

STATE PRESIDENT'S OFFICE

No. 369
10 March 1993

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

NO. 9 OF 1993: DEPOSIT-TAKING INSTITUTIONS AMENDMENT ACT, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Deposit-taking Institutions Act, 1990, so as to substitute for the expression "deposit-taking institution" or any derivative thereof, wherever that expression or derivative appears in the said Act, the word "bank" or the appropriate derivative thereof; to further define the expression "the business of a bank"; to create criteria according to which it can be established whether or not a particular person is a fit and proper person to hold the office of a director or an executive officer of a bank or a controlling company; to allow a right of appeal to the board of appeal against a decision of the Registrar of Banks in connection with an application for authorization to establish a bank; to compel the Registrar of Banks to give notice in the Gazette of every consent granted by him to the establishment in the Republic of a representative office of a foreign institution; to provide for the submission of a written report to the Registrar of Banks regarding the advisability of the continuation of the curatorship of a bank that is under curatorship; to further define the expressions "primary share capital", "primary unimpaired reserve funds", "secondary share capital" and "secondary unimpaired reserve funds", respectively; to substitute the expression "debt instruments" for the word "debentures" in section 70; to make further provision in connection with the minimum share capital and unimpaired reserve funds to be maintained by a subsidiary by way of which a bank or controlling company conducts the business of a bank in a country other than the Republic; to repeal the provisions relating to the maintenance by banks of a minimum reserve balance with the South African Reserve Bank, in view of the insertion of corresponding provisions in the South African Reserve Bank Act, 1989; to render the acquisition by a bank or an associate thereof of more than 49 per cent of the issued shares of a registered insurer subject to approval by the Registrar of Banks; and to prescribe a penalty for a further offence; and to provide for matters connected therewith.

(English text signed by the State President.)

(Assented to 26 February 1993.)

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

Amendment of section 1 of Act 94 of 1990, as amended by Government Notice No. R.1765 of 30 July 1991 and section 1 of Act 42 of 1992

1. Section 1 of the Deposit-taking Institutions Act 1990 (hereinafter referred to as the principal Act), is hereby amended-

- (a) by the insertion in subsection (1) after the definition of "agency" of the following definition:

" 'bank' means a public company registered provisionally or finally as a bank in terms of this Act,";

- (b) by the deletion in subsection (1) of the definition of "deposit-taking institution";

- (c) by the substitution in subsection (1) for paragraph (a) of the definition of "liquid assets" of the following paragraph:

"(a) Reserve Bank notes, subsidiary coin (*excluding such notes or coin to the extent to which it is taken into account in the calculation of the minimum reserve balance a bank is required to maintain in an account with the Reserve Bank in terms of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989)*), gold coin and bullion;"

- (d) by the substitution in subsection (1) for paragraph (b) of the definition of "liquid assets" of the following paragraph:

"(b) any credit balance **in an account maintained with the Reserve Bank in terms of section 71 or** in a clearing account with the Reserve Bank;"

- (e) by the deletion in subsection (1) of paragraphs (c), (e), (h) and (i) of the definition of "liquid assets".

- (f) by the substitution in subsection (1) for paragraph (a) of the definition of "the business of a deposit-taking institution" of the following paragraph:

"(a) the acceptance of deposits from the general public as a regular feature of the business in question, including, in relation to **such an institution a bank**, from persons in its employ:"

- (g) by the substitution in subsection (1) for paragraph (ff) of the definition of "the business of a deposit-taking institution" of the following paragraph:

(ff) the effecting, subject to the provisions of any other Act of Parliament and to such conditions as the Registrar may from time to time determine by notice in the Gazette, of a money lending transaction directly between a lender and a **deposit-taking institution bank** as borrower through the intermediation of a third party who does not act as a principal to the transaction (*hereinafter in this paragraph referred to as the agent*), provided **such money lending transaction is so effected on the same day on which the third party concerned receives from the lender** the funds to be lent in terms of the money lending transaction are entrusted by the lender to the agent subject to a written contract of agency in which, in addition to any other terms thereof, at least the following matters shall be recorded:

(i) Confirmation by the lender that the agent acts as his agent; and

(ii) that the lender assumes, except in so far as he may in law have a right of recovery against the agent, all risks connected with the administration by the agent of the funds

entrusted to him by the lender, as well as the responsibility to ensure that the agent executes his instructions as recorded in the written contract of agency:

Provided that, notwithstanding the preceding provisions of this paragraph, an agent that-

- (i) is a natural or juristic person registered or established in terms of, by or under any other Act of Parliament and the main business activities of whom or of which are regulated or controlled in terms of, by or under such other Act of Parliament; and
- (ii) has been designated by the Registrar by notice in the Gazette, may, for the purposes of the effecting of the money lending transaction and subject to such conditions as the Registrar

may determine in the relevant notice, pool the funds entrusted by the lender to such agent with funds entrusted to such agent by other lenders;":

- (h) by the insertion of the following subsection after subsection (1):

"(1A) (a) In order to determine, for the purposes of this Act, whether a particular person is a fit and proper person to hold the office of a director or an executive officer of a bank or a controlling company, the Registrar shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned:

- (i) His general probity;
- (ii) his competence and soundness of judgement for the fulfilment of the responsibilities of the office in question; and
- (iii) the diligence with which the person concerned is likely to fulfil those responsibilities.

(b) For the purposes of and without prejudice to the generality of the provisions of paragraph (a), the Registrar may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person-

- (i) was convicted of the offence of fraud or any other offence of which dishonesty, or the commission of violence, was an element;
- (ii) had contravened the provisions of any law appearing to the Registrar to be designed for protecting members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in
 - (aa) the provision of banking, insurance, investment or other financial services; or
 - (bb) the management of juristic persons, or against financial loss due to activities relating to insolvency;
- (iii) was a director who had been indicated, as contemplated in section 421(2) of the Companies Act, as the effective cause

of a particular company having been unable to pay its debts;

- (iv) had taken part in any business practices that, in the opinion of the Registrar, were deceitful, prejudicial or otherwise improper (whether unlawful or not) or which otherwise brought discredit on his methods of conducting business; or
- (v) had taken part in or been associated with any such other business practices as would, or had otherwise conducted himself in such a way as to, cast doubt on his competence and soundness of judgement.

(c) The Registrar shall be entitled to request any person to complete a questionnaire that is designed to enable the Registrar to form an opinion, as contemplated in this subsection, regarding the qualities of that person."; and

- (i) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

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

Substitution of section 3 of Act 94 of 1990

2. The following section is hereby substituted for section 3 of the principal Act:

"Office for Banks

3. For the registration as banks of **institutions as deposit-taking institutional public companies desiring to conduct the business of a bank** and for the other purposes of this Act there shall, as part of the Reserve Bank, be an office in Pretoria called the Office for **Deposit-taking institutional Banks**, and at the head of such office shall be a person to be styled the Registrar of **Deposit-taking Institutional Banks**."

Amendment of section 7 of Act 94 of 1990

3. Section 7 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) direct such **institution 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, **1951 (Act No. 51 of 1951) 1991 (Act No. 80 of 1991)**, or by any other person with appropriate professional skill, on any matter, or any aspect of any matter, about which the Registrar has directed or may direct under paragraph (a) the **institution bank**, controlling company or subsidiary to furnish information."

Amendment of section 9 of Act 94 of 1990, as amended by section 2 of Act 42 of 1992

4. Section 9 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) **Subject to the provisions of section 13(4), any** 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 appeal against such decision to the board of appeal established by subsection (2)."; and

- (b) by the substitution for paragraphs (b) and (c) of subsection (2) of the following paragraphs, respectively

"(b) three shall be persons who in the opinion of the Minister have wide experience of, and are knowledgeable about the latest developments in, the **deposit-taking institution banking** industry; and

(c) one shall be a person registered as an accountant and auditor under section **23 15** of the Public Accountants' and Auditors' Act, **1951 (Act No. 51 of 1951)** 1991 (Act No. 80 of 1991), and who in the opinion of the Minister has wide experience of, and is knowledgeable about the latest developments in, the accountants' and auditors' profession.".

Amendment of section 12 of Act 94 of 1990

5. Section 12 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) a report by a public accountant as defined in section 1 of the Public Accountants' and Auditors' Act, **1951 (Act No. 51 of 1951)** 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,".

Amendment of section 13 of Act 94 of 1990

6. Section 13 of the principal Act is hereby amended-

- (a) by the insertion after paragraph (f) of subsection (2) of the following paragraph:

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

- (b) by the deletion of subsection (4).

Amendment of section 22 of Act 94 of 1990

7. Section 22 of the principal Act is hereby amended-

- (a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"No person shall use in respect of any business a name or description which includes the word "bank", or any derivative thereof, or the words "*deposit-taking institution*" or "building society", or any derivative thereof, unless-";

- (b) by the substitution for subsection (6) of the following subsection:

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

- (a) of which the formation has been approved by the Registrar in terms of section 15, may be formed under a name which includes the word "bank" or the words "*deposit-taking institution*" or "building society", or a derivative thereof; or
- (b) whose application for provisional registration as a **deposit-taking institution bank** has been granted by the Registrar under section 17 and which has not been formed in accordance with paragraph (a) of this subsection under a name which already includes the word "bank" or the words "*deposit-taking institution*" or "building society", or a derivative thereof, may before its provisional registration take the necessary steps in accordance with the Companies Act to include such word, words or derivative in its name."; and
- (c) by the substitution in subsection (7) for the words preceding paragraph:

(a) of the following words:

"The Registrar may in writing direct a company referred to in subsection (6) whose name includes the word "bank" or the words "*deposit-taking institution*" or "building society", or any derivative thereof, to remove such word, words or derivative from its name-".

Substitution of section 30 of Act 94 of 1990

8. The following section is hereby substituted for section 30 of the principal Act:

"Publication of information relating to banks and representative offices of foreign institutions

30. The Registrar shall publish a notice in the Gazette-

(a) of every-

- (a) (i) provisional or final registration of an institution as a **deposit-taking institution bank**;
- (b) (ii) cancellation or suspension of such a registration;
- (c) (iii) expiration of such a provisional registration;
- (d) (iv) restriction of the activities of a **deposit-taking institution bank**;
- (e) (v) withdrawal of such suspension or restriction; or
- (f) (vi) change of the name of a **deposit-taking institution bank**;

which is effected or which takes place in terms of this Act; and

- (b) of every consent to the establishment in the Republic of a representative office of a foreign institution which has been granted by him in terms of section 34."

Substitution of section 33 of Act 94 of 1990

9. The following section is hereby substituted for section 33 of the principal Act:

"Reregistration in terms of this Act

33. (1) *Every institution which on the date immediately preceding the date of commencement of the Deposit-taking Institutions Amendment Act, 1993 (hereinafter in this section referred to as the Amendment Act), is a deposit-taking institution that has been provisionally or finally registered as such under the provisions of this Act as those provisions existed prior to the amendment thereof by the Amendment Act shall, in accordance with and subject to the provisions of subsections (2) and (3)-*

- (a) *in the case of an institution that has so been provisionally registered as a deposit-taking institution, be provisionally registered as a bank; and*
- (b) *in the case of an institution that has so been finally registered as a deposit-taking institution, be finally registered as a bank, by the Registrar in terms of the provisions of this Act as so amended, as soon as is practicable after the said date of commencement.*

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

(3) *The reregistration of an institution in terms of this section shall in the case of a provisional registration be for the unexpired portion of the period of the institution's former provisional registration as a deposit-taking institution.*

(4) *Upon the reregistration of an institution in terms of this section its previous registration as a deposit-taking institution shall be deemed to have lapsed and any certificate of registration issued in respect thereof shall be deemed to have been cancelled.*

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

Amendment of section 44 of Act 94 of 1990

10. Section 44 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) A public company which on the date immediately preceding the date of commencement of the Deposit-taking Institutions Amendment Act, 1993 (hereinafter in this subsection referred to as the Amendment Act), is, in terms of the provisions of this Act as those provisions existed prior to the amendment thereof by the Amendment Act, registered as a controlling company in respect of a deposit-taking institution, shall, with effect from the date of the reregistration of the deposit-taking institution concerned as a bank in terms of section 33, be deemed to be a controlling company registered as such in terms of this section in respect of the bank as so reregistered."

Amendment of section 51 of Act 94 of 1990

11. Section 51 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The Minister may with the concurrence of the Minister of Trade and Industry **and Tourism** by notice in the Gazette declare that a provision of the Companies Act specified in such notice-".

Amendment of section 54 of Act 94 of 1990, as substituted by section 6 of Act 42 of 1992

12. Section 54 of the principal Act is hereby amended-

(a) by the substitution in subsection (8) for the words following upon paragraph (b) of the following words:

"any **deposit-taking institution bank** which has amalgamated with any other **such institution bank** or any **deposit-taking institution bank** which has transferred all its assets and liabilities to any other **such institution bank**, shall, if he is satisfied-

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

(ii) that such amalgamation or transfer has been duly effected,

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

(b) by the substitution for subsection (9) of the following subsection:

"(9) The provisions of this section shall not affect the rights of any creditor of a **deposit-taking institution bank** which has amalgamated with or transferred all its assets and liabilities to any other **such institution bank** or taken over all the assets and liabilities of any other **such institution bank**, except to the extent provided in this section."; and

(c) by the substitution for subsection (10) of the following subsection:

"(10) The conditions and any tax benefit which immediately prior to the date of a transfer, referred to in this section, of assets and liabilities were applicable in respect of an investment, referred to in section 10(1)(i)(xii), (xiiA) or (xiii), 10(1)(v), (vA) or (w) or 19(5A) of the Income Tax Act, 1962 (Act No. 58 of 1962), with the transferor **deposit-taking institution bank** shall, notwithstanding such a transfer of assets and liabilities but subject to the provisions of the said Act, remain applicable to the investment until the expiration of a period of ten years as from the date on which it was initially made or until it is redeemed, whichever occurs first.".

Amendment of section 59 of Act 94 of 1990

13. Section 59 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) If the total nominal value of the shares in a **deposit-taking institution 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 **institution bank** or *controlling* company concerned, such **institution 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 2 shareholder in the register of members referred to in section 105 of the Companies Act is an address in the Republic; and
- (b) is not an associate of any other shareholder of the **institution bank** or *controlling* company."

Amendment of section 61 of Act 94 of 1990

14. Section 61 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 63 of Act 94 of 1990, as amended by section 7 of Act 42 of 1992

15. Section 63 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"Notwithstanding anything to the contrary contained in the Public Accountants' and Auditors' Act, **1951 (Act No. 51 of 1951) 1991 (Act No. 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 61 or 62-".

Amendment of section 68 of Act 94 of 1990

16. Section 68 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

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

Amendment of section 69 of Act 94 of 1990, as amended by section 8 of Act 42 of 1992

17. Section 69 of the principal Act is hereby amended by the insertion after subsection (6) of the following subsection:

"(6A) *While a bank is under curatorship the curator shall, on the expiration of a period of one year as from the date of his appointment as such and thereafter biannually upon the expiration of every period of six months, furnish the Registrar with a written report in which it is stated whether or not, in the opinion of the curator, it is in the interest of the depositors of the bank concerned that the bank remains under curatorship.*"

Amendment of section 70 of Act 94 of 1990, as amended by section 9 of Act 42 of 1992

18. Section 70 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) For the purposes of this Act-

'primary share capital' means capital obtained through the issue of ordinary shares or non-redeemable non-cumulative preference shares, *excluding such ordinary or non-redeemable non-cumulative preference shares issued in pursuance of the capitalization 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 realization of capital assets, and which have been set aside as a general or special reserve, are disclosed as such a reserve in the financial statements of the **deposit-taking institution bank** concerned and are available for the purpose of meeting liabilities of or losses suffered by the **deposit-taking institution bank**, but does not include any fund required to be maintained in terms of any other law;

'secondary share capital' means-

(a) capital obtained through the issue, with the prior written approval of the Registrar and in accordance with conditions approved by the Registrar in writing, of cumulative preference shares, *excluding, in the case of such cumulative preference shares issued in pursuance of the capitalization of reserves resulting from a revaluation of assets, 50 per cent of the capital represented thereby; and*

(b) *50 per cent of the capital represented by ordinary shares, or preference shares other than cumulative preference shares, issued in pursuance of the capitalization of reserves resulting from a revaluation of assets,*

and includes loan capital obtained by way of **debentures debt instruments** issued subject to-

(a)(i) the condition that the **debentures debt instruments** are issued for a minimum period of five years;

(b)(ii) the condition that the **debentures debt instruments** may be redeemed before maturity only at the option of the **deposit-taking institution bank** concerned and with the prior written approval of the Registrar;

(c)(iii) the condition that, notwithstanding the provisions of any other Act, in the event of the winding-up of the **deposit-taking institution bank** concerned, the capital amount of the **debentures debt instruments** shall not be repaid until the claims of other creditors have been fully satisfied; and

(d) (iv) such further conditions, if any, as may be prescribed;

'secondary unimpaired reserve funds' means funds obtained and set aside as contemplated in the definition of 'primary unimpaired reserve funds' in this subsection (*except such funds obtained by way of premiums on the issue of ordinary or non-redeemable non cumulative preference shares*), and which are available for the purpose contemplated in that definition, but which are not disclosed as a general or special reserve in the financial statements of the **deposit-taking institution bank** concerned, and includes-

- (a) 50 per cent of the amount of any surplus resulting from a revaluation of assets and determined as prescribed in subsection (4); **and**
- (b) general provisions held against unidentified and unforeseen losses, *and*
- (c) *funds obtained by way of premiums on the issue of cumulative preference shares or debt instruments issued in accordance with the provisions of paragraphs (i) to (iv), inclusive, of the definition of 'secondary share capital', whether or not such funds are disclosed as a general or special reserve in the financial statements of the bank concerned,*

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

- (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) the amount obtained by way of the issue, after the date of commencement of this Act, of **debentures debt instruments** and which may in terms of this section rank as secondary share capital shall (except in the case of such **debentures debt instruments** which are to be converted into **preference shares representing capital which may in terms of this section rank as primary or secondary share capital**) during the fifth year preceding the maturity of such **debentures debt instruments** be reduced by an amount equal to 20 per cent of the amount so obtained and annually thereafter by an amount which in each successive year is increased by 20 per cent of the amount so obtained; **and**";

- (c) by the substitution for item (bb) of subparagraph (vi) of paragraph (a) of subsection (5) of the following item:

"(bb) **debentures debt instruments** held by the **deposit-taking institution bank** which **debentures debt instruments** have been issued by any other **deposit-taking institution bank** and the amounts of which may in terms of this section rank as secondary share capital of that other **deposit-taking institution bank**; **and**"; **and**

- (d) by the substitution for subsection (6) of the following subsection:

"(6) (a) The provisions of subsection (2) shall apply *mutatis mutandis* to the affairs of a subsidiary by way of which a **deposit-taking institution bank or controlling company** conducts the business of a **deposit-taking institution outside bank in a country other than the Republic, except if, in terms of the laws regarding capital and reserves in force in such other country, such subsidiary will be required to maintain a minimum share capital and unimpaired reserve funds in an aggregate**

amount equal to or higher than the aggregate amount it will be required to maintain in terms of subsection (2), in which event the subsidiary shall be subject to the said laws of that other country.

(b) A bank or a controlling company that conducts the business of a bank by way of a subsidiary in a country other than the Republic, as contemplated in paragraph (a), shall be obliged to ensure that such subsidiary at all times complies with the provisions of the laws regarding minimum share capital and unimpaired reserve funds applicable to such subsidiary in terms of paragraph (a) and shall, whenever necessary, make sufficient funds available to enable such subsidiary so to comply with the provisions of the said laws.

(c) A bank shall in respect of a foreign branch thereof be subject, *mutatis mutandis*, to the obligations imposed upon it in paragraph (b) in respect of a foreign subsidiary thereof, as if such a foreign branch were such a foreign subsidiary."

Repeal of section 71 of Act 94 of 1990

19. Section 71 of the principal Act is hereby repealed.

Amendment of section 74 of Act 94 of 1990

20. Section 74 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

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

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

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

Amendment of section 75 of Act 94 of 1990, as amended by section 12 of Act 42 of 1992

21. Section 75 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) whether the **deposit-taking institution bank** is complying with the provisions of-

(i) sections **71** 70 and 72; or

(ii) section **70** 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); or"; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) A **deposit-taking institution bank** shall, within such period as the Registrar may on the application of such **institution bank** approve, furnish the Registrar, in

respect of that one of the returns referred to in subsection (1) (b) which most nearly coincides with the end of the financial year of the **institution bank**, with a report by the auditor of the **institution bank** in which is stated whether or not that return fairly and in conformity with generally accepted accounting practice presents those affairs of the **institution bank** to which the return relates, and the Registrar may, if he deems it necessary, require the **institution bank** so to furnish him with such a report in respect of any other of those returns furnished during the financial year."

Amendment of section 80 of Act 94 of 1990

22. Section 80 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) No **deposit-taking institution bank** and no associate of a **deposit-taking institution bank** shall, *without the prior written approval of the Registrar*, either jointly or individually acquire or hold shares in any registered insurer as defined in section 1 of the Insurance Act? 1943 (Act No. 27 of 1943), to the extent to which the nominal value of those shares exceeds 49 per cent of the nominal value of all the issued shares of such insurer."

Amendment of section 91 of Act 94 of 1990

23. Section 91 of the principal Act is hereby amended-

(a) by the deletion of the word "or" at the end of paragraph (a) of subsection (1);

(b) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

"(aA) *in completing any questionnaire contemplated in section 1(1A)(c) furnishes the Registrar with any information which to the knowledge of such person is untrue or misleading in any material respect, or*", and

(c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

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

Substitution of section 93 of Act 94 of 1990

24. The following section is hereby substituted for section 93 of the principal Act:

"Interpretation of certain references in existing laws and in other documents

93. A reference in any law in force immediately prior to the commencement of **this Act** *the Deposit-taking Institutions Amendment Act, 1993, or in any other document*, to-

(a) a **bank deposit-taking institution**, discount house, banking institution, banking institution registered under or in terms of the Banks Act, 1965 (Act No. 23 of 1965), or building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986),

shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a **deposit-taking institution bank**;

- (b) the Registrar of **Banks Deposit-taking Institutions** or the Registrar of Building Societies shall be construed as a reference to the Registrar:

Provided that-

- (i) any such reference in section 10(1)(i)(xii)(bb), (xiiA) or (xiii)(bb) **10(1)(v) or (vA)** or 19(5A) of the Income Tax Act, 1962 (Act No. 58 of 1962), to a building society shall be so construed as a reference to a **deposit-taking institution bank** which, **immediately** prior to its registration as a **deposit-taking institution in terms of section 33** such, *was had been* a building society **registered as such in terms of** (within the meaning of the Building Societies Act, 1986) *that after the commencement of this Act was registered as a deposit-taking institution by virtue of the provisions of section 33 as those provisions existed prior to the amendment thereof by the Deposit-taking Institutions Amendment Act, 1993;* and
- (ii) any such reference in section 10(1)(w) of the Income Tax Act, 1962, to a **banking** deposit-taking institution shall be so construed as a reference to a **deposit-taking institution bank** which, **immediately** prior to its registration as a **deposit-taking institution in terms of section 33** such, *was had been* a banking institution **registered as such in terms of** (within the meaning of the Banks Act, 1965) *that after the commencement of this Act was registered as a deposit-taking institution by virtue of the provisions of section 33 as those provisions existed prior to the amendment thereof by the Deposit-taking Institutions Amendment Act, 1993.*

Substitution of certain expressions in Act 94 of 1990

25. The principal Act is hereby amended-

- (a) by the substitution for the expressions "Deposit-taking Institutions", "deposit-taking institutions", "deposit-taking institution" and "deposit-taking institution's", wherever they occur, of the expressions "Banks", "banks", "bank" and "bank's", respectively: Provided that the provisions of this paragraph shall not apply to the expression "Deposit-taking Institutions" forming part of the expression "Deposit-taking Institutions Amendment Act, 1992" appearing in section 37(3) of the principal Act;
- (b) by the substitution for the words "institution" and "institutions", wherever they occur in sections 6(3), 54(3), (6)(a) and (7), 56(5)(b), 57(3), 60(3)(a), 62(2), 63(1)(b)(i), 64(4), 67, 68(2), 69(1)(a), (2)(d), (3), (3A), (5) and (6), 70(3)(b), 72(3), 74(2), (3) and (4), 78(2)(a) and 87(2), of the words "bank" and "banks", respectively; and
- (c) by the substitution-
- (i) in section 12(1) for the expression "an institution"; and
- (ii) in section 14(1) for the word "institution". of the expression "a bank".

Substitution of section 96 of Act 94 of 1990

26. The following section is hereby substituted for section 96 of the principal Act:

"Short title

96. (1) This Act shall be called the **Deposit-taking Institution Banks Act, 1990** and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the Gazette.

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

(3) Any reference in this Act to the date of commencement thereof shall be construed as a reference to the applicable date so fixed."

Short title

27. This Act shall be called the Deposit-taking Institutions Amendment Act, 1993.