assets and liabilities of which have, by virtue of the provisions of section 50, been transferred to it or, in the case of a change of name, the name by which it was previously known.

(3) An institution which contravenes the provisions of subsection (1) shall be guilty of an offence.

(4) Any person who, in connection with any business conducted by him, her or it -

(a) uses, or refers to himself, herself or itself by, any name, description or symbol indicating, or calculated to lead persons to infer, that such person is a dedicated bank registered as such under this Act; or

(b) in any other manner purports to be a dedicated bank registered as such under this Act,

while such person is not so registered as a dedicated bank, shall be guilty of an offence.

(5) No person shall use in respect of any business a name or description which includes the expression “dedicated bank”, or any derivative thereof, unless the business in question is a dedicated bank and the Registrar has in writing authorized such person so to use such name or description.

(6) Notwithstanding the prohibition contained in subsection (5), a company -

(a) of which the formation has been approved by the Registrar in terms of section 16, may be formed under a name which includes the expression “dedicated bank”, or a derivative thereof; or

(b) whose application for registration as a dedicated bank has been granted by the Registrar under section 18 and which has not been formed in accordance with paragraph (a) of this subsection under a name which already includes the expression “dedicated bank” or a derivative thereof,

may before its registration take the necessary steps in accordance with the Companies Act to include such expression in its name.

(7) The Registrar may in writing direct a company referred to in subsection (6) whose name includes the expression "dedicated bank" or any derivative thereof, to remove such expression or derivative from its name -

(a) in the case of a company referred to in paragraph (a) of that subsection, if it fails to apply in terms of section 17(1) for registration as a dedicated bank within the period of 12 months referred to in that section, or if its application for such registration is refused under section 18; and

(b) in the case of a company referred to in paragraph (b) of that subsection, if it fails to comply, within a reasonable time after its application for registration has been granted under section 18, with the conditions subject to which it was registered.

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

(9) Every dedicated 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 dedicated bank, the name of the dedicated bank and a statement to the effect that it is a savings bank or a savings and loans bank, as the case may be.

**Cancellation or suspension of registration by Registrar**

22.(1) The Registrar may, subject to the provisions of section 23, in the case of a dedicated bank 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 registration if the institution has not conducted any business as a dedicated bank during the period of six months commencing on the date on which the institution was registered as a dedicated bank.

(2) The Registrar may, subject to the provisions of section 23, in the case of a dedicated bank 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 registration if -

(a) it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 20; or

(b) the institution concerned has failed to comply -

(i) with a prescribed condition or a further condition, contemplated in section 19(1), to which its registration is subject; or

(ii) with a condition imposed by the Registrar under section 19(2).

(3) The Registrar may, subject to the provisions of section 23, in the case of a dedicated bank registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel such registration if the institution --

(a) is conducting or has conducted its business in contravention of the provisions of this Act; or

(b) ceases or ceased to conduct the business of a dedicated bank or is no longer in operation.

**Notice by Registrar of intention to cancel or suspend registration**

23.(1) The Registrar shall, before cancelling or suspending under section 22 the registration of a dedicated bank, in a written notice addressed to the chairman or chief executive officer of the institution concerned –

(a) inform the institution as well as the South African Reserve Bank of the Registrar's 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 registration should not be so cancelled or suspended.

(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 or her discretion -

(a) proceed with the cancellation or suspension, in terms of section 22, of the registration; or

(b) refrain from taking any further steps in terms of section 22,

and the Registrar shall in writing inform the chairman or chief executive officer of the institution concerned of the Registrar's decision in terms of this subsection.

**Cancellation or suspension of registration by court**

24.(1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling or suspending the registration of a dedicated bank if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 22, justifying such cancellation or suspension.

(2) A competent court for the purposes of subsection (1) shall be any division of the High Court of South Africa within the area of jurisdiction of which the registered office, referred to in section 170 of the Companies Act, of the dedicated bank concerned is situated.

(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 which the court may consider sufficient to justify the granting of an order under subsection (1) cancelling or suspending the registration of a dedicated bank, such an order may also be granted if the institution concerned -

(a) has, or any of its directors or executive officers has, been convicted of any offence in terms of this Act;

(b) does not carry on satisfactorily the business of a dedicated bank;

(c) has failed to comply with a requirement of this Act which is applicable to it in its capacity as a registered dedicated 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,

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 dedicated bank.

**Restriction by Registrar of activities of dedicated bank**

25.(1) The Registrar may, in lieu of an application under section 24(1), by written notice to a dedicated bank in respect of which, in the opinion of the Registrar, any of the circumstances mentioned in paragraphs (a) to (*e)*, inclusive, of section 24(4) is present, restrict the activities of the institution concerned as a dedicated bank in such respects and on such conditions as the Registrar may specify in the notice.

(2) the provisions of section 23 shall *mutatis mutandis* apply in respect of the restriction of the activities of a dedicated bank by the Registrar under subsection (1).

**Cancellation of registration at request of dedicated bank**

26. The Registrar shall cancel the registration of a dedicated bank upon submission to the Registrar by the institution concerned of a special resolution contemplated in section 200 of the Companies Act authorising such cancellation.

**Cancellation of registration upon winding-up**

27. When the affairs of a dedicated bank have been completely wound up as contemplated in section 419(1) of the Companies Act, the responsible Master of the High Court shall transmit to the Registrar a copy of the certificate referred to in that section, and the Registrar shall upon receipt of such copy cancel the registration of the dedicated bank concerned.

**Withdrawal of suspension or restriction**

28.(1) The Registrar may on the written application of a dedicated bank of which -

(a) the registration was suspended under section 22; or

(b) the activities were restricted under section 25,

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 24 whereby the registration of a dedicated bank has been suspended by the court, may be made to the competent court referred to in section 24(2).

**Publication of information relating to dedicated banks**

29. The Registrar shall publish a notice in the *Gazette* of every -

(a) registration of an institution as a dedicated bank;
(b) cancellation or suspension of the registration of a dedicated bank;
(c) restriction of the activities of a dedicated bank;
(d) withdrawal of such suspension or restriction; or
(e) change of the name of a dedicated bank;

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

**Date on which registration lapses**

30. An institution registered as a dedicated bank shall cease to be registered as such -

(a) in the case of a registration cancelled by the Registrar under section 22, 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 application for the review of such a decision to cancel was lodged with the board or review in terms of section 10 before the expiry of the said 30 days and the board of review has

confirmed such cancellation, upon the date on which the institution concerned is notified of such confirmation;

(b) in the case of a registration in respect of which the court has granted an order under section 24 cancelling the registration, upon the date on which that order comes into force; or

(c) in the case of a registration cancelled by the Registrar in terms of section 26 or 27, upon such date as may be determined by the Registrar.

**Repayment of deposits upon lapse of registration**

31.(1) Whenever an institution which is registered as a dedicated 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 dedicated bank, including any interest or any other amounts owing by it in respect of such money; and

(b) to change its name and its memorandum of association and articles of association within the period and in the manner required by the Registrar.

(2) Different directions and periods may under subsection (1) be determined in respect of different kinds of deposits: Provided that in determining such directions and periods no preference shall be given to any such member of the public which he or she 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.

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

(a) be guilty of an offence; and

(b) for the purposes of sections 344 and 345 of the Companies Act, be deemed not to be able to pay its debts.

**Annual licence**

32. A dedicated bank shall obtain from the Registrar a business licence pertaining to its particular business as a savings bank or a savings and loans bank in respect of each year ending on the thirty-first day of December against payment of the prescribed licence fees.

## CHAPTER V

## SHAREHOLDING IN, AND REGISTRATION OF CONTROLLING COMPANIES IN RESPECT OF, DEDICATED BANKS

**Permission for acquisition of shares in dedicated bank or controlling company**

33.(1) Subject to the provisions of subsection (5), no person shall acquire in a dedicated bank or controlling company shares -

(a) of which the total nominal value; or

(b) of which the total nominal value together with the total nominal value of such shares already held by such person; or

(c) of which the total nominal value together with the total nominal value of such shares already held by such person and by his or her associate or associates,

amounts to more than 15 per cent of the total nominal value of all the issued shares of the dedicated bank or controlling company, without first having obtained permission in accordance with the provisions of subsection (2) for such acquisition.

(2) (a) If any person has held so many shares in a dedicated bank or controlling company as he or she may in accordance with the provisions of subsection (1) hold therein, such person may, if the Registrar has granted permission in writing thereto, acquire more than 15 per cent of those shares: Provided that each such further acquisition of shares requires the written consent of the Registrar as contemplated in this section.

(b) Permission in terms of paragraph (a) shall only be granted on application on the prescribed form.

(3) Permission in terms of subsection (2) for the acquisition of shares in a dedicated bank or controlling company shall not be granted unless the Registrar is satisfied that the proposed acquisition of shares -

(a) will not be contrary to the public interest; and

(b) will not be contrary to the interests of the dedicated bank concerned or its depositors or of the controlling company concerned, as the case may be.

(4) If, in the case of a shareholding contemplated in this section the Registrar is of the opinion that the retention of such shareholding in a dedicated bank or controlling company by a particular shareholder will be to the detriment of the dedicated bank or controlling company concerned, he or she may by way of application on notice of motion apply to the division of the High Court in whose area of jurisdiction the head office of the dedicated bank or controlling company is situated, for an order -

(a) compelling such shareholder to reduce, within a period determined by the court, his or her shareholding in that dedicated bank or controlling company to a shareholding, as contemplated in subsection (1), with a total nominal value of not more than 15 per cent of the total nominal value of all the issued shares of that dedicated bank or controlling company; and

(b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his or her shareholding to 15 per cent of the voting rights attached to all the issued shares of the dedicated bank or controlling company concerned.

(5) The provisions of subsection (1) shall not apply to the acquisition of shares in a dedicated bank by a controlling company registered as such in respect of that dedicated bank.

(6) For the purpose of this section 'associate' -

(a) in relation to a natural person, means –

(i) a close relative of that person; or

(ii) any person who has entered into an agreement or arrangement with the first-mentioned person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the dedicated bank or controlling company in question;

(b) in relation to a juristic person -

(i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

(ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;

(iii) which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person -

(aa) had such first-mentioned juristic person been a company; or

(bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;

(iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act; and

(c) in relation to any person -

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

(ii) includes any trust controlled or administered by that person.

**Registration of shares in name of nominees**

34.(1) Notwithstanding the provisions of the Companies Act, no dedicated bank or controlling company shall without the written approval of the Registrar -

(a) allot or issue any of its shares to, or registered any of its shares in the name of, any person other than the intended beneficial shareholder;

(b) transfer any of its shares in the name of a person other than the beneficial shareholder; or

(c) after the commencement of this Act allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.

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

(a) in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;

(b) in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances mentioned in section 103(3) of the Companies Act;

(c) for a period of not more than six months, in the name of a company controlled by the dedicated bank or of an employee of the dedicated bank, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares or where the beneficiary is not known;

(d) in the name of a person in other special circumstances determined by the Minister by notice in the *Gazette;* or

(e) in the name of a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992.

**Furnishing of information by shareholders**

35. Any person desiring shares in a dedicated bank or controlling company to be allotted or issued to him or her or to be registered in his or her name, or in whose name such shares are registered, and any person acting on behalf of such a person, shall at the written request of the dedicated bank or controlling company furnish it with such information as may be required by the dedicated bank or controlling company for the purpose of complying with the provisions of section 34.

**Absence of wrongful intent**

36. If a dedicated bank or a controlling company or any director, officer, employee or agent of a dedicated bank or controlling company in good faith and on the strength of information reasonably obtained acts or fails to act and thereby unknowingly contravenes the provisions of section 34, such act or failure to act shall not constitute an offence.

**Effects of registration of shares contrary to Act**

37.(1) No person shall -

(a) either personally or by proxy granted to any other person, cast a vote attached to; or

(b) receive a dividend payable on,

any share in a dedicated bank or controlling company allotted or issued to him or her or registered in his or her name in contravention of a provision of this Act.

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

(3) A dividend referred to in subsection (1)(b) shall accrue to the dedicated bank or controlling company concerned.

**Restriction of right to control bank**

38.(1) Subject to the provisions of section 33, no person other than a dedicated bank or a bank may exercise control over a dedicated bank, unless such person is a public company and is registered as a controlling company in respect of such dedicated bank.

(2) For the purposes of this Act a person shall be deemed to exercise control over a dedicated bank if, in the case where that person is a company, the dedicated bank is a subsidiary of that company, or, whether or not that person is a company, if that person individually or together with such person's associates -

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

(b) is entitled to exercise more than 50 per cent of the voting rights in respect of the issued shares of that dedicated bank; or

(c) is entitled or has the power to determine the appointment of the majority of the directors of that dedicated bank, including –

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

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

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

(3) For the purposes of this section 'associate' means an associate as defined in section 33(6).

**Application for registration as controlling company**

39(1) A public company –

(a) which desires to exercise control over any dedicated bank; or

(b) which is a controlling company, as defined in section 1 of the Companies Act, in respect of any public company which has applied in terms of section 17 for registration as a dedicated bank,

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

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

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

**Granting or refusal of application for registration as controlling company**

40.(1) Subject to the provisions of subsection (2), the Registrar may, after considering all information, documents and particulars furnished in terms of section 39 for the purposes of an application under that section, grant or refuse the relevant application or grant the application subject to such conditions as the Registrar may impose.

(2) The Registrar shall not grant an application made under section 39 unless the Registrar is satisfied -

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

(b) that, in the case of an applicant applying for registration in the circumstances referred to in section 39(1)(a), the applicant will be able to establish control, as contemplated in section 38(2), over the dedicated bank concerned;

(c) that no provision of the memorandum of association or articles of association of the applicant is inconsistent with a provision of this Act or is undesirable in so far as it concerns dedicated banks;

(d) that every director or executive officer of the applicant is, as far as can reasonably be ascertained, a fit and proper person to hold the office of such director or executive officer, and that every such executive officer has sufficient knowledge and experience to manage the affairs of the applicant in its capacity of a controlling company;

(e) that the applicant is in a financially sound condition;

(f) that no interest which any person has in the applicant is inconsistent with a provision of this Act; and

(g) that the applicant complies with the requirements of this Act.

(3) When the Registrar in terms of this section grants or refuses an application for registration as a controlling company, the Registrar shall give written notice of that fact to the applicant concerned.

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

(b) No applicant which has applied for registration as a controlling company in the circumstances referred to in section 39(1)(b) shall be registered as such a controlling company unless the company in respect of which it made such application is registered as a dedicated bank.

(5) in addition to any other condition which the Registrar may impose under subsection (1), the Registrar may impose a condition requiring an applicant which applied for registration as a controlling company in the circumstances referred to in section 39(1)(a) -

(a) to furnish within a specified period, proof to the satisfaction of the Registrar that it will immediately after its registration as a controlling company

establish control over the dedicated bank in respect of which it desires to be registered; or

(b) to make an offer, within a specified period and on a basis and on conditions regarded by the Registrar as reasonable and fair, to persons holding shares in the said dedicated bank to take up shares in the applicant or to exchange shares held by them in the said dedicated bank for shares in the applicant.

(6)(a) Whenever the Registrar has imposed a condition referred to in subsection (5)(b), the Registrar may, after consultation with the applicant concerned, designate a person to investigate, independently of the applicant, and to advise the Registrar on, the reasonableness and fairness of the basis and conditions on which the applicant intends to make the share offer in compliance with the condition.

(b) The costs of an investigation in terms of paragraph (a) shall be paid by the applicant concerned.

**Cancellation by Registrar of registration of controlling company**

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

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

**Cancellation by court of registration of controlling company**

42.(1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling the registration of a controlling company if in the opinion of the Registrar there exist grounds, other than the grounds referred to in section 41, justifying such cancellation.

(2) The provisions of subsections (2) and (3) of section 24 shall *mutatis mutandis* apply to an application under subsection (1).

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

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

(b) has contravened or failed to comply with a provision of or a requirement under this Act,

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

**Cancellation of registration at request of controlling company**

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

**Lapse of registration of controlling company upon cancellation of registration of dedicated bank**

44.(1) If the registration of a dedicated bank in respect of which a controlling company is registered, is cancelled, the registration of that controlling company in respect of that dedicated bank shall be deemed to have been cancelled simultaneously.

(2) The cancellation of the registration of a controlling company by virtue of the provisions of subsection (1) shall be with effect from the date on which the dedicated bank concerned in terms of section 30 ceased to be registered as such.

**Date on which registration of controlling company lapses**

45. A controlling company shall cease to be registered as such -

(a) in the case of a registration cancelled by the Registrar under section 41, upon expiry of 30 days after the date of the notice referred to in subsection (1) of that section or, if an application for the review of such a decision to cancel was lodged with the board of review in terms of section 10 before the expiry of the said days and the board of review has confirmed such cancellation, upon the date on which the controlling company concerned is notified of such confirmation;

(b) in the case of a registration in respect of which the court has granted an order under section 42 cancelling the registration, upon the date on which that order comes into force; or

(c) in the case of a registration cancelled by the Registrar in terms of section 43, upon such date as may be determined by the Registrar.

**Investments by controlling companies**

46. A controlling company investing money -

(a) in undertakings other than dedicated banks, banks, institutions which conduct business similar to the business of a bank in a country other than the Republic, controlling companies or companies of which the main object is the holding or development of property which is used or intended to be used mainly for the purpose of conducting the business of a dedicated bank or a bank; or

(b) in fixed property which is not used or intended to be used mainly for the purpose of conducting the business of a dedicated bank or a bank,

shall manage its transactions in such investments in such a way that the amount of such investments does not at any time exceed 40 per cent of the sum of its share capital and reserve funds.

## CHAPTER VI

## FUNCTIONING OF DEDICATED BANKS AND CONTROLLING COMPANIES WITH REFERENCE TO COMPANIES ACT

### Application of Companies Act to dedicated banks and controlling companies

47.(1) The provisions of section 51 of the Banks Act shall *mutatis mutandis* apply to any dedicated bank or controlling company.

(2) For the purposes of subsection (1) any reference in section 51 of the Banks Act to a bank shall be deemed to be a reference to a dedicated bank.

### Subsidiaries of dedicated banks and controlling companies

48.(1) A dedicated bank shall not without the prior written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing establish a subsidiary or enter into an agreement having the effect that any company becomes its subsidiary.

(2) To obtain the prior approval of the Registrar as contemplated in subsection (1), there shall be lodged with the Registrar a written application in which full particulars of the proposed action are furnished.

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

(4) The provisions of subsections (1), (2) and (3) shall *mutatis mutandis* apply in respect of any controlling company.

**Disclosure by dedicated banks and controlling companies of interests in subsidiaries**

49. A dedicated bank or a controlling company shall on such a form and at such intervals as may be prescribed furnish the Registrar with such particulars as may be prescribed relating to its shareholding or other interest in its subsidiaries contemplated in section 48(1).

**Compromises, amalgamations, arrangements and affected transactions**

50. The provisions of section 54 of the Banks Act shall *mutatis mutandis* apply to a dedicated bank but only in so far as those provisions can be so applied having regard to the nature of the business a dedicated bank is permitted to conduct in terms of the provisions of section 3 of this Act in the case of a savings bank, or section 4 of this Act in the case of a savings and loans bank.

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

51.(1) No -

(a) alteration, in terms of section 55, 56 or 62 of the Companies Act, of the memorandum of association or articles of association of a company registered as a dedicated bank; or

(b) change, in terms of section 44 of the Companies Act, of the name of any such company,

shall have legal force for the purposes of this Act or any other law unless such alteration or change has been approved in writing by the Registrar prior to the registration thereof by the Registrar of Companies.

(2) Any application for the Registrar's approval in terms of subsection (1) shall be lodged with the Registrar before the proposed special resolution authorizing the alteration or change in question is laid before a general meeting of the company, and such application shall be accompanied by -

(a) two copies of the proposed special resolution; and

(b) an explanation of the reasons for the resolution.

(3) The Registrar shall not grant any application referred to in subsection (2) if the Registrar is of the opinion -

(a) that the proposed alteration is inconsistent with any provision of this Act or is undesirable in so far it concerns the activities of dedicated banks; or

(b) that the proposed new name is unacceptable on any of the grounds mentioned in subparagraph (i), (ii), (iii) and (iv) of section 18 (2) (e).

(4) A dedicated bank shall within 21 days of the registration by the Registrar of Companies of an alteration of its memorandum of association or articles of association or a change of its name, furnish the Registrar with a certified copy of the special resolution which sets out the alteration or change of name, as the case may be.

(5) Upon receipt, by virtue of the provisions of subsection (4), of a copy of a special resolution, and payment by the dedicated bank concerned of the prescribed fee, the Registrar shall -

(a) in the case of a special resolution relating to an alteration of a memorandum of association or articles of association, register the alteration in question and issue to the dedicated bank concerned a

certificate to the effect that the said alteration has been registered by the Registrar with effect from a date specified in the certificate; or

(b) in the case of a special resolution relating to a change of name, change the name of the dedicated bank concerned in the Registrar's register of dedicated banks, and issue to the dedicated bank concerned a certificate of such change of name.

(6) An alteration referred to in subsection (5) (a) shall not take effect until it has been registered in terms of that subsection.

(7) The provisions of subsections (1), (2) and (3) shall not apply with respect to any alteration of a dedicated bank's memorandum of association or articles of association in accordance with a direction by the Registrar under this Act.

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

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

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

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

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

**Information regarding directors and officers**

53. Every dedicated bank and every controlling company shall within 30 days of its registration as such, furnish the Registrar with a copy of its register of directors and officers referred to in section 215 of the Companies Act.

**Returns regarding shareholders**

54.(1) Every dedicated bank and every controlling company shall within 90 days of its registration as such, and annually thereafter within 30 days of the thirty-first day of December of each year, furnish the Registrar with a return regarding its shareholders as at the date of the said registration or as on the said thirty-first day of December, as the case may be.

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

(a) the address of the shareholder;

(b) the number and class of shares registered in the shareholder's name;

(c) the total nominal value of those shares;

(d) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the dedicated bank or controlling company; and

(e) if the shareholder is a dedicated bank, bank, controlling company or, in the case of a foreign shareholder, an institution conducting business similar to the business of a bank, the fact that it is such a dedicated bank, bank controlling company or institution, as the case may be:

Provided -

(i) that two or more domestic shareholders who are associates shall in alphabetical order according to their names be included in the list as a group under the name of one of the associates, stating, in addition to the particulars referred to in paragraph (a) to (e), inclusive -

(aa) the fact that they are associates;

(bb) the total nominal value of all the shares registered in their respective names; and

(cc) the percentage which the total nominal value of those shares represents of the total nominal value of all the issued shares of the dedicated bank or controlling company; and

(ii) that the name of a shareholder and the particulars referred to in paragraphs (a) to (e), inclusive, shall, subject to subsection (3), not be included in such a list if the total nominal value of the shares registered in such shareholder's name -

(aa) in the case of a domestic shareholder, is less than one per cent of the total nominal value of all the issued shares of the dedicated bank or controlling company; or

(bb) in the case of a foreign shareholder, is less than the lower of R100 000 or one percent of the total nominal value of all such issued shares.

(3) A return referred to in subsection (1) shall further specify -

(a) the number of domestic and the number of foreign shareholders whose names and individual particulars are by virtue of paragraph (ii) of the proviso to subsection (2) not included in the lists, and opposite the respective numbers -

(i) the number of shares registered in the name of the relevant shareholders;

(ii) the total nominal value of such shares; and

(iii) the percentage which the total nominal value of such shares represents of the total nominal value of all the issued shares of the dedicated bank or controlling company; and

(b) the total nominal value of shares registered in the name of all domestic and all foreign shareholders, respectively.

(4) If the total nominal value of the shares in a dedicated bank or controlling company registered in the name of a shareholder is less than the lower of R100 000 or one per cent of the total nominal value of all the issued shares of the dedicated bank or controlling company concerned, such dedicated bank or controlling company may, for

the purposes of this section, summarily accept, unless it has knowledge to the contrary, that the shareholder concerned -

(a) is a domestic shareholder, if the address entered in respect of such shareholder in the register of members referred to in section 105 of the Companies Act is an address in the Republic; and

(b) is not an associate of any other shareholder of the dedicated bank or controlling company.

(5) For the purposes of this section 'associate' means an associate as defined in section 33(6).

**Directors of dedicated bank**

55.(1) Each director, chief executive officer and executive officer of a dedicated bank owes a fiduciary duty and a duty of care and skill to the dedicated bank of which such a person is a director, chief executive officer or executive officer.

(2) Each director, chief executive officer and executive officer of a dedicated bank owes a duty towards the dedicated bank to -

(a) act *bona fide* for the benefit of the dedicated bank;

(b) avoid any conflict between the dedicated bank's interests and the interests of such a director, chief executive officer or executive officer, as the case may be;

(c) possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment as and carrying out

similar functions as are carried out by, the director, chief executive officer or executive officer of that dedicated bank; and

(d) exercise such care in the carrying out of his or her functions in relation to that dedicated bank as may reasonably be expected of a diligent person holding a similar appointment, and who possesses both the knowledge and skill mentioned in paragraph (c) and any such additional knowledge and skill as the director, chief executive officer or executive officer in question may have.

(3) Without derogating from the provisions of subsections (1) and (2), a director, chief executive officer or executive officer of a dedicated bank shall in the performance of his or her functions in respect of that dedicated bank, observe such guidelines and comply with such requirements as may be prescribed under section 89(1)(b).

(4) (a) (i) Every dedicated bank shall give the Registrar written notice of the nomination of any person for appointment as a non-executive member of its board of directors by furnishing the Registrar with the prescribed information in respect of the nominee.

(ii) The notice shall reach the Registrar at least 30 days prior to the proposed date of appointment.

(iii) The Registrar may object to the proposed appointment by means of a written notice, stating the grounds for the objection, to the chairperson of the board of directors of the dedicated bank and to the nominee, to be given within 20 days of receipt of the notice referred to in subparagraph (ii).

(iv) If the Registrar objects to the proposed appointment as envisaged in subparagraph (iii), the dedicated bank shall not appoint the nominee

and any purported appointment shall have no legal effect: Provided that the dedicated bank or nominee may dispute the Registrar's objection, in which case the provisions of subsection (5)(d) to (k), inclusive, shall apply *mutatis mutandis*.

(b) (i) Every dedicated bank shall give the Registrar written notice of the appointment of a chief executive officer, executive director or executive officer by furnishing the Registrar with the prescribed information in respect of the appointee.

(ii) The Registrar may object to the appointment by means of a written notice, stating the grounds for the objection, to the chief executive officer, or acting chief executive officer of the dedicated bank, and to the appointee, to be given within 20 working days of receipt of the notice referred to in subparagraph (i).

(iii) If the Registrar objects to the appointment in terms of subparagraph (ii), the appointment shall be terminated within 14 working days of receipt of the Registrar's notice of objection by the dedicated bank: Provided that the dedicated bank or appointee may dispute the Registrar's objection, in which case the provisions of subsection (5)(d) to (k), inclusive, shall *mutatis mutandis* apply.

(iv) Notwithstanding anything to the contrary in any Act, in the common law or in any agreement, the appointment by a dedicated bank of a chief executive officer, executive director or an executive officer shall be subject to the resolutive condition that the appointment not be terminated under subparagraph (iii).

(5) (a) Without derogating from the provisions of any Act or the common law, the appointment of a director, chief executive officer or executive officer of a

dedicated bank may be terminated by the Registrar if the Registrar has reason to believe that the director, chief executive officer or executive officer concerned is not or is no longer a fit and proper person to hold that office, or that it is not in the public interest that such a director, chief executive officer or executive officer continues to hold such office.

(b) If the Registrar wishes to terminate the appointment of a director, chief executive officer or executive officer of a dedicated bank, as envisaged in paragraph (a), the Registrar shall notify the following affected parties in writing of his or her intention and of the grounds for the proposed termination, namely -

(i) the director, chief executive officer or executive officer concerned;

(ii) the chairperson of the board of directors of that dedicated bank (except if the chairperson of the board is the person whose appointment the Registrar wishes to terminate, in which case each director of the dedicated bank concerned shall be notified); and

(iii) the chief executive officer of that dedicated bank, (except if the chief executive officer is the person whose appointment the Registrar wishes to terminate, in which case the deputy chief executive officer shall be notified).

(c) The written notice referred to in paragraph (b) shall notify the affected parties that they are entitled to submit written representations to the Registrar in response to that notice.

(d) Any affected party who wishes to respond to the Registrar's written notice shall submit his, her or its written representations in response to that notice to the Registrar within 14 working days of receipt of the Registrar's notice,

or within such longer period as the Registrar may, upon written application by the affected party concerned, allow.

(e) The Registrar shall, within 14 working days of receipt of a written representation as envisaged in paragraph (d) -

(i) consider the representation;

(ii) decide whether or not the appointment of the director, chief executive officer or executive officer concerned, as the case may be, should be terminated for the reasons contemplated in paragraph (a); and

(iii) give notice to the affected parties, as envisaged in paragraph (b), of his or her decision in writing.

(f) If, after having considered any written representation in respect of the director, chief executive officer or executive officer concerned, the Registrar remains of the view that such officer's appointment should be terminated, or if no such written representation is submitted to the Registrar within the period allowed under paragraph (d), the Registrar shall refer the matter to the Arbitration Foundation of South Africa or its successor-in-title; or any other body designated by the Registrar by means of a notice in the *Gazette* (referred to below as the "Arbitrator") for arbitration in terms of expedited procedures approved by the Registrar in writing, and published in the *Gazette.*

(g) The Registrar shall make the request for arbitration referred to in paragraph (f) -

(i) in writing; and

(ii) within three working days after the expiry of the fourteen-day period referred to in paragraph (e) or, if the affected parties do not submit any written representations to the Registrar within the period allowed under paragraph (d), within three working days after the expiry of that period.

(h) The Arbitrator shall determine whether or not adequate reasons exist for the termination, by the Registrar, of the appointment of the director, chief executive officer or executive officer concerned.

(i) If under paragraph (h) the Arbitrator decides that adequate reasons exist for the termination of the appointment, the Arbitrator shall confirm the termination by the Registrar of the appointment of the director, chief executive officer or executive officer concerned, whereupon the termination shall immediately take effect and the appointment of the person in question shall forthwith no longer have any legal force.

(j) If under paragraph (h) the Arbitrator determines that adequate reasons do not exist for the termination of the appointment, the Arbitrator shall not confirm the termination by the Registrar of the appointment of the director, chief executive officer or executive officer concerned, whereupon the appointment of the person in question shall continue with full force and effect.

(k) Any termination of the appointment of a director, chief executive officer or executive officer in terms of this section shall be final and binding and shall not be subject to review as envisaged in section 10.

(6) (a) The Registrar may institute action in terms of section 424 of the Companies Act against any director, chief executive officer or executive officer of a dedicated bank who was knowingly a party to the carrying on of

the business of the dedicated bank in the manner envisaged in that section.

(b) Notwithstanding anything to the contrary in any Act or the common law, any amount recovered as a result of proceedings instituted by the Registrar as envisaged in paragraph (a), shall first be utilised -

(i) to reimburse all expenses reasonably incurred by the Registrar in bringing such proceedings; and thereafter -

(ii) to off-set any amount paid to depositors by the Registrar, a deposit insurance scheme, or any governmental body, as part or full compensation for the losses suffered by depositors as a result of the dedicated bank having been unable to repay their deposits; and thereafter -

(iii) for the *pro rata* repayment of the losses of depositors.

(7) The provisions of this section, in so far as they are appropriate, shall *mutatis mutandis* apply in respect of a dedicated bank's controlling company.

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

(a) a dedicated bank shall be employees of that dedicated bank or of any of its subsidiaries, or of such dedicated bank's controlling company, or of any of such controlling company's subsidiaries;

(b) a controlling company shall be employees of that company or of any dedicated bank in respect of which that company is registered as a controlling company:

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

**Appointment of auditor**

56.(1) Notwithstanding the provisions of Chapter X of the Companies Act –

(a) no person shall hold office as auditor of a dedicated bank or a controlling company unless the appointment of such person as such an auditor has been approved by the Registrar; and

(b) any person contemplated in paragraph (a) shall be appointed for such period and on such conditions as may be prescribed.

(2) A dedicated bank or a controlling company shall within 30 days of the appointment in accordance with the provisions of Chapter X of the Companies Act of a person as auditor thereof apply to the Registrar on the prescribed form for the Registrar's approval of such appointment.

(3) The Registrar may -

(a) refuse an application under subsection (2) for the Registrar's approval of the appointment of an auditor if –

(i)the application seeks the re-appointment of an auditor who has already served as auditor of the dedicated bank in question for the prescribed number of years consecutively; or

(ii) any grounds for withdrawal of approval listed in paragraph (b)(i) to (iv) apply to the proposed appointee.

(b)withdraw any approval of the appointment of an auditor previously granted by the Registrar under this section, if such auditor –

(i)has been convicted of an offence of which dishonesty is an element;

(ii)is found to be incompetent or unfit to perform the functions of an auditor;

(iii)is under investigation by the Public Accountants' and Auditors' Board; or

(iv) fails to disclose any direct or indirect interests which may constitute a conflict of interest in respect of such auditor's duties,

and thereupon the functions and responsibilities of that auditor in respect of that dedicated bank shall cease forthwith.

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

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

(6) A person appointed under subsection (4) to replace an auditor whose approval has been withdrawn under subsection 3(b) shall be appointed for the remainder of the period for which the person whom he or she replaces was appointed and is subject to the same conditions as his or her predecessor.

**Appointment of auditor by Registrar**

57.(1) If a dedicated bank for any reason fails to appoint an auditor the Registrar may, notwithstanding the provisions of sections 269 (4) and 271 (1) of the Companies Act, make the necessary appointment.

(2) A person appointed under subsection (1) as auditor of a dedicated bank shall be deemed to have been so appointed by that dedicated bank.

**Functions of auditor in relation to Registrar**

58.(1) Notwithstanding anything to the contrary contained in the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), or the Companies Act, but subject to the provisions of subsections (2) and (3) of this section, the auditor referred to in section 56 or 57 -

(a) shall, whenever such auditor furnishes, in terms of section 20 (5) (b) of the first-mentioned Act, the Public Accountants' and Auditors' Board with copies of the report, acknowledgement of receipt and reply and with the other particulars referred to in that section, relating to an irregularity or suspected irregularity in the conduct of the affairs of the dedicated bank for which he or she has been appointed as auditor, also furnish the Registrar with such copies and particulars; and

(b) shall in writing inform the Registrar of any matter relating to the affairs of a dedicated bank -

(i) of which such auditor became aware in the performance of his or her functions as auditor of that dedicated bank; and

(iii) which, in the opinion of such auditor, may endanger the dedicated bank's ability to continue as a going concern or may impair the

protection of the funds of the dedicated bank's depositors or may be contrary to principles of sound management (including risk management) or amount to inadequate maintenance of internal controls; and

(c) shall, if requested by the Registrar to do so, furnish the Registrar with written information relating to a matter referred to in paragraph (b), specified by the Registrar.

(2) Whenever an auditor by virtue of the provisions of subsection (1) (b) or (c) furnishes the Registrar with written information, the auditor may at the same time furnish the chief executive officer of the dedicated 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.

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

**Audit committee**

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

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

(a) assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within that dedicated 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 of directors and the executive officers of, the auditor appointed under section 56 or 57 for, and the employee charged with the internal auditing of the transactions of, the dedicated bank; and

(c) introduce such measures as in the committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the dedicated bank.

(3) All of the members of the audit committee may be, and the majority of such members, including the chairperson of the audit committee, shall be, persons who are not employees of the dedicated bank: Provided that the chairperson of the board of directors of the dedicated bank shall not be appointed as a member of the audit committee.

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

60.(1) Whenever a dedicated bank or a controlling company -

(a) forwards a notice of a meeting or of the declaration of a dividend or a report on its activities during a financial year or part of such year to its shareholders;

(b) gives notice to the Registrar of Companies in terms of section 170 (2) of the Companies Act of any intended change in the situation of its registered office or of its postal address;

(c) forwards in terms of section 216 (2) of the Companies Act a return referred to in that section regarding its directors to the Registrar of Companies; or

(d) forwards in terms of section 302 (4) of the Companies Act financial statements to the Registrar of Companies,

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

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

**Disclosure of issued share capital**

61. If a dedicated bank publishes any statement or issues any document in which the amount of its authorised share capital is mentioned, the amount of its issued share capital shall also be mentioned in such statement or document.

**Disclosure of names of certain shareholders**

62. If, in the case of an individual shareholder in a savings and loans bank who holds more than 25 per cent of all the issued shares in that savings and loans bank to which voting rights are attached, the sum of the amounts of such savings and loans bank's investments with or loans or advances or other exposures to such individual shareholder exceeds the total nominal value of the said shares so held by that individual

shareholder, the savings and loans bank shall in its financial statements mention the name of such individual shareholder.

**Special provisions relating to winding-up of dedicated bank**

63.(1) Notwithstanding the provisions of section 64 of this Act and anything to the contrary contained in the Companies Act -

(a) the Registrar shall have the right to apply to a competent court for the winding-up of any dedicated bank in terms of the Companies Act, and the Registrar shall have the right to oppose any such application made by any other person;

(b) no person other than a person recommended by the Registrar shall be appointed by a Master of the High Court as provisional liquidator or liquidator of a dedicated bank; and

(c) the Master shall appoint a person designated by the Registrar, who shall be a person who in the opinion of the Registrar has wide experience of, and is knowledgeable about the latest developments in, the banking industry, to assist a provisional liquidator or liquidator referred to in paragraph (b) in the performance of his or her functions in respect of the dedicated bank in question.

(2) The appointment by the Master of a person in terms of subsection (1) (c) shall be by means of a letter of appointment addressed by the Master to the person appointed and in which is set out -

(a) the name of the dedicated bank in respect of which such person is appointed;

(b) directions in regard to the remuneration of the person appointed; and

(c) such other directions incidental to the matter as the Master or the Registrar may deem necessary,

and a copy of such letter of appointment shall be furnished by the Master to the provisional liquidator or liquidator concerned.

(3) During the voluntary winding-up of any dedicated bank the liquidator shall furnish the Registrar with such return or statement which the dedicated bank concerned would have been obliged to furnish to the Registrar in terms of this Act, were such dedicated bank not being wound up, as the Registrar may require.

(4) In the application, in relation to the winding-up of a company which is a dedicated bank -

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

"(4)(a) Before an application for the winding-up of a company which is a dedicated 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, or if there is no Master at the seat of the Court, with an officer in the public service designated for that purpose by the Master by notice in the *Gazette*.

(b) The Registrar of Banks or the Master or any such officer may report to the court any facts ascertained by him or her which appear to him or her 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 or her agent and to the said company."; and

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

"(3) A copy of every special resolution for the voluntary winding-up of any company which is a dedicated 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 fourteen days after the registration of the resolution in terms of section 200 or the making of the order, be transmitted by that company to the officers and registrars referred to in paragraphs (a), (b) and (c) of subsection (1), as well as to the Registrar of Banks.".

(5) Notwithstanding anything to the contrary contained in any law, the suspension, cancellation or termination of the registration of a dedicated bank while such dedicated bank, as a result of an application brought by the Registrar, is being wound up in terms of this section, shall not affect -

(a) any order or appointment made, direction issued or any other thing done under this section or in terms of the Companies Act, in respect of such dedicated bank; or

(b) any power to be exercised, duty to be executed or right to be enforced in respect of such dedicated bank by the Registrar, the Master of the High Court or the provisional liquidator or liquidator, respectively, by virtue of the provisions of this section or the provisions of the Companies Act,

and the Registrar, the Master of the High Court, the provisional liquidator or liquidator, respectively, shall, until the affairs of the public company of which the registration as a dedicated bank has been so suspended, cancelled or terminated have been completely wound up as contemplated in section 419 (1) of the

Companies Act, or until the winding-up is stayed or set aside by an order of a competent court, continue to exercise their respective powers and to perform their respective duties under this section or in terms of the Companies Act, in respect of the public company of which the registration as a dedicated bank has been so suspended, cancelled or terminated, as if such suspension, cancellation or termination had not taken place.

**Appointment of curator to dedicated bank**

64.(1) The provisions of section 69 of the Banks Act, relating to the appointment of a curator to a bank, shall *mutatis mutandis* apply to any dedicated bank that in the opinion of the Registrar -

(a) will be unable to repay, when legally obliged to do so, deposits made with it; or

(b) will probably be unable to meet any other of its obligations.

(2) In the application, in terms of subsection (1), of the provisions of section 69 of the Banks Act, the reference -

(a) in section 69(2C) (b) (i) of the Banks Act to section 54 of the Banks Act shall be deemed to be a reference to the said section 54 as applied to dedicated banks by section 50 of this Act; and

(b) in section 69 (10) (b) of the Banks Act to section 68 of the Banks Act shall be deemed to be a reference to section 63 of this Act.

**Investigation of affairs of dedicated bank under curatorship**

65.(1) The provisions of section 69A of the Banks Act, relating to the investigation of the business, trade, dealings, affairs or assets and liabilities of a bank that is under curatorship or of its associate or associates, shall *mutatis mutandis* apply to any dedicated bank that is under curatorship.

(2) In the application, in terms of subsection (1), of the provisions of section 69A of the Banks Act, the reference -

(a) in section 69A(11)(b) of the Banks Act to section 68(1)(a) of the Banks Act shall be deemed to be a reference to section 63(1)(a) of this Act;

(b) in section 69A(16) and (17) of the Banks act to section 69(8) of the Banks Act shall be deemed to be a reference to the said section 69(8) as applied to dedicated banks by section 64 of this Act; and

(c) in section 69A(18) of the Banks Act to section 37(7) of the Banks Act shall be deemed to be a reference to section 33(6) of this Act.

## CHAPTER VII

## PRUDENTIAL REQUIREMENTS

### Minimum share capital and unimpaired reserve funds

66.(1) For the purposes of this Act -

**"allocated capital and reserve funds"** means such amount of qualifying capital and reserve funds as may be approved and assigned by the board of directors of a dedicated bank as capital and reserve funds designated to provide for the risks pertaining to the particular nature of such dedicated bank's business;

**"qualifying capital and reserve funds"** means the net sum of capital and reserve funds required to be held by a dedicated bank, calculated and determined in accordance with the provisions of subsection (2)(b).

(2) (a) A dedicated bank shall manage its affairs in such a way that, subject to the provisions of paragraph (b), the sum of its primary and secondary capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time amount to less than the greater of -

(i) (aa) in the case of a savings bank, R10 000 000; or

(bb) in the case of a savings and loans bank, R50 000 000; or

(ii) 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 71) of such different categories of -

(aa) assets; and

(bb) other risk exposures in the conduct of its business,

as may be prescribed in the Regulations relating to Dedicated Banks, by the risk weights, expressed as percentages, so prescribed in respect of such different categories of assets and other risk exposures.

(b) Notwithstanding the provisions of paragraph (a) -

(i) the sum of the dedicated bank's primary share capital and primary unimpaired reserve funds shall, in the calculation of the aggregate amount which such bank is in terms of paragraph (a) required to maintain, be calculated by deducting from the amount thereof such amounts as may be prescribed; and

(ii) the sum of the dedicated bank's secondary capital and secondary unimpaired reserve funds shall, in the calculation of the aggregate amount which such bank is in terms of paragraph (a) required to maintain, be -

(aa) calculated by deducting from the amount thereof such amounts as may be prescribed; and

(bb) taken into account to an amount not exceeding the sum of such bank's allocated and qualifying primary share capital and allocated and qualifying primary unimpaired reserve funds.

**Minimum liquid assets for savings and loans banks**

67.(1) A savings and loans 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

of such different categories of its liabilities as may be specified by regulation with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities: Provided that such sum of amounts calculated as aforesaid shall not be less than a percentage as may be prescribed from time to time, of the savings and loans bank's total liabilities.

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

(3) A savings and loans 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 exempt such bank from the prohibition contained in this subsection on such conditions and to such an extent and for such a period as the Registrar may determine.

(4) For the purposes of this section securities which constitute "liquid assets" as defined in section 1 shall be valued as prescribed.

**Large exposures of savings and loans banks**

68.(1) A savings and loans bank shall not make investments with or grant loans or advances or other credit to any person, to an aggregate amount exceeding 10 per cent of such amount of its capital and reserves as may be prescribed.

(2) A savings and loans bank shall not take deposits from a person resulting in its exposure towards the depositor exceeding a prescribed percentage of the savings and loans bank's assets.

(3) Notwithstanding anything to the contrary contained in this Act, a savings and loans bank -

(a) shall not without the prior written approval of the Registrar make an investment with or grant a loan, advance or other credit to any private sector non-bank person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that private sector non-bank person, results in the savings and loans bank being exposed to that private sector non-bank person to an amount exceeding 25 per cent of a prescribed amount;

(b) 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 other than a private sector non-bank person, which transaction, either alone or together with any previous transaction or transactions entered into by it with that other person, results in the savings and loans bank being exposed to that other person up to an amount exceeding 25 per cent of a prescribed amount; and

(c) shall, in the event of the Registrar granting such written approval as contemplated in paragraph (a), be subject to such additional capital requirements as may be prescribed.

(4) For the purposes of this section -

(a) 'person' includes -

(i) 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

(ii) two or more persons, whether natural or juristic persons, between whom there exists no relationship of control as contemplated in subparagraph (i), 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; and

(b) 'private sector non-bank person' means a person as defined in paragraph (a) but does not include -

(i) the central government or other public sector bodies;

(ii) a bank;

(iii) a mutual bank;

(iv) a branch as defined in section 1 of the Banks Act;

(v) a foreign institution that, under an authorization referred to in section 18A of the Banks Act, conducts the business of a bank by means of a branch in the Republic;

(vi) a controlling company as defined in section 1 of the Banks Act; or

(vii) any other person designated by the Registrar.

**Minimum reserve balance of savings and loans banks**

69. 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 savings and loans bank.

**Failure or inability to comply with prudential requirements**

70.(1) If a dedicated bank fails to comply with a provision of section 66 or, in the case of a savings and loans bank, section 67, or is unable to comply with any such provision, it shall forthwith in writing report its failure or inability to the Registrar, stating the reasons for such failure or inability.

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

(3) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a dedicated 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 dedicated bank, in respect of such failure or inability, a fine -

(a) in the case of any failure or inability to comply with the provisions of section 66, 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 by or inability of a savings and loans bank to comply with the provisions of section 67, not exceeding 3 per cent of the amount of the shortfall.

(4) A fine imposed under subsection (3) shall be paid to the Registrar within such period as may be specified in the relevant notice, and if the dedicated 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 dedicated bank the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified.

**Returns**

71.(1) A dedicated bank shall, in order to enable the Registrar to determine -

(a) whether the dedicated bank is complying with the provisions of -

(i) section 66 or, in the case of a savings and loans bank, section 67, or

(ii) in the case of a savings and loans bank, section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); or

(b) the nature and amounts of the dedicated bank's assets, liabilities and contingent liabilities,

furnish the Registrar, subject to the provisions of subsection (3), with returns.

(2) A dedicated bank shall, in addition to the returns referred to in subsection (1), furnish the Registrar, subject to the provisions of subsection (3), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.

(3) The returns referred to in subsections (1) and (2) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar in respect of such period, at such times and on such a form as may be prescribed.

(4) A dedicated bank shall furnish the Registrar, in respect of those of the respective returns referred to in subsections (1) and (2) which most nearly coincide with the end of the financial year of the dedicated bank, with a report by the auditor of the dedicated bank in which is stated whether or not those returns fairly and in conformity with generally accepted accounting practice present those affairs of the dedicated bank to which the returns relate, and the Registrar may, if he or she deems it necessary, require the dedicated bank so to furnish him or her with such a report in respect of any other of those returns furnished during the financial year.

(5) A dedicated bank shall, at such times as may be prescribed, furnish the Registrar with such further prescribed information as the Registrar may require.

## CHAPTER VIII

## PROVISIONS RELATING TO ASPECTS OF THE CONDUCT OF THE BUSINESS OF A DEDICATED BANK

**Restriction on investments in immovable property and shares, and on loans and advances to certain subsidiaries by savings and loans banks**

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

(a) invested by it in immovable property, taken at the book value thereof;

(b) invested by it in shares (excluding preference shares which are not convertible into ordinary shares), taken at the price at which they were acquired; and

(c) owing to it by any such subsidiary in respect of a loan or an advance granted by it,

does not at any time exceed a prescribed amount.

(2) A savings and loans bank may with the written approval of the Minister and subject to such conditions as the Minister may determine, make investments and grant loans and advances, referred to in subsection (1), to an aggregate amount which exceeds the sum to which it is limited in terms of subsection (1).

**Restriction on investments with, and loans and advances to, certain associates by savings and loans banks**

73.(1) A savings and loans bank which invests money in debentures or preference shares of any of its associates (excluding any such associate which is a subsidiary referred to in section 72(1), a bank or a mutual building society), or which lends or advances money to any such associate, or which provides guarantees in respect of liabilities of such associates, shall manage its transactions in such investments, loans, advances or guarantees in such a way that the sum of the amounts -

(a) invested by it in debentures or preference shares of such associates (excluding debentures or preference shares which are convertible into ordinary shares), taken at the price at which they were acquired;

(b) owing to it by such associates in respect of loans or advances granted by it; and

(c) of such guarantees,

does not at any time exceed ten per cent of its liabilities, 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 66(2), of the savings and loans bank exceeds the sum of the amounts referred to in paragraphs (a), (b) and (c) of section 72(1).

(3) For the purposes of this section ‘associate’ means an associate as defined in section 33(6).

**Undesirable practices**

74.(1) A dedicated bank -

(a) shall not hold shares in any company of which such dedicated bank is a subsidiary;

(b) that is in terms of section 4 permitted to grant loans by virtue of its being a savings and loans bank, shall not lend money to any person against security of its own shares;

(c) referred to in paragraph (b), shall not grant unsecured loans or loans against security which in the opinion of the Registrar is inadequate;

(d) shall hold all its assets in its own name, excluding any asset -

(i) *bona fide* hypothecated to secure an actual or potential liability;

(ii) in respect of which the Registrar has, on application of the dedicated bank concerned, approved in writing that such asset may be held in the name of another person; or

(iii) falling within a category of assets designated by the Registrar by notice in the *Gazette* as a category of assets which may be held in the name of another person;

(e) shall not show in its financial statements or in any return referred to in section 71(1)(b) as an asset any amount representing the cost of organisation or extension or the purchase of a business or a loss (including a loss originating from the sale of an asset) or bad debts;

(f) shall not before provision has been made out of profits for the items referred to in paragraph (e) -

(i) open any branch or agency or any further branch or agency; or

(ii) pay out dividends on its shares; and

(g) shall not, in the case of a savings and loans bank, 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 savings and loans bank subject to a written contract of agency in which, in addition to any other term thereof, at least the following matters shall be recorded:

(i) Confirmation by the lender that the savings and loans bank acts as the lender's agent;

(ii) that the lender assumes, except in so far as the lender may in law have a right of recovery against the savings and loans bank, all risks connected with the placing by such bank of the funds entrusted to it by the lender, as well as the responsibility to ensure that such bank executes the lender's instructions as recorded in the written contract of agency; and

(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 savings and loans bank;

(h) shall not in its accounting records record any asset at a value increased by the amount of a loss incurred upon the realisation of another asset;

(i) shall not conclude a repurchase agreement in respect of a fictitious asset or any asset created by means of a simulated transaction; and

(j) shall not purport to have concluded a repurchase agreement without -

(i) such agreement being substantiated by a written document signed by the other party thereto; and

(ii) the details of such agreement being recorded in the accounts of the dedicated bank as well as in the accounts, if any, kept by the dedicated bank in the name of such other party.

(2) The Registrar may -

(a) in writing notify a dedicated bank that a practice employed by that dedicated bank and specified in the notice constitutes an undesirable practice for that dedicated bank; or

(b) by notice in the *Gazette* declare a practice specified in that notice to be an undesirable practice for dedicated banks specified in that notice or for all dedicated banks,

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

(3) A dedicated 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, which contains information which is not a correct statement of fact, or the publication or issue of which is, in the opinion of the Registrar, not in the public interest.

**Shares, debentures, negotiable certificates of deposit and share warrants**

75.(1) A dedicated bank shall not -

(a) sections 74 and 75 of the Companies Act notwithstanding, issue shares of no par value or convert any of its shares into shares of no par value;

(b) without the written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing -

(i) issue any preference shares or debt instruments;

(ii) convert any of its shares into preference shares or debt instruments; or

(iii) convert any of its preference shares of a particular class into preference shares of any other class;

(c) issue negotiable certificates of deposit otherwise than in accordance with such conditions as may be prescribed; or

(d) section 101 of the Companies Act notwithstanding, issue share warrants to bearer within the meaning of that section.

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

(3) Notwithstanding anything to the contrary contained in any contract or in the memorandum of association or articles of association of any dedicated bank, there shall be no differentiation in the voting rights attached to any of the ordinary shares of a dedicated bank, and such voting rights shall be exercised in accordance with the determination thereof as provided in section 195(1) of the Companies Act.

## CHAPTER IX
## CONVERSION OF DEDICATED BANKS

**Conversion of savings bank into savings and loans bank or of savings and loans bank into bank**

76.(1) A savings bank that desires to carry on business as a savings and loans bank or a savings and loans bank that desires to carry on business as a savings bank or a bank may with the approval of the Registrar and under the authority of a special resolution adopted at a special general meeting of shareholders of the savings bank or savings and loans bank, as the case may be, be converted –

(a) in the case of the savings bank, into such a savings and loan bank; or

(b) in the case of the savings and loans bank, into such a savings bank or a bank,

in accordance with the provisions of this Chapter.

(2) A special resolution referred to in subsection (1) may be adopted by a savings bank or by a savings and loans bank, as the case may be, notwithstanding the provisions of its memorandum and articles of association or the provisions of this Act.

**Application for Registrar's approval**

77.(1) A savings bank or a savings and loans bank, as the case may be, contemplating to hold a general meeting of shareholders for the purpose of adopting a special resolution referred to in section 76, shall before it convenes such a meeting apply to the Registrar on the prescribed form for the Registrar's 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 regulating the proposed conversion and governing the reciprocal rights and obligations of the parties to the conversion, and in particular, specifying the basis, terms and conditions on which the conversion is to be effected;

(c) a proposed memorandum of association and articles of association incorporating such alterations of the savings bank's or savings and loans bank's (as the case may be) existing memorandum of association and articles of association as are necessitated by the intended conversion;

(d) the memorandum of association and articles of association of –

(i) the savings bank's or savings and loans bank's controlling company (if any), incorporating such alterations of the controlling company's existing memorandum of association and articles of association as are necessitated by the intended conversion; or

(ii) any public company (if any) intending to apply for registration as a controlling company in respect of the savings and loans bank or the bank, as the case may be, to be established by the conversion;

(e) a proposed special resolution –

(i) authorizing in accordance with the conversion scheme, referred to in paragraph (b), the conversion of the savings bank into a savings

and loans bank or the savings and loans bank into a savings bank or a bank, as the case may be;

(ii) approving the provisions of the conversion scheme referred to in paragraph (b);

(iii) adopting the proposed memorandum of association and articles of association referred to in paragraph (c);

(iv) approving, if a controlling company for the savings and loans bank or the bank, as the case may be, to be established by the conversion, is contemplated, the memorandum of association and articles of association referred to in paragraph (d)(ii); and

(v) providing for any such other matters in connection with the conversion as may be regarded necessary.

(3) A savings bank or savings and loans bank, as the case may be, 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**

78.(1) The Registrar shall not grant his or her approval for the conversion of a savings bank into a savings and loans bank or a savings and loans bank into a savings bank or a bank, as the case may be, if the Registrar is of the opinion –

(a) that any of the documents mentioned in section 77(2) is inconsistent –

(i) in the case of a proposed conversion of a savings bank into a savings and loans bank, with a provision of this Act; or

(ii) in the case of a proposed conversion of a savings and loans bank into a savings bank or a bank, with a provision of the Banks Act,

or contains a provision that is undesirable; or

(b) that the application does not comply –

(i) in the case referred to in paragraph (a)(i), with a requirement of this Act; or

(ii) in the case referred to in paragraph (a)(ii), with a requirement of the Banks Act.

(2) The Registrar shall not refuse any application on the ground of subsection (1)(a) without having afforded the savings bank or savings and loans bank, as the case may be, a reasonable opportunity to adjust the relevant document in accordance with the Registrar's requirements.

**Special general meeting to authorize conversion**

79.(1) As soon as the Registrar has granted approval for the conversion of a savings bank into a savings and loans bank or a savings and loans bank into a savings bank or a bank, as the case may be, the savings bank or savings and loans bank that is to be so converted may convene a special general meeting of shareholders in accordance with this Act and its articles of association for the purpose of adopting the special resolution referred to in section 76.

(2) The documents put before any such meeting shall consist of -

(a) the documents mentioned in section 77(2) or, if the Registrar has refused to grant approval for the conversion unless any of such documents are

adjusted in accordance with the Registrars requirements, the said documents as so adjusted; and

(b) any additional documents that the board of directors of the savings bank or the savings and loans bank, as the case may be, 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 savings bank or the savings and loans bank, as the case may be, issue a certificate to it to the effect that the Registrar has granted approval for the proposed conversion.

**Registration of controlling company in respect of savings and loans bank or of bank established by conversion**

80.(1) In the case where a savings bank that is converted into a savings and loans bank or a savings and loans bank that is converted into a savings bank or a bank in terms of this Chapter does not have a controlling company, a public company intending to acquire control over the savings and loans bank or the bank, as the case may be, established by the conversion may -

(a) in the case of the savings and loans bank or savings bank so established, apply in terms of section 39(1) of this Act; or

(b) in the case of the bank so established, apply in terms of section 43(1) of the Banks Act,

for registration as a controlling company in respect of such savings and loans bank, savings bank or bank, as the case may be, at any time after the special resolution referred to in section 76 authorizing the conversion has been adopted.(2) A company that applied for registration as a controlling company in the circumstances mentioned in sub-section (1) shall not be registered as such a controlling company before the savings and loans bank, savings bank or bank, as the case may be, in respect of which it applied is established.

(3) In addition to any other condition which the Registrar may -

(a) in the case of an application in respect of a savings and loans bank or a savings bank, impose under section 40(1) of this Act; or

(b) in the case of an application in respect of a bank, impose under section 44(1) of the Banks Act,

in respect of a company applying for registration as a controlling company in the circumstances mentioned in subsection (1), the Registrar may impose a condition requiring the company to acquire control over the savings and loans bank, savings bank or the bank, as the case may be, within a specified period after the establishment of the savings and loans bank, savings bank or the bank, as the case may be, by virtue of the conversions.

**Finalisation of conversion**

81.(1) A savings bank shall be converted into a savings and loans bank and a savings and loans bank shall be converted into a savings bank, as contemplated in this Chapter, upon registration by the Registrar of Companies of the relevant altered memorandum of association and articles of association referred to in section 77(2)(c).

(2) A savings and loans bank shall be converted into a bank provided that the relevant provisions of the Banks Act have been complied with.

(3) The Registrar of Companies shall not register the memorandum of association and articles of association referred to in subsection (1) unless the application for such registration is accompanied by a certificate issued by the Registrar in terms of section 79(3).

**Notice in *Gazette* of conversion**

82.(1) Within 14 days of any conversion in terms of section 81 the savings and loans bank or the savings bank or the bank, as the case may be, established by the conversion shall forward two certified copies of its memorandum of association 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 registration as a savings and loans bank or as a bank, as the case may be.

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

## CHAPTER X

## GENERAL PROVISIONS

**Control of unlawful activities of persons not registered as dedicated banks**

83.(1) The provisions of -

(a) section 81 of the Banks Act relating to the obtaining of an order of Court prohibiting anticipated or actual contraventions of certain provisions of the Banks Act by persons not registered as banks (hereinafter in this section referred to as unregistered persons);

(b) section 82 of the Banks Act relating to the Registrar's power to exact information from unregistered persons;

(c) section 83 of the Banks act relating to the repayment of money unlawfully obtained by unregistered persons; and

(d) section 84 of the Banks Act relating to the management and control of the repayment of money unlawfully obtained by unregistered persons,

shall *mutatis mutandis* apply to anticipated or actual contraventions of the corresponding provisions of this Act by persons not registered as dedicated banks.

(2) In the application, in terms of subsection (1), of the provisions of section 81 of the Banks Act -

(a) the references in subsection (1) of the said section 81 to -

(i) section 11(1) of the Banks Act shall be deemed to be references to section 12(1) of this Act; and

(ii) section 22(4) or (5) of the Banks Act shall be deemed to be a reference to section 21(4) or (5) of this Act; and

(b) the reference in subsection (2)(a) of the said section 81 to section 11(1) of the Banks Act shall be deemed to be a reference to section 12(1) of this Act.

**Certification of returns and other documents**

84. Any return or other document to be furnished to the Registrar by a dedicated 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 dedicated bank and be endorsed by such chief executive officer with the date on which it is so certified.

**Inspection, copies and keeping of documents**

85(1) Any person may upon payment of the prescribed fee -

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

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

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

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

(a) certificates of registration, or of the registration of an alteration of the memorandum of association or articles of association, or of a change of name, of dedicated banks;

(b) memorandums of association and articles of association of dedicated banks; and

(c) returns and copies of notices, reports, returns, statements or minutes lodged with the Registrar in terms of section 54, 60 or 71, excluding any return or statement so lodged by means or under cover of a prescribed form which, in terms of the regulation prescribing it, is to be treated as confidential and not available for inspection by the public.

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

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

**Limitation of liability**

86. No liability shall attach to the South African Reserve Bank or, either in his or her 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.

**Furnishing of information by Registrar**

87. 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 or her in the performance of his or her duties or functions under this Act 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.

**Regulations**

88.(1) The Minister may make regulations -

(a) as to any matter which is required or permitted to the prescribed by regulation under this Act;

(b) subject to the provisions of the Companies Act, providing guidelines relating to the conduct of, and prescribing requirements to be complied with by, a member of the board of directors of a dedicated bank in the performance of his or her 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;

(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 dedicated banks to the Registrar;

(f) prescribing that the financial statements of a dedicated 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 32 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;

(h) prescribing the basis on which any movable or immovable assets shall for the purposes of this Act be valued; or

(i) prescribing, generally, any matter, whether or not connected with any matter specified in paragraphs (a) to (h), inclusive, which the Minister 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 that person has set forth therein all the particulars for which provision is made in the prescribed form.

(3) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of R2 000 or imprisonment for a period of six months.

**Offences, penalties and liabilities**

89.(1) Any person who -

(a) fails to comply with a direction under section 8; or

(b) contravenes or fails to comply with a provision of section 8(3), (4) or (5),32, 33(1), 34(1), 35, 37, 48(1), 49, 53, 54, 56(2), 60, 61, 62, 66(2), 67, 68, 71, 72, 73, 74(1) or (3) or 75 of this Act, or of section 84(2) of the Banks Act as applied by section 84(1)(d) of this Act,

shall be guilty of an offence.

(2) A director or employee of a savings and loans bank or of a controlling company who, or any company in which such director or employee has a direct interest and which -

(a) accepts from any person any benefit for or in connection with any advance granted by that savings and loans bank or by the savings and loans bank in respect of which that controlling company is registered; or

(b) otherwise than with the written consent of the Registrar or at a duly advertised public auction purchases any immovable property owned by or mortgaged to that savings and loans bank or the savings and loans bank in respect of which that controlling company is registered, and which is sold by or at the instance of the savings and loans bank in question or is sold at a judicial sale at the instance of any other person,

shall be guilty of an offence.

(3) A dedicated bank which, while a shortfall referred to in section 70(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 12(2) or 21(4), shall be liable to a fine not exceeding R1000000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment; or

(b) section 18(6), 20, 21(3) or (8), 31(4)(a), 69A (14) of the Banks Act as applied by section 65 of this Act, 65(2), sections 82(3), 83(3)(a) or 84(8) of the Banks Act as applied by section 84 of this Act, or subsection (1), (2) or (3) of this section, shall be liable to a fine not exceeding R100000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(5) Any person who accepts any benefit in contravention of the provisions of subsection (2)(a), shall pay to the savings and loans 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 9(2)(a), within the extended period, the Registrar may impose upon such person 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.

(8) Whenever it appears that the business of a dedicated bank was conducted in an impermissible manner, that is, in the case of –

(a) a savings bank, not in accordance with section 3; or

(b) a savings and loans bank, not in accordance with section 4,

then every director, chief executive officer or executive officer of the dedicated bank in question whose act or omission caused the business of that dedicated bank to be managed in such impermissible manner, shall at the suit of the Registrar, be personally, jointly or severally, liable for any loss suffered as a result of the dedicated bank having been managed in such impermissible manner.

**Review of Act**

90. This Act shall be reviewed from time to time, *mutatis mutandis* as contemplated in section 92 of the Banks Act, by the standing committee appointed under section 92(1) of the Banks Act.

**Short title and commencement**

91. This Act is called the Dedicated Banks Act, 2004, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette.*