

SOUTH AFRICAN RESERVE BANK**No. 2170****14 December 1994****BANKS ACT, 1990****DESIGNATION OF AN ACTIVITY NOT FALLING WITHIN THE MEANING OF
"THE BUSINESS OF A BANK" (MINING HOUSES)**

Under paragraph (cc) of the definition of "the business of a bank" in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), I, Christo Floris Wiese, Deputy Registrar of Banks, hereby designate, with the approval of the Minister of Finance, with effect from 1 January 1995, the activity set out in paragraph 2 of the Schedule and which is performed in accordance with the conditions so set out as an activity which does not fall within the meaning of "the business of a bank"

C F WIESE,
Deputy Registrar of Banks.

SCHEDULE

1. In this Schedule-

"affiliate", in relation to a public company referred to in paragraph (a) or a subsidiary company referred to in paragraph (b) of the definition of "Group", means any company, partnership or trust in which such public company or subsidiary company (hereinafter in this definition referred to as a member) holds a qualifying investment which such member intends to retain as a long-term investment, and which company, partnership or trust has entered into an agreement with any such member in terms of which all funds of such company partnership or trust which are in excess of its needs, from time to time, shall be invested with such member or with a bank;

"Group" means a group consisting of-

- (a) a public company which is a member of the Chamber of Mines of South Africa and of which the securities, as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), are included in the list of securities kept in terms of section 16(a) of that Act;
- (b) all the subsidiary companies of the public company referred to in paragraph (a); and
- (c) all the affiliates of the public company referred to in paragraph (a) and of the subsidiary companies referred to in paragraph (b),

provided the aggregate amount representing the share capital, share premium and reserves (including retained income) of the public company referred to in paragraph (a) and the subsidiary companies referred to in paragraph (b), as reflected in the consolidated balance sheet which forms part of the latest consolidated annual financial statements made out in

respect of such public company and subsidiary companies in terms of sections 289 and 290 of the Companies Act, 1973 (Act No. 61 of 1973), exceeds R1 000 000 000;

"qualifying investment", in relation to a company, partnership or trust referred to in the definition of "affiliate" in this paragraph, means an investment in such company, partnership or trust made by a member, referred to in paragraph (a) or (b) of the definition of "Group" in this paragraph, of the Group of which such company, partnership or trust is an affiliate and which investment-

- (a) either enables such member to exercise significant influence, as defined in paragraph 07 of Accounting Statement AC 110 issued by the South African Institute of Chartered Accountants, over the financial and operating policies of such company, partnership or trust; or
- (b) in the case of such company, represents 20 per cent or more of the equity share capital of such company.

2. The acceptance, with a view to the ultimate objective of the financing of the development of the mining industry, and of directly related activities, of deposits, as defined in section 1 of the Banks Act, 1990, from any member of a Group by any other member of that Group, subject to the following conditions:

- (1) Prior to the commencement of the practice of the acceptance of deposits within a Group in terms of this paragraph, that member of the Group which is the public company referred to in paragraph (a) of the definition of "Group" in paragraph 1 shall in writing inform the Registrar of the intention of that Group to employ such practice.
- (2) The public company referred to in subparagraph (1) shall within thirty days after the thirty-first day of December of each year, in respect of that year furnish the Registrar with-
 - (1) a return containing the following particulars, namely-
 - (i) the name of the public company;
 - (ii) the names of the subsidiary companies and affiliates which constitute the other members of the Group;
 - (iii) the nature of the relationship which exists between each such affiliate and the public company or a subsidiary company, as the case may be, in the Group;
 - (iv) the nature of the investment in each such affiliate by the public company or a subsidiary company, as the case may be, in the Group;
 - (v) details of the control exercised through significant influence or shareholding contemplated in paragraphs (a) and (b), respectively, of the definition of "qualifying investment" in paragraph 1, by such public company or subsidiary, as the case may be, over the financial and operating policies of the affiliate concerned;

- (vi) the aggregate amount referred to in the definition of "Group" in paragraph 1, broken down under the headings "share capital", "share premium", "non-distributable reserves" (to be described) and "distributable reserves", as extracted from the public company's latest consolidated annual financial statements; and
 - (vii) whether the agreement referred to in the definition of "affiliate" in paragraph 1 is disclosed as a related party transaction in the annual financial statements of the affiliate concerned, and if not, why not;
- (b) a copy of the public company's latest consolidated annual financial statements; and
- (c) a statement setting out-
- (i) the sources, average balance and aggregate amount of deposits accepted within the Group during the past financial year;
 - (ii) the aggregate amount of deposits accepted within the Group during the past financial year from those members of the Group which are affiliates as contemplated in paragraph (c) of the definition of "Group" in paragraph 1; and
 - (iii) details of the utilization of the aggregate amount referred to in subparagraph (i).