

UNISA

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Banking Law and Usage – LML4807

Assignment: 01

Unique No: 574442

According to the Bank Act 90 of 1990 in South Africa only a public company that is registered as a Bank with the Registrar of Banks is permitted to conduct Banking business.

The following are activities that are listed in the Banks Act 94 of 1990 as activities that form part of the business of a bank:

- **Accepting deposits from the general public on a regular basis** ✓
The banks accept and safeguard money owned by other individuals and entities, this is a relationship based on trust that it will be given back to them as and when they demand.
- **Soliciting of deposits** ✓
The bank here invites the general public by advertising to come and deposit funds for savings or investment purposes with the promise of earning interest on the funds deposited with the particular banking institution. They can earn some extra money when the money is kept in saving or fixed deposits
- **Using money from deposits to grant loans or make investments** ✓
Once funds have been deposited the banking institution then lends out this money to borrowers or invests it in order to earn a profit for the banking institution.
- **Repurchase agreements**
This occurs in the sale of securities or assets together with an agreement for the seller to buy back the securities or assets at a later date. ✓ 
- **Foreign exchange dealers**
The banking institutions make foreign currency available to the general public and they make some profit on the sale of any foreign currency. Customers can also sell any legitimately acquired foreign currency to the bank.
- **Any activity that the Registrar deems to be the business of the Bank** ✓

There are certain activities that do not fall under business of a Bank as quoted under Section 1 of the Act; this therefore exempts the persons carrying the following activities from the provisions of the Act:

- The acceptance of deposits by a person who has not advertised in order to solicit deposits and a person whose main line of business is to accept deposits from the general public. This basically refers to a person or entity that has not registered as a bank and does not advertise its business activities as that of a bank or deposit taking institution.

The following extracted from the Act also form part of activities that do not form part of the business of a Bank:

(bb) the borrowing of money from its members by a co-operative subject to such conditions as may be prescribed;

(cc) any activity of a public sector, governmental or other institution, or of any person or category of persons, designated by the Registrar, with the approval of the Minister, by notice in the Gazette, provided such activity is performed in accordance with such conditions as the Registrar may with the approval of the Minister determine in the relevant notice;

(dd) any activity contemplated in paragraph (a), (b) or (c) –

- i) performed by any institution registered or established in terms of, by or under any other Act of Parliament and designated by the Minister by notice in the Gazette; or*
- ii) performed in terms of any scheme authorized and controlled by, and conducted in accordance with the provisions of, any other Act of Parliament and so designated by the Minister, provided such activity is performed in accordance with such conditions as the Minister may determine in the relevant notice;*

(ee) the acceptance, subject to such conditions as the Registrar may from time to time determine by notice in the Gazette, of money against debentures, bills of exchange, promissory notes or other similar financial instruments, provided the money so accepted is not used, in the case of such acceptance of money by a person other than a Bank, for the granting of money loans or credit (other than customary credit in respect of the sale of goods or the provision of services by the issuer of such financial instruments) to the general public;

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

- i) Confirmation that the agent acts as the agent of the lender; and*
- ii) that the lender assumes, except in so far as there may in law be a right of recovery against the agent, all risks connected with the administration of the entrusted funds by the agent, as well as the responsibility to ensure that the agent executes the instructions as recorded in the written contract of agency; or*

(gg) the activities, set forth in subparagraphs (A) and (B) hereunder, of a person (hereinafter in this paragraph referred to as the mandatory) that –

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

(A) Accepts money from the mandator in terms of a prescribed contract or mandate; and

(B) in the execution of the mandate, and subject to such conditions as the Registrar may determine in the notice referred to in subparagraph (ii) above, deposits such money into an account maintained by the mandatory with a Bank, irrespective as to whether or not such money is so deposited together with money so accepted by the mandatory from other mandators.

