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Financial Institutions (Consolidation) Order, 1975

Kings Order in Council 23 of 1975

Legislation as at 1 December 1998

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Financial Institutions (Consolidation) Order, 1975

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Financial Institutions (Consolidation) Order, 1975

Kings Order in Council 23 of 1975

Assented to on 18 July 1975

Commenced on 1 August 1975

[This is the version of this document at 1 December 1998.]

[Repealed by [Financial Institutions Act, 2005 \(Act 6 of 2005\)](#) on 26 October 2005]

A King's Order-in-Council to amend and consolidate the Financial Institutions Order 1973, as amended.

Part I – Introductory provisions

1. Short title

This King's Order-in-Council may be cited as the Financial Institutions (Consolidation) Order, 1975.

2. Interpretation

In this Order, unless the context otherwise requires—

“**affiliate**”, in respect of any financial institution, means—

- (a) any company, association, syndicate, partnership or other body of persons corporate or unincorporate in which twenty-five per cent or more of any class of voting shares or other voting participation is directly or indirectly owned or controlled by such financial institution, or is held by it with power to vote; or
- (b) any company, association, syndicate, partnership or other body of persons corporate or unincorporate in which the election of a majority of directors is controlled in any manner by such financial institution;

“**bank**” means any financial institution the operations of which include the acceptance of deposits subject to withdrawal or transfer by cheque;

“**banking business**” means—

- (i) the business of receiving funds from the public or from members thereof through the acceptance of money, deposits of money payable upon demand or after a fixed period or after notice or any similar operation through the periodic sale or placement of bonds, certificates, notes or other securities and the use of such funds either in whole or in part for loans, advances, investments or any other operation authorised by law or customary banking practice, for the account and at the risk of the person doing such business;
- (ii) any other activity recognised by the Central Bank as customary banking practice which a financial institution may be authorised by the Central Bank to engage in;

[Added A.2/1991]

“**Central Bank**” means the Central Bank of Swaziland established under the Central Bank of Swaziland Order, No. 6 of 1974;

“**credit institution**” means any financial institution other than a bank;

“**director**” includes any person, by whatever title he may be referred to, carrying out or empowered to carry out substantially the same functions in relation to the direction of the financial institution as those carried out by a director of a company under the Companies Act, [No. 7 of 1912](#);

“**financial institution**” means any person carrying on banking business or the business of a stockbroker or dealer in stocks, bonds or shares:

[Amended A.2/1991]

Provided that for the purposes of this Order, unless the context otherwise requires, all branches and offices of a foreign financial institution in Swaziland shall be deemed to be one financial institution;

“**financial year**” means the period from 1st April to 31st March, except where otherwise stated;

“**foreign financial institution**” means any financial institution, incorporated or otherwise, other than a local financial institution, doing business in Swaziland, whether such business be banking or other business;

“**licensed**”—

- (a) in relation to an agent, means licensed under [section 15](#);
- (b) in relation to a financial institution, means licensed under [section 6](#) or [11](#);

“**local financial institution**” means a financial institution under the laws of Swaziland;

“**Minister**” means the Minister for Finance and Economic Planning;

“**place of business**” means any branch or office of a financial institution in Swaziland, including a mobile agency, open to the public;

“**principal officer**” means the manager or other person in Swaziland, by whatever title he may be referred to, responsible for the management of the affairs of a financial institution;

“**public in Swaziland**” includes the Government of Swaziland, the Central Bank, any statutory body and every licensed financial institution;

“**regulation**” means a regulation made by the Minister under this Order;

“**unsecured**” in relation to loans, advances or credit facilities means loans, advances, or credit facilities granted without special security; or in the case of loans, advances or credit facilities granted against special security, any part of such loans, advances or credit facilities which at any given time exceeds the market value of the assets comprising the security given, or which exceeds the valuation approved by the Central Bank whenever it deems that no market value exists for such assets.

3. Non-applicability of the Order

This Order shall not apply to—

- (a) a building society within the meaning assigned to it in the Building Societies Act, [No. 1 of 1962](#);
- (b) a co-operative society within the meaning assigned to it in the Co-operative Societies Act, [No. 28 of 1964](#); or
- (c) an insurer as defined in the Control of Insurance Order, No. 33 of 1973.

4. Exemptions

The Minister may after consultation with the Prime Minister, by notice published in the *Gazette* exempt any class of credit institutions from all or part of the provisions of sections [10\(2\)](#), [13\(1\)](#), [17](#), [18\(1\)\(b\)](#) and

24, for such period and under such conditions as he may determine, whenever such exemption may be deemed by him to be in the public interest:

Provided that:

- (a) any such notice shall be laid before the Council of Ministers or any other legislative body duly created by law for its consideration as soon after the making thereof as possible, and in the event of it not being approved of, it shall cease to have effect after such reasonable period as the Minister may grant for the purpose of effecting compliance with the provisions of this Order; and
- (b) such exemption shall not be granted for periods exceeding two years, but may be granted anew by the Minister as provided herein.

Part II – Licences

5. Prohibition against carrying on of business by a financial institution without a licence

- (1) No business shall be transacted, either in Swaziland by a foreign financial institution, or in Swaziland or abroad by a local financial institution, unless such financial institution has been licensed in terms of this Order to carry on such business.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine of E300 in respect of each day on which the contravention continues.

6. Financial institutions deemed to be licensed under this Order

The following institutions shall be deemed to be licensed in terms of this Order:

- (a) the Swaziland Development and Savings Bank established under the Swaziland Development and Savings Bank Order, No. 49 of 1973;
- (b) Barclays Bank of Swaziland Limited; and
- (c) Standard Bank Swaziland Limited.

7. Investigation of persons suspected of carrying on business without a licence

- (1) If the Central Bank has reason to believe that any person required to be licensed as a financial institution, or as agent within the meaning of [section 15](#), is carrying on business without a valid licence therefor in terms of this Order, it may in writing call for and examine the books, accounts and records of such person in order to ascertain whether such person is so acting.
- (2) Any person refusing to make available for examination such books, accounts and records after having been requested to do so by the Central Bank shall be guilty of an offence and liable on conviction to a fine of E1,000 or imprisonment for one year or both.
- (3) A person required to be licensed as a financial institution, or as an agent within the meaning of [section 15](#), holding funds which he has obtained by carrying on business without being licensed therefor in terms of this Order shall repay such funds in accordance with any direction which the Central Bank shall issue.
- (4) Nothing in subsection (3) shall relieve any person from liability to criminal proceedings arising out of any contravention of this Order or any other law.

8. Use of word “bank” in title

- (1) No person other than a licensed financial institution, its agent, or a licensed agent shall, without the consent of the Central Bank, use the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking business, in the name, description or title under which such person is transacting business in Swaziland, or make or continue to make any

representation to such effect in any bill-head, letter-paper, notice, advertisement or in any other manner whatsoever for the purpose of transacting business in Swaziland.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine of E1,000.
- (3) Nothing in subsection (1) shall prevent a person from using the word “bank” or any of its derivatives in any language, if—
 - (a) it is for the sole purpose of establishing a company to the end of applying for a licence under [section 11](#); or
 - (b) it is included in the title of a bank staff association or a bank pension or provident scheme or fund or similar organization.

9. Names of institutions

- (1) No financial institution shall be granted or continue to hold a licence under a name which closely resembles the name of an existing institution or which would be likely in the opinion of the Central Bank, to mislead the public.
- (2) Except with the approval of the King, the Central Bank shall not grant a licence to any financial institution the name of which contains the words “Royal” or “King of Swaziland” or any word which suggests Royal patronage or support in any language as part of its name.
- (3) Except with the written consent of the Minister, the Central Bank shall not grant a licence to any financial institution the name of which contains the word “Government” or any word which suggests governmental patronage or support in any language as part of its name.
- (4) Except with the written consent of the Central Bank, no financial institution shall use, or refer to itself by, a name other than the name under which it is licensed.

10. Local financial institutions to be incorporated

- (1) No local financial institution shall be granted a licence in terms of this Order unless it is registered as a company under the Companies Act, [No. 7 of 1912](#).
- (2) No holder of shares issued by a local financial institution shall have voting rights in respect of such shares unless such shares are registered under his name in the register to be maintained by the institution.

11. Licensing of financial institutions and annual fees

- (1) In order to obtain a licence under this Order as a financial institution, the applicant shall apply in writing to the Central Bank and submit—
 - (a) an authenticated copy of its memorandum and articles of association, or, in the case of a foreign financial institution, such similar documents regulating its affairs or such other documents as the Central Bank may require to establish the manner of control and regulation of such institution, and, in the case of a public company, a copy of its prospectus or similar document required under any law relating to companies, and the name, nationality and address of every promoter;
 - (b) a statement of the address of its head office, and the name, nationality and address of its chairman, of every director or partner, as the case may be, and of its principal officer;
 - (c) a copy of its balance sheet as at a date within ninety days prior to the date of its application;
 - (d) full particulars of the business it proposes to carry on, and of the manner in which it proposes to carry on such business;

- (e) the location of the principal place and other places of business in Swaziland and, in the case of a local financial institution operating outside Swaziland, any place where it proposes to carry on its activities and, in the case of a mobile agency, the area to be served by any mobile agency; and
 - (f) such other information as the Central Bank may require.
- (2) The application and every document submitted in accordance with subsection (1) shall be signed by the principal officer of the applicant.
- (3) The applicant shall, when submitting the application—
- (a) pay to the Central Bank the investigation fee specified in the Schedule hereto; and
 - (b) deposit with the Central Bank the annual fee for the first year, specified in the Schedule hereto:

Provided that such deposit shall be returned to the applicant if the license is refused.

- (4) In considering an application for a licence, the Central Bank shall conduct such investigation as may be deemed necessary to ascertain the validity of the documents submitted under subsection (1), the financial status and history of the applicant, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the earning prospects afforded by the area primarily to be served, the prospective effect that the opening of a financial institution may have on existing financial institutions in such area, and the public interest.
- (5) No person shall be granted a licence unless the requirements specified, either in [section 18\(1\)\(a\)\(i\)](#) in the case of a bank, or in [section 18\(1\)\(b\)\(i\)](#) in the case of a credit institution, are fulfilled.
- (6) Within ninety days after the receipt of an application, or, if further information has been required, after the receipt of such information, the Central Bank shall, after consultation with the Minister, either grant a licence or inform the applicant that it has refused to grant a licence.
- (7) In granting a licence, the Central Bank may impose conditions to be satisfied by the licensee, including a condition that the licensee carry on business at a designated place or places, or provide or refrain from providing specified services or facilities.
- (8) In the case of a foreign financial institution, without limiting the generality of subsection (7), the Central Bank shall require as a condition that there be filed with it before the commencement of operations—
- (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Central Bank its true and lawful agent, upon whom all process in any action or proceedings against it on a cause of action arising out of a transaction with any of its places of business in Swaziland may be served with the same force and effect as if it were established in Swaziland and had been lawfully served with process therein; and
 - (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Swaziland—
 - (i) to whom such process shall be forwarded by the Central Bank; or
 - (ii) upon whom any process not served upon the Central Bank under paragraph (a) may be served.
- (9) In refusing to grant a licence, the Central Bank shall furnish to the applicant a written statement of the reasons for its decision:

Provided that if the Minister shall certify to the Central Bank that the granting of such licence is not in the public interest, such certification shall be final and no other reason for refusal need be furnished to the applicant.

- (10) Every licensed financial institution shall pay annually to the Central Bank for the account of the Consolidated Fund the annual fee for financial institutions specified in the Schedule to this Order.

12. Place of business and term of licence

- (1) Any licence granted to a financial institution under this Order shall authorise the licensee to carry on business at the place or places designated in the licence, subject to such conditions and for such period as may be specified in the licence.
- (2) No financial institution shall open a new place of business in Swaziland, or change the location of, or close, an existing place of business in Swaziland without the prior written consent of the Central Bank:

Provided that the Central Bank shall not grant such consent unless it is satisfied by inspection or otherwise that the new place of business, or the financial institution as relocated, will continue to meet the criteria, as applicable, of [section 11\(4\)](#).

- (3) No local financial institution shall open a new place of business outside Swaziland, or change the location of, or close, an existing place of business outside Swaziland without the prior written consent of the Central Bank.

13. General conditions

- (1) Without the prior written approval of the Central Bank, no person may acquire by transfer either directly or indirectly any interest in the capital stock of a local financial institution which would confer upon him a voting share exceeding twenty per cent of the total, and, in considering any application for such approval, the Central Bank may call for such information as it may require.
- (2) Without the prior written approval of the Central Bank, no local financial institution shall—
- (a) enter into a merger or consolidation;
 - (b) transfer the whole or any part of its assets in Swaziland other than in the ordinary course of its business;
 - (c) effect an increase or reduction of its authorised share capital or a reduction of its paid-up capital;
 - (d) alter its name as set out in its licence; or
 - (e) amend its memorandum or articles of association.
- (3) Without the prior approval of the Central Bank, no foreign financial institution which is licensed under this Order shall—
- (a) transfer the whole or any part of its assets in Swaziland other than in the ordinary course of its business;
 - (b) effect a reduction of its assigned capital in Swaziland; or
 - (c) alter its name as set out in its licence.

14. Revocation of licence of financial institution

- (1) The Central Bank may revoke the licence of any financial institution if the holder—
- (a) fails to commence operations within a period of one year following the grant of the licence;
 - (b) exceeds the terms of its licence or fails to comply with any conditions imposed under [section 11\(7\)](#) or (8) or with any measures required by the Central Bank under [section 36\(a\)](#);
 - (c) is in breach of any other of the provisions of this Order; or

- (d) ceases to carry on the business for which it is licensed.
- (2) Before revoking the licence of any financial institution, the Central Bank shall consult with the Minister and give such institution notice of its intention to do so, and shall afford it a reasonable opportunity to show cause why such licence should not be revoked:
Provided that—
 - (a) in no event shall a licence be revoked earlier than twenty-eight days after the notice of intention is served on the financial institution; and
 - (b) the Central Bank may obtain a temporary injunction upon application to the High Court for the suspension of any part or all of the business being conducted by such institution after the notice of intention has been served upon it.
- (3) If the Central Bank has revoked a licence, it shall as soon as possible publish notice of the revocation in the *Gazette* and take other means appropriately calculated to inform the public of such revocation, including, where possible, publication of the notice of revocation in a newspaper of general circulation in each of the places in which there is situated a place of business of the financial institution.

15. Licensing of agents and annual fees

- (1) Any person, other than a licensed financial institution, proposing to act as agent of a financial or investment institution, not licensed in Swaziland, who represents such institution, or undertakes any activity on its behalf, in Swaziland, other than in the course of a legal proceeding, shall, before engaging in such representation or activity, apply to the Central Bank for a licence under this section.
- (2) In applying for a licence, the applicant shall submit in writing to the Central Bank full particulars of —
 - (a) his authority;
 - (b) the business he proposes to carry on; and
 - (c) the manner in which, and the places where, he proposes to carry on such business.
- (3) The licensee shall, upon the granting or renewal of his licence, pay to the Central Bank for the account of the Consolidated Fund the annual fee for agents specified in the Schedule hereto.
- (4) The licence shall be granted for a period not exceeding one year, but may be renewed upon application to the Central Bank made prior to the expiry of the period for which the licence was granted:
Provided that the Central Bank may—
 - (a) at its discretion refuse to grant such licence; or
 - (b) refuse to renew such licence but only on good cause shown.
- (5) In granting or renewing a licence, the Central Bank may impose conditions to be satisfied by its holder and limitations on his activity.
- (6) The licence may be revoked by the Central Bank in the event that its holder exceeds the terms of the licence, comes under the provisions of [section 40\(1\)](#), or fails to comply with conditions or limitations imposed upon him under subsection (5).

- (7) Before revoking any licence issued under this section, the Central Bank shall give the holder notice of its intention to do so, and shall afford him a reasonable opportunity to show cause why such licence should not be revoked:

Provided that—

- (a) in no circumstances shall a licence be revoked earlier than twenty-eight days after the notice of intention is served on the holder; and
 - (b) the Central Bank may obtain a temporary injunction upon application to the High Court for the suspension of any part or all of the business being conducted by the holder after the notice of intention has been served upon him.
- (8) If the Central Bank has revoked a licence under this section, it shall as soon as possible publish notice of the revocation in the *Gazette* and take other means appropriately calculated to inform the public of such revocation, including, where possible, publication of notice of such revocation in a newspaper of general circulation in Swaziland.
- (9) Any person acting as an agent within the meaning of this section without a valid licence therefor shall be guilty of an offence and liable on conviction to a fine of E2,000.

16. Disclosable information

With respect to any licensed financial institution or agent, the Central Bank shall disclose to any person upon request—

- (a) the nature of the licence;
- (b) any conditions and limitations attached to such licence;
- (c) the places where the holder of such licence may, according to his licence, carry on his activities; or
- (d) the name of the person upon whom process may be served in lieu of the holder of such licence, when a certificate of designation has been filed with the Central Bank.

Part III – Financial requirements and limitations

17. Capital and reserve account

- (1) Every financial institution shall at all times maintain unimpaired capital either paid-up if it is a local financial institution, or assigned if it is a foreign financial institution, at least equal to the minimum amount specified either in [section 18\(1\)\(a\)\(i\)](#) or in [section 18\(1\)\(b\)\(i\)](#), as the case may be.
- (2) The assigned capital of a foreign financial institution shall serve the same purposes under this Order as the paid-up capital of a local financial institution.
- (3) Every financial institution shall maintain a Reserve Account and, before any dividend is declared or any profit is transferred to the head office or elsewhere, shall transfer to such Account out of the net profits of each year, after due provision has been made for taxation, a sum equal to not less than the minimum amount specified either in [section 18\(1\)\(a\)\(ii\)](#) or in [section 18\(1\)\(b\)\(ii\)](#), as the case may be.
- (4) The Reserve Account shall neither be reduced nor impaired:

Provided that the impairment of the Reserve Account shall be permitted when it is the only means of preventing an impairment of the capital, in which case the Central Bank shall be notified within thirty days of the amount of such impairment.
- (5) No financial institution shall declare, credit or pay any dividend or make any other transfer from profits if there is an impairment of the paid-up or assigned capital or of the minimum required balance in its Reserve Account.

- (6) This section shall not apply to the Swaziland Development and Savings Bank, established under the Swaziland Development and Savings Bank Order, No. 49 of 1973.
- (7) This section shall not apply to Barclays Bank of Swaziland Limited nor to Standard Bank Swaziland Limited until 30th June, 1976.

18. Amount of capital and reserve account

- (1) The following requirements shall apply in respect of a financial institution—
 - (a) operating as a bank—
 - (i) its minimum required capital shall be not less than the greater of one million emalangeni (E1,000,000) or five per cent of its liabilities to the public in Swaziland in terms of the most recent balance sheet prepared in accordance with [section 30\(1\)](#);

[Amended A.2/1991]
 - (ii) it shall transfer each year to its Reserve Account a sum equal to not less than ten per cent of its net profits until the balance in the Reserve Account is equal to its minimum required capital; and

[Amended A.2/1991]
 - (iii) the sum of the capital and reserve accounts together shall not be less than eight per cent of the sum of its risk assets computed in the manner prescribed by the Central Bank from time to time in the *Gazette*.

[Added A.2/1991]
 - (b) operating as a credit institution—
 - (i) its minimum required capital shall be not less than the amount prescribed by regulation in respect of the appropriate class of institutions:

Provided that such prescription shall not be inferior to the greater of five hundred thousand emalangeni (E500,000) or five per cent of its liabilities to the public in Swaziland in terms of the most recent balance sheet prepared in accordance with [section 30\(1\)](#), nor shall it exceed the greater of two hundred thousand emalangeni (E200,000) or twenty per cent of such liabilities; and

[Amended A.2/1991]

Provided further that any credit institution required by a change in a regulation under this section to augment its capital shall be afforded a reasonable period of time, being not less than twelve months, in which to comply therewith; and
 - (ii) it shall transfer each year to its Reserve Account a sum equal to not less than twenty-five per cent of its net profits until the balance in such Reserve Account is equal to its minimum required capital.
- (2) If
 - (a) the minimum capital of a financial institution, prescribed in reference to its liabilities, exceeds the amount of its unimpaired capital, such institution may, provisionally and subject to the approval of the Central Bank for such period as it may approve, include in the computation of its capital any unimpaired balance in its Reserve Account;
 - (b) the sum of Capital and Reserve Accounts of a financial institution falls below eight per cent of the sum of its computed risk assets, such institution may, on application to the Central Bank, be granted a reasonable time not exceeding one year for compliance.

[Amended A.2/1991]

19. Provisions to be made for certain items

In making the calculations necessary to ascertain that a financial institution has complied with the requirements of sections [17](#) and [18](#)—

- (a) provisions shall be made to the satisfaction of the Central Bank and the auditor of such institution for the following items—
 - (i) depreciation of assets and bad or doubtful debts (to be calculated at least once in each calendar year) and including accumulated depreciation and bad debts not yet written off;
 - (ii) operating and accumulated losses;
 - (iii) preliminary expenses, representing expenses relating to organisation or extension or the purchase of business or goodwill, and including underwriting commission;
 - (iv) the value of any assets lodged or pledged to secure liabilities incurred under any law if all the liabilities (including contingent liabilities) so secured are not included in the calculation and if the effect of such lodging or pledging is that such assets are not available for the purpose of meeting the liabilities of the institution to the public; and
 - (v) such other items as may be prescribed by regulation; and
- (b) capital, paid-up or assigned as the case may be, and liabilities shall be of such kinds and computed in such manner as may be prescribed by regulation.

20. Prescribed investments to be maintained

The Central Bank may from time to time, by notice published in the *Gazette*, prescribe that every financial institution of a given class or classes shall maintain in Swaziland specified investments of an amount to be determined as a percentage of its liabilities to the public in Swaziland as shown in its last preceding monthly statement furnished to the Central Bank under [section 31\(a\)](#):

Provided that—

- (a) no such prescription shall require the total amount of such specified investments to exceed ten per cent of such liabilities; and
- (b) every such prescription shall afford every institution required to maintain such specified investments a reasonable period, not less than three months, in which to comply.

21. Minimum local assets to be maintained

The Central Bank may from time to time, by notice in the *Gazette*, prescribe that every financial institution of a given class or classes shall maintain minimum local assets, i.e. assets (other than claims) situate in Swaziland and assets consisting of claims payable in Swaziland, of an amount to be determined as a percentage, not exceeding one hundred per cent, of the aggregate value of—

- (a) its liabilities to the public in Swaziland as shown in the last preceding quarterly statement furnished to the Central Bank under [section 31\(b\)](#); and
- (b) its minimum required paid-up or assigned capital and Reserve Account:

Provided that every institution subject to a prescription under this section shall be afforded a reasonable period in which to comply; and

Provided further that no such institution shall be required to augment its holdings of local assets during any calendar month by an amount in excess of ten per cent of the aggregate value referred to in this section.

22. Minimum liquid assets to be maintained

- (1) The Central Bank may from time to time, by notice published in the *Gazette*, prescribe that every financial institution of a given class or classes shall maintain liquid assets amounting to not less than a prescribed percentage or percentages, not exceeding one hundred per cent, of the total, or specified categories, of its liabilities to the public in Swaziland as shown in the last preceding monthly statement furnished to the Central Bank under [section 31\(a\)](#):

Provided that no financial institution shall be required—

- (a) without the prior approval of the Minister, to maintain liquid assets in excess of thirty per cent of such total liabilities to the public in Swaziland; or
 - (b) to augment its liquid assets during any calendar month by an amount in excess of four per cent of such total liabilities to the public in Swaziland.
- (2) The distribution of amounts between the various types of liquid assets required to be held under this section shall be made at the discretion of each financial institution:

Provided that the Central Bank may, by notice published in the *Gazette* and with the approval of the Minister, prescribe the distribution of amounts between the types of liquid assets required to be held under this section.

- (3) For the purpose of this section, “liquid assets” shall consist of freely transferable assets, unencumbered by any charge or lien whatsoever, of the following classes—
- (a) notes and coins that are legal tender in Swaziland and net balances held with the Central Bank;
 - (b) net balances withdrawable on demand and money at call at any financial institution in Swaziland;
 - (c) treasury bills and other securities issued by the Government and maturing within three hundred and seventy days;
 - (cc) securities issued by the Central Bank and maturing within one hundred and eighty days;
[Added A.2/1991]
 - (d) net balances withdrawable on demand, and money at call or at up to thirty-one days’ notice at such financial institutions, denominated in such currencies and located in such countries and available in accordance with such terms, as the Central Bank may approve;
 - (e) negotiable instruments of such type as the Central Bank may approve bearing at least two good signatures, payable within a period of one hundred and eighty-six days and drawn on such places, and denominated in such currencies as the Central Bank may approve;
 - (f) treasury notes or bills issued by the Government of such countries, and denominated in such currencies, as the Central Bank may approve, and maturing within three hundred and seventy days; and
 - (g) such other assets as the Central Bank, with the approval of the Minister, may, by notice published in the *Gazette*, approve.

23. Failure to provide information

A financial institution shall be held to be in breach of this Order if it fails to furnish, within such reasonable period as may be prescribed by the Central Bank, any information requested by the Central Bank to satisfy itself that the financial institution is complying with sections [20](#), [21](#) and [22](#).

24. Limitations on specified operations and activities

(1) No financial institution shall directly or indirectly—

- (a) grant to any person or permit to be outstanding any loan, advance or credit facility, or give any financial guarantee or incur any other liability on behalf of such person, so that the total value of such loans, advances or credit facilities to, and financial guarantees or other liabilities on behalf of, such person is at any time more than ten per cent of the unimpaired paid-up or assigned capital and unimpaired balance in the Reserve Account of such financial institution:

Provided that the limitation upon such transactions shall not apply in respect thereof if they —

- (i) are upon, or with respect to, drafts or bills of exchange drawn in good faith against actually existing assets, or upon bankers' acceptances or bills of exchange of the kinds and maturities authorised by the Central Bank, or upon commercial or business paper actually owned by the person discounting or selling it with or to such financial institution and endorsed without limitation or guaranteed by such person;
- (ii) are granted against special security, covered by insurance to such extent and in such manner as may be prescribed by regulation, having an ascertained market value or otherwise having a value as collateral as found in good faith by an officer of such financial institution, of at least fifteen per cent more than the amount of the obligations secured thereby;
- (iii) represent loans, advances or credit facilities to, or guaranteed by, the Government of Swaziland;
- (iv) represent such loans, advances or credit facilities to, or guaranteed by, such foreign governments, as the Central Bank may specify for the purposes of this section; or
- (v) are approved by the Central Bank and represent loans, advances or credit facilities to, or guaranteed by, persons of established creditworthiness;
- (b) grant any loans, advances or credit facilities against the security of its own shares or, without the prior approval in writing of the Central Bank, those of any other licensed financial institutions;
- (c) except with the prior approval in writing of the Central Bank, grant or permit to be outstanding unsecured loans, advances or credit facilities of an aggregate amount in excess of fifty thousand emalangeni (E50,000)—
 - (i) to its directors whether such loans, advances or facilities are granted to them jointly or severally;
 - (ii) to any firm, partnership, syndicate, association, company or other body of persons corporate or unincorporate in which it or any one or more of its directors is directly or indirectly interested as owner, shareholder, director, partner, manager, agent or member; and
 - (iii) to any individual, firm, partnership, syndicate, association, company or other body of persons corporate or unincorporate of whom or of which it or any one or more of its directors is directly or indirectly a guarantor;
- (d) grant or permit to be outstanding to any officer or employee unsecured loans, advances or credit facilities which in aggregate amount exceed one year's emoluments of such officer or employee;
- (e) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, except insofar as may be necessary in exceptional

circumstances in the course of banking business or in the course of the satisfaction of debts due to it;

- (f) acquire or hold any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholdings as a financial institution may acquire in the course of the satisfaction of debts due to it, which shareholdings shall, however, be disposed of at the earliest suitable moment:

Provided that this paragraph shall not prevent the purchase and sale of shares of stock for trust account or upon the order and for the account of a customer without recourse; and

Provided further that this paragraph shall not apply—

- (i) in respect of any shareholding approved by the Minister in any corporation established for the purpose of insuring deposits or of promoting the development of a money market or securities market in Swaziland or of improving the financial mechanism for the financing of economic development; or
- (ii) to any shareholdings in other undertakings the aggregate value of which does not at any time exceed twenty-five per cent of the sum of its unimpaired paid-up or assigned capital and unimpaired balance in its Reserve Account:

Provided, however, that the acquisition of any voting shares of a local financial institution shall be subject to the prior authorisation of the Central Bank; or

- (g) purchase, acquire or lease immovable property except as may be necessary for the purpose of conducting its business, including provision for future expansion or housing its staff or in such circumstances as the Central Bank may approve:

Provided that—

- (i) in respect of any immovable property held or leased by a financial institution at the commencement of this Order for purposes other than those referred to herein, such financial institution shall be allowed a reasonable period, not less than three years, in which to comply with this paragraph; and
- (ii) a financial institution may secure a debt on any immovable property and in default of repayment may acquire such property for resale by the financial institution as soon as possible thereafter.

- (2) If in the application of the limitation of subsection (1)(a) the Central Bank determines that the interests of a group of two or more persons are so interrelated that they should be considered as a unit, the total indebtedness of such group shall be combined and deemed to be in respect of a single person:

Provided that a financial institution shall not be deemed to have breached subsection (1)(a) by reason solely of the fact that the combined indebtedness exceeds the limitation at the time of the determination, but the financial institution shall dispose of the indebtedness of the group in the amount in excess of the limitation within such reasonable time as shall be fixed by the Central Bank.

- (3) Any financial institution which, prior to the commencement of this Order, entered into any transactions incompatible with subsection (1)(a) to (f) inclusive, shall within three months after the commencement of this Order submit a statement thereof to the Central Bank and shall, subject to agreement with the Central Bank, liquidate all such transactions as soon as possible.

25. Loans and advances secured by hypothec

- (1) Subject to this section, a financial institution may, on completion of a deed of hypothecation, secure any loans or advances by a hypothec of crops or other agricultural or natural produce, whether attached to the soil or not, felled timber, animals, fodder, industrial and fishing materials, rolling stock, boats, fishing tackle or nets, raw materials, equipment, machinery, stock-in-trade

and generally all produce of labour and things necessarily used in connection with production, or other movable property (including incorporeal rights) of whatsoever kind or description, of which the borrower is the owner, and in respect whereof he has the right of use and disposal, whether or not on the date of such deed of hypothecation the property offered as security is in existence or has been acquired by the borrower.

- (2) Any deed of hypothecation entered into under this section shall—
- (a) include—
 - (i) a statement that the institution has, through its servant or agent, explained to the borrower the effect of making such deed and that the borrower understands the explanation;
 - (ii) the amount of the loan or advance secured by the hypothec;
 - (iii) a description of the property offered as security; and
 - (iv) such other matters as may be prescribed by regulation;
 - (b) be lodged by the financial institution with the Registrar of Deeds within thirty days of its execution and thereafter registered in the register of deeds of hypothecation; and
 - (c) be endorsed by the signature of an officer who has been duly authorised thereto, either generally or specially, by the institution concerned.
- (3) A deed of hypothecation entered into under this section shall be of no effect unless and until it has been registered in accordance with subsection (2)(b).
- (4) Immediately upon payment by the financial institution of the loan or advance or any part thereof to or on behalf of the borrower, and subject to subsection (3), notwithstanding any other law, all property hypothecated and progeny or produce thereof shall be deemed to be pledged in favour of the institution for the amount owing in respect of such loan or advance, including interest and costs, as fully and effectually as if it has been pledged by delivery to such institution.
- (5) The security created under subsection (4) shall not be extinguished by any delivery to another person of the property without the written consent of the financial institution:
- Provided that this subsection shall not apply to—
- (a) any delivery by or on behalf of the borrower to another person in good faith if the value of the property so delivered does not exceed E50; or
 - (b) any subsequent delivery to another person for value in good faith, even if the person so delivering the property has acquired it in bad faith from the borrower.
- (6) The financial institution may at any time, upon such conditions as it deems fit, grant permission in writing to the borrower to dispose of the property which has been hypothecated in terms of this section or to substitute any other property of the same description therefor, and any property so substituted shall be deemed to have been validly hypothecated in terms of this section:
- Provided that the financial institution shall cause the details of such substitution to be noted against the deed of hypothecation lodged with the Registrar of Deeds in terms of subsection (2)(b) hereof and until so noted, such substitution shall be of no effect as against persons other than the borrower.
- (7) Any movable property already hypothecated by any registered notarial bond shall not be hypothecated under this section, except with the consent in writing of the holder of such bond.
- (8) Any borrower who, without the written authority of the financial institution, disposes of, destroys or consumes any property hypothecated under this section or removes any property from the land where it is to be kept by agreement with the financial institution, shall be guilty of an offence and liable to a fine of E500 or imprisonment for one year or both:

Provided that it shall be a good defence in any prosecution under this subsection if the accused establishes that the amounts secured under the deed of hypothecation were fully paid by or on his behalf to the financial institution concerned immediately after the disposal, destruction, consumption or removal, as the case may be.

- (9) If, at a trial in respect of a contravention of subsection (8), it is proved that the accused failed, on the demand of any person designated by the institution for such purpose, to produce the property hypothecated or any part thereof, the accused shall be presumed to have disposed of, destroyed, consumed or removed the property in question as the case may be according to the charge, unless the contrary is proved.
- (10) Every financial institution shall maintain a register of all deeds of hypothecation entered into in terms of this section at the principal place of business and such register shall be open for inspection by members of the public without charge during normal hours of business of the institution.
- (11) Upon recovery or repayment of any loan or advance secured by a hypothec together with interest thereon to the date of such repayment and any costs which may have been incurred in connection with such loan or advance and recoverable in terms thereof or of any law, the institution shall issue a receipt for such moneys and notify the Registrar of Deeds who shall forthwith cancel the entry in the register of deeds of hypothecation.
- (12) Any deed of hypothecation lodged with the Registrar of Deeds in terms of subsection (2)(b) shall be deemed to be a liquid document for the purposes of any application to a court for summary judgment or provisional sentence.

26. Allocation of proceeds

- (1) Notwithstanding any other law, the proceeds of a sale in execution or under the judgment of a court of any property hypothecated under [section 25](#) shall be applied, firstly, towards any costs or expenses incidental to the taking of possession and sale of such property, and, secondly, to the discharge of the loan or advance or balance thereof outstanding and any interest thereon to the date of receipt of proceeds of sale, and thereafter any surplus remaining over shall be repaid to the borrower or his successor in title or assigns, as the case may be.
- (2) For the purposes of this section the expression “his successor in title” includes his *curator bonis* and any executor, administrator, trustee or liquidator of his estate.

27. Hypothecation deeds to be prepared by the financial institution

- (1) A deed of hypothecation to secure a debt to a financial institution and a deed evidencing the discharge of any debt so secured may be prepared by the financial institution and the borrower shall pay such charges in connection therewith as may be approved by the Central Bank from time to time.
- (2) Notwithstanding any regulations made under the Deeds Registry Act, [No. 37 of 1968](#) or any other law, all such documents prepared by a financial institution in accordance with subsection (1) which are registrable in the Deeds Office shall be registrable without it being necessary for any person to appear before the Registrar of Deeds.
- (3) A deed of hypothecation lodged with the Registrar of Deeds in terms of [section 25\(2\)\(b\)](#) shall be substantially in the form prescribed by regulation, but may contain such terms and conditions as are not inconsistent with this or any other law.

Part IV – Audit, information and examination

28. Audit

- (1) Every financial institution shall annually appoint an independent auditor, satisfactory to the Central Bank, whose duty shall be to make a report to the shareholders of a local financial institution or to the head office of a foreign financial institution upon the annual balance sheet and profit and loss account, and in every such report he shall state whether in his opinion the balance sheet and profit and loss account have been prepared in accordance with standard banking practice, whether they fairly present the financial institution's affairs and, if the auditor has called for explanations or information from the directors, officers or agents of the financial institution, whether such are satisfactory.
- (2) The report of the auditor shall be read together with the report of the board of management of the financial institution at the annual meeting of shareholders of each local financial institution and shall be transmitted to the head office of each foreign financial institution, and a copy thereof sent to the Central Bank.
- (3) If a financial institution fails to appoint an auditor in accordance with subsection (1), the Central Bank shall have the power to appoint him and his remuneration shall be paid by the financial institution.
- (4) No person having any interest in a financial institution otherwise than as a depositor and no officer, employee or agent of a financial institution shall be eligible for appointment as an auditor to such financial institution, and any person appointed as an auditor to any financial institution who shall after such appointment acquire such interest or become an officer, employee or agent of such financial institution shall forthwith cease to be such auditor.

29. Financial records

Every financial institution shall keep such records in Swaziland as are necessary to exhibit clearly and correctly the state of its affairs and to explain its transactions and financial position and to enable the Central Bank to determine whether the institution has complied with the provisions of this Order, and it shall preserve every such record for a period of at least five years as from the date of the last entry therein.

30. Annual account

- (1) Not later than three months after the expiry of its financial year, every local financial institution, in respect of all business transacted by it, and every foreign financial institution in respect of all business transacted through its places of business in Swaziland, shall prepare, with reference to that year, a balance sheet and profit and loss account as of the last working day of the year in such form as the Central Bank may approve, under the joint signatures of the principal officer and the majority of directors of a local financial institution or of the principal officer and the next most senior officer in Swaziland of a foreign financial institution.
- (2) The balance sheet and profit and loss account prepared in accordance with subsection (1) shall be audited in the manner prescribed in [section 28](#).
- (3) Every financial institution shall—
 - (a) within fourteen days after the receipt of the audited balance sheet and profit and loss account in accordance with subsection (1)—
 - (i) send the Central Bank copies thereof; and
 - (ii) publish a copy of such balance sheet in the *Gazette* and in at least one newspaper of general circulation in Swaziland; and

- (b) exhibit throughout the year in a conspicuous position in each of its places of business in Swaziland, other than a mobile office, a copy of such balance sheet.

31. Returns

Every financial institution shall send the Central Bank in duplicate—

- (a) not later than the twenty-first day of each month a statement in such form as the Central Bank may approve showing the assets and liabilities of its places of business in Swaziland at the close of business on the last business day of the preceding month; and
- (b) not later than forty days after the last day of each quarter ending on 31st March, 30th June, 30th September and 31st December, a statement in such form as the Central Bank may approve giving an analysis of its assets and liabilities in Swaziland at the close of the last business day of the quarter:

Provided that the Central Bank may from time to time call for any additional information which it may require for the purpose of the administration of this Order from any financial institution about its operations in Swaziland or those of its affiliates in Swaziland and, in the case of a local financial institution, about its operations and those of its affiliates abroad.

32. Extension of time

At the request of a financial institution, the Central Bank may from time to time extend any period within which such financial institution is, in terms of this Order, obliged to furnish any document or information.

33. Examinations

- (1) The Central Bank may, from time to time, cause an examination under conditions of secrecy to be made of any financial institution in order to determine that it is in a sound financial condition and that the requirements of this Order have been complied with in the administration of its affairs.
[Amended A.2/1991]
- (2) For the purpose of determining the condition of a financial institution and its compliance with this Order in the course of an examination undertaken pursuant to subsection (1), the Central Bank may cause an examination to be made of any of its affiliates in Swaziland to the same extent that an examination may be made of the financial institution.
- (3) The Central Bank shall also cause such examination to be made where application is made by one-fifth of the total number of depositors, or by any number of depositors holding not less than one-third of the liabilities to the public in Swaziland of such institution:

Provided that the applicants shall submit to the Central Bank such evidence as it may consider necessary to justify an examination.

34. Production of records and information for examiner

- (1) Every financial institution and every affiliate of such institution shall, pursuant to an examination conducted under [section 33](#), produce for the inspection of any examiner duly authorised by the Central Bank to examine their affairs, at such times and in such places as the examiner may specify (being times and places which, in the opinion of the examiner, would not be detrimental to the conduct of the normal daily business of such institution), all books, minutes, accounts, cash, securities, documents and vouchers in their possession or custody, relating to their business and shall supply all information concerning their business as may reasonably be required by such examiner within such time as the examiner may specify.
- (2) If any books, minutes, accounts, cash, securities, documents and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting financial institution or

affiliate, or both, as the case may be, shall be guilty of an offence and liable on conviction to a fine of E200 in respect of every day during which the default continues.

- (3) If any information supplied or item produced under subsection (1) is false in any material particular, the financial institution or affiliate, or both, as the case may be, shall be guilty of an offence and liable on conviction to a fine of E5,000.
- (4) As soon as possible after the conclusion of an examination, the Central Bank shall forward a summary of the examiner's report containing its salient points to the head office of the financial institution concerned.
- (5) All expenses of, and incidental to, an examination shall be paid by the financial institution as prescribed by regulation.

35. Other offences

Any director, officer, employee or agent of a financial institution shall be guilty of an offence and liable on conviction to a fine of E1,000, or to imprisonment for one year or both, if he—

- (a) obstructs the proper performance by an auditor of his duties in accordance with the provisions of this Order, or a lawful examination of such institution by an examiner duly authorised by the Central Bank; or
- (b) with intent to deceive, makes any false or misleading statement or entry, or omits any statement or entry that should be made, in any book, account, report, or statement of such institution.

36. Powers after examination

Without derogating from its powers under Parts V or VI, the Central Bank may, if, in its opinion, an examination shows that the financial institution concerned is conducting its business in an unlawful or unsound manner or that it is otherwise in an unsound condition—

- (a) require such institution to take such measures the Central Bank may consider necessary to rectify the situation; and/or
- (b) appoint a person, who in its opinion has had proper training and experience, to advise the financial institution on measures to be taken to rectify its situation, and shall fix his remuneration which shall be paid by the financial institution.

37. Confidentially of information

- (1) Nothing in this Order shall authorise the Minister or the Central Bank to inquire or cause an inquiry to be made into the affairs of any individual customer of a financial institution.
- (2) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court under any law, no person appointed under [section 33](#) to examine the affairs of a financial institution or under [section 36](#) to advise a financial institution, shall disclose to any person any information relating to the affairs of any financial institution or other person, including any customer of a financial institution, which he has acquired in the performance of his duties or the exercise of his functions.
- (3) Every such examiner or adviser shall, before acting in the execution of his office, take and subscribe before a Commissioner of Oaths such oath of fidelity or secrecy as may be prescribed by regulation:

Provided that this provision shall not apply to a person who has already taken the oath prescribed in section 20 of the Central Bank of Swaziland Order, No. 6 of 1974.
- (4) Every such examiner or adviser who in contravention of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals any matter which has come to his knowledge in his official capacity shall be guilty of an offence and liable on conviction to a fine of E2,000 or imprisonment for two years or both.

- (5) If any such examiner or adviser acts in the execution of his office before he has taken the prescribed oath, he shall be guilty of an offence and liable on conviction to a fine of E100.

38. Publication of information

The Central Bank may publish in whole or in part, in such form and at such time as it may determine, any information or data furnished or collected under this Order:

Provided that no information or data shall be published which might disclose the particular affairs of a financial institution or of a customer of a financial institution unless the consent of that financial institution or customer, as the case may be, has been obtained.

39. Annual report by Central Bank

The Central Bank shall annually submit to the Minister a report on all financial institutions and agents licensed under this Order and on all matters relating to such institutions and agents which have been dealt with by it during the year under review, and the Minister shall present the report to the legislature.

Part V – Miscellaneous provisions

40. Persons debarred from management or representation

- (1) Without prejudice to anything in any other law, no person shall act or continue to act as a director or manager of, or otherwise be directly or indirectly concerned in the management in Swaziland of, a financial institution, or be an agent within the meaning of [section 15](#), or otherwise represent in Swaziland any financial institution—
- (a) if his estate is declared insolvent or bankrupt in Swaziland or any other country, if such person has not been rehabilitated by order of a court; or
- (b) if he is convicted of an offence involving dishonesty or fraud, unless he has been granted permission in writing by the Minister in consultation with the Attorney-General.
- (2) No person who has been a director or manager of, or otherwise directly or indirectly concerned in the management of, any financial institution which has been wound-up, whether in or out of Swaziland, shall, without the approval in writing of the Central Bank, act or continue to act as a director or manager of, or otherwise be directly or indirectly concerned in the management in Swaziland of, any financial institution.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine of E2,000 or imprisonment for two years or both.
- (4) A person who is a director, officer or employee of a financial institution shall not serve at the same time as a director, officer or employee of any other financial institution except where the Central Bank after consultation with the Minister permits, in writing, such service in respect of not more than one such other institution.

[Added A.2/1991]

41. Reserve for losses due to negligence or dishonesty

Every financial institution shall either maintain a special reserve account which is, in the opinion of the Central Bank, adequate and which is reserved exclusively for the purpose of making good any loss resulting from the negligence or dishonesty of any of its officers and other personnel, or it shall insure itself against such loss, to an amount which the Central Bank deems adequate, with a person approved by the Central Bank and carrying on insurance business or the business of guaranteeing against any such loss.

42. Financial holidays

- (1) The Minister may declare by notice in the *Gazette* any day to be a financial holiday on which no financial institution may be open for business with the public.
- (2) Except with the approval of the Central Bank, all financial institutions shall remain open for business with the public on such days, other than public holidays and financial holidays, and during such hours, as may be prescribed by regulation.
- (3) Any private obligation which can only be fulfilled at a financial institution and which would fall due on any day on which such institution is not open for business under this section, shall be deemed to fall due on the next day on which such institution is open for business.

43. Substitution for depositor's signature

If in any transaction connected with the opening of, deposit into, or withdrawal from, a deposit account, the depositor is unable to sign, his thumb impression affixed in the presence of an officer of the financial institution shall have the same legal effect as if it were the depositor's signature.

44. Acceptance of deposits by insolvent financial institutions

- (1) A financial institution which receives any deposits at a time when its liabilities exceed its assets shall be guilty of an offence and liable on conviction to a fine of E5,000.
- (2) A director, officer or employee of a financial institution who knows, or, in the proper performance of his duties, should know that the liabilities of such institution exceed its assets, and who receives, or authorises the acceptance of, a deposit shall be guilty of an offence and liable on conviction to a fine of E1,000 or imprisonment for one year or both.
- (3) In any prosecution under subsection (1) or (2), it shall be a defence if the accused establishes that at the time of the acceptance of the deposit, the depositor was aware of the situation of the financial institution.

Part VI – Seizure

45. Seizure of financial institution

The Central Bank may, acting with the prior written approval of the Minister, apply to a judge of the High Court for an order authorising the Central Bank to take possession of any financial institution—

- (a) whose required paid-up or assigned capital is impaired or whose condition is otherwise unsound;
- (b) whose business is being conducted in an unlawful or unsound manner;
- (c) if the continuation of its activities is detrimental to the interests of its depositors;
- (d) which refuses to permit an examination to be made as provided in [section 33](#) or has otherwise obstructed such examination;
- (e) on which notice of intention to revoke its licence has been served under [section 14\(2\)](#); or
- (f) in the circumstances specified in [section 54\(2\)](#).

46. Notice of seizure

- (1) On taking possession in terms of [section 45](#), the Central Bank shall post at each place of business of the financial institution a notice announcing its action pursuant to [section 45](#), specifying the time when such possession shall take effect.

- (2) A copy of the notice shall be published in the *Gazette* and in a newspaper of general circulation.

47. Appeal for termination of seizure

At any time after the Central Bank has taken possession of a financial institution in terms of [section 45](#), such institution or any shareholder in, or other owner of, or creditor of such an institution for an amount of not less than E300 may institute proceedings in the High Court to have the seizure lifted.

48. Powers and duties of Central Bank upon seizure

- (1) As soon as the Central Bank has taken possession of a financial institution, it shall be vested with the full and exclusive powers of management, administration, and control of the institution, including, without limiting the generality of the foregoing, the power to continue or discontinue its operations, to stop or limit the payment of its obligations, to employ any necessary officers or employees, to execute any instrument in the name of the financial institution and to initiate, defend and conduct in its name any action or proceedings to which the institution may be party.
- (2) As soon as possible after taking possession of a financial institution, the Central Bank shall make an inventory of the property vested in, belonging to or held by the institution and transmit a copy thereof to the High Court which copy shall be available for examination by interested parties at the office of the Registrar of the High Court.

49. Effects of seizure

If the Central Bank has taken possession of a financial institution, any term, statutory, contractual or otherwise, on the expiry of which a right or action of the institution would expire or be extinguished, shall be extended by six months from the date of seizure.

50. Restriction of rights of creditors as to execution in seizure

No execution shall be returned against the property of a seized financial institution except, in the discretion of the High Court, an execution effected pursuant to a judgment rendered prior to the date of the seizure for an amount not exceeding E500.

51. Limitation on duration of seizure

If the Central Bank has taken possession of a financial institution, it shall, within a maximum period of sixty days counting from the effective date of seizure specified pursuant to [section 46](#) or within such longer period as may be permitted from time to time by the High Court—

- (a) terminate the seizure by restoring the institution to its board of management or owners, as the case may be; or
- (b) petition the court for a winding-up order under the Companies Act, [No. 7 of 1912](#).

Part VII – Winding-up

52. Applicability of Companies Act

Subject to this Part, the provisions of the Companies Act, [No. 7 of 1912](#), relating to the winding-up of companies (Part IV), or the winding-up of unregistered companies (Part VII), as the case may be, shall be applicable to licensed financial institutions which are companies or unregistered companies, respectively, within the meaning of the Companies Act:

Provided that, for the purposes of this Part and notwithstanding section 201 of the Companies Act, an unregistered company shall be subject to the provisions of Part VII of the Companies Act regardless of the number of its members.

53. Authority to act as Master

In the winding-up of a licensed financial institution, the powers and functions assigned to the Master under the Companies Act or under the Insolvency Act, [No. 81 of 1955](#), shall be exercised by the Central Bank.

54. Prior consent of Central Bank for voluntary winding-up

- (1) There shall be no voluntary winding-up of a licensed financial institution without the prior consent in writing of the Central Bank:

Provided that the consent of the Central Bank for a voluntary winding-up shall be granted on such terms and conditions as it may determine and only if it appears to it that the institution is solvent and has sufficient property to repay its depositors and other creditors and discharge all its other obligations in full and without delay.

- (2) If the Central Bank finds that the property of a financial institution the voluntary winding-up of which it has authorised will not be sufficient for the prompt and full discharge of its obligations or that completion of the winding-up is unduly delayed, it may—
- (a) take possession of the institution under [section 45](#); or
 - (b) petition the court for a winding-up order.

55. Prior report of Central Bank for a judicial winding-up

There shall be no judicial winding-up of a financial institution without a prior report by the Central Bank to the Court on the situation of such institution.

56. Notice of voluntary winding-up

- (1) Within fourteen days from the granting of consent by the Central Bank under [section 54](#)(1) for voluntary winding-up, a notice setting forth such information as the Central Bank may prescribe shall be sent by mail to all depositors, other creditors and persons otherwise entitled to the funds or other property held by the financial institution as a trustee, fiduciary, lessor of a safe deposit box, or bailee.
- (2) The notice shall also be posted conspicuously on the premises of each place of business of the financial institution, and the financial institution shall publish it in the *Gazette* and in such other places as the Central Bank may prescribe.

57. Evidence of claim

Notwithstanding section 146 of the Companies Act and the relevant provisions of the Insolvency Act, a depositor of a financial institution, evidence of whose claim appears, to the satisfaction of the liquidator, in the books, accounts or other documents of such institution, shall be deemed to have proved such claim for the purpose of such provisions.

58. Voidable and undue preferences

For the purposes of section 182 of the Companies Act, when the Central Bank has taken possession under section 45 of a financial institution which is subsequently wound-up and found insolvent, the date of the order of seizure shall be deemed to correspond with the date of the sequestration order under the Insolvency Act.

59. Exception to section 103 of Insolvency Act

Notwithstanding section 180 of the Companies Act and section 103 of the Insolvency Act, in the winding-up of a financial institution unable to pay its debts, any balance of the free residue after making provision for the payment of the secured and otherwise preferent claims shall be applied in payment of the remaining claims in the following order—

- (a) deposits and interest accrued thereon up to an amount not exceeding E500 per depositor;
- (b) other deposits and interest accrued thereon;
- (c) other claims.

60. Unclaimed moneys or property

- (1) Any sums of money remaining unclaimed after the winding-up of a financial institution shall be deposited in the Guardian's Fund.
- (2) Any other property held by the financial institution as a trustee, fiduciary, lessor of a safe deposit box or bailee, which has not been returned to its rightful owners in the course of the winding-up of such institution, shall, together with the inventories pertaining thereto, be placed in the custody of the Central Bank, and after a period of not less than two years, shall be disposed of as may be prescribed by regulation.

61. Failure to secure compliance with the provisions of this Order

Any director, manager or other officer concerned in the management of a financial institution who fails to take all reasonable steps to secure compliance by the institution with any requirement of this Order shall be guilty of an offence and liable on conviction to a fine of E1,000 or imprisonment for six months, or both.

Part VIII – General provisions and repeal**62. Regulations**

The Minister may, in consultation with the Central Bank, make regulations for the better carrying out of the purposes and provisions of this Order, including the prescribing of any lodgment or office fees, and may amend by regulation the fees prescribed in the Schedule to this Order.

63. Appeals

- (1) Any decisions taken by the Central Bank under this Order, including any refusal or revocation of a licence, shall be subject to appeal to the Minister.
- (2) The appeal shall be noted and prosecuted in the manner and within the time prescribed by regulation.

64. Amendment of Central Bank Order

The Central Bank of Swaziland Order, No. 6 of 1974 is hereby amended by—

- (a) replacing the words “Financial Institutions Order 19 of 1973” in section 2 by “Financial Institutions (Consolidation) Order, No. 23 of 1975”;
- (b) replacing the words “Registrar of Financial Institutions under the Financial Institutions Order, No. 19 of 1973, and with the approval of the board, may appoint an Assistant Registrar” in section 11(3) (d) by “the Central Bank under the Financial Institutions (Consolidation) Order, No. 23 of 1975”;

- (c) repealing section 39; and
- (d) replacing the words “Financial Institutions Order, No. 19 of 1973” in section 55 by “Financial Institutions (Consolidation) Order, No. 23 of 1975”.

65. **Amendment of Deeds Registry Act, No. 37 of 1968**

Section 5 of the Deeds Registry Act, 1968 is amended by adding the following words at the end of paragraph (k) thereof, namely, “as well as deeds of hypothecation lodged with him under the Financial Institutions (Consolidation) Order, No. 23 of 1975, and any cession, substitution, cancellation or amendment of any such deed”.

66. **Application to Swaziland Development and Savings Bank**

- (1) This Order shall apply to the Swaziland Development and Savings Bank to the extent that it is not inconsistent with any law regulating the affairs of the said Bank.
- (2) Section 34 of the Swaziland Development and Savings Bank Order, No. 49 of 1973 is hereby repealed.

67. **Repeal**

The Financial Institutions Order, No. 19 of 1973 is hereby repealed.

Schedule

Investigation and annual fees

		Emalangeni
Agents—		
Annual fee		20
Financial institutions—		
Investigation fee		200
Annual fee		
	For the first or only place of business	100
	For every other place of business	50