

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 odd numbered pages as the other language is printed on even numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 325

Cape Town

1 July 1992

No. 14079

THE PRESIDENCY

No. 1772

1 July 1992

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

No. 83 of 1992: Financial Institutions Amendment Act, 1992.



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.

ACT

To amend the Insurance Act, 1943, so as to amend certain definitions and define certain expressions; to regulate sinking fund business; to empower the Minister to prescribe interim and additional calculations of liabilities; and to extend the Third Schedule; to amend the Pension Funds Act, 1956, so as to delete the reference therein to South-West Africa; to provide for the registration of pension fund administrators; to make provision for further requirements in regard to the registration, rules and financial matters of pension funds; to make further provision for the protection of the interests of members; and to increase penalties; to amend the Unit Trusts Control Act, 1981, so as to further regulate exemption of certain schemes and arrangements in connection with mortgage bonds; to amend the Co-operatives Act, 1981, so as to limit exemption from the provisions of the Insurance Act, 1943, in respect of pool insurance, to agricultural co-operatives; and to provide for the winding-up of trading co-operatives in respect of their pool insurance business; to amend the Inspection of Financial Institutions Act, 1984, and the Financial Institutions (Investment of Funds) Act, 1984, so as to extend the definition of financial institution; to amend the Stock Exchanges Control Act, 1985, so as to further regulate the hearing of appeals; and to remove certain restrictions in respect of bear sales of securities; and to amend the Financial Markets Control Act, 1989, so as to extend the definition of court; to extend the functions of the registrar; and to further regulate appeals; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
 (Assented to 18 June 1992.)

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

Amendment of section 1 of Act 27 of 1943, as amended by section 2 of Act 73 of 1951, section 39 of Act 24 of 1956, section 50 of Act 25 of 1956, section 1 of
 5 Act 79 of 1959, section 1 of Act 10 of 1965, section 1 of Act 41 of 1966, section 1 of Act 65 of 1968, section 1 of Act 39 of 1969, section 1 of Act 91 of 1972, section 1 of Act 101 of 1976, section 1 of Act 94 of 1977, section 1 of Act 80 of 1978, section 1 of Act 103 of 1979, section 1 of Act 99 of 1980, section 1 of Act 36 of 1981, section
 10 1 of Act 86 of 1984, section 1 of Act 106 of 1985 and section 1 of Act 54 of 1989

1. Section 1 of the Insurance Act, 1943, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “approved reinsurances” of the following words:

15 “in the case of life and sinking fund business for the purpose of

- computing the contingent liabilities of an insurer under unexpired policies, in respect of the business carried on by him in the Republic—”;
- (b) by the substitution in the said subsection for paragraph (c) of the definition of “insurance business” of the following paragraph:
- 5 “(c) the activities of **[a] an agricultural co-operative [society] or [of a co-operative company which is registered or which is deemed to be registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939), or the Co-operation Proclamation 1922 (Proclamation No. 19 of 1922) of the Territory]** a special farmers’ co-operative in so far as they relate to a scheme or arrangement in terms of the **[regulations] statute of [the society or company concerned,]** any such co-operative under which the amount of the benefits afforded by such scheme or arrangement is not guaranteed and the liability of the **[society or company] co-operative** in respect of claims is limited to the amount standing to the credit of a fund specially maintained in respect of such claims;”;
- 10
- (c) by the addition to the said definition of “insurance business” in the said subsection of the following paragraph:
- 15 “(k) the activities of a deposit-taking institution registered provisionally or finally in terms of the Deposit-taking Institutions Act, 1990 (Act No. 94 of 1990), in so far as such deposit-taking institution enters into any sinking fund policy and acts in accordance with the conditions subject to which it is so registered;”;
- 20
- (d) by the substitution in the said subsection for the definition of “long-term insurance business” of the following definition:
- 25 “‘long-term insurance business’ means any life business, industrial business, funeral business, **[or] home service business or sinking fund business;**” and
- (e) by the insertion in the said subsection, after the definition of “short term insurance business”, of the following definitions:
- 30 “‘sinking fund business’ means the business of assuming obligations under sinking fund policies; ‘sinking fund policy’ means a policy, excluding a life policy and a home service policy, whereby an insurer assumes in return for the payment or the promise of the payment of a sum or sums of money an obligation to pay a sum or sums of money to a person on a fixed or determinable date after the expiry of the period as determined by or under section 59B(1) from the date upon which the only or first sum of money has become payable to the insurer in terms of the policy;”.
- 35
- 40

Amendment of section 11 of Act 27 of 1943, as substituted by section 9 of Act 73 of 1951 and amended by section 8 of Act 10 of 1965, section 3 of Act 103 of 1979, section 6 of Act 99 of 1980 and section 4 of Act 54 of 1989

2. Section 11 of the Insurance Act, 1943, is hereby amended—

- (a) by the substitution for the proviso to subsection (1) of the following proviso:
- 50 “Provided that a profit and loss account shall not be required to be furnished by a company or association which has no share capital, or by an insurer who carries on, either within or outside the Republic, no business other than insurance business and only one class of insurance business or only life business and sinking fund business.”; and
- 55
- (b) by the substitution for subsection (6) of the following subsection:
- 60 “(6) On the application of any owner of a domestic policy which is a life policy, industrial policy, funeral policy, **[or] home service policy or sinking fund policy and,** under which a registered insurer is liable, the insurer shall furnish to the applicant, free of charge,

a copy of the last revenue account, profit and loss account or balance sheet prepared by the insurer under subsection (1).”.

Amendment of section 23B of Act 27 of 1943, as inserted by section 9 of Act 103 of 1979 and amended by section 8 of Act 99 of 1980 and section 6 of Act 106 of 5 1985

3. Section 23B of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

10 “(b) if such declaration applies to an insurer who is registered under this Act to carry on funeral, industrial, life, **[or]** home service or sinking fund business or to a person who renders services towards effecting, maintaining or servicing funeral, industrial, life, **[or]** home service or sinking fund policies underwritten by a registered insurer, the registrar has consulted the advisory committee, if any, appointed in terms of section 2A, about it; and”.

15 **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, section 10 of Act 103 of 1979, section 11 of Act 99 of 1980 and section 1 of Act 54 of 1991**

4. Section 25 of the Insurance Act, 1943, is hereby amended—

20 (a) by the substitution for subsection (2) of the following subsection:
“(2) A domestic insurer who is a party to a transaction to which subsection (1)(a) applies shall, before application is made to the court for the confirmation of the transaction, and a domestic insurer who is a party to a transaction to which subsection (1)(b) or (1)(c) applies shall, prior to or simultaneously with the application to the registrar for confirmation of the transaction, furnish the registrar with a copy of the scheme for the proposed amalgamation or transfer and with a copy of every report or statement upon 25 which the scheme is based or which is taken into account for the purposes of the scheme, and any party to the transaction in question shall thereafter at the request of the registrar furnish the latter with such other information relating to the scheme as the registrar may specify and as may be available to the party concerned.”;

35 (b) by the substitution for subsection (3) of the following subsection:
“(3) The registrar may appoint a competent person (who shall be an independent actuary if subsection (1)(a) or (1)(c) applies to the transaction in question) to investigate and report upon the said scheme. The parties to the transaction shall bear in equal shares the cost of that investigation and report and of any copy of the report which the registrar may have deemed desirable to send to the said parties, and the court or the registrar shall not confirm the transaction unless the said cost has been paid or guaranteed to the satisfaction of the registrar.”; and

40 (c) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
45 “(b) throughout any period of twenty-one days which the registrar deems suitable (if subsection (1)(b) or (1)(c) applies in connection with the transaction),”.

50 **Amendment of section 31 of Act 27 of 1943, as amended by section 26 of Act 73 of 1951, section 24 of Act 10 of 1965 and section 12 of Act 99 of 1980**

5. Section 31 of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (a) of subsection (11) of the following paragraph:

“(a) in so far as those assets are held in respect of long term insurance business, for the benefit of owners of such of the life policies,

industrial policies, funeral policies, **[and]** home service policies and sinking fund policies under which the insurer is liable, as have been issued in connection with the long term insurance business carried on by the insurer in the Republic;”.

5 Insertion of heading, after section 59A, in Act 27 of 1943

6. The Insurance Act, 1943, is hereby amended by the insertion after section 59A of the following heading:

“(E) *Sinking Fund Business*”.

Insertion of sections 59B and 59C in Act 27 of 1943

10 7. The Insurance Act, 1943, is hereby amended by the insertion after the heading “(E) *Sinking Fund Business*” of the following sections:

“Provisions relating to sinking fund policies

15 **59B.** (1) No insurer shall pay any benefit in terms of a sinking fund policy within 5 years, or such other period prescribed by regulation, after the only or first sum of money has become payable to the insurer in terms of the policy.

20 (2) A sinking fund policy may not be terminated and no sum of money may be paid by the insurer and no other benefit may be provided by the insurer in respect of a sinking fund policy to or for the benefit of the policy-holder or any other person within the period referred to in subsection (1).

(3) An insurer may not grant a loan in terms of or on the security of a sinking fund policy within the period referred to in subsection (1).

25 (4) Where the performance of the insured to a sinking fund policy comprises the payment of two or more sums of money to the insurer, the total amount of money which must be paid or is paid to the insurer in any period of 12 months may not increase by more than 15%, or such other percentage as prescribed by regulation, of the total amount of money which became payable or was paid to the insurer in the preceding period of 12 months.

(5) An insurer may not accept a sum of money in respect of a sinking fund policy—

35 (a) after the expiry of a period of 12 months during which no sum of money became payable by the other party in terms of the policy; or

40 (b) if a sum of money that became payable by the other party in terms of the policy was not paid within a period of 12 months commencing on the date on which the sum of money became payable.

(6) Notwithstanding the provisions of subsections (1) and (2), an insurer may terminate a sinking fund policy or pay a sum of money before the expiry of the period referred to in subsection (1)—

45 (a) where the person to whom the benefits in terms of the policy are to be paid by the insurer, has died, or his estate has been sequestrated or it has been liquidated, or he or it has been placed under curatorship or judicial management; or

(b) in such other cases as the registrar may approve either generally or in any particular case.

50 **Application to sinking fund business of sections 34 and 51**

59C. The provisions of sections 34 and 51 shall *mutatis mutandis* apply in connection with sinking fund business.”.

Amendment of section 61 of Act 27 of 1943, as amended by section 30 of Act 46 of 1944 and section 19 of Act 99 of 1980

8. Section 61 of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

- 5 “(a) one hundred rand for one or more of the following classes of business, viz., for life business, industrial business, **[or]** home service business or sinking fund business”.

Amendment of section 62 of Act 27 of 1943, as amended by section 40 of Act 73 of 1951, section 7 of Act 94 of 1977 and section 20 of Act 99 of 1980

10 9. Section 62 of the Insurance Act, 1943, is hereby amended—

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

15 “(1) If any premium under a life policy, industrial policy, **[or]** home service policy or sinking fund policy which is a domestic policy, has not been paid on its due date, the insurer who is liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without payment of a further premium for a period of one month as from the due date of the first unpaid premium, and if the premium is paid within the said month the insurer shall renew the policy: Provided that if the premiums under a domestic life policy or a sinking fund policy are payable at monthly intervals, or at intervals of less than one month, the provisions of this subsection shall be construed as if the words ‘fifteen days’ were in each case substituted for the words ‘one month’ and ‘month’: Provided further that if a claim under the policy occurs during the period of grace herein provided for, the insurer shall be entitled to deduct the amount of the unpaid premium from the claim.”;

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

25 “(c) a home service policy under which at least five years’ premiums have been paid; **or**”;

30 (c) by the insertion after the said paragraph (c) of the following paragraph:

35 “(d) a sinking fund policy under which at least three years’ premiums have been paid,”.

Substitution of section 64 of Act 27 of 1943, as substituted by section 21 of Act 99 of 1980

10 10. The following section is hereby substituted for section 64 of the Insurance Act, 1943:

40 **“Lost policies**

45 **64.** When a domestic policy which is a life policy or a sinking fund policy has been lost or destroyed and the loss or destruction has been proved and advertised in such a manner as may have been prescribed by regulation, the insurer who is liable under the policy shall, at the request of the owner of the policy and on payment by him to the insurer of such a fee as may have been prescribed by regulation, issue to the said owner a correct and certified copy of the policy (including any endorsement made on the original policy after its issue) and of any record in the possession of the insurer of any dealings with the policy. Such certified copy shall thereafter for all purposes take the place of the policy so lost or destroyed and be the sole evidence of the contract made by the policy.”.

50

Amendment of section 76 of Act 27 of 1943, as substituted by section 9 of Act 41 of 1966 and amended by section 13 of Act 101 of 1976, section 11 of Act 86 of 1984, section 9 of Act 106 of 1985, section 7 of Act 53 of 1989 and section 18 of Act 54 of 1989

5 11. Section 76 of the Insurance Act, 1943, is hereby amended by the insertion in subsection (1) after paragraph (aB) of the following paragraph:

10 “(aC) prescribing interim and additional calculations of liabilities under unmatured policies in connection with long term insurance business, the manner in which it is to be done, and the manner and form in which and the periods in respect of which and within which statements in respect thereof shall be furnished to the registrar by insurers;”.

15 **Amendment of Second Schedule to Act 27 of 1943, as substituted by section 45 of Act 73 of 1951 and amended by section 35 of Act 10 of 1965, section 26 of Act 39 of 1969, section 14 of Act 101 of 1976 and section 19 of Act 54 of 1989**

12. Part I of the Second Schedule to the Insurance Act, 1943, is hereby amended—

(a) by the insertion of the following heading after section 9:
20 “Minimum Basis for Liabilities under Sinking Fund Policies”; and
(b) by the insertion of the following section after the heading “Minimum Basis for Liabilities under Sinking Fund Policies”:

25 “9A. In calculating liabilities under unmatured sinking fund policies on the minimum basis, an insurer shall comply as far as possible with the applicable requirements of section 4 as if those policies were endowment insurance policies, but without reference to any mortality table, and with such modifications of the said requirements as may be necessary to adapt them to the valuation of liabilities under unmatured sinking fund policies.”.

30 **Amendment of Third Schedule to Act 27 of 1943, as substituted by section 46 of Act 73 of 1951 and amended by section 24 of Act 79 of 1959, section 36 of Act 10 of 1965, section 10 of Act 41 of 1966, section 27 of Act 39 of 1969, section 1 of Act 23 of 1970 and section 15 of Act 101 of 1976**

13. Part II of the Third Schedule to the Insurance Act, 1943, is hereby amended by the substitution for paragraph 11 of the following paragraph:

35 “11. (1) Any stocks or shares in a company, building society or other institution incorporated in the Republic;
(2) stocks, shares, debentures or depository receipts of a company or other institution which is incorporated outside the Republic and which are listed on a licensed stock exchange in the Republic;
40 (3) linked units in respect of companies of which one is incorporated outside the Republic and which are listed on a licensed stock exchange in the Republic; [or]
45 (4) units in a unit trust scheme as defined in the Unit Trusts Control Act, [1947 (Act No. 18 of 1947)] 1981 (Act No. 54 of 1981).”.

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 3 of Act 51 of 1988 and section 20 of Act 54 of 1989

50 14. Section 1 of the Pension Funds Act, 1956, is hereby amended—

- (a) by the deletion of the definitions of “*Gazette*”, “*Territory*” and “*Union*”; and
- 5 (b) by the substitution for the definition of “*court*” of the following definition:
- “ ‘*court*’ means a provincial or local division of the Supreme Court of South Africa [**and includes the High Court of South-West Africa**];”.

Amendment of section 2 of Act 24 of 1956, as amended by section 10 of Act 94 of 1977, section 13 of Act 103 of 1979 and section 36 of Act 9 of 1989

10

15. Section 2 of the Pension Funds Act, 1956, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

15

“(a) The registrar may in his discretion and subject to such conditions as may be prescribed by regulation exempt in writing any pension fund from the provisions of section 5(2), 9 or 9A, as well as from any other provision of this Act which, in his opinion, is connected with any such exemption.”; and

- (b) by the deletion of subparagraph (iii) of paragraph (aA) of the said subsection (3).

20

Amendment of section 4 of Act 24 of 1956, as amended by section 11 of Act 65 of 1968 and section 14 of Act 86 of 1984

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

25

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

“(2) An application under subsection (1) shall be accompanied by the particulars and the fee prescribed by regulation.”; and

- (b) by the substitution for subsection (4) of the following subsection:

30

“(4) If after considering any such application the registrar is satisfied that the fund complies with the conditions prescribed by regulation, he shall register such fund and send to the applicant a certificate of registration as well as a copy of the rules of the fund bearing an endorsement of the date of registration.”.

Substitution of section 11 of Act 24 of 1956

17. The following section is hereby substituted for section 11 of the Pension Funds Act, 1956:

35

“Requirements for rules

11. The rules of a fund shall comply with the requirements prescribed by regulation.”.

Amendment of section 12 of Act 24 of 1956

40

18. Section 12 of the Pension Funds Act, 1956, is hereby amended—

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

45

“(2) Within 60 days from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with the particulars prescribed by regulation.”; and

- (b) by the substitution for subsection (3) of the following subsection:

50

“(3) If any such alteration, rescission or addition may affect the financial condition of the fund, the principal officer shall also transmit to the registrar a certificate by the valuator or, if no valuator has been employed, a statement by the fund, as to its financial soundness, having regard to the rates of contributions by employers and, if the fund is not in a sound financial condition, what arrangements will be made to bring the fund in a sound financial condition.”.

Substitution of section 13A of Act 24 of 1956, as inserted by section 15 of Act 86 of 1984

19. The following section is hereby substituted for section 13A of the Pension Funds Act, 1956:

5 **“Payment of contributions to pension funds**

13A. (1) Notwithstanding any provision of the rules of a registered fund to the contrary—

(a) any contribution deducted from a member's remuneration in terms of the rules of such a fund shall be paid in full to the fund by the person who has made that deduction; and

10 (b) any contribution payable in terms of the rules of such a fund by an employer shall be paid in full to the fund by him.

(2) (a) Payment in terms of subsection (1) or payment in terms of the rules of a fund of a contribution by a member himself or on his behalf shall be made to the fund not later than 15 days after the expiration of the month in which the contribution in question is payable.

15 (b) Alteration of the rules of a fund with regard to the reduction, or the suspension or discontinuation of the payment, of contributions after the expiration of the period in respect of which they are payable, shall not affect any liability to pay any contribution which became payable in respect of such period.

20 (3) The person managing the business of a fund shall not later than the first business day following the day on which such fund receives any payment in terms of subsection (2), deposit such payment in the name of such fund with an institution registered otherwise than provisionally under the Deposit-taking Institutions Act, 1990 (Act No. 94 of 1990).

25 (4) If any person ceases to be a member of a fund for any other reason than that contemplated in sections 14, 28 and 29 and thereafter becomes a member of another fund and is in terms of the rules of such funds entitled to transfer to the second-mentioned fund any benefit or right to any benefit which he may have in respect of the first-mentioned fund and requests in writing the first-mentioned fund to so transfer it, such fund shall within 60 days, or such other period as determined by the registrar by notice in the *Gazette*, of the date upon which the written request was made, transfer that benefit or right in full to the second-mentioned fund.

30 (5) In a case contemplated in section 15(4) the provisions of this section with regard to a fund shall *mutatis mutandis* apply with reference to the insurer concerned as if it were the fund.

35 (6) The principal officer, employer or such other person as may be determined by the registrar by notice in the *Gazette*, shall in connection with the compliance with this section submit reports to the registrar within the period and in the manner so determined.”.

Insertion of section 13B in Act 24 of 1956

20. The following section is hereby inserted in the Pension Funds Act, 1956, after section 13A:

“Restrictions on administration of pension funds

50 **13B. (1) No person shall administer on behalf of a pension fund the investments of such a pension fund, or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto and the person complies with such conditions as the registrar may from time to time determine in the particular case or in general.**

55

(2) Approval in terms of subsection (1) may be limited to the performance of specified functions.

(3) Application for approval in terms of subsection (1) shall be made in the manner and be accompanied by the fee prescribed by regulation.

(4) If the registrar deems it desirable in the public interest he may on such conditions, to such extent and in such manner as he may deem fit, exempt any person or category of persons from the provisions of this section, and may at any time revoke or amend any such exemption in a similar manner.”.

Amendment of section 14 of Act 24 of 1956, as amended by section 15 of Act 81 of 1957 and section 3 of Act 54 of 1991

21. Section 14 of the Pension Funds Act, 1956, is hereby amended—

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

“(c) the registrar is satisfied that the scheme referred to in paragraph (a) is reasonable and equitable and accords full recognition—

(i) to the rights and reasonable benefit expectations of the persons concerned in terms of the rules of a fund concerned; and

(ii) to any additional benefits the payment of which has become established practice,

and that the proposed transactions would not render any 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 15 of Act 24 of 1956

22. Section 15 of the Pension Funds Act, 1956, is hereby amended—

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

“(1) Subject to the provisions of subsection (4), every registered fund shall, within six months as from the expiration of every financial year, furnish to the registrar such statements in regard to its revenue, expenditure and financial position as may be prescribed by regulation, duly audited and reported on by the auditor of the fund.”; and

(b) by the addition of the following subsection:

“(4) If a fund has been exempted as contemplated in section 2(3)(a), the registrar may authorize such fund to furnish to him, instead of the statements referred to in subsection (1), the information prescribed by regulation.”.

Amendment of section 16 of Act 24 of 1956, as amended by section 16 of Act 86 of 1984, section 9 of Act 50 of 1986 and section 4 of Act 54 of 1991

23. Section 16 of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) A report in terms of any of the preceding subsections shall include the particulars prescribed by regulation.”.

Amendment of section 17 of Act 24 of 1956

24. Section 17 of the Pension Funds Act, 1956, is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Any statement prepared in terms of subsection (1) shall include the particulars prescribed by regulation.

(4) The said statement shall be accompanied by a report thereon by the auditor of the fund, stating the particulars prescribed by regulation.”.

Amendment of section 28 of Act 24 of 1956, as amended by section 15 of Act 103 of 1979

25. Section 28 of the Pension Funds Act, 1956, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- 5 “(1) Subject to the provisions of this section, a registered fund may be terminated or dissolved in such circumstances (if any) as may be specified for that purpose in its rules and in the manner provided by such rules, and the assets of the fund shall, subject to the said provisions, in that event be distributed in the manner provided by the said rules.”;
- 10 (b) by the substitution for subsection (4) of the following subsection:
- “(4) (a) The liquidator shall as soon as may be deposit with the registrar the preliminary accounts prescribed by regulation, signed by him and certified by him as correct, showing the assets and liabilities of the fund at the commencement of the liquidation and the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.
- 15 (b) In discharging the liabilities and contingent liabilities to or in respect of members referred to in paragraph (a) full recognition shall be accorded to—
- 20 (i) the rights and reasonable benefit expectations of the persons concerned;
- (ii) additional benefits the payment of which by the fund has become an established practice.”; and
- 25 (c) by the substitution for subsection (9) of the following subsection:
- “(9) If objections are lodged with the registrar in terms of subsection (7), the registrar may, after considering the said objections, direct the liquidator to amend the preliminary [account and preliminary balance sheet] accounts or give such other directions relating to the liquidation as he thinks fit, provided such directions are not inconsistent with the rules of the fund or this section, and any such direction shall be binding upon the liquidator.”.
- 30

35 Amendment of section 29 of Act 24 of 1956, as amended by section 16 of Act 103 of 1979

26. Section 29 of the Pension Funds Act, 1956, is hereby amended by the insertion after subsection (6) of the following subsection:

- 40 “(6A) In giving any order or direction under this section the court shall have regard to any recommendation which may have been made by the fund’s valuator, if any, and accord full recognition to the rights and reasonable benefit expectations of the persons concerned and to additional benefits the payment of which by the fund has become an established practice.”.

45 Amendment of section 36 of Act 24 of 1956, as amended by section 18 of Act 103 of 1979, section 18 of Act 86 of 1984 and section 9 of Act 53 of 1989

27. Section 36 of the Pension Funds Act, 1956, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- 50 “(2) Different regulations may in terms of subsection (1) be made in respect of different funds.”.

Amendment of section 37 of Act 24 of 1956, as amended by section 14 of Act 65 of 1968, section 19 of Act 86 of 1984 and section 13 of Act 50 of 1986

28. Section 37 of the Pension Funds Act, 1956, is hereby amended—

- 55 (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) contravenes or fails to comply with the provisions of section 9, 9A, 13A, [or] 13B or 35; or”; and

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

“(i) in the case of an offence referred to in paragraph (a) to a fine not exceeding **[R200]** R2 000;”.

5 Amendment of section 37C of Act 24 of 1956, as inserted by section 24 of Act 101 of 1976, substituted by section 41 of Act 99 of 1980 and amended by section 6 of Act 51 of 1988 and section 21 of Act 54 of 1989

29. Section 37C of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (2) of the following subsection:

10 “(2) For the purpose of this section, a payment by a registered fund to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee.”.

Amendment of section 37 of Act 54 of 1981

15 30. Section 37 of the Unit Trusts Control Act, 1981, is hereby amended by the insertion after subsection (2) of the following subsection:

20 “(2A) (a) If the registrar deems it expedient or necessary in the public interest or in the interest of investors he may amend or withdraw any exemption granted by him under subsection (2) by virtue of his discretionary powers.

(b) Any amendment of an exemption under paragraph (a) may be made on additional conditions or on conditions other than those imposed under subsection (2)(a).”.

Substitution of section 51 of Act 91 of 1981

25 31. The following section is hereby substituted for section 51 of the Co-operatives Act, 1981:

“Application of Act 27 of 1943 to certain co-operatives in connection with pool insurance

30 51. (1) The provisions of the Insurance Act, 1943 (Act No. 27 of 1943), shall not apply to any agricultural co-operative or any special farmers’ co-operative in respect of its activities in so far as they relate to a scheme or arrangement in terms of the statute of the co-operative under which the amount of the benefits afforded by such scheme or arrangement is not guaranteed and the liability of the co-operative in respect of claims is limited to the amount standing to the credit of a fund specially maintained in respect of such claims.

35 (2) (a) Notwithstanding the provisions of subsection (1) of this section, any trading co-operative referred to in section 17(1)(c) which on the date immediately before the date of commencement of section 31 of the Financial Institutions Amendment Act, 1992, carried on any activities contemplated in the said subsection (1), shall be entitled to continue to carry on such activities until a date fixed by the State President by proclamation in the *Gazette*.

40 (b) Any such co-operative shall be deemed to have been ordered under section 182 by the Minister, on the date after the date so fixed, to be wound up in respect of such activities.”.

Amendment of section 1 of Act 38 of 1984, as amended by section 106 of Act 82 of 1986, section 13 of Act 6 of 1987 and section 22 of Act 51 of 1988

50 32. Section 1 of the Inspection of Financial Institutions Act, 1984, is hereby amended by the substitution for paragraph (b) of the definition of “financial institution” of the following paragraph:

“(b) a pension fund organization registered in terms of the Pension

Funds Act, 1956 (Act No. 24 of 1956), or a person contemplated in section 13B of the said Act;”.

Amendment of section 1 of Act 39 of 1984, as amended by section 14 of Act 6 of 1987 and section 23 of Act 51 of 1988

5 33. Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended by the substitution for paragraph (b) of the definition of “financial institution” of the following paragraph:

10 “(b) a pension fund organization registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or a person contemplated in section 13B of the said Act;”.

Amendment of section 20 of Act 1 of 1985, as amended by section 27 of Act 54 of 1989 and section 14 of Act 54 of 1991

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

“(aa) **[the reasons for the decision of the committee]** the circumstances which the committee considered in coming to the decision appealed against in terms of paragraph (a);”.

Amendment of section 24 of Act 1 of 1985

20 35. Section 24 of the Stock Exchanges Control Act, 1985, is hereby amended—
(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

25 “(a) If any person requests a stock-broker to sell securities on his behalf and the sale of those securities will be or is a bear sale, such person shall at the same time inform the stock-broker in question, and on the day on which the request is made, by telegram, telex, facsimile or by letter sent by registered post or delivered to him, confirm to that stock-broker, that the sale will be a bear sale.”; and

30 (b) by the substitution for subsection (4) of the following subsection:
“(4) Subject to the provisions of subsection (5) no person shall for his own account or on behalf of any other person enter into a bear sale on a stock exchange

35 **[(a) at a price below the cash sale price of the securities in question last recorded by such stock exchange; or**

40 **(b) unless such sale is at the cash sale price of the securities in question last recorded by such stock exchange [unless the cash sale price is higher than the last preceding different cash sale price so recorded], or at a price which is higher than the cash sale price concerned.”.**

Amendment of section 1 of Act 55 of 1989, as amended by section 29 of Act 97 of 1990 and section 23 of Act 54 of 1991

45 36. Section 1 of the Financial Markets Control Act, 1989, is hereby amended by the substitution for the definition of “court” of the following definition:

“ ‘court’, in relation to the winding-up or judicial management of a financial exchange, means any division of the Supreme Court of South Africa within whose area of jurisdiction the head office or principal place of business of such exchange is situated;”.

Amendment of section 15 of Act 55 of 1989, as amended by section 24 of Act 54 of 1991

37. Section 15 of the Financial Markets Control Act, 1989, is hereby amended by the substitution for subsection (4) of the following subsection:

- 5 “(4) (a) Whenever the Registrar deems it desirable in the public interest, he may, after consultation—
- (i) with the executive committee of the financial exchange concerned, exercise any power referred to in subsection (1)(a);
 - 10 (ii) with the executive officer of the financial exchange concerned, exercise any power referred to in subsection (1)(b); or
 - 15 (iii) with the executive committees of two financial exchanges, in a case contemplated in subparagraph (i), or with the executive officers of two financial exchanges, in a case contemplated in subparagraph (ii), transfer the listed financial instruments concerned from the list of financial instruments of the one to that of the other.
- (b) Subsections (2) and (3) shall *mutatis mutandis* apply in the exercise of such powers, and in the application thereof in respect of any of such powers, a reference therein to an executive committee or an executive officer, as the case may be, shall be construed as a reference to the Registrar.”.

20 Amendment of section 19 of Act 55 of 1989, as amended by section 27 of Act 54 of 1991

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

- 25 “(aa) **[the reasons for the decision of the executive committee]** the circumstances which the executive committee considered in coming to the decision appealed against in terms of paragraph (a);”.

Short title and commencement

39. (1) This Act shall be called the Financial Institutions Amendment Act, 30 1992, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.