

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 311    Cape Town    22 May 1991    **No. 13246**

## THE PRESIDENCY

No. 1132 22 May 1991

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 54 of 1991: Financial Institutions Amendment Act, 1991.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

## GENERAL EXPLANATORY NOTE:

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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*(Afrikaans text signed by the State President.)  
(Assented to 15 May 1991.)*

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## ACT

To amend the Insurance Act, 1943, so as to further regulate the transfer of the business of a registered insurer to a separate company; to amend the Pension Funds Act, 1956, so as to provide for the establishment of a Pension Funds Advisory Committee; and to accord recognition to the reasonable benefit expectations of persons in respect of whom a pension fund has liabilities; to amend the Unit Trusts Control Act, 1981, so as to extend the definition of "securities"; to provide for the establishment of a Unit Trusts Advisory Committee; and to authorize the Registrar of Unit Trust Companies to exempt persons from the application of certain provisions of the Act; to amend the Inspection of Financial Institutions Act, 1984, so as to regulate the disclosure of certain information to the Registrar of Deposit-taking Institutions; to amend the Stock Exchanges Control Act, 1985, so as to exempt certain transactions from the definition of "bear sale"; to further provide for the delegation or assignation of powers or duties of the committee of a stock exchange; to further define the powers of the president of a stock exchange to suspend the listing of securities or to omit the prices of securities; to further regulate the hearing of appeals; to further provide for the compulsory purchase and sale of securities by a stock-broker as well as the recovery of interest on outstanding amounts in this regard; to regulate the disclosure of the removal from office of an auditor; and to provide for the imposition of civil fines; to amend the Financial Markets Control Act, 1989, so as to further define certain expressions; to further define the powers of the executive officer of a financial exchange to suspend the listing of financial instruments; to provide for the separate position of goods given to or received by a clearing house or member of a financial exchange; to further regulate the hearing of appeals; and to provide for the imposition of civil fines; to amend the Insolvency Act, 1936, so as to provide for the realization of a financial instrument held as security for a claim; and to provide for incidental matters.

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**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 25 of Act 27 of 1943, as amended by section 22 of Act 73 of 1951, section 8 of Act 39 of 1969 and section 11 of Act 99 of 1980

1. Section 25 of the Insurance Act, 1943, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) except in the case of a transfer contemplated in section 25A, by the court, if any party to the transaction in question is or was carrying on long term insurance business in the Republic immediately before the commencement of or during the transaction; **[or]**”; and
- (b) by the addition to subsection (1) of the following paragraph:
- “(c) in the case of a transfer contemplated in section 25A, by the registrar.”.

#### Insertion of section 3B in Act 24 of 1956

2. The following section is hereby inserted in the Pension Funds Act, 1956, after section 3A:

#### “Pension Funds Advisory Committee

**3B.** (1) There is hereby established an advisory committee to be known as the Pension Funds Advisory Committee (in this Act referred to as the advisory committee).

(2) (a) The advisory committee consists of the registrar as chairman and such other members—

- (i) as the Minister may from time to time designate;
- (ii) who in the opinion of the Minister have special knowledge regarding matters relating to pension funds;
- (iii) who represent associations and organizations which in the opinion of the Minister have an interest in matters relating to pension funds.

(b) A member of the advisory committee shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiration of his period of office.

(c) The Minister may at any time terminate the membership of any member if in the opinion of the Minister a sufficient reason exists therefor.

(3) The advisory committee may from time to time conduct an investigation and advise or make recommendations to the registrar, or make recommendations to the Minister, regarding any matter relating to pension funds, and shall advise the Minister on any such matter referred to the advisory committee by the Minister.

(4) For the purposes of any investigation by the advisory committee the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairman of the advisory committee were the secretary of such a commission.

(5) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which is being investigated or considered by the advisory committee.

(6) (a) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at a time and place determined by the advisory committee.

(b) The chairman may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him.

(c) The chairman shall determine the procedure at a meeting of the advisory committee.

(d) The quorum for a meeting of the advisory committee shall be a majority of its members.

(e) The decision of a majority of the members of the advisory committee present at any meeting thereof shall constitute the decision

of the advisory committee, and in the case of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(7) (a) The advisory committee may nominate one or more subcommittees, which may, subject to the instructions of the advisory committee, perform those functions of the advisory committee that the advisory committee may determine.

(b) Such a subcommittee shall consist of so many members of the advisory committee or so many other persons as the advisory committee may deem necessary, and the advisory committee may at any time dissolve or reconstitute such a subcommittee.

(c) The advisory committee shall designate one of the members of the subcommittee as chairman thereof, and if any such chairman is absent from any meeting of the subcommittee, the members present shall from among themselves elect a person to preside at such meeting.

(d) The advisory committee may make rules regarding the manner in which meetings of any subcommittee shall be convened, the procedure at, the functions of, and the quorums for, such meetings and the manner in which minutes of such meetings shall be kept.

(8) The advisory committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to pension funds.

(9) The administrative work incidental to the performance of the functions of the advisory committee and its subcommittees shall be performed by officers or employees in the office of the registrar designated for that purpose by the registrar.”.

**Amendment of section 14 of Act 24 of 1956, as amended by section 15 of Act 81 of 1957**

3. Section 14 of the Pension Funds Act, 1956, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the registrar is satisfied that the scheme referred to in paragraph (a) accords full recognition to the reasonable benefit expectations of the active members, deferred pensioners and vested pensioners concerned and that the proposed transaction would not render any registered fund which is a party thereto and which will continue to exist if the proposed transaction is completed, unable to meet the requirements of this Act or to remain in a sound financial condition, or, in the case of a fund which is not in a sound financial condition, to attain such a condition within a period of time deemed by the registrar to be satisfactory;”.

**Amendment of section 16 of Act 24 of 1956, as amended by section 16 of Act 86 of 1984 and section 9 of Act 50 of 1986**

4. Section 16 of the Pension Funds Act, 1956, is hereby amended—

(a) by the substitution in subsection (7)(c)(i) for paragraph (aa) of the following paragraph:

“(aa) the actuarial liability in respect of past service benefits of active members, with due allowance for future salary increases where these affect the benefits in respect of past service and with due allowance for increases in pensions or deferred pensions at **[the rates stipulated in the rules of the fund]** a rate which meets with the reasonable benefit expectations of active members; plus”; and

(b) by the substitution in subsection (7)(c)(i) for paragraph (bb) of the following paragraph:

“(bb) the actuarial liabilities in respect of pensions in course of payment and deferred pensions, with due allowance for increases at **[the rates stipulated in the rules of the fund]** a rate which meets with the reasonable benefit expectations of vested pensioners and deferred pensioners; plus”.

**Amendment of section 1 of Act 54 of 1981, as amended by section 8 of Act 51 of 1988**

5. Section 1 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for the definition of "securities" of the following definition:

" 'securities' means —

- (a) shares, stock including loan stock as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), units in a trust scheme in property shares, debentures, debenture stock and debenture bonds, and includes unsecured notes, whether or not they have inherent option rights or are convertible; and
- (b) except for the purposes of section 6(1), the instruments referred to in paragraphs (a), (b) and (d) of the definition of 'financial instrument' in section 1 of the Financial Markets Control Act, 1989;"

**Insertion of section 2B in Act 54 of 1981**

6. The following section is hereby inserted in the Unit Trusts Control Act, 1981, after section 2A:

**"Unit Trusts Advisory Committee**

**2B.** (1) There is hereby established an advisory committee to be known as the Unit Trusts Advisory Committee (in this Act referred to as the advisory committee).

(2) (a) The advisory committee consists of the registrar as chairman and such other members as the Minister may from time to time designate.

(b) A member of the advisory committee shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiration of his period of office.

(c) The Minister may at any time terminate the membership of any member if in the opinion of the Minister a sufficient reason exists therefor.

(3) The advisory committee may from time to time conduct an investigation and advise or make recommendations to the registrar, or make recommendations to the Minister, regarding any matter relating to unit trusts, and shall advise the Minister on any such matter referred to the advisory committee by the Minister.

(4) For the purposes of any investigation by the advisory committee the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairman of the advisory committee were the secretary of such a commission.

(5) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which is being investigated or considered by the advisory committee.

(6) (a) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at a time and place determined by the advisory committee.

(b) The chairman may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him.

(c) The chairman shall determine the procedure at a meeting of the advisory committee.

(d) The quorum for a meeting of the advisory committee shall be a majority of its members.

(e) The decision of a majority of the members of the advisory committee present at any meeting thereof shall constitute the decision of the advisory committee, and in the case of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(7) (a) The advisory committee may nominate one or more subcommittees, which may, subject to the instructions of the advisory committee, perform those functions of the advisory committee that the advisory committee may determine.

(b) Such a subcommittee shall consist of so many members of the advisory committee or so many other persons as the advisory committee may deem necessary, and the advisory committee may at any time dissolve or reconstitute such a subcommittee.

(c) The advisory committee shall designate one of the members of the subcommittee as chairman thereof, and if any such chairman is absent from any meeting of the subcommittee, the members present shall from among themselves elect a person to preside at such meeting.

(d) The advisory committee may make rules regarding the manner in which meetings of any subcommittee shall be convened, the procedure at, the functions of, and the quorums for, such meetings and the manner in which minutes of such meetings shall be kept.

(8) The advisory committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to unit trusts.

(9) The administrative work incidental to the performance of the functions of the advisory committee and its subcommittees shall be performed by officers or employees in the office of the registrar designated for that purpose by the registrar.”.

#### Amendment of section 6 of Act 54 of 1981

7. Section 6 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No management company **[shall sell or offer for sale any unit if] —**

(a) shall sell or offer for sale any unit if at the date on which that unit was created by such company, the unit portfolio to which that unit relates included —

(i) securities (other than approved securities) issued by any one concern to an amount in excess of five per cent of the market value of all the securities comprised in the unit portfolio, except in so far as the excess is due to appreciations or depreciations of the value of the underlying securities comprised in that portfolio, but subject to the reservation that so long as the market value of an investment in any particular concern exceeds the limit specified in this subparagraph, the management company shall not purchase any further investments in the concern affected; or

(ii) securities of any one class (other than approved securities) issued by any one concern to an amount in excess of five per cent of the aggregate amount representing all the securities of that class issued by that concern, or, in the case of securities in any investment company, 10 per cent of the aggregate amount of the issued securities of any one class in such company, except in so far as the excess is due to an amalgamation, cession, transfer or take-over in terms of section 24, but subject to the conditions that —

(aa) the management company shall not make any further investments in securities of the class in question as long as the said five or 10 per cent, as the case may be, is exceeded;

- (bb) the management company shall within 12 months after the date on which such amalgamation, cession, transfer or take-over becomes effective or within such further period as the registrar may determine from time to time, reduce the securities of the class in question to at least the said five or 10 per cent, as the case may be; **[and]**
- (b) shall sell or offer for sale any unit if the securities included in the unit portfolio to which the unit relates do not consist, to the extent of at least 95 per cent of market value, of stock exchange securities or of securities (other than stock exchange securities) acquired by the management company pursuant to the exercise of rights attaching to any stock exchange securities included in the unit portfolio; and
- (c) shall include in the unit portfolio to which a unit relates instruments referred to in paragraphs (a), (b) and (d) of the definition of 'financial instrument' in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), except in the manner and on the conditions as prescribed."

#### Insertion of section 45 in Act 54 of 1981

8. The following section is hereby inserted in the Unit Trusts Control Act, 1981, after section 44:

#### "Application of Act

45. Whenever the registrar deems it desirable in the public interest, he may, after consultation with the advisory committee, by notice in the Gazette exempt on such conditions and to such extent as he may deem fit any person or category of persons from any provision of section 6, 8, 10, 12, 17, 22(1)(h) or 33, in so far as such provision does not already make provision for exemption, and may at any time in like manner revoke or amend such exemption."

#### Amendment of section 8 of Act 38 of 1984, as amended by section 26 of Act 57 of 1988 and section 4 of Act 92 of 1988

9. Section 8 of the Inspection of Financial Institutions Act, 1984, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- "(b) if the registrar has reason to believe that an offence or irregularity affecting any department of State or the Registrar of Deposit-taking Institutions has been committed, he may convey information regarding that offence or irregularity to the department or Registrar concerned;"

#### Amendment of section 1 of Act 1 of 1985, as amended by section 14 of Act 50 of 1986, section 24 of Act 51 of 1988, section 25 of Act 54 of 1989, section 38 of Act 55 of 1989 and section 13 of Act 64 of 1990

10. Section 1 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition to the definition of "bear sale" of the following words:

" , but excluding that sale of listed securities designated by the Registrar by notice in the Gazette;"

#### Amendment of section 2A of Act 1 of 1985, as inserted by section 26 of Act 51 of 1988

11. Section 2A of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The committee may, subject to such conditions as it may determine, delegate or assign any power or duty conferred upon or assigned to it by or under this Act, to a subcommittee or such person as it deems fit, but shall not thereby be divested or relieved of any power or duty so delegated or assigned.”.

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**Amendment of section 16 of Act 1 of 1985, as amended by section 14 of Act 64 of 1990**

12. Section 16 of the Stock Exchanges Control Act, 1985, is hereby amended by the deletion of subsection (2).

**Amendment of section 17 of Act 1 of 1985**

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13. Section 17 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Whenever the president of a stock exchange is of the opinion that it is desirable, also for the purposes of compliance with and enforcement of the rules and other requirements of the stock exchange in respect of the listing of securities, he may, after consultation with the head of the department of the stock exchange dealing with the listing of securities, without prior notice to any person and without hearing any person, order a suspension or an omission referred to in paragraphs (a) and (b) of subsection (1), respectively, for a period not exceeding 30 days.”.

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**Amendment of section 20 of Act 1 of 1985, as amended by section 27 of Act 54 of 1989**

14. Section 20 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:

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“(i) The board shall deal with an appeal **[only on the relevant information which the committee had before it]** with due regard to—  
 (aa) the reasons for the decision of the committee appealed against in terms of paragraph (a);  
 (bb) the grounds of the appeal;  
 (cc) the documentary or oral evidence submitted or given by any person (with or without legal representation) at the request or with the permission of the board; and  
 (dd) any other information at the disposal of the board.”.

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**Amendment of section 22 of Act 1 of 1985, as amended by section 30 of Act 51 of 1988**

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15. Section 22 of the Stock Exchanges Control Act, 1985, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) is a corporate body whose last audited balance sheet as at a date not earlier than 15 months prior to the date on which the securities are purchased, shows that its assets exceed its liabilities (excluding liabilities in respect of paid-up share capital and reserves) by at least R1 000 000, or is a subsidiary of such corporate body and that corporate body is capable of paying for the securities against delivery thereof, or, **[as]** in the case **[may be]** of a subsidiary of such corporate body, that body corporate has furnished the stock-broker with a written guarantee **[by itself for payment, by such]** in terms of which it undertakes to pay the debt of such subsidiary, if that subsidiary defaults to pay for the securities against delivery thereof.”;

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(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:



- “If a stock-broker has purchased securities on behalf of any person and such person is in terms of subsection (1) obliged to pay for the securities against offer of delivery thereof or within a period of seven business days after the purchase thereof, the stock-broker shall, if he is not paid for the securities **[within the seven business days following]** upon the day of such offer or of the expiry of that period, as the case may be, on the next succeeding business day after that day or as soon thereafter as [is reasonably possible, but within 60 days thereafter or such further period as the Registrar] the committee of a stock exchange may allow in the particular case—”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “If a stock-broker has been notified of arrangements and instructions as is contemplated in subsection (1)(a), he shall, before purchasing the securities concerned, satisfy himself that in fact the arrangements have been made and the instructions given, and if he has purchased securities on behalf of any person in the circumstances contemplated in the said subsection, the stock-broker shall as soon as the securities purchased or any portion thereof is available for delivery by him, offer to deliver the same to the banking institution **[or]**, corporate body or subsidiary concerned against payment of the amount payable to the stock-broker, and, if such payment is not made **[forthwith]** upon the day of such offer, shall on the next succeeding business day after that day or as soon thereafter as [is reasonably possible, but within 60 days thereafter or such further period as the Registrar] the committee of a stock exchange may allow in the particular case—”; and
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- “Before purchasing securities on behalf of any person in the circumstances contemplated in subsection (1)(b), a stock-broker shall satisfy himself that such person is such a corporate body or subsidiary as is contemplated in the said subsection, and either shall satisfy himself that such corporate body is capable of paying for the securities against delivery thereof, or, **[as]** in the case **[may be]** of a subsidiary of such body corporate, shall have been placed in possession of a guarantee as is contemplated in the said subsection, and if he has purchased securities on behalf of such person as is contemplated in the said subsection, the stock-broker shall, as soon as the securities purchased or any portion thereof is available for delivery by him, offer to deliver the same to such person against payment of the amount payable to the stock-broker, and, if such payment is not made **[forthwith]** upon the day of such offer, shall on the next succeeding business day after that day or as soon thereafter as [is reasonably possible, but within 60 days thereafter or such further period as the Registrar] the committee of a stock exchange may allow in the particular case—”.

**Amendment of section 23 of Act 1 of 1985, as amended by section 31 of Act 51 of 1988**

16. Section 23 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If minimum cover is not provided in terms of subsection (1) within the period of seven business days **[following upon the expiry of the period of seven days]** mentioned in the said subsection, the stock-broker in question shall on the next succeeding business day after the day of the expiration of that period or as soon thereafter as [is reasonably possible, but within 60 days thereafter or such further period as the Registrar] the committee of a stock exchange may allow in the particular case, sell, for the account of such person, all the securities bought by him as contemplated in that subsection, or so much of—”.

## Amendment of section 25 of Act 1 of 1985

17. Section 25 of the Stock Exchanges Control Act, 1985, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If a stock-broker sells securities on behalf of any person and the stock-broker was not prior to the sale advised that the sale would be a bear sale or that such person was not in possession of the securities, such person shall within a period of seven business days after the sale deliver the securities to the stock-broker, and if the stock-broker does not receive the securities within **[the] such period [seven business days following upon the expiration of the first-mentioned seven days]**, he shall on the next succeeding business day after the day of the expiration of that period or as soon thereafter as **[is reasonably possible, but within 60 days thereafter or such further period as the Registrar]** the committee of a stock exchange may allow in the particular case, buy the securities for the account of such person.”; and

(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) If any person sells securities in the circumstances contemplated in paragraph (a) and the stock-broker does not receive the securities **[within the seven business days following upon]** by the date for delivery referred to in that paragraph, the stock-broker shall on the next succeeding business day after that date or as soon thereafter as **[is reasonably possible, but within 60 days thereafter or such further period as the Registrar]** the committee of a stock exchange may allow in the particular case, buy the securities for the account of such person.”.

## Amendment of section 26 of Act 1 of 1985

18. Section 26 of the Stock Exchanges Control Act, 1985, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) and the words following thereupon of the following paragraph and words:

“(b) the person owing that amount does not within **[seven] a period of three** business days after those securities have become insufficient so to be minimum cover, by a reduction of the amount owing by him or by the provision of additional securities provide minimum cover for the amount owing by him,

the stockbroker shall on the next succeeding business day after the day of the expiration of the period referred to in paragraph (b) or as soon thereafter as **[is reasonably possible but within 60 days thereafter or such further period as the Registrar]** the committee of a stock exchange may allow in the particular case, sell for the account of that person so much of those securities as is necessary to make, as far as possible, the securities not so sold sufficient to provide minimum cover in relation to the amount still owing to him after the sale.”; and

(b) by the substitution in subsection (3) for paragraph (b) and the words following thereupon of the following paragraph and words:

“(b) the person on whose behalf the bear sale has been entered into does not, within **[seven] a period of three** business days after those securities have become insufficient so to be minimum cover, by the provision of additional securities or cash or such securities and cash, provide minimum cover for that amount,

the stock-broker shall on the next succeeding business day after the day of the expiration of the period referred to in paragraph (b) or as soon thereafter as **[is reasonably possible, but within 60 days thereafter or such further period as the Registrar]** the committee of a stock exchange may

allow in the particular case, sell for the account of that person so much of those securities as is necessary to make, as far as possible, the securities not so sold, and any cash deposited for the purpose, together with the proceeds of the securities so sold, sufficient to provide minimum cover for that amount.”

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#### Amendment of section 27 of Act 1 of 1985

19. Section 27 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection:

“(5) A stock-broker who is in terms of section 22, 23, 24, 25 or 26, read with this section, obliged to buy or sell securities, shall be entitled to recover interest on the amount still owing to him after the purchase or sale, as the case may be, and as from the date after the fulfilment of that obligation.”

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#### Amendment of section 42 of Act 1 of 1985

20. Section 42 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection:

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“(7) If an auditor who has been removed from office is of the opinion that he was removed for improper reasons, he shall forthwith by registered post inform the Registrar thereof.”

#### Amendment of section 48 of Act 1 of 1985, as amended by section 31 of Act 54 of 1989 and section 38 of Act 55 of 1989

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21. Section 48 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection:

“(3) (a) If any person fails to submit to the Registrar or to furnish the Registrar with any record, return statement, report or other document or information in accordance with a requirement of this Act or regulation made under section 51(1) within the period determined by or under this Act, the Registrar may impose upon him by way of a notice in writing a fine not exceeding the prescribed amount for every day during which such failure continues.

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(b) A fine imposed under paragraph (a) shall be paid to the Registrar within such period as may be specified in the notice, and if the person concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified.”

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#### Insertion of section 52 in Act 1 of 1985

22. The following section is hereby inserted in the Stock Exchanges Control Act, 1985, after section 51:

##### “Application of Act

52. The application of this Act with regard to the buying and selling of options referred to in the definition of ‘securities’ in section 1 shall not be affected by the provisions of any law or the common law relating to gambling or wagering.”

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#### Amendment of section 1 of Act 55 of 1989

23. Section 1 of the Financial Markets Control Act, 1989, is hereby amended— 45

(a) by the substitution for the definition of “futures contract” of the following definition:

“ ‘futures contract’ means a standardized contract **[imposing an**

obligation on a person to make or accept delivery of] the effect of which is that—

- (a) a person agrees to deliver to or receive from another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or 5
- (b) a person will pay to or receive from another person an amount of money before or on a future date according to whether the pre-arranged value or price of an asset, index as referred to in the definition of 'securities' in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), currency, rate of interest or any other factor is higher or lower before or on that future date than the pre-arranged value or price;"; 10
- (b) by the substitution for the definition of "option contract" of the following definition: 15
- “ ‘option contract’ means a standardized contract **[conferring a right on a person to make or accept delivery of] the effect of which is that a person acquires the option—**
- (a) to buy from or sell to another person a certain quantity of corporeal or incorporeal things [on or] before or on a future date at a pre-arranged price; or 20
- (b) that an amount of money will be paid to or received from another person before or on a future date according to whether the pre-arranged value or price of an asset, index as referred to in the definition of 'securities' in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), currency, rate of interest or any other factor is higher or lower before or on that future date than the pre-arranged value or price;"; and 25
- (c) by the substitution for the definition of "unsolicited call" of the following definition: 30
- “ ‘unsolicited call’, in relation to entering into an agreement in respect of listed financial instruments, means a personal visit made to someone or an oral communication made to someone without an express or tacit invitation from such person, but excluding any personal visit or oral communication made to someone on whose behalf the business of buying and selling of listed financial instruments has previously been carried on by the person who made that personal visit or oral communication, a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), a member of a financial exchange, or a financial institution referred to in paragraph (a), (b), (c), (d), (e), (f) or (h) of the definition of 'financial institution' in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984).” 35 40

#### Amendment of section 15 of Act 55 of 1989

24. Section 15 of the Financial Markets Control Act, 1989, is hereby amended 45  
by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) an executive officer of a financial exchange may, whenever he is of the opinion that it is desirable, also for the purposes of compliance with and enforcement of the rules and other requirements of the financial exchange in respect of the listing of financial instruments, in accordance with the rules in question [summarily], without prior notice to any person and without hearing any person, suspend for a period not exceeding 30 days the inclusion of financial instruments in the list referred to in section 14.” 50

**Amendment of section 17 of Act 55 of 1989**

25. Section 17 of the Financial Markets Control Act, 1989, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (q) of the following subparagraph:

- “(i) for the separation of a client’s funds, financial instruments and other corporeal or incorporeal things from the assets of the financial instrument trader;” 5

**Insertion of section 17A in Act 55 of 1989**

26. The following section is hereby inserted in the Financial Markets Control Act, 1989, after section 17: 10

**“Separate position of goods given to or received by clearing house or member of financial exchange**

**17A.** For the purposes of a claim against a clearing house or member of a financial exchange with regard to dealings in financial instruments there shall be excluded from the assets of the clearing house or member concerned— 15

- (a) money; 20  
(b) financial instruments; and  
(c) other corporeal or incorporeal things distinguishable from the assets of that clearing house or member, given by any person to that clearing house or member, or received by that clearing house or member on behalf of any person.” 20

**Amendment of section 19 of Act 55 of 1989**

27. Section 19 of the Financial Markets Control Act, 1989, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph: 25

- “(i) The board shall deal with an appeal [only] on [the relevant information which the executive committee had before it]— 25  
(aa) the reasons for the decision of the executive committee appealed against in terms of paragraph (a); 30  
(bb) the grounds of the appeal;  
(cc) the documentary or oral evidence submitted or given by any person (with or without legal representation) at the request or with the permission of the board; and  
(dd) any other information at the disposal of the board.” 35

**Amendment of section 36 of Act 55 of 1989**

28. Section 36 of the Financial Markets Control Act, 1989, is hereby amended by the addition of the following subsection:

- “(3) (a) If any person fails to submit to the Registrar or to furnish the Registrar with any record, return statement, report or other document or information in accordance with a requirement of this Act or regulation made under section 37(1) within the period determined by or under this Act, the Registrar may impose upon him by way of a notice in writing a fine not exceeding the prescribed amount for every day during which such failure continues. 40  
(b) A fine imposed under paragraph (a) shall be paid to the Registrar within such period as may be specified in the notice, and if the person concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified.” 45 50

**Amendment of section 40 of Act 55 of 1989**

29. Section 40 of the Financial Markets Control Act, 1989, is hereby amended by the addition of the following subsection:

“(3) The application of this Act with regard to dealings in financial instruments shall not be affected by the provisions of any law or the common law relating to gambling or wagering.” 5

**Amendment of section 83 of Act 24 of 1936, as amended by section 24 of Act 16 of 1943 and section 27 of Act 99 of 1965**

30. Section 83 of the Insolvency Act, 1936, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 10

“(2) If such property consists of a marketable security **[or]**, a bill of exchange or a financial instrument as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), the creditor may, after giving the notice mentioned in subsection (1) and before the second meeting of creditors, realize the property in the manner and on the conditions mentioned in subsection (8).”; 15  
and

(b) by the substitution in subsection (8) for paragraph (a) of the following paragraph: 20

“(a) if it is— 20

(i) any property of a class ordinarily sold through a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), the creditor may, subject to the provisions of the said Act and (where applicable) the rules referred to in section 12 thereof, forthwith sell it through a **[broker approved of by the trustee or the Master]** stockbroker, or if the creditor is a stockbroker, also to another stockbroker; or 25

(ii) a financial instrument referred to in subsection (2), the creditor may, subject to the provisions of the Financial Markets Control Act, 1989, and rules referred to in section 17 thereof, forthwith sell it through a financial instrument trader as defined in section 1 of the said Act, or, if the creditor is a financial instrument trader or financial instrument principal as defined in section 1 of the said Act, also to another financial instrument trader or financial instrument principal;” 30  
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**Short title and commencement**

31. (1) This Act shall be called the Financial Institutions Amendment Act, 1991, 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 be fixed under subsection (1) in respect of different provisions of this Act. 40