

Custody and Administration of Securities Act, No 85 of 1992

ACT

To provide for the registration of a central securities depository for the custody and administration of securities in terms of a predetermined set of rules; to permit a depository institution to become a participant of a central securities depository; to permit clients to deposit securities through a participant with a central securities depository; to provide for the ownership, transfer, pledge and delivery of securities held by a depository institution; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'auditor' means a public accountant as defined in the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);

'central securities account' means an account kept by a central securities depository for a participant and reflecting the number or nominal value of securities of each kind and all entries made in such account;

'central securities depository' means a public company incorporated in terms of the Companies Act, 1973 (Act 61 of 1973), and registered as a central securities depository in terms of this Act;

'central securities repository' means a collection of securities of the same kind as contemplated in section 11;

'client' means any person, including a depository institution, who deposits securities with a depository institution for the purposes of this Act and who may be the beneficial owner of such securities;

'controlling body', in relation to a central securities depository, means the board of directors of the central securities depository;

'deposit' means a deposit of securities for custody and administration and includes a deposit by means of an entry in a securities account or a central securities account;

'depository institution' means a person or category of persons authorized by the Registrar to hold and administer securities or an interest in securities for the purposes of this Act;

'directive' means a directive issued by a central securities depository in terms of the rules;

'entry' includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession in securitatem debiti or other transaction in respect of securities;

'issuer' means a person who issues securities and whose securities are accepted for deposit by a depository institution or by a central securities depository, as the case may be;

'Minister' means the Minister of Finance;

'participant' means a depository institution accepted by a central securities depository as a participant in terms of section 2 (1A);

'prescribed' means prescribed by regulation;

'Registrar' means the Executive Officer of the Financial Services Board referred to in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

'regulation' means a regulation made under section 14;

'rules' means the rules of a central securities depository made in terms of section 12;

'securities' means any listed securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), any listed financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act 55 of 1989), or any other securities approved by the Registrar Treasury bills issued by the Minister of Finance in terms of s 19 of the Exchequer Act 66 of 1975 approved - GN 1117 in GG 20461 of 17 September 1999.\* by notice in the Gazette and all rights or other benefits existing in respect of or accruing to such securities or instruments, including any certificate issued in respect of such securities or instruments and of such rights or other benefits;

'securities account' means an account kept by or on behalf of a depository institution for a client and reflecting the number or nominal value of securities of each kind deposited and all entries made in respect of such securities relating to such client;

'securities of the same kind' means securities of the same class and issued by the same issuer;

'securities repository' means a collection of securities of the same kind as contemplated in section 3;

'this Act' includes the regulations;

'uncertificated securities' means uncertificated securities as defined in section 91 of the Companies Act, 1973 (Act 61 of 1973).

## 2 Deposit of securities

(1) The Registrar may-

(a) authorize any person; or

(b) authorize any category of persons by notice in the Gazette,

to act as a depository institution for the purposes of this Act on such terms and conditions as the Registrar may determine in writing to such person or publish in the notice concerned in respect of such category of persons.

(1A) A depository institution authorised by the Registrar in terms of subsection (1) may be accepted by a central securities depository as a participant in terms of the rules of that central securities depository.

(2) (a) Where securities are deposited with a depository institution such institution may, unless the client expressly directs otherwise in writing, deposit them with another depository institution or, if it is a participant, deposit them with a central securities depository.

(b) The depository institution or participant, as the case may be, shall reflect the number or nominal value of the securities so deposited in a securities account.

(2A) A participant shall deposit and administer securities in terms of the rules.

If the records of a central securities depository is inconsistent with those of a participant regarding securities deposited with the central securities depository by the participant, the records of the central securities depository shall, until the contrary is proved, be deemed to be correct.

(3) (a) Every client, depository institution and participant shall be deemed to warrant that such person is entitled to deposit the securities deposited by that person and that any document or instruction relating to such securities and lodged or given by that person is genuine and correct in all respects and that person shall be deemed to have agreed to indemnify the depository institution, participant or the central securities depository against any claim made upon the depository institution, participant or central securities depository and against any loss suffered by the depository institution, participant or central securities depository arising out of such deposit or breach of warranty.

(b) A central securities depository shall not be deemed to have given any such warranty or indemnity.

### 3 Securities repository

(1) A depository institution holding securities may hold all securities of the same kind deposited with it collectively in a separate securities repository.

(2) A depository institution shall notify the client having a securities account with it in writing or as otherwise agreed to by the client of any entry made in such account.

(3) A depository institution shall on request disclose information with regard to the holdings of a client in a securities account, unless the client concerned directs otherwise in writing in a case where the client may do so in terms of any law.

### 4 Ownership of securities

(1) Where securities of any kind are deposited with a depository institution or with a central securities depository, or accrue to securities held by such institution in a securities repository or by such depository in a

central securities repository, the person who was the owner of the securities at the time of deposit or accrual shall become entitled to an interest as co-owner of all the securities of the same kind comprised in the securities repository or central securities repository, as the case may be.

(2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right shall extend to the interest of such co-owner and to any securities delivered to that co-owner.

(3) The interest of a co-owner, client or participant in all the securities in a securities repository or central securities repository, as the case may be, shall be calculated with reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner, client or participant and accruing to such securities bears from time to time to the total number or nominal value of all securities of that kind held in the securities repository or central securities repository, as the case may be.

(3A) Subsections (1), (2) and (3) do not apply to uncertificated securities.

(4) A written acknowledgement signed by or on behalf of a depositary institution in respect of an owner of securities or of a client, or by or on behalf of a central securities depository in respect of a participant or client, as the case may be, and specifying the interest of that owner, client or participant, as the case may be, shall be prima facie evidence of the title or interest of that person in such securities.

## 5 Transfer of securities

Transfer of securities or of an interest in securities held by a depositary institution shall be effected in terms of the rules of a central securities depository by entry in the securities accounts of the transferor and the transferee with the depositary institution or institutions concerned.

## 6 Pledge, or cession in securitatem debiti, of securities

(1) A pledge, or cession in securitatem debiti, in respect of securities or of an interest in securities held by a depositary institution shall be effected in terms of the rules of a central securities depository by entry in the securities account of-

(a) the pledgor in favour of the pledgee specifying the name of the pledgee, the securities or interest therein ceded and the date; or

(b) the cedent in favour of the cessionary specifying the name of the cessionary, the securities or interest therein ceded and the date, as the case may be.

(2) Such securities or interest therein shall not be transferred except with the written consent of the pledgee or cessionary.

(3) The pledgee or cessionary of such securities or interest therein shall be entitled to all the rights of a pledgee or cessionary in securitatem debiti of movable property.

(4) Notwithstanding section 3 (3), a depository institution shall at the request of an issuer disclose to the issuer the information contemplated in subsection (1) (a) and (b) and the issuer shall, in turn, furnish such information to any person who requests it.

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## 8       Delivery of securities

(1) Subject to the provisions of sections 4 and 6, the owner of an interest in securities held by a depository institution in a securities repository or a participant holding an interest in a central securities repository, as the case may be, shall at all times be entitled to delivery, within a reasonable time, by the depository institution or central securities depository concerned, of the same number of securities, or securities of the same nominal value, and of the same kind as the securities held on such person's behalf, as long as such person has a sufficient unencumbered credit balance of securities with the depository institution or central securities depository concerned.

(2) Subsection (1) does not apply to uncertificated securities.

## 9       Registration of central securities depository

(1) No person may conduct the business of a central securities depository unless that person is registered as such in terms of this Act.

(2) Any public company may apply to the Registrar for registration as a central securities depository.

(3) An application in terms of subsection (2)-

(a) shall be made in the prescribed manner and on the prescribed form, and shall be accompanied by the prescribed fee;

(b) shall be accompanied by a statement containing the prescribed information and such other information, including a report on any matter by an auditor, as the Registrar may deem relevant.

(4) The Registrar may, after considering all the information, documents and reports furnished in terms of this section, grant or refuse the relevant application or grant the application subject to such terms and conditions as the Registrar may deem fit, and the Registrar may thereafter amend those terms and conditions if prevailing circumstances necessitate any amendment.

(5) The Registrar shall not grant an application under this section for the registration of a central securities depository unless the prescribed fee has been paid and the Registrar is satisfied-

(a) that the establishment of the proposed central securities depository will be in the public interest;

(b) that the applicant will be able to establish itself successfully as a central securities depository; and

(c) that the business of the applicant will be conducted in a prudent manner and with due regard to the rights of clients, participants and issuers of securities.

(6) The Registrar may, subject to the provisions of subsection (7), cancel the registration of a central securities depository-

(a) if the registration has been obtained on the strength of untrue or misleading information;

(b) if the Registrar is of the opinion that it is not in the public interest to allow the central securities depository to continue its activities; or

(c) at the written request of the central securities depository.

(7) (a) The Registrar shall, before cancelling under subsection (6) the registration of a central securities depository, in a written notice addressed to the central securities depository-

(i) inform the central securities depository of the intention to cancel such registration;

(ii) furnish the central securities depository with the reasons for the intended cancellation; and

(iii) call upon it 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;

(b) After considering any representations received within the specified period from the central securities depository concerned, the Registrar may-

(i) proceed with the cancellation; or

(ii) refrain from taking any further steps,

and the Registrar shall in writing inform the central securities depository concerned of the decision in terms of this subsection.

(8) Whenever the Registrar grants or refuses an application in terms of this section or cancels the registration of a central securities depository, the Registrar shall give written notice of the fact to the applicant or to the central securities depository, as the case may be.

(9) Whenever a central securities depository becomes aware of a particular depository institution ceasing to be a participant, the central securities depository shall as soon as practicable notify the Registrar thereof.

#### 10 Deposit of securities with central securities depository

(1) Only a participant shall be entitled to have a central securities account with a central securities depository, and to-

(a) deposit securities with or withdraw securities from that depository; or

(b) transfer, pledge or cede securities through the medium of that depository.

(2) In the event of rights being exercised against a central securities depository in respect of securities deposited with a central securities depository, such rights shall be exercised through a participant, and that participant shall exercise those rights in its own name on behalf of the relevant clients.

(3) All securities held by a central securities depository shall, unless they are bearer or uncertificated securities, be registered in the name of that central securities depository or its wholly owned subsidiary, as defined in section 1 (1) of the Companies Act, 1973 (Act 61 of 1973), and approved by the Registrar.

(4) (a) No central securities depository or depository institution shall become the owner, co-owner, holder, pledgee or cessionary in securitatem debiti, of securities merely because of-

(i) a deposit of securities; or

(ii) the registration in its name of-

(aa) securities;

(bb) limited rights in securities;

(cc) other rights in securities;

(dd) benefits in respect of securities; or

(ee) benefits accruing to securities.

(b) Paragraph (a) shall also apply to a wholly owned subsidiary (as defined in section 1 (1) of the Companies Act, 1973 (Act 61 of 1973)) of a central securities depository or depository institution.

(5) A central securities depository shall not be obliged to recognise any relationship of trust or agency of its participants in respect of securities.

(6) A central securities depository shall on request disclose information with regard to the holdings of a participant or client in a central securities account, unless the participant or client concerned directs otherwise in writing in a case where the participant or client may do so in terms of any law.

## 11 Central securities repository

(1) A central securities depository may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities repository.

(2) .....

(3) The provisions of sections 5 and 6 shall apply mutatis mutandis to the transfer, pledge and cession in securitatem debiti by one participant to another of an interest in securities held by a central securities depository.

(4) A central securities depository shall notify a participant having a central securities account with it in writing or as otherwise agreed to by the participant of any entry made in such account.

## 12 Rules of central securities depository

(1) The rules of a central securities depository shall be framed so as to ensure, to the satisfaction of the Registrar-

(a) that the business of the central securities depository is carried out with due regard to the public interest and the interests of owners, clients, participants and the issuers of securities;

(b) that the central securities depository is managed and administered in an efficient manner;

(c) that only a person or category of persons authorised by the Registrar to act as a depository institution in terms of section 2 (1) and accepted by the central securities depository in terms of section 2 (1A) may be a participant and that the rules governing the acceptance and expulsion of a person as a participant are equitable and in the public interest;

(d) that the central securities accounts kept for each participant are conducted with due regard to their interests and the interests of their clients;

(e) that adequate steps are available against any participant which contravenes or fails to comply with any provision of this Act, the rules, interim rules or directives, and-

(i) that sanctions including penalties which shall not exceed R1 000 000 are prescribed in respect of any such contravention or failure to comply therewith;

(ii) that full particulars regarding the imposition of a penalty may be published in the Gazette;

(iii) that any person found guilty in terms of the rules may be ordered to pay the costs incurred in an investigation or hearing; and

(iv) that a central securities depository may take into account any relevant information at a hearing, including information provided to it by the Registrar in accordance with section 18 (2) (b);

(f) that each of the participants is financially sound and has entered into, and is maintaining, valid and adequate guarantees in respect of-

(i) its actual and potential liabilities; and

(ii) conditional and contingent liabilities to the central securities depository; and

(iii) liabilities which existed before, or accrue after, a person has ceased to be a participant;

(g) that adequate steps are taken on a regular basis by a central securities depository and by its participants according to generally accepted accounting practice for the auditing of the central securities accounts and securities accounts, as the case may be, and that adequate precautions are taken for guarding against falsification;

(h) that, unless the rights are exercised directly against the issuer, proper measures are taken to pay to the participants or clients all dividends and other payments made by the issuers of securities and to convey to them all notices regarding rights and other benefits accruing to the securities and to give effect to the lawful instructions of the participants or clients with regard to voting rights and other matters and to ensure that the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities repository as provided for by this Act.

(i) that fees and charges required by it for its services shall be made known to its participants and that the fees and charges required by a participant for its services shall be made known to its client;

(j) that proper measures are taken by a participant to ensure that the rights of clients are not in any way diminished by the fact that securities held on their behalf are held collectively in a securities repository or central securities repository as provided for by this Act and to ensure that, where a participant agrees-

(i) to receive moneys in respect of securities on behalf of clients from a central securities depository, issuer or company, such moneys are paid to the clients concerned;

(ii) to convey to clients all information regarding rights and other benefits accruing to the securities held on behalf of such clients, such information is, in fact, conveyed; and

(iii) to give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;

(k) that, on written request from a client or an owner of securities or of an interest in securities held in a securities repository or central securities repository, a participant be required to deliver the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client or owner in the securities repository or central securities repository, as long as the client or owner has a sufficient unencumbered credit balance of securities with the relevant participant;

(l) that a participant's central securities accounts shall be prohibited from showing a debit balance;

(m) that a central securities depository shall be entitled to issue directives and interim rules;

(n) that a central securities depository may refuse to accept securities from any particular issuer of securities;

(o) that a central securities depository may keep records of clients, owners and beneficial owners of securities and limited or other interests in the securities;

(p) that the right of clients and participants to withdraw instruments in respect of securities be subject to a time limit from the date and time of the deposit;

(q) that provisions are made for instructions to be given by participants to a central securities depository.

(1A) The rules of any central securities depository may provide, to the satisfaction of the Registrar, for the limitation of the liability of the central securities depository, a director, officer, employee or representative of the central securities depository, or any member of the controlling body or subcommittee of the controlling body, for any loss sustained by or damage caused to any person as a result of anything done or omitted by the central securities depository, a director, officer, employee, representative or member in the bona fide or negligent (but not grossly negligent) exercise of any power or carrying out of any duty or performance of any function under or in terms of this Act or the rules.

(1B) Subject to this Act and the approval of the Registrar, the controlling body may make rules with regard to any matter which is necessary or expedient in order to achieve the objects of this Act.

(1C) (a) A central securities depository may, with the consent of the Registrar, delegate or assign any power or duty conferred upon or assigned to it by or under this Act or by the rules to any person.

(b) A central securities depository is not divested of any power or duty delegated or assigned under paragraph (a).

(c) A central securities depository may, and the Registrar may by written notice to a central securities depository, cancel a delegation or assignment made under paragraph (a).

(2) The Registrar shall as soon as possible after granting an application for the registration of a central securities depository, cause the rules of the central securities depository and a list of its participants to be published in the Gazette in English and one other official language at the expense of the central securities depository concerned.

(3) No addition to, amendment of or deletion from (other than a suspension of) the rules of a central securities depository or the said list of participants shall be valid unless-

(a) it has been approved by the Registrar in writing;

(b) the prescribed fee has been paid; and

(c) a date has been stipulated in the Registrar's approval for the coming into operation of the addition, amendment or deletion.

(4) Upon receipt of an application for approval in terms of subsection (3), the Registrar shall cause to be published at the expense of the central

securities depository in English and one other official language in the Gazette a notice setting out the proposed addition to, amendment of or deletion from the said rules or the list of participants.

(5) (a) The said notice shall call upon members of the public who have objections to the proposed addition, amendment or deletion, to lodge such objections with the Registrar within a period of 30 days from the date of publication in the Gazette.

(b) The Registrar shall consider the objections, if any, and shall approve or disapprove of the addition, amendment or deletion within a period of two months after expiry of the period referred to in paragraph (a).

(c) The Registrar may, within the period of two months contemplated in paragraph (b), extend that period by notice to the central securities depository concerned for a period which in the circumstances is reasonable.

(d) If the Registrar does not disapprove of an addition, amendment or deletion within the period of two months, or any period extended in terms of paragraph (c), the Registrar shall be deemed to have approved thereof and such addition, amendment or deletion shall come into operation on the day immediately following upon the date of expiry of the said period of two months.

(6) Whenever it is in the public interest, the Registrar may, after reasonable consultation with the central securities depository and with the consent of the Minister, by notice in the Gazette amend, add to or rescind any provision of the rules of that central securities depository with effect from the date immediately following upon the date of publication of the notice or such later date as may be specified therein.

(7) (a) Subject to the prior approval of the Registrar, the controlling body may suspend any of the rules of the central securities depository concerned for a period not exceeding 90 days at a time after notice of the proposed suspension has been given to the participants of the central securities depository concerned.

(b) Subject to the prior approval of the Registrar, the central securities depository may, for the period of the suspension referred to in paragraph (a), issue an interim rule to regulate the matter in question until such time as an appropriate amendment to the rules can be made in terms of this section.

(c) The Registrar shall as soon as possible after the suspension of a rule and the issue of an interim rule, cause to be published at the expense of the central securities depository in English and one other official language in the Gazette a notice setting out the rule suspended, the period of suspension, the interim rule and the period of the operation of the interim rule.

(d) Any contravention of or non-compliance with an interim rule shall mutatis mutandis have the same legal effect as a contravention of or non-compliance with a rule.

(8) The provisions of any rule made under this section shall be binding on all participants and on every person utilising the services of a participant.

(1) The attachment of securities or of an interest in securities deposited with a depository institution and held in a securities repository or central securities repository shall only be complete when-

(a) notice of the attachment has been given in writing by the sheriff to the depository institution;

(b) the sheriff has taken possession of any securities account as evidenced by a written acknowledgement issued by a participant or has certified that he or she has been unable, despite diligent search, to obtain possession of such written acknowledgement; and

(c) the sheriff has made an entry of the attachment on such securities account or caused it to be made by such depository institution.

(2) The sheriff may upon exhibiting the original of the warrant of execution to the depository institution concerned enter upon the premises where such account is kept and make an inventory and valuation of the interest attached.

#### 14 Regulations

(1) The Minister may make regulations as to-

(a) the records to be kept and furnished to the Registrar by depository institutions and central securities depositories;

(b) any matter which he considers it necessary to prescribe in order to give effect to the objects of this Act;

(bA) matters in addition to those contemplated in any other provision of this Act in respect of which fees shall be payable, the fee payable in respect of each such matter, and, in relation to such fees as well as fees payable under any such other provision of this Act, the persons by whom the fees shall be payable, the manner of payment thereof and, where it is deemed necessary, the payment of interest in respect of overdue fees; and

(c) any matter which in terms of this Act is required or permitted to be prescribed by regulation.

(2) Fees which are in terms of or by virtue of a provision of this Act payable, and interest so payable in respect of overdue fees, shall be a debt due to the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act 97 of 1990), and may be recovered by the Registrar by action in any competent court.

#### 15 Attendance of certain meetings by Registrar and furnishing of certain documents to him

(1) The Registrar or a person nominated by the Registrar may attend any meeting of a controlling body of a central securities depository or a subcommittee of such a body, and may take part, but not vote, in all the proceedings at such meeting.

(2) An executive officer of a central securities depository shall furnish the Registrar with all notices, minutes and documents which are furnished to

members of the controlling body thereof or a subcommittee of that body, as if the Registrar were a member of that body or subcommittee.

(3) For the purposes of this section 'executive officer' means the person appointed by the controlling body of the central securities depository in terms of the rules concerned as executive officer of that central securities depository or, in the executive officer's absence, the deputy or, if there is no such deputy, such other person as may be appointed by the controlling body to perform all the functions which shall or may be performed by the executive officer.

16 Amends section 22 of the South African Reserve Bank Act 90 of 1989 by adding the words 'unless that nominee is a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992.' to subsection (4).

17 Amends section 38 (2) of the Deposit-taking Institutions Act 94 of 1990, as follows: paragraph (a) deletes the word 'or' at the end of paragraph (c); paragraph (b) adds the word 'or' at the end of paragraph (d); and paragraph (c) adds paragraph (e).

#### 18 Inspections

(1) The provisions of the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984), shall mutatis mutandis apply to a central securities depository, participant or depository institution, and for such purposes the central securities depository, participant or depository institution shall be deemed to be a financial institution, and the Registrar to be the registrar defined in section 1 of the Inspection of Financial Institutions Act, 1984.

(2) In such application of the said provisions of the Inspection of Financial Institutions Act, 1984-

(a) section 4 (2) thereof shall be construed as if the words 'or any person who has had dealings with such institution' were inserted after the words 'of the financial institution'; and

(b) the proviso to section 8 (1) thereof shall be construed as if the following further paragraph were added:

'(e) the registrar shall communicate to the controlling body of a central securities depository any relevant information obtained by the registrar in the course of an inspection under this Act, or from a report by an inspector on such an inspection.'

(3) .....

#### 19 Short title and commencement

(1) This Act shall be called the Custody and Administration of Securities Act, 1992, 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 in terms of subsection (1) be fixed in respect of different provisions of this Act.