

## ANNEXURE “A”

### THE CONDUCT OF AN INVESTIGATION IN TERMS OF s69A OF THE

#### BANKS ACT

1. The commissioner has the powers and duties in all respects corresponding to the powers and duties conferred or imposed by s4 and s5 of IFIA<sup>1</sup>.
2. The commissioner may administer an oath or affirmation or otherwise examine any person who is or formerly was a director, servant, employee, partner, member or shareholder of the bank. The person examined may have his or her legal representative present. On good cause shown the commissioner may direct that the proceedings under s69A(5) shall be held in camera and not be accessible to the public.<sup>2</sup>
3. When an investigation is made under s69A and s5 of IFIA applies, subsection (1)(a) of that section shall be deemed to have been amended to read as follows:

“(1) In carrying out an investigation into the business, trade, dealings, affairs or assets and liabilities of a bank under curatorship, a commissioner may-

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<sup>1</sup> s69A(4)

<sup>2</sup> s69A(5)

(a) administer an oath or affirmation or otherwise examine any person, if the commissioner has reason to believe that such person may be able to provide information relating to the affairs of the Bank: Provided that the person examined, whether under oath or not, may have his or her legal adviser present at the examination: Provided further that unless directed otherwise by the commissioner, the proceedings under this paragraph shall be held in camera and not be accessible to the public.”<sup>3</sup>

4. Any person examined by a commissioner under s69A shall not be entitled to refuse to answer any question upon the ground that the answer would tend to incriminate him or her or upon the ground that he or she is to be tried on a criminal charge and may be prejudiced at such trial by his answer.<sup>4</sup>
5. Where any person gives such evidence the commissioner shall direct, in respect of such part of the proceedings, that no information regarding such questions and answers may be published in any manner whatsoever.<sup>5</sup>
6. No such evidence, and no evidence regarding any fact or information that has come to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in

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<sup>3</sup> s69A(5)A

<sup>4</sup> s69A(6)(a)

<sup>5</sup> s69A(6)(b)

criminal proceedings where the person concerned is charged with an offence in terms of s69A(14).<sup>6</sup>

7. The commissioner has the power to summons before him any such person as he may examine in terms of s69A(5).<sup>7</sup>
8. If any person who has been summoned and to whom a reasonable sum has been tendered, fails to attend before the commissioner at the time and place appointed by the summons without lawful excuse made to the commissioner at the time of the sitting, the commissioner may cause the person so summoned to be apprehended and brought before him for examination.<sup>8</sup>
9. Any examination or any report by a commissioner under s69A shall be private and confidential unless the Registrar of Banks, after consultation with the Minister of Finance, either generally or in respect of any part of such examination or such report, directs otherwise.<sup>9</sup>
10. In terms of s69A(14), any person who has been summoned by the commissioner and who:
  - (i) fails, without sufficient cause, to attend at the time and place specified in the summons;

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<sup>6</sup> s69A(6)(c)

<sup>7</sup> s69A(7)

<sup>8</sup> s69A(8)

<sup>9</sup> s69A(13)

- (ii) fails, without sufficient cause, to remain in attendance until excused by the commissioner from further attendance;
- (iii) refuses to be sworn or to affirm as a witness;
- (iv) fails, without sufficient cause:
- (v) to answer fully and satisfactorily any questions lawfully put to such person by the commissioner, notwithstanding that such answer may tend to incriminate him; or
- (vi) to produce such books or papers in the custody of such person or under the control of such person which the commissioner has required him or her to produce;
- (vii) wilfully furnishes the commissioner with any false information;
- (viii) refuses or fails to comply to the best of his or her ability with any reasonable request made to him or her by the commissioner in the exercise of his powers or the performance of his duties;
- (ix) wilfully hinders the commissioner in the exercise of his powers or the performance of his duties;
- (x) fails to comply with any provision or a direction by the commissioner or the Registrar as contemplated in s69A, shall be guilty of an offence.

11. In addition to the powers conferred on the commissioner under s69A of the Banks Act, in terms of s4 and s5 read with s3 of IFIA, the commissioner or his assistants may carry out an inspection of the

affairs, or any part of the affairs, of the bank under curatorship or any of its associates. In carrying out the inspection the commissioner may:

- (i) at any time without prior notice enter and search any premises occupied by the bank and require the production of any document relating to the affairs of the bank;
- (ii) open any strong room, safe or other container in which he or she suspects any document of the bank is kept;
- (iii) examine and make extracts from and copies of any document of the bank or, against the issue of a receipt, remove such document temporarily for that purpose;
- (iv) against the issue of a receipt, seize any document of the bank which in his opinion may afford evidence of an offense or irregularity;
- (v) retain any seized documents for as long as it may be required for any criminal or other proceedings;<sup>10</sup>
- (vi) on the authority of a warrant<sup>11</sup> at any time and without prior notice:
  - (a) enter any premises and require the production of any document relating to the affairs of the bank;

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<sup>10</sup> The bank or its authorised representative may during normal office hours, examine and make extracts from any document seized from the bank under the supervision of the commissioner or his assistants (s4(2) of IFIA).

<sup>11</sup> A warrant may be issued, on application of the commissioner, by a judge or magistrate who has jurisdiction in the area where the premises in question are located (s5(2)(a) of IFIA). Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the affairs of the bank being inspected, is kept at the premises concerned (s5(2)(b) of IFIA).

- (b) enter and search any premises for any documents relating to the affairs of the bank;
- (c) open any strong room, safe or other container which he suspects contains any document relating to the affairs of the bank;
- (d) examine, make extracts from and copy any document relating to the affairs of the bank or, against the issue of a receipt, remove such document temporarily for that purpose;
- (e) against the issue of a receipt, seize any document relating to the affairs of the bank, which in his opinion, may afford evidence of an offence or irregularity;<sup>12</sup>
- (f) retain any seized document for as long as it may be required for criminal or other proceedings,

but the commissioner may proceed without a warrant, if the person in control of the premises consents to the actions contemplated in paragraph 11(vi)(a)-(f) above.

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<sup>12</sup> Any person from whom a document has been seized or his or her legal representative may examine such document and make extracts therefrom under the supervision of the commissioner or his assistants during normal office hours (s5(3) of IFIA).