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OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1045.

26 May 1989

No. 1045.

26 Mei 1989

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

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 54 of 1989: Financial Institutions Second Amendment Act, 1989.

No. 54 van 1989: Tweede Wysigingswet op Finansiële Instellings, 1989.

Act No. 54, 1989

FINANCIAL INSTITUTIONS SECOND AMENDMENT ACT, 1989

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

————— Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Insurance Act, 1943, so as to define or further define certain expressions; to reduce the period within which all registered insurers have to furnish certain information to the registrar of insurance; to extend the scope of an auditor's attestation of statements of liabilities; to authorize the Minister to prescribe by regulation a method for the calculation of unintimated claims relating to short term insurance business; to provide for the compulsory maintenance of a contingency reserve; to further regulate the extent to which outstanding premiums in respect of short term and compulsory third party insurance business may be treated as assets by insurers; to increase the minimum amount of additional assets in addition to the prescribed minimum which a short term insurer has to hold, and to authorize the registrar to determine a smaller amount; to further regulate the transmission of short term insurance premiums received by intermediaries; to provide for the furnishing of guarantees to the South African Insurance Association; to provide for the transfer of the business of a registered insurer to a separate company free of charge; to prohibit the direct or indirect acquisition of control of a registered insurer without the said registrar's prior consent and to grant discretionary powers to the registrar in the absence of such approval; to extend the power of the Minister to make regulations; to provide for the imposition of penalties for failure to comply with section 20bis of the said Act; to authorize the Minister to promulgate regulations in connection with the maintenance of records and a subdivision of a class of insurance business; to limit the allowance for expenses which may be deducted from premiums in calculating the liability of an insurer under unmatured policies; and to prescribe the action to be taken by an insurer in the event of an operating loss; to amend the Pension Funds Act, 1956, so as to further define "dependant"; and to further regulate the disposal of pension benefits upon the death of a member of a registered fund; to amend the Friendly Societies Act, 1956, so as to identify the societies exempt from the operation of the Act; to amend the Inspection of Financial Institutions Act, 1984, so as to authorize the registrar concerned to appoint a person who is not in the full-time employment of the State to undertake a certain inspection; and to provide that the expenses and remuneration of a temporary inspector shall be defrayed by the person being inspected; to amend the Stock Exchanges Control Act, 1985, so as to define "bank"; to amend the references in the said Act to the Building Societies Act, 1965; to further regulate the provisions relating to advertising, touting and canvassing for business; to extend the powers of the Registrar of Financial Institutions to obtain information from certain persons; and to create an offence relating to advertisements; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 17 May 1989.)

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FINANCIAL INSTITUTIONS SECOND AMENDMENT ACT, 1989

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 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 1 of Act 86 of 1984 and section 1 of Act 106 of 1985

1. Section 1 of the Insurance Act, 1943, is hereby amended—
- (a) by the insertion in subsection (1) after the definition of “actuary” of the following definition:
- “‘admissible reinsurances’ means, for the purpose of calculating the amount of additional assets to be held by an insurer in terms of sections 17 and 18—
- (i) any reinsurances which in terms of paragraph (d) of subsection (2) are deemed to form part of the business in the Republic of the person with whom such reinsurances were effected;
- (ii) any reinsurances effected in accordance with the provisions of section 60 (1); and
- (iii) any reinsurance effected in terms of section 2 of the Export Credit Re-insurance Act, 1957 (Act No. 78 of 1957);”
- (b) by the substitution for the definition of “approved reinsurances” in subsection (1) of the following definition:
- “‘approved reinsurances’ means—
- (a) in the case of short term insurance business and compulsory third party insurance business, for the purpose of computing the contingent liabilities of an insurer under unmatured policies in respect of the business carried on by him in the Republic, any proportional reinsurance in terms of which a reinsurer is liable to the insurer concerned for contingent liabilities under unmatured policies and any non-proportional reinsurance which remains in force until the contingent liabilities under unmatured policies have expired—
- (i) **[any reinsurances]** and which in terms of paragraph (d) of subsection (2) are deemed to form part of the business in the Republic of the person with whom such reinsurances were effected;
- [(iA)]** (ii) **[any reinsurances]** and effected in accordance with the provisions of section 60 (1);
- [(iB)]** (iii) **[any reinsurance]** and effected in terms of the provisions of section 2 of the Export Credit Re-insurance Act, 1957 (Act No. 78 of 1957); and
- [(ii)]** in the case of life business, any reinsurances effected prior to the first day of January, 1952, and relating to policies issued before that date, and any other reinsurances specially approved by the registrar in exceptional circumstances at the request of the insurer concerned; and
- [(iii)]** (iv) **[in the case of short-term insurance business and compulsory third party insurance business, any reinsurances]** and effected under a policy or contract of reinsurance in terms of which the reinsurer maintains in the Republic moneys with the insurer by whom such reinsurance was effected on which the insurer has a prior charge and lien as security against losses which may be occasioned by the failure of the reinsurer to discharge his obligations under the said policy or contract or by the termination of such policy or contract for any reason; and

- (b) in the case of life business for the purpose of computing the contingent liabilities of an insurer under unmaturing policies, in respect of the business carried on by him in the Republic—
- (i) any reinsurances which in terms of paragraph (d) of subsection (2) are deemed to form part of the business in the Republic of the person with whom such reinsurances were effected; and
 - (ii) any reinsurances effected prior to the first day of January, 1952, and relating to policies issued before that date, and any other reinsurances specially approved by the registrar in exceptional circumstances at the request of the insurer concerned;
- [(b)](c) for the purpose of computing the contingent liabilities of an insurer under unmaturing policies, in respect of the business which he carries on outside the Republic [any reinsurances] any proportional reinsurance in terms of which the insurer's reinsurer is liable to the insurer concerned for contingent liabilities under unmaturing policies and any non-proportional reinsurance which remains in force until the contingent liabilities under unmaturing policies have expired; and
- [(c)](d) for the purposes of computing the liabilities of an insurer other than contingent liabilities under unmaturing policies, any reinsurances;";
- (c) by the insertion in subsection (1) after the definition of "approved securities" of the following definition: 25
"'associate', in relation to an insurer, includes—
- (a) a person who controls the insurer;
 - (b) a person who controls the person referred to in paragraph (a);
 - (c) a subsidiary of the insurer or of a person referred to in paragraph (a) or (b);
 - (d) a director, the chief executive officer, other executive officers or the secretary of the insurer or of a person referred to in paragraph (a) or (b) or of a subsidiary referred to in paragraph (c);
 - (e) a partner of the insurer or of a person referred to in paragraph (a) or (b); or
 - (f) the spouse or minor child of a natural person referred to in paragraphs (a) to (e);";
- (d) by the insertion in subsection (1) after the definition of "mutual insurer" of the following definition: 40
"'non-proportional reinsurance' means reinsurance where a reinsurer's share of a loss is not proportional to his share of original premiums;";
- (e) by the insertion in subsection (1) after the definition of "policy" of the following definition: 45
"'proportional reinsurance', in the case of short term insurance business, means reinsurance of a part of an original insurance, premiums and losses being shared in the same proportion between reinsurer and insurer;"; and
- (f) by the insertion in subsection (1) after the definition of "regulation" of the following definition: 50
"'reinsurance' means insurance by a second insurer of an obligation under a policy issued by the first insurer;";

Substitution of section 8 of Act 27 of 1943, as amended by section 6 of Act 73 of 1951

2. The following section is hereby substituted for section 8 of the Insurance Act, 1943:

"Insurer must notify registrar of certain changes and particulars 55

8. Every registered insurer shall within a period of ~~six~~ four months as from the close of each financial year of his insurance business furnish to

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the registrar a statement of any change which occurred during the said year in any matter specified by regulation for the purposes of this section, in relation to the insurer concerned.”.

Amendment of section 9 of Act 27 of 1943, as amended by section 7 of Act 73 of 1951, section 8 of Act 79 of 1959, section 7 of Act 10 of 1965, section 5 of Act 39 of 1969 and section 4 of Act 106 of 1985 5

3. Section 9 of the Insurance Act, 1943, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The auditor of a domestic insurer or local auditor of a foreign insurer shall satisfy himself that the statement of the insurer’s liabilities prepared by the insurer in terms of sections *twelve* and *thirteen*, is a true and fair statement thereof according to the books of the insurer and any other information which may be necessary for that purpose (including, in the case of a foreign insurer, any such information furnished to him by the auditor of the insurer), and shall, if he has so satisfied himself, attest such statement accordingly, or, if he cannot so satisfy himself, attest it subject to such qualifications as he may deem necessary, and shall, in attesting any such statement, indicate **[how he has satisfied]** what reasonable steps he has taken to satisfy himself as to the **[reasonableness]** adequacy of the insurer’s estimates of his liabilities of the kinds mentioned in subparagraphs (i), (ii), (iiA) and (iii) of paragraph (a) of section *thirteen*.”.

Amendment of section 11 of Act 27 of 1943, as substituted by section 9 of Act 73 of 1953, section 8 of Act 10 of 1965, section 3 of Act 103 of 1979 and section 6 of Act 99 of 1980

4. Section 11 of the Insurance Act, 1943, is hereby amended— 25

(a) by the substitution in subsection (1) for the words preceding paragraph (a), and paragraph (a), of the following words and paragraph, respectively:

“(1) Every registered insurer shall within a period of **[six]** four months as from the expiration of each financial year of his insurance business prepare and furnish to the registrar— 30

(a) a revenue account—

(i) in respect of the insurance business carried on by him during that year, not being insurance business in respect of which subparagraph (ii) applies;

(ii) if the regulations so **[describe]** prescribe, in respect of any class or subdivision of a class of short term insurance business or compulsory third party insurance business carried on by him during such period as may be so prescribed,

including any such business carried on outside the Republic;”;

(b) by the substitution for subsection (2) of the following subsection: 40

“(2) The accounts and balance sheet referred to in subsection (1) shall be prepared in accordance with regulations, which may prescribe different forms of **[revenue]** such accounts or balance sheets for various classes of insurance business and may require information or documents to be furnished in regard to any matter affecting the said accounts or the said balance **[sheet]** sheets and may prescribe different requirements in respect of domestic insurers and foreign insurers.”.

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Amendment of section 12 of Act 27 of 1943, as amended by section 10 of Act 73 of 1951 and substituted by section 9 of Act 10 of 1965

5. Section 12 of the Insurance Act, 1943, is hereby amended by—

- (a) the substitution in subsection (1) for the words preceding the proviso, and paragraph (a) of the proviso, of the following words and paragraph, 5 respectively:

“(1) Every domestic insurer who, on the date of commencement of this Act, is carrying on either within or outside the Republic any long term insurance business shall, within a period of six months as from the expiration of his financial year relating to the said insurance business during 10 which this Act came into operation, and thereafter from time to time within a period of **[six] four** months as from the expiration of every third subsequent financial year, prepare and furnish to the registrar a statement of all his liabilities in respect of such business, calculated as at the end of such financial year: Provided that— 15

- (a) if such an insurer furnished to the Treasury in respect of the said insurance business a statement in accordance with the provisions of the Fourth or Fifth Schedule to the Insurance Act, 1923, in respect of a period which ended less than three years before the expiration of the first-mentioned financial year, he shall prepare and furnish such a 20 statement of his liabilities, as aforesaid, not later than a date six months after the expiration of his third financial year which ended subsequent to the termination of the period in respect whereof the said statement under the said Fourth or Fifth Schedule was furnished, and thereafter from time to time within a period of **[six] four** months as 25 from the expiration of every third subsequent financial year;”;
- (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) Every domestic insurer who, after the commencement of this Act, commences to carry on either within or outside the Republic any long term 30 insurance business shall within a period of **[six] four** months as from the termination of his third financial year relating to the said business, and thereafter from time to time within a period of **[six] four** months as from the expiration of every third subsequent financial year, prepare and furnish 35 to the registrar such a statement as is mentioned in subsection (1): Provided that paragraphs (b) and (c) of the proviso to subsection (1) shall also apply in connection with this subsection.

(3) Every domestic insurer who carries on either within or outside the Republic any short term insurance business or compulsory third party 40 insurance business shall within a period of **[six] four** months as from the expiration of every financial year of the said business prepare and furnish to the registrar such a statement as is mentioned in subsection (1) in respect of the class of short term insurance business or the compulsory third party insurance business which he so carries on.”.

Amendment of section 13 of Act 27 of 1943, as substituted by section 11 of Act 73 of 45 1951 and amended by section 10 of Act 10 of 1965 and section 4 of Act 101 of 1976

6. Section 13 of the Insurance Act, 1943, is hereby amended by the substitution for subparagraphs (ii) and (iiA) of paragraph (a) of the following subparagraphs, respectively:

- “(ii) the amount, as estimated by the insurer, of his liabilities in respect of 50 claims under policies which had been intimated to the insurer or to any agent of the insurer but which had not been paid by the insurer prior to the date of termination of the financial year referred to in section 12 **[and as approved by the registrar as far as short-term insurance business is concerned or, in the absence of such approval, as estimated by the registrar 55 as far as such business is concerned]**;
- (iiA) if the insurer carried on any short term insurance business, the amount, as estimated **[by the insurer]** in accordance with the method prescribed by

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regulation, of his liabilities relating to claims under policies issued in respect of such business which had arisen but not been intimated to the insurer or any agent **[or]** of the insurer prior to the date referred to in subparagraph (ii) **[and as approved by the registrar or, in the absence of such approval, as estimated by the registrar]**: 5

Provided that if in the opinion of the registrar circumstances require otherwise in the case of a particular insurer the registrar may approve a different and more suitable method of estimating such amount."

Insertion of section 13A in Act 27 of 1943

7. The following section is hereby inserted in the Insurance Act, 1943, after section 13:

"Contingency reserve which insurer carrying on short term insurance business shall maintain

13A. (1) An insurer carrying on short term insurance business shall maintain a reserve at the end of his fifth financial year following the date of commencement of the Second Financial Institutions Amendment Act, 1989, in respect of his short term insurance business, which reserve shall, save for subsections (3), (4) and (5), at the end of the fifth financial year not be less than 10 per cent or another prescribed percentage of the greater of his premium income after deduction of approved reinsurances referred to in paragraph (a) of the definition of "approved reinsurances" in subsection (1) of section 1 in the previous financial year or the expired portion of the current financial year. 15 20

(2) An insurer shall in respect of a reserve referred to in subsection (1) reserve an amount of 20 per cent at the end of the first financial year, 25 30 per cent at the end of the second financial year, 60 per cent at the end of the third financial year, 80 per cent at the end of the fourth financial year and 100 per cent at the end of the fifth financial year following the date of commencement of the Second Financial Institutions Amendment Act, 1989.

(3) The reserve referred to in subsection (1) may be drawn upon only with the approval of the registrar and if the registrar is satisfied that the contingencies in respect of the short term insurance business carried on by such insurer justify such a withdrawal.

(4) If the reserve referred to in subsection (1) is exhausted after the deduction of a withdrawal referred to in subsection (3) and the insurer is not able to comply with section 17 (4) (a) or 18 (4), the registrar may forthwith act against the insurer in terms of section 30. 35

(5) In the case of a contingency referred to in subsection (3) and where subsection (4) is not applicable, the insurer shall submit a business plan to the registrar, together with the revenue accounts referred to in section 11, in which is set out the proposed action to reinstate the reserve referred to in subsection (1) to the level referred to in subsection (1) within the three years following the financial year in which a withdrawal referred to in subsection (3) has been made. 40 45

(6) The registrar may, if he deems it fit, approve or reject a business plan submitted to him in terms of subsection (5) or refer it back to the insurer with proposals to amend it before his approval.

(7) The registrar may rule that a business plan referred to in subsection (5) shall set out steps to ensure that the gross premium income an insurer receives for the purpose of such business plan in respect of his business shall not exceed an amount determined by the registrar. 50

(8) If an insurer, after a withdrawal referred to in subsection (3), cannot comply with the provisions of subsection (1) and section 17 (4) (a) or 18 (4) at the end of the third subsequent financial year, the registrar may forthwith act against such insurer in terms of section 30. 55

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(9) The amounts in respect of a reserve referred to in subsections (1) and (2) shall be invested in the manner prescribed by the registrar by notice in the *Gazette*.”

Amendment of section 14 of Act 27 of 1943, as amended by section 12 of Act 73 of 1951

8. Section 14 of the Insurance Act, 1943, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Every domestic insurer shall, within a period of **[six]** four months as from the expiration of every financial year of his insurance business, prepare and furnish to the registrar a statement of all assets which he owns in connection with that business drawn up as at the end of such financial year.”. 10

Amendment of section 15 of Act 27 of 1943, as substituted by section 13 of Act 73 of 1951 and amended by section 10 of Act 79 of 1959, section 11 of Act 10 of 1965, section 3 of Act 41 of 1966, section 5 of Act 101 of 1976 and section 2 of Act 50 of 1986

9. Section 15 of the Insurance Act, 1943, is hereby amended by the substitution in paragraph (d) for the words preceding subparagraph (i) of the following words: 15

“(d) In respect of any short term insurance business or compulsory third party insurance business, no outstanding premium (irrespective of whether or not it has been debited to an insurance broker or an agent of the insurer) shall be included in the statement **[if at the end of the financial year to which the statement relates and which ends before 1 January 1987, more than six months have elapsed since the date on which such premium became due by the owner of the policy in question or]** if at the end of the financial year to which the statement relates and which ends on or after 1 January **[1987]** 1990, more than **[two months]** seventy days have elapsed since the due date of the premium as contemplated in subsection **[(9)]** (6) of section 20bis, and the value of any other outstanding premiums or premiums debited to insurance brokers or agents of the insurer shall be shown at an amount which in the aggregate does not exceed the full amount of such premiums reduced by—”. 20 25

Amendment of section 16 of Act 27 of 1943, as amended by section 14 of Act 73 of 1951 30

10. Section 16 of the Insurance Act, 1943, is hereby amended by the substitution in subsections (2) and (3) for the word “six”, wherever it occurs, of the word “four”.

Amendment of section 17 of Act 27 of 1943, as substituted by section 12 of Act 10 of 1965 and amended by section 4 of Act 41 of 1966, section 2 of Act 91 of 1972, section 6 of Act 101 of 1976, section 3 of Act 94 of 1977, section 2 of Act 80 of 1978, section 4 of Act 103 of 1979, section 2 of Act 36 of 1981, section 1 of Act 82 of 1982, section 4 of Act 86 of 1984 and section 2 of Act 51 of 1988

11. Section 17 of the Insurance Act, 1943, is hereby amended—

(a) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (4) of the following subparagraphs, respectively: 40

“(i) **[R200 000]** R3 000 000 or such smaller amount as may be determined by the registrar; or

(ii) such percentage as may from time to time be prescribed by regulation of the greater of the following amounts, namely—

(aa) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **[approved]** admissible reinsurances’ in subsection (1) of section 1) in the previous financial year; or 45

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- (bb) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **'[approved] admissible reinsurances'** in subsection (1) of section 1) in the expired portion of the current financial year;"; and
- (b) by the substitution for paragraphs (i) and (ii) of paragraph (b) of subsection (4) of the following subparagraphs, respectively:
- "(i) **[R200 000] R3 000 000 or such smaller amount as may be determined by the registrar; or**
- (ii) such percentage as may from time to time be prescribed by regulation of the greater of the following amounts, namely—
- (aa) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **'[approved] admissible reinsurances'** in subsection (1) of section 1) in respect of such business carried on by him in the Republic in the previous financial year; or
- (bb) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **'[approved] admissible reinsurances'** in subsection (1) of section 1) in respect of the aforementioned business in the expired portion of the current financial year."

Amendment of section 18 of Act 27 of 1943, as substituted by section 13 of Act 10 of 1965 and amended by section 5 of Act 41 of 1966, section 3 of Act 91 of 1972, section 7 of Act 101 of 1976, section 4 of Act 94 of 1977, section 3 of Act 80 of 1978, section 5 of Act 103 of 1979, section 3 of Act 36 of 1981, section 2 of Act 82 of 1982 and section 5 of Act 86 of 1984

12. Section 18 of the Insurance Act, 1943, is hereby amended by the substitution for paragraphs (a) and (b) of subsection (4) of the following paragraphs, respectively:

- "(a) **[R200 000] R3 000 000 or such smaller amount as may be determined by the registrar; or**
- (b) such percentage as may from time to time be prescribed by regulation of the greater of the following amounts, namely—
- (i) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **'[approved] admissible reinsurances'** in subsection (1) of section 1) in respect of such business carried on by him in the Republic in the previous financial year; or
- (ii) his premium income (after deduction of reinsurances referred to in **[subparagraphs (i), (iA) and (iB) of paragraph (a) of]** the definition of **'[approved] admissible reinsurances'** in subsection (1) of section 1) in respect of the aforementioned business in the expired portion of the current financial year."

Substitution of section 20bis of Act 27 of 1943, as inserted by section 17 of Act 10 of 1965 and amended by section 7 of Act 41 of 1966, section 6 of Act 94 of 1977, section 7 of Act 103 of 1979 and section 3 of Act 50 of 1986

13. The following section is hereby substituted for section 20bis of the Insurance Act, 1943:

"Agents to account for premiums to insurers

20bis. (1) Subject to the provisions of subsections (2), (3) and (4), no registered insurer shall authorize or permit an agent, broker or other person, not being a registered insurer, to retain or deal with any moneys in respect of premiums received other than in terms of subsection (3) on behalf of such insurer and relating to short term insurance business carried on by such insurer in the Republic: Provided that the provisions of this section are not applicable to a reinsurer or to premiums received in respect of a reinsurance policy.

- (2) (a) Every such agent, broker or person shall before becoming indebted to any insurer furnish security, within the period prescribed by regulation, for any amount which may become payable by him to insurers in terms of subsection (3), and such security shall be in the form of a guarantee issued by—
- (i) an insurer registered to carry on guarantee business in terms of a guarantee facility created by the short term insurance industry;
 - (ii) the Land and Agricultural Bank of South Africa; or
 - (iii) a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act No. 23 of 1965).
- (b) Such guarantee shall be in favour of the South African Insurance Association for the benefit of all such insurers and shall be in a form prescribed by regulation and shall be for an amount certified by the auditor of the agent, broker or person concerned to be equal to 20 per cent of the premiums which became due to registered insurers by such agent, broker or person in his last financial year but not less than R10 000 or more than R50 000 000: Provided that the guarantee to be furnished by an agent, broker or person who becomes indebted to any insurer for the first time, shall be based on 20 per cent of a reasonable estimate of premiums which would become due to registered insurers in his first financial year.
- (c) If the businesses of two or more agents, brokers or other persons are amalgamated, the provisions of subparagraph (b) shall apply *mutatis mutandis* to the amalgamated businesses with respect to the annual premium income of the last financial year and the amount of the guarantee.
- (3) Every such agent, broker or person who receives such premiums on behalf of an insurer shall—
- (a) close off his records of premium receipts not later than the last day of the month following the month during which the due date of such premiums occurred;
 - (b) pay the amount of such premiums to the insurer within ten days after closing the records referred to in paragraph (a); and
 - (c) simultaneously furnish such insurer with a detailed payment bordereau in respect of a payment in terms of paragraph (b).
- (4) Any such agent, broker or person may before remitting any premiums in terms of subsection (3) set off any commission due to him by such insurer in respect of such premiums.
- (5) Payment of a premium by a policyholder in terms of his insurance policy to an agent, broker or other person referred to in subsection (1) shall be deemed to be specific performance in terms of the policy.
- (6) For the purposes of this section—
- “deposit premium” means a provisional premium which is agreed upon in the event of it being impossible at the due date to determine the exact premium, and which represents a reasonable estimate of the premium;
- “due date”, in relation to a premium, means—
- (a) in the case of a new policy, the inception date of the policy;
 - (b) in the case of an existing policy which has been renewed, the renewal date of the policy; and
 - (c) in the case of a policy endorsement and a declaration in terms of an open marine cargo policy, the first day of the month following the date upon which documentation is issued by the insurer to the policyholder concerned;
- “premium” includes a deposit premium.
- (7) Notwithstanding the provisions of this section, the Minister may, if he deems it in the interest of policyholders, insurers or intermediaries to

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whom this section applies, prescribe by regulation different or additional requirements for the receipt of, retention of, or dealing with, moneys in respect of premiums.”.

Insertion of section 25A in Act 27 of 1943

14. The following section is hereby inserted in the Insurance Act, 1943, after section 25: 5

“Transfer of business to separate company

25A. If a registered insurer which is authorized to carry on long-term insurance business as well as any class of short term insurance business and compulsory third party insurance business wishes to transfer any such business to a company to be registered as an insurer for this purpose as a going concern— 10

- (a) no fees which are payable under any law in respect of the incorporation of such a company will be payable; and
- (b) every person in charge of any office in which property or any mortgage, right of ownership or other right is registered in the name of or in favour of the insurer wishing to transfer the business or an appointment of or in favour of such insurer was made or a licence was issued to or in favour of such insurer, shall upon production to him of a certificate in which the registrar states that such a transfer of business is being effected and upon production to him of the title deed, mortgage bond, proof of ownership, deed, certificate, letter of appointment, licence, share certificate, or other document in question, free of charge make such endorsement thereon and such entries in his registers or other books as may be necessary to effect or record the transfer of the property, mortgage, ownership, other right, appointment, licence, or securities in question to the other company to whom the business was transferred.”. 15 20 25

Substitution of section 27 of Act 27 of 1943, as substituted by section 5 of Act 50 of 1986 30

15. The following section is hereby substituted for section 27 of the Insurance Act, 1943:

“Acquisition of shares or other interest to be approved by registrar

27. (1) No acquisition of shares or any other interest in the business of a registered insurer [amounting to] resulting in the holding of one-quarter or more of the value of all the shares or other interest in that business, shall be of any force or effect unless that acquisition has previously been approved by the registrar in writing. 35

(2) Except with the prior written approval of the registrar, no person and his associates shall directly or indirectly acquire control of a registered insurer. 40

(3) The registrar may approve any acquisition of control by any person and his associates in contravention of subsection (2) or, if he does not so approve, he may give such directions regarding the compulsory disposition of their shareholding or other interest, or the exercising of voting rights, as he deems fit.”. 45

Amendment of section 60 of Act 27 of 1943, as substituted by section 8 of Act 41 of 1966 and amended by section 2 of Act 65 of 1968, section 7 of Act 86 of 1984 and section 7 of Act 106 of 1985

16. Section 60 of the Insurance Act, 1943, is hereby amended by the substitution for subsection (2) of the following subsection: 50

“(2) Except with the prior written approval of the registrar, applied for as prescribed by regulation, no person who is deemed for the purposes of

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subsection (1) to be carrying on insurance business in the Republic shall effect or renew any insurance business (other than reinsurance business) through a broker at Lloyds which is not underwritten by an underwriter at Lloyds.”.

Substitution of section 73bis of Act 27 of 1943, as inserted by section 21 of Act 79 of 1959 and amended by section 9 of Act 86 of 1984 5

17. The following section is hereby substituted for section 73bis of the Insurance Act, 1943:

“Penalty for failure to submit documents or to furnish information or to comply with section 20bis

73bis. Any person who fails to submit, transmit or furnish to the registrar within any period fixed by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, transmitted or furnished, or any insurer, agent, broker or other person referred to in section 20bis who fails to comply with any provision of section 20bis, shall, irrespective of any criminal action that may have been taken or may be taken against such person under this Act, be liable to pay such penalty (if any) as the registrar may deem fit, but not exceeding R50 for every day after the expiration of such period that he continues so to fail, and the registrar may by action in any competent court recover from such person such penalty or such portion thereof (if any) as he in his discretion considers the circumstances justify him in claiming.”. 15 20

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 and section 9 of Act 106 of 1985 25

18. Section 76 of the Insurance Act, 1943, is hereby amended by the insertion after paragraph (a) of subsection (1) of the following paragraphs:

“(aA) prescribing in respect of the contingent liabilities and liabilities of an insurer that such insurer shall—

- (i) keep record of those contingent liabilities and liabilities and the run-off of such contingent liabilities and liabilities in a prescribed format and manner;
- (ii) record information separately in respect of his contingent liabilities and his liabilities in the Republic, outside the Republic and in any state the territory of which formerly formed part of the Republic;
- (iii) record information separately from his other business in respect of policies the risk of which terminates at the end of each month; and
- (iv) record information in respect of his contingent liabilities and liabilities under a class of insurance business separately in respect of particular prescribed risks or subdivisions of a class of insurance business;

(aB) prescribing a subdivision for a class of insurance business;”. 30 35 40

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 and section 14 of Act 101 of 1976

19. Part II of the Second Schedule to the Insurance Act, 1943, is hereby amended— 45

(a) by the substitution for section 10 of the following section:

“10. The liability on any particular date of an insurer under unmaturing policies in any particular class or prescribed subdivision of a class of short term insurance business or in compulsory third party insurance business shall be the amount that the insurer requires to hold to meet claims and expenses arising in connection with those policies after that date, and shall, 50

subject to the provisions of section *twelve*, be deemed to be the amount arrived at by means of a calculation as follows:

(a) The amount of the premium to which the insurer was entitled under each policy (after deducting the amount of any refund of premium, discount or other allowance made to the owner of the policy in his capacity as owner, but without making any deduction in respect of commission, brokerage or other remuneration to any insurance broker or to any agent of the insurer) **[shall be reduced by such a proportion thereof, not exceeding 20 per cent, as may in the opinion of the registrar properly represent the expenses incurred by the insurer in conducting the class or kind of insurance business in question]** shall be reduced by the deduction of approved reinsurances.

(aA) The amount computed in accordance with paragraph (a) shall be reduced by such a portion thereof as represents the actual costs paid in respect of commission, brokerage or other remuneration to any insurance broker, other insurer or to any agent of the insurer, but not exceeding any maximum consideration prescribed under section 23A of the Act or other percentage, as may in the opinion of the registrar properly represent the expenses incurred by the insurer in conducting the class or subdivision of a class or kind of insurance business in question.

(b) There shall be deducted from the amount computed in accordance with the provisions of **[paragraph]** paragraphs (a) and (aA) such an amount as bears the same ratio thereto as the expired part of the insurance period covered by such premium bears to the whole of the said period.

(c) (i) For the purposes of this section—

‘claims paid’ means claims paid in the current financial year less proportional and non-proportional reinsurance recoveries;

‘closing shareholders’ funds’ means shareholders’ funds at the end of the current financial year of an insurer;

‘closing technical reserves’ means the amount referred to in subparagraphs (i), (ii) and (iiA) of paragraph (a) of section 13 and subsections (1) and (2) of section 13A of the Act to be provided by an insurer at the end of the current financial year as shown in the balance sheet referred to in section 11 (1) (c) of the Act;

‘commission’ means the difference between commission incurred and reinsurance commission earned in the current financial year;

‘investment income’ means interest, dividends and rent earned, excluding capital gains and losses, both realized and unrealized, before deduction of taxation, in the current financial year;

‘investment income on technical reserves’ means the product of investment income and the ratio which the sum of opening and closing technical reserves bears to the sum of opening and closing technical reserves plus opening and closing shareholders’ funds;

‘management expenses’ means expenses of management, excluding dividends and taxation paid and payable in the current financial year;

‘opening shareholders’ funds’ means shareholders’ funds at the end of the previous financial year of an insurer;

‘opening technical reserves’ means the amounts referred to in subparagraphs (i), (ii) and (iiA) of paragraph (a) of section 13 and subsections (1) and (2) of section 13A of the Act to be provided by an insurer at the end of the previous financial year as shown in the balance sheet referred to in paragraph (c) of subsection (1) of section 11 of the Act;

‘operating loss’ means the difference between opening technical reserves, written premium and investment income on technical reserves in the current financial year on the one hand and closing technical reserves, claims paid, commission and man-

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- agement expenses in the current financial year on the other hand, where such difference results in a negative figure;
- 'operating profit' means the difference between opening technical reserves, written premium and investment income on technical reserves in the current financial year on the one hand and closing technical reserves, claims paid, commission and management expenses in the current financial year on the other hand, where such difference results in a positive figure;
- 'shareholders' funds' means—
- (i) paid-up capital, including any capital redemption reserve fund;
 - (ii) share premium;
 - (iii) non-distributable reserves;
 - (iv) distributable reserves;
 - (v) general reserve; and
 - (vi) retained income,
- as shown in the balance sheet referred to in section 11 (1) (c) of the Act; and
- 'written premium' means premiums written in the current financial year less proportional and non-proportional reinsurances paid and payable.
- (ii) If an insurer incurs an operating loss in a particular class or prescribed subdivision of a class of insurance business during a financial year in the conduct of his short term insurance business which is not attributable to an event referred to in section 13A (3) of the Act, the insurer shall, in conjunction with the auditor, consider whether—
- (aa) the amount calculated in paragraph (b) is adequate to defray the possible cost of claims in connection with that business; or
 - (bb) sufficient operating profits have been earned in another class or subdivision of a class of short-term insurance business to cover the operating loss incurred in that particular class or subdivision of a class of short term insurance business.
- (iii) In the event of it being found that the amounts referred to in subparagraph (aa) or (bb) are insufficient, the insurer must increase the amount calculated in paragraph (b) by an amount determined by the insurer in conjunction with the auditor.”;
- (b) by the deletion of section 11; and
- (c) by the substitution for section 12 of the following section:
- “12. Notwithstanding the provisions of [sections] section ten [and eleven], the registrar may authorize or direct an insurer in writing to adopt for the purpose of calculating his net liabilities under all unmatured policies in any particular class of insurance business or part thereof, [such stricter] a different and more suitable basis or method which in the opinion of the registrar places a proper value upon such liabilities, and the insurer shall thereupon adopt no other basis or method in calculating such liabilities without the consent in writing of the registrar.”.

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 and section 3 of Act 51 of 1988

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20. Section 1 of the Pension Funds Act, 1956, is hereby amended by the substitution for the definition of “dependant” of the following definition:

“‘dependant’, in relation to a member, means—

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person—

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- (i) was, in the opinion of the person managing the business of the fund, upon the death of the member in fact dependent on the member for maintenance; **[or**
- (ii) **a child or descendant of a child of the member or the spouse of such child or descendant;]** 5
- (ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;” 10

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

21. Section 37C of the Pension Funds Act, 1956, is hereby amended by the substitution for paragraphs (b), (bA) and (c) of the following paragraphs, respectively: 15

“(b) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee: Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee. 20 25

(bA) If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the person managing the business of the fund may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee after the coming into operation of this paragraph. 30 35

(c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian’s Fund.” 40 45

Amendment of section 3 of Act 25 of 1956, as amended by section 20 of Act 103 of 1979

22. Section 3 of the Friendly Societies Act, 1956, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of this Act shall not apply in relation to any friendly society— 50

(a) which has been established in terms of an agreement published or deemed to have been published under section *forty-eight* of the Labour Relations Act, 1956 (Act No. 28 of 1956), except that such society shall from time to

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time furnish the registrar with such statistical information as may be prescribed by the Minister; **[and]**

- (b) of which the aggregate value of income does not exceed R100 000 per annum, except that such society shall comply with the provisions of any regulation that may be made in relation to it.”

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Amendment of section 2 of Act 38 of 1984

23. Section 2 of the Inspection of Financial Institutions Act, 1984, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) When he considers it necessary, the registrar may **[with the approval of the Minister]** appoint a person who is not in the full-time employment of the State, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a financial institution or of any person, partnership or company not registered as a financial institution, or to undertake such an inspection.”

Amendment of section 3 of Act 38 of 1984

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24. Section 3 of the Inspection of Financial Institutions Act, 1984, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) **[A person who has applied for an inspection of a financial institution may, with the approval of the Minister, be required by the registrar to furnish such security as the registrar may deem satisfactory and sufficient to defray the remuneration of, and all]** All expenses necessarily incurred by and the remuneration of any temporary inspector who may be appointed under section 2 (2) shall be defrayed by—
- (a) a person who has applied for an inspection of a financial institution or any person, partnership or company not registered as a financial institution, and the registrar may require such person to furnish such security as the registrar may deem satisfactory and sufficient to defray such expenses and remuneration; or
- (b) the financial institution, or any person, partnership or company not registered as a financial institution, being inspected if the registrar after having considered the inspection report so decides and notwithstanding the provisions of paragraph (a).”

Amendment of section 1 of Act 1 of 1985, as amended by section 14 of Act 50 of 1986 and section 24 of Act 51 of 1988

25. Section 1 of the Stock Exchanges Control Act, 1985, is hereby amended— 35

- (a) by the insertion after the definition of “arbitrage transaction” of the following definition:
- “‘bank’, for the purpose of section 3 (2), (3), (4) and (5), means any bank registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965);” and
- (b) by the substitution for paragraph (iii) of the definition of “carrier against shares” of the following paragraph:
- “(iii) any mutual building society registered under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965) or a building society registered under the Building Societies Act, 1986 (Act No. 82 of 1986); or”

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Amendment of section 3 of Act 1 of 1985, as amended by section 15 of Act 50 of 1986 and section 27 of Act 51 of 1988

26. Section 3 of the Stock Exchanges Control Act, 1985, is hereby amended—

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

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- “(c) he is a **[merchant]** bank **[registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965),]** and such buying and selling is effected in accordance with such conditions as the Registrar may from time to time determine, and is restricted to transactions entered into— 5
- (i) to give effect to a reconstruction of a company by the issue of new shares or a take-over by one company of another or a merger of two or more companies; or
 - (ii) with a view to the taking over of a company as regards control of its management, policy or business; or 10
 - (iii) on behalf of or with persons investments of whom are administered by such **[merchant]** bank for remuneration.”;
- (b) by the substitution for paragraph (ii) of subsection (3) of the following paragraph:
- “(ii) a **[merchant]** bank **[registered otherwise than provisionally under the Banks Act, 1965];** or”;
- (c) by the substitution for paragraph (b) of subsection (4) of the following paragraph:
- “(b) a **[merchant]** bank **[registered otherwise than provisionally under the Banks Act, 1965];** or”;
- (d) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
- “(b) a **[merchant]** bank **[registered otherwise than provisionally under the Banks Act, 1965];** or”.

Amendment of section 20 of Act 1 of 1985

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27. Section 20 of the Stock Exchanges Control Act, 1985, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) If the committee of a licensed stock exchange— 30
- (i) terminates the membership of any person;
 - (ii) under section 16 (b) defers or refuses any application for the inclusion of securities in, or under section 17 (1) (a) removes securities from, or suspends, for a period which together with any suspension in terms of section 17 (3) exceeds 30 days, the inclusion of securities in the list referred to in section 16 (a), or omits, for 35 a period which together with any omission in terms of section 17 (3) exceeds 30 days, the price of securities from a list of quotations referred to in section 17 (1) (b); **[or]**
 - (iii) grants an application for the inclusion of securities in the list referred to in section 16 (a), and the Registrar is of opinion that 40 the listing requirements of the stock exchange were not complied with in respect of those securities or that the inclusion of the securities in such list is not in the public interest; or
 - (iv) makes any finding or takes any action against or in respect of a person regarding, or on the grounds of, an alleged contravention 45 by such person of section 39 (3),
- such person, or the person who issued the securities, or the Registrar, as the case may be, shall be entitled to be furnished with the reason for the termination, deferment, refusal, removal, suspension, omission **[or]**, inclusion, finding or action and may appeal against the decision of 50 the committee to the board referred to in section 21, and the board may confirm, vary or set aside the decision, and, whether or not the appeal is withdrawn, make such award as to costs as it may deem fit.”;
- and
- (b) by the substitution for subsection (2) of the following subsection: 55
- “(2) In the case of a termination, removal, suspension, **[or]** omission, finding or action referred to in subsection (1), the committee may, subject

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to such conditions as it may impose and in accordance with the rules of the stock exchange (if any), suspend its decision pending any such appeal, and in the case of an inclusion referred to in subsection (1), the committee shall suspend its decision immediately after such an appeal has been noted and while it is pending.”

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Amendment of section 34 of Act 1 of 1985

28. Section 34 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) with reference to a deposit made by a stock-broker or carrier against shares with a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act No. 23 of 1965), or with a mutual building society registered otherwise than provisionally in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or with a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act No. 82 of 1986);”

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Substitution of section 39 of Act 1 of 1985

29. The following section is hereby substituted for section 39 of the Stock Exchanges Control Act, 1985:

“Advertising, canvassing or touting by stockbrokers and carriers against shares

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39. (1) Subject to the provisions of subsection (2), no person shall **[orally or by means of written matter]** in any manner or by any means, either for himself or for any other person, directly or indirectly canvass, advertise or tout for work forming part of the business of a stock-broker or carrier against shares.

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(2) **[The provisions of subsection (1) shall not prohibit a stock-broker or carrier against shares who is entitled to carry on business as such, from making known by a simple statement on a nameplate or signboard exhibited in or on the premises in which he carries on his business or on his stationery or on a document issued in connection with a transaction relating to securities entered into by him, that he is a stock-broker or carrier against shares or a member of a specified stock exchange, as the case may be]** Subject to the provisions of subsection (3), a stock-broker or a carrier against shares may directly or indirectly canvass, advertise or tout for work forming part of the business of a stock-broker or a carrier against shares and which may be performed in terms of this Act.

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(3) The committee of a licensed stock exchange may in consultation with the Registrar prescribe the conditions on which such canvassing, advertising or touting may be undertaken and may take such action as it deems necessary, against a stock-broker or a carrier against shares, as the case may be, in the event of any contravention of such conditions.

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(4) Notwithstanding anything to the contrary contained in any law, the Registrar may, if he is of the opinion that the advertisement, brochure or other similar document relating to a stock-broker or carrier against shares and proposed to be published or being published by such person or his authorized agent is misleading or for any reason objectionable, direct such person not to publish or to cease the publication of the advertisement, brochure or document concerned or to effect such adjustments as he may deem fit.”

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Substitution of section 47 of Act 1 of 1985

30. The following section is hereby substituted for section 47 of the Stock Exchanges Control Act, 1985:

“Furnishing of information to Registrar

47. The Registrar may by notice in writing require any person who is 5
not a stock-broker or licensed carrier against shares or a person referred
to in section 4 (1) and in respect of whom the Registrar has reason to
suspect that he is carrying on the business of buying and selling securities
in contravention of section 3 (2), (3), (4) or (5) or of a carrier against
shares in contravention of section 3 (6) or of administering or holding in 10
safe custody on behalf of any other person any investments in listed
securities or any investments of which listed securities form part in
contravention of section 4 (1), to transmit to the Registrar within a
period stated in the notice any document or information at that person's
disposal and relating to his affairs which the Registrar may require, and 15
that person shall comply with the requirements of the Registrar to his
satisfaction within the relevant period or within such further period as the
Registrar may allow.”.

Amendment of section 48 of Act 1 of 1985

31. Section 48 of the Stock Exchanges Control Act, 1985, is hereby amended by 20
the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) refuses or fails to comply with any requirement of a president under section
19 or of the registrar under the said section 19, section 39 or section 47;”.

Short title and commencement

32. (1) This Act shall be called the Financial Institutions Second Amendment Act, 25
1989, and 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.