



**SWAZILAND**  
**GOVERNMENT GAZETTE**  
**EXTRAORDINARY**

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VOL. XLVI]

MBABANE, Thursday, JUNE 12<sup>th</sup> 2008

[No. 83

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**PUBLISHED BY AUTHORITY**

# PART C

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## LEGAL NOTICE NO. 121 OF 2008

### THE FINANCIAL INSTITUTIONS ACT, 2005 (Act No. 6 of 2005)

#### THE DEPOSIT TAKING BUSINESS REGULATIONS, 2008 (Under Sections 9 (1) and 62)

In exercise of the powers conferred by Sections 9 (1) and 62 of the Financial Institutions Act, 2005, the Minister of Finance, acting in consultation with the Central Bank of Swaziland, hereby makes the following Regulations -

#### *Citation*

1. These Regulations may be cited as the Deposit Taking Business Regulations, 2008.

#### *Interpretation*

2. In these Regulations, unless the context otherwise requires -

"Bank" means the Central Bank of Swaziland;

"collective investment scheme" means any arrangement in respect of property of any description, including money, the purpose or effect of which is to enable a person taking part in the arrangement, whether by becoming the owner of the property or part thereof or otherwise, to participate in, or receive profits or income arising from the acquisition holding, management or disposal of that property or sums paid out of such profits or income, and in which arrangement the -

- (a) person who is to participate in the arrangement do not have day to day control over the management of the property;
- (b) contribution of the person who participates in the arrangement is pooled with other such persons; and,
- (c) property is managed as a whole by, or on behalf of the operator of the arrangement;

"custodian" means, in relation to a collective investment scheme other than a unit trust scheme, any person who, whether or not under a trust, is entrusted with the custody of the property of a scheme;

"investment" means, in relation to an investment advisor -

- (a) a security listed on a licensed securities exchange, whether that exchange is licensed or registered in Swaziland or in a foreign country;
- (b) a participatory interest or unit in a collective investment scheme, whether that scheme is licensed or registered in Swaziland or in a foreign country; or,
- (c) any other instrument declared to be an investment by the Bank, by Notice published in the Gazette, or under any other law;

and includes funds intended for the purchase of such security, participatory interest or investment;

"investment advisor" means a person who -

- (a) carries on the business of advising other persons concerning an investment;
- (b) as part of a regular business, issues or promulgates analyses or reports concerning an investment;
- (c) pursuant to a contract or arrangement with another person, undertakes on behalf of that person, whether on a discretionary authority granted by the other person, or otherwise the management of an investment including the arranging of the purchase, sale or exchange of a security through a licensed dealer;

but does not include -

- (d) a financial institution licensed under the Financial Institutions Act, 2005;
- (e) an insurance company licensed under the Insurance Act, 2005
- (f) a pension fund registered under the Retirement Funds Act, 2005;
- (g) a building society registered under the Building Societies Act, 1962,
- (h) a licensed dealer or a licensed dealer's representative whose advice in respect of investments is solely incidental to the conduct of the business of or employment of the licensed dealer or licensed dealer's representative in dealing in securities;
- (i) a legal practitioner or an accountant whose advice in respect of an investment is wholly incidental to the practice of the profession of such legal practitioner or accountant;
- (j) the proprietor or the publisher of a registered newspaper, magazine, journal or other periodical publication that is generally available to the public, in relation to any advice in respect of an investment given therein;

"manager" means, in relation to a collective investment scheme, a person, regardless of the title or description of that person within the scheme, who is authorized to manage, operate or control a scheme;

"scheme" means a collective investment scheme;

"trustee" means, in relation to a unit trust scheme, the person holding the property of the scheme is on trust for the participant;

"unit trust scheme" means a collective investment scheme under which the property of the scheme is held in trust for the participants.

***Deposit taking business***

3. (1) for the purposes of section 9(1) of the Act, deposit taking business includes -

- (a) acting as a manager, custodian or trustee of a collective investment scheme, or
- (b) operating as an investment advisor.

(2) A person carrying on a deposit taking business prior to the coming into force of these Regulations, shall, within six weeks of the coming into force of these Regulations, apply to the bank for authorization to carry on such business.

(3) An application for authorization to carry on deposit taking business shall be in the manner and form prescribed by the Bank.

(4) Authorization by the Bank shall be subject to such terms and conditions as may be prescribed or imposed by the Bank.

**MAJOZI V. SITHOLE**  
*MINISTER OF FINANCE*

Mbabane  
4<sup>th</sup> June, 2008