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GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1633.

31 July 1985

No. 1633.

31 Julie 1985

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:—

—o. 106 of 1985: Financial Institutions Amendment Act, 1985.

No. 106 van 1985: Wysigingswet op Finansiële Instellings, 1985.

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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.
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ACT

To amend the Insurance Act, 1943, so as to further define "life policy"; to further regulate the appointment and functions of auditors, local auditors and valuers of registered insurers and the appointment of advisory committees; to increase the amount to be deposited by underwriters at Lloyds in a certain trust account; to make other provision regarding the payment of dividends by insurers to their shareholders; and to extend the power of the Minister of Finance to make regulations; to amend the Banks Act, 1965, so as to define or further define certain expressions and to delete certain definitions; to alter the classification of banking institutions for the purposes of registration; to provide further for the obtaining of control over banking institutions, and for the returns which a banking institution has to render to the Registrar of Banks; to further regulate the requirements in respect of the share capital and reserves, the reserve balance with the South African Reserve Bank and the minimum liquid assets which a banking institution shall maintain; to confer certain powers on the Minister of Finance as to liquid assets that banks carrying on business outside the Republic shall maintain; to empower the said Registrar to issue certain directives in relation to business carried on by banks outside the Republic; to delete the requirement that a banking institution shall maintain prescribed investments; to provide therefor that a banking institution shall obtain the approval of the said Registrar to open a branch office outside the Republic; to prohibit bank controlling companies from carrying on the business of a banking institution outside the Republic; to further regulate the voting power of a shareholder *nomine officii*; to make new provision for the limitation of certain activities of banks; and to curtail the right to inspect certain returns of banking institutions; to amend the Building Societies Act, 1965, so as to further define certain expressions and to delete a certain definition; to extend the forms of security in which building societies may invest; to further regulate the minimum liquid assets which a building society shall maintain; to delete the requirement that a building society shall maintain certain prescribed investments; and to further regulate the period of repayment of loans against reducible mortgage; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 10 July 1985.)

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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 and section 1 of Act 86 of 1984.

Amendment of section 2A of Act 27 of 1943, as inserted by section 2 of Act 94 of 1977.

Amendment of section 2B of Act 27 of 1943, as inserted by section 2 of Act 99 of 1980.

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 and section 5 of Act 39 of 1969.

1. Section 1 of the Insurance Act, 1943, is hereby amended by the insertion in subsection (1) after paragraph (bb) in the definition of "life policy" of the following paragraph: 5

"(cc) any contract in terms of which a registered insurer who is authorized to carry on life business, underwrites an obligation which a pension fund, a retirement annuity fund, a provident fund or a benefit fund (but not a medical aid scheme registered under the provisions of the Medical Schemes Act, 1967 (Act No. 72 of 1967), as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), or a Friendly Society as defined in the Friendly Societies Act, 1956 (Act No. 25 of 1956), owes to its members;" 10 15

2. Section 2A of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) The Minister [shall] may appoint an advisory committee on matters relating to long-term insurance, consisting of the registrar as chairman and such other members as the Minister may from time to time determine." 20

3. Section 2B of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 25

"(a) The Minister [shall] may appoint an advisory committee on matters relating to short-term insurance, consisting of the registrar as chairman and such other members as the Minister may from time to time determine." 30

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

(a) by the deletion in subsection (1) of the second proviso; 35

(b) by the substitution in subsection (2) for the word "provisos" of the word "proviso";

(c) by the insertion after subsection (2) of the following subsection: 40

"(2A) Whenever the appointment of an auditor or local auditor is terminated, otherwise than contemplated in subsection (2), that auditor or local auditor shall forthwith submit a report to the registrar in which the following is stated: 40

(a) Whether to his knowledge an irregularity in the conduct of the affairs of the insurer which has caused or is likely to cause financial loss to the insurer is contemplated, has taken place or is taking place; 45

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- (b) particulars of the irregularity; and
 (c) the reason, if known, or the presumable reason for the termination of his appointment.”; and
 (d) by the insertion after subsection (4) of the following subsection: 5
“(4A) No person shall hinder or obstruct an auditor or local auditor in the performance of his duties or the exercise of his powers under this Act.”.

Amendment of section 10 of Act 27 of 1943, as amended by section 8 of Act 73 of 1951, section 9 of Act 79 of 1959 and section 6 of Act 39 of 1969.

5. Section 10 of the Insurance Act, 1943, is hereby amended—
 (a) by the substitution for subsection (2) of the following subsection: 10
“(2) The [provisos] proviso to section 9 (1) and the provisions of section 9 (1)bis, [and] (2) and (2A) shall apply mutatis mutandis in connection with the valuator of a registered insurer.”;
 (b) by the insertion after subsection (4) of the following subsection: 15
“(4A) No person shall hinder or obstruct a valuator in the performance of his duties or the exercise of his powers under this Act.”; and
 (c) by the insertion after subsection (6) of the following subsection: 20
“(6A) A valuator shall not attest without qualification a statement referred to in subsection (6), unless he has satisfied himself as provided in that subsection.”. 25

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.

6. Section 23B of the Insurance Act, 1943, is hereby amended—
 (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 30
“(b) if such declaration applies to an insurer who is registered under this Act to carry on funeral, industrial, life or home service business or to a person who renders services towards effecting, maintaining or servicing funeral, industrial, life or home service policies underwritten by a registered insurer, the registrar has consulted the advisory committee, if any, appointed in terms of section 2A, about it; and”;
 (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 40
“(c) if such declaration applies to an insurer who is registered under this Act to carry on fire, guarantee, marine, miscellaneous, motor or personal accident business or to a person who renders service towards effecting, maintaining or servicing fire, 45 guarantee, marine, miscellaneous, motor or personal accident policies underwritten by a registered insurer, the registrar has consulted the advisory committee, if any, appointed in terms of section 2B, about it.”. 50

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 and section 7 of Act 86 of 1984.

7. Section 60 of the Insurance Act, 1943, is hereby amended by the substitution for subparagraph (i) of paragraph (j) of subsection (1) of the following subparagraph: 55
“(i) Underwriters at Lloyds, acting through the person referred to in paragraph (g), shall deposit in the trust account aforesaid an amount equivalent to [seventy] one hundred and thirty per cent, or such percentage as the Minister may from time to time determine, of all premiums and additional premiums less return premiums,

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less payments in terms of paragraph (f) and less all commissions relating to policies and endorsements in respect of such insurance business as aforesaid, received through persons carrying on such business and taken down at Lloyds policy signing office subsequent to the thirtieth day of June, 1966.” 5

Amendment of section 73ter of Act 27 of 1943, as inserted by section 21 of Act 79 of 1959 and substituted by section 10 of Act 86 of 1984.

8. Section 73ter of the Insurance Act, 1943, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) An insurer [referred to in subsection (1)] who— 10
 (a) fails to comply with any provision of section 17 (1), 17 (4), 18 (1) or 18 (4) and who pays out [any] dividends to shareholders during the existence of a deficiency [so referred to] in the assets required in terms of the said sections; or 15
 (b) pays out dividends to shareholders when such payment causes a deficiency referred to in paragraph (a), shall be guilty of an offence.”

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 and section 11 of Act 86 of 1984.

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

- “(bB) prescribing periods within which policies and amended policies are to be issued.”

Amendment of section 1 of Act 23 of 1965, as amended by section 12 of Act 91 of 1972, section 37 of Act 101 of 1976, section 18 of Act 80 of 1978, section 27 of Act 103 of 1979, section 45 of Act 99 of 1980, section 16 of Act 82 of 1982, section 20 of Act 46 of 1984 and section 22 of Act 86 of 1984.

10. Section 1 of the Banks Act, 1965, is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “associate” of the following definition:
 “‘bank’ means a person, other than a discount house, who carries on the business of a banking institution as described in subsection (2);”;
 (b) by the insertion in that subsection after the definition of “bank controlling company” of the following definition:
 “‘banking group’ means two or more banks one of which controls the other or all of which are controlled by the same bank controlling company;”;
 (c) by the substitution in that subsection for the definition of “‘banking institution’ or ‘institution’” of the following definition:
 “‘banking institution’ or ‘institution’ means a bank or a discount house;”;
 (d) by the deletion in that subsection of paragraph (d) of the definition of “liquid assets”,
 (e) by the insertion in that subsection in the definition of “liquid assets” of the following paragraph after paragraph (g): 45
 “(gA) bills issued by the Land Bank for purposes of extending short-term financing to an agricultural co-operative or a special farmers’ co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), or which is deemed to be so formed and incorporated under that Act, for the purchase of agricultural products from farmers 50

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- and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products;”;
- (f) by the substitution in that subsection for paragraph (h) of the definition of “liquid assets” of the following paragraph: 5
- “(h) for a period of not more than three years from the date of commencement of section 10 of the Financial Institutions Amendment Act, 1985, other bills issued by the Land Bank and advances to the said bank which, at the option of the lender, are convertible into bills, up to the respective amounts representing the percentages, determined from time to time by the Minister by notice in the Gazette, of the amount of such bills held by the banking institution on the said date of commencement and of the amount owing to the banking institution on that date in respect of such advances, respectively;”;
- (g) by the substitution in that subsection for paragraph (i) of the definition of “liquid assets” of the following paragraph: 20
- “(i) debentures of the Land Bank held by the banking institution on the date of commencement of section 10 of the Financial Institutions Amendment Act, 1985, and which on that date had [with] a maturity of not more than three years;”;
- (h) by the substitution in that subsection for paragraph (j) of the definition of “liquid assets” of the following paragraph: 30
- “(j) debentures or notes issued by the Industrial Development Corporation of South Africa, Limited, in connection with a scheme for financing the export of capital goods, held by the banking institution on the date of commencement of section 10 of the Financial Institutions Amendment Act, 1985, and which [have] on that date had a maturity of not more than three years;”;
- (i) by the substitution in that subsection for paragraph (n) of the definition of “liquid assets” of the following paragraph: 40
- “(n) promissory notes issued by a foreign borrower in favour of a banking institution registered in terms of this Act or the Industrial Development Corporation of South Africa, Limited, constituted under the Industrial Development Act, 1940 (Act No. 22 of 1940), or bills drawn on a foreign borrower and accepted by him, in terms of any loan agreement concluded between the foreign borrower and such a banking institution for the financing of the export of capital goods or the financing of services and re-insured in terms of the Export Credit Re-insurance Act, 1957 (Act No. 78 of 1957), if such promissory notes or bills comply with any further requirements under the regulations and were held by the banking institution on the date of commencement of section 10 of the Financial Institutions Amendment Act, 1985;”;
- (j) by the substitution in that subsection for the word “thirty-first”, wherever it appears in the definition of “medium-term liability”, of the word “thirty-second”; 60
- (k) by the substitution in that subsection for the word “thirtieth”, wherever it appears in the definition of “short-term liability”, of the word “thirty-first”;

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- (l) by the deletion in that subsection of the definitions of "commercial bank", "general bank", "merchant bank" and "prescribed investments";
- (m) by the deletion in subsection (2) of the word "or" at the end of paragraph (a);
- (n) by the addition in that subsection of the word "or" at the end of paragraph (b);
- (o) by the addition to that subsection of the following paragraph:
 "(c) carries on the business contemplated in the definition of "discount house" in subsection (1)"; and
- (p) by the substitution for paragraph (e) of subsection (5) of the following paragraph:
 "(e) the amount by which the amount of the paid-up capital and unimpaired reserve funds required in terms of section 14 (3) exceeds the paid-up share capital and unimpaired reserve funds of a subsidiary referred to in section 13 (2) (b)."

Amendment of section 2 of Act 23 of 1965, as amended by section 38 of Act 101 of 1976 and section 20 of Act 46 of 1984.

11. Section 2 of the Banks Act, 1965, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 "(1) This Act shall not apply to the Post Office Savings Bank or the Land Bank or the Reserve Bank or the Corporation for Public Deposits or the Industrial Development Corporation of South Africa, Limited, or the Public [Debt] Investment Commissioners or to any local authority or any building society or any Black cooperative credit society registered under any proclamation issued under Act No. 29 of 1897 of the Cape of Good Hope or under the Black Administration Act, 1927 (Act No. 38 of 1927), or an institution having as its main objective the financing of the development of certain regions and which has been approved by the Minister and complies with conditions which the Minister may from time to time deem necessary and of which the institution has been notified in writing: Provided that such exemption shall not apply to any savings department or savings bank or similar deposit-receiving institution established by or in connection with any local authority."; and
- (b) by the deletion of subsection (2).

Amendment of section 4 of Act 23 of 1965, as amended by section 23 of Act 86 of 1984.

12. Section 4 of the Banks Act, 1965, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 "(1) Any person who intends to carry on the business of [any class of] a banking institution in the Republic, may apply to the Registrar for permission to establish [such a banking institution] a bank or discount house, and the Registrar shall grant such permission if the applicant satisfies him that the establishment of such institution will be in the public interest and, where the proposed business is that of a discount house, furnishes proof to him that the Reserve Bank will be prepared to recognize the applicant as a discount house.";
- (b) by the substitution for subsection (2) of the following subsection:
 "(2) An applicant to whom the Registrar has granted permission in terms of subsection (1) may, within the period fixed by the Registrar, apply to him in the form prescribed by regulation to be registered provisionally under this Act as a [banking institution of the class in question] bank or a discount house, as the case may be, and shall submit in duplicate with its application—
 (a) its memorandum and articles of association;
 (b) a statement of the address of its head office;

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- (c) a statement of the name and address of its chairman and of every director and of its chief executive officer; and
- (d) full particulars of the business it proposes to carry on and of the manner in which it proposes to carry on such business.”;
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) If the Registrar is satisfied—
- (a) that the business proposed to be carried on is that of a banking institution of the class in respect of which registration is desired;
- (b) that the memorandum and articles of association of the applicant are not inconsistent with this Act and are not undesirable for any reason; and
- (c) that the applicant does not propose to adopt undesirable methods of conducting business,
- he shall, subject to the provisions of subsections (6) and (7), and after payment by the applicant of the registration fee prescribed by regulation, register the applicant provisionally as a **[banking institution of the said class] bank or a discount house, as the case may be.**”;
- (d) by the insertion after subsection (4) of the following subsection:
- “(4A) A bank which at the commencement of section 12 (d) of the Financial Institutions Amendment Act, 1985, is registered or provisionally registered as a merchant bank, general bank or commercial bank shall be deemed to be registered or provisionally registered under this section as a bank, but the provisions of this subsection shall not affect any right or privilege which belonged to such a bank by virtue of the fact that it was registered as such a merchant bank, general bank or commercial bank.”;
- (e) by the substitution for subsection (6) of the following subsection:
- “(6) The Registrar shall not register an applicant provisionally unless the applicant is a public company incorporated and registered **[or deemed to have been incorporated and registered]** under the Companies Act, 1926 (Act No. 46 of 1926) **1973 (Act No. 61 of 1973).**”;
- (f) by the substitution for paragraph (d) of subsection (7) of the following paragraph:
- “(d) the applicant proposes to carry on business in a location as defined in the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), and the Department of **[Plural Relations and Development] Co-operation, Development and Education** has recommended that it be not provisionally registered.”; and
- (g) by the substitution for subsection (9) of the following subsection:
- “(9) If a provisionally registered institution becomes fully qualified for registration at any time while it is provisionally registered, by reason of the fact that it has complied with any requirements imposed under subsection (8), the Registrar shall, upon payment of the registration fee prescribed by regulation, register such institution as a **[banking institution of the class to which it belongs] bank or a discount house, as the case may be.**”.

Amendment of section 7 of Act 23 of 1965, as amended by section 39 of Act 101 of 1976.

13. Section 7 of the Banks Act, 1965, is hereby amended by the substitution in subsection (1) for the words “banking institution of a particular class” of the words “a bank or a discount house”.

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Amendment of section 10 of Act 23 of 1965, as amended by section 41 of Act 101 of 1976.

14. Section 10 of the Banks Act, 1965, is hereby amended—
 (a) by the substitution for subsection (3) of the following subsection:

“(3) (a) When a banking institution, in the opinion of the Registrar, has ceased to carry on the business of a banking institution of the class in which it is registered or provisionally registered, the Registrar shall by notice in writing call upon that institution to show cause, within a period of not less than thirty days stated in the notice, why its registration or provisional registration shall not be cancelled [or, in the case of an institution continuing to carry on banking business, shall not be converted into registration or provisional registration as a banking institution of the appropriate class].”

(b) If the institution does not, within the period mentioned in paragraph (a), show cause to the satisfaction of the Registrar, he shall cancel the registration of the institution [or, in the case of an institution continuing to carry on banking business, convert its registration into registration of a banking institution of the appropriate class].

(c) A cancellation [or conversion in terms of paragraph (b)] shall take effect one month after the date on which the Registrar has given written notice thereof to the institution concerned, unless within that period the institution appeals to the Minister in terms of section *three* against the Registrar's decision, in which case the cancellation [or conversion] shall have no force or effect unless and until it has been confirmed by the Minister.

(d) The Minister may after considering any appeal under paragraph (c) confirm the decision of the Registrar or set it aside and substitute any decision which in his opinion the Registrar ought to have given, and any such decision shall be final and shall be carried out in all respects as if it were the Registrar's decision.

[(e) When the registration or provisional registration of an institution has been converted into registration or provisional registration in another class in terms of this subsection, the Registrar shall issue to the institution a certificate of such conversion]”; and

(b) by the deletion of subsection (4).

Substitution of section 11 of Act 23 of 1965.

15. The following section is hereby substituted for section 11 of the Banks Act, 1965:

“Voluntary cancellation of registration.

11. Upon the application or with the consent in writing of a banking institution the Registrar may cancel its registration or provisional registration [or convert its registration or provisional registration] under this Act [as a banking institution of a particular class into a registration or provisional registration as a banking institution of any other class, and when he has so converted a registration or provisional registration he shall issue to the institution a certificate of the new or converted registration or provisional registration].”

Substitution of section 12 of Act 23 of 1965.

16. The following section is hereby substituted for section 12 of the Banks Act, 1965:

“Publication of fact of registration and of name and class of banking institution.

12. (1) Upon the registration or provisional registration of any banking institution or upon the cancellation or suspension [or conversion] of any such registration or upon the expiry of a provisional registration or upon the change of the name of an institution, the Registrar shall cause to be published a notice thereof in the *Gazette*.

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- (2) Every banking institution shall display—
- (a) conspicuously and in easily legible letters at the entrance to every place in the Republic where the banking institution carries on any business as such; 5
- (b) in easily legible letters on every statement, notice, advertisement or letter published or issued to any member of the public in the Republic by or on behalf of the banking institution, the name of the institution and a statement of the fact that it is authorized to carry on the business of a banking institution of the class in which the institution in question was registered or provisionally registered.”. 10

Amendment of section 12A of Act 23 of 1965, as inserted by section 42 of Act 101 of 1976 and amended by section 28 of Act 103 of 1979 and section 25 of Act 86 of 1984.

17. Section 12A of the Banks Act, 1965, is hereby amended— 15

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) No person shall without the prior written approval of the registrar acquire control over a banking institution, and **[subject to the provisions of subsection (6), a person, other than a registered banking institution, shall not acquire control over a banking institution unless he is registered as a bank controlling company]** the Registrar shall not grant such approval—
- (a) in the case of a bank, to a person other than a registered bank or registered bank controlling company; and 25
- (b) in the case of a discount house, to a person other than a registered bank controlling company.”;
- (b) by the deletion of subsections (2), (3) and (4); 30
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) A person who intends to acquire control over a banking institution must obtain the written approval of the Registrar, and unless such a person is a registered bank controlling company or **[banking institution or an institution mentioned in subsection (6)]** bank he must also apply to the Registrar, in the manner prescribed by regulation, to be registered as a bank controlling company and submit with his application the information and documents prescribed by regulation.”; and 35 40
- (d) by the deletion of subsection (6).

Amendment of section 13 of Act 23 of 1965, as amended by section 19 of Act 80 of 1978.

18. Section 13 of the Banks Act, 1965, is hereby amended—

- (a) by the deletion in paragraph (a) of subsection (1) of the words “the prescribed investments”; 45
- (b) by the substitution, in the Afrikaans text, for paragraph (b) of subsection (1) of the following paragraph:
- “(b) binne ’n tydperk van veertig dae vanaf die einde van elke kalenderkwartaal, ’n staat in die vorm soos [wat in ’n] by regulasie [voorgeskrewe bates, soos deur hierdie Wet vereis, in] voorgeskryf en soos voormeld gesertifiseer [is], van sy bates en laste aan die einde van die laaste besigheidsdag in daardie kwartaal;” 50
- (c) by the substitution for subsection (2) of the following subsection: 55
- “(2) The regulations referred to in paragraphs (a), (b) and (c) of subsection (1) may—
- (a) prescribe different forms for the statements and returns to be furnished by [various classes of institutions] banks and discount houses; 60

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- (b) prescribe that a banking institution which carries on the business of a banking institution (as defined in section 1 (2)) by way of a subsidiary, branch office, agency or joint undertaking (unless it has an interest of less than thirty per cent) outside the Republic, shall incorporate the information referred to paragraphs (a), (b) and (c) of subsection (1) in respect of such business in the returns and statements which it has to furnish to the Registrar in accordance with those paragraphs and shall also furnish such information separately to the Registrar in the prescribed form and certified as aforesaid;
- (c) prescribe that in the case of a banking group, the controlling company of such banking group shall, in addition to the returns furnished by each bank in the group, furnish to the Registrar the information concerned in the prescribed form and certified in accordance with paragraph (a) of subsection (1), relating to all the banking institutions in the group, including the business referred to in paragraph (b), if any, in consolidated form.”; and
- (d) by the deletion of subsections (4) and (5).

Amendment of section 14 of Act 23 of 1965, as amended by section 3 of Act 23 of 1970, section 44 of Act 101 of 1976, section 29 of Act 103 of 1979, section 46 of Act 99 of 1980 and section 23 of Act 36 of 1981.

19. Section 14 of the Banks Act, 1965, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection—

“(1) A **[banking institution (other than a discount house)] bank** shall, subject to the provisions of subsection (2), maintain in the Republic a paid-up share capital and unimpaired reserve funds together amounting to not less than—

- (a) **[two hundred thousand] one million** rand; or
- (b) **[six per cent of]** an amount which represents the average of the total amounts **[of its liabilities to the public in the Republic excluding liabilities under acceptances, plus four per cent of an amount which represents the average of the total amounts of such last-mentioned liabilities and the banking institution’s contingent liabilities under promissory notes, bills and any other similar instrument endorsed by it]** representing the percentages, determined by regulation, of the amounts of the different groups of assets, groups of contingent liabilities and other groups of risk exposures in the conduct of its business, as determined by regulation, and of the amount of the repurchase agreements (excepting such agreements entered into with the Reserve Bank) at the end of each of **[the months of]** the last preceding **three** calendar **[quarter] quarters**, as shown in the **[monthly]** returns furnished to the Registrar in terms of section 13 (1) **[(a)] (c)** in respect of such **[months]** calendar quarters,

whichever is the greater **[: Provided that for the purposes of the application of this subsection—**

- (i) a banking institution may deduct from its aforesaid liabilities, other than liabilities under acceptances, an amount equal to the amount of liquid assets it holds in excess of the amount required by this Act; and
- (ii) a commercial bank may deduct from its aforesaid liabilities, other than liabilities under acceptances, in addition to the amount referred to in paragraph (i), an amount equal to fifty per cent of the remittances in transit].”;

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- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) Loan capital obtained by way of debentures, issued for a minimum period of seven years, may rank as capital for the purposes of subsection (1), if issued subject to—
- (i) the condition that the debentures may be repaid before maturity only at the option of the bank and with the prior written approval of the Registrar;
- (ii) the condition that, notwithstanding the provisions of any other Act, in the event of the liquidation of the bank the capital amount of the debentures shall not be repaid until the claims of other creditors have been satisfied; and
- (iii) the further conditions which the Minister may determine by regulation.
- (b) The total amount of debentures referred to in paragraph (a), issued and not repaid, shall at no time exceed an amount equal to twenty per cent of the amount of share capital and reserve funds which the institution is required to maintain.”;
- (c) by the insertion after subsection (2) of the following subsections:
- “(3) The provisions of subsection (1) shall apply *mutatis mutandis* to the business of a subsidiary mentioned in section 13 (2) (b).
- (4) A bank which on the date of commencement of section 19 of the Financial Institutions Amendment Act, 1985, does not comply with the provisions of subsection (1), shall correct the deficiency within the period and in accordance with the conditions determined by the Registrar.”; and
- (d) by the deletion of subsection (5).

Substitution of section 15 of Act 23 of 1965, as amended by section 45 of Act 101 of 1976.

20. The following section is hereby substituted for section 15 of the Banks Act, 1965:

- “Share capital requirement for discount houses.
15. A discount house shall maintain in the Republic a paid-up share capital and unimpaired reserve funds together amounting to not less than—
- (a) **[two hundred thousand] one million** rand; or
- (b) two per cent of the amount of its liabilities to the public **[in the Republic]** and the total amount of its repurchase agreements (excepting such agreements entered into with the Reserve Bank) as shown in the last preceding quarterly statement furnished by it to the Registrar in terms of paragraph (b) of subsection (1) of section *thirteen*, whichever is the greater.”.

Amendment of section 16 of Act 23 of 1965, as substituted by section 13 of Act 91 of 1972 and amended by section 47 of Act 99 of 1980.

21. Section 16 of the Banks Act, 1965, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A **[banking institution (other than a discount house)] bank** shall maintain a reserve balance with the Reserve Bank **[amounting]** which, together with the total amount of its Reserve Bank notes, subsidiary coin and gold coin, amounts to not less than the sum of—
- (a) eight per cent of its short-term liabilities to the public in the Republic, other than liabilities under acceptances; and

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(b) four per cent of its medium-term liabilities to the public in the Republic, other than liabilities under acceptances,

as shown in the last preceding monthly return furnished by it to the Registrar in terms of section 13 (1) (a).”;

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

“(2) For the purposes of the provisions of subsection (1) the provisions of provisos (i), (ii), (iii) and **[(v)] (iv)** **[of]** to section 17 (1) shall apply *mutatis mutandis*.”;

(c) by the addition of the following subsection:

“(3) (a) Whenever the Governor of the Reserve Bank, with the consent of the Minister of Finance, deems it desirable in the national economic interest, he may determine that the percentages mentioned in paragraph (a) and (b) of subsection (1) shall be increased or decreased. 15
 (b) Whenever the Governor of the Reserve Bank has made a determination under paragraph (a), he shall inform the Registrar thereof in writing, and the Registrar shall as soon as practicable give written notice of the determination to every registered bank and cause the determination to be published by notice in the Gazette. 20
 (c) Any such determination shall take effect on a date mentioned in the notice whereby the determination in terms of paragraph (b) is promulgated in the Gazette.” 25

Amendment of section 17 of Act 23 of 1965, as substituted by section 14 of Act 91 of 1972 and amended by section 46 of Act 101 of 1976, section 48 of Act 99 of 1980, section 24 of Act 36 of 1981 and section 20 of Act 46 of 1984.

22. Section 17 of the Banks Act, 1965, is hereby amended— 30

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

“(1) A **[banking institution (other than a discount house)] bank** shall maintain in the Republic liquid assets amounting to not less than the aggregate of— 35

- (a) **[thirty] twenty** per cent of its short-term liabilities to the public in the Republic, other than liabilities under acceptances;
- (b) **[twenty] fifteen** per cent of its medium-term liabilities to the public in the Republic, other than 40 liabilities under acceptances; and
- (c) five per cent of its long-term liabilities to the public in the Republic **;** and
- (d) **five per cent of its liabilities under acceptances and of its contingent liabilities under promissory notes, 45 bills and any other similar instrument endorsed by it].**

as shown in the last preceding monthly return furnished by it to the Registrar in terms of paragraph (a) of subsection (1) of section *thirteen*: Provided that for the 50 purposes of this subsection—

- (i) the credit balance which **[in the case of a commercial bank (as defined in subsection (3))]** originates from a clearing house settlement or a similar settlement between **[commercial]** banks shall be 55 deemed not to be a liability to the public and a debit balance of such bank which originates from a clearing house settlement or a similar transaction between **[commercial]** banks shall be deemed not to be a liquid asset; 60
- (ii) a **[commercial]** bank may **[effect the deduction referred to in proviso (ii) to subsection (1) of section fourteen]** deduct from the liabilities referred to in

paragraph (a) hereof an amount equal to fifty per cent of the remittances in transit;

(iii) a **[banking institution] bank** may deduct from the liabilities referred to in paragraphs (a), (b) and (c) the amounts owing to it in respect of loans made by it against security of **[fixed] deposits** included under the said paragraphs as well as the amounts owing to it by other banks and payable within the respective periods referred to in paragraphs (a), (b) and (c); **[and]**

(iv) the aggregate amount of—
 (aa) acceptances; and
 (bb) self-liquidating bills or promissory notes arising out of the movement of goods and discountable by the Reserve Bank, with a maturity not exceeding one hundred and twenty days or, in the case of agricultural bills, six months, which rank as liquid assets, shall not exceed twenty per cent of the total amount of liquid assets to be maintained by a banking institution in terms of this subsection after deduction of the reserve balance referred to in section *sixteen*, without, however, any of the foregoing provisions of this paragraph prohibiting a banking institution from holding, for purposes other than minimum liquid assets, any such acceptances, bills or promissory notes in excess of the aggregate amount which may, in terms of the said foregoing provisions, be included in the required minimum liquid assets

(v) (iv) in determining its liabilities referred to in paragraph (a), a **[banking institution] bank** shall, in respect of each of its branches, including its head office, where the total amount of its demand liabilities can be determined daily, bring into account the average daily amount of such liabilities for all the **[business] days** in the month in question, instead of the amount of such liabilities at the end of such month.”;

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

“(2) (a) The Minister may by notice in the *Gazette* determine that in respect of the business conducted by a bank outside the Republic in accordance with section 13 (2) (b), liquid assets shall be maintained as prescribed in subsection (1) of this section.

(b) The Registrar may by notice in the *Gazette* issue directives in regard to the correlation of maturities of the liabilities and investments expressed in foreign currencies of the business carried on by a bank outside the Republic as contemplated in section 13 (2) (b).”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of subsection (1) a remittance in transit means the amount of a cheque or other order to pay drawn on one of a bank’s branches in the Republic or on another bank in the Republic or on the Reserve Bank, with which another branch in the Republic of the bank concerned has credited a client or which it has paid out but with which the first-mentioned

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branch or such other bank or the Reserve Bank has not yet debited a client, and includes the amount of a warrant voucher which the bank has paid out or with which it has credited a client but for which it has not yet received repayment from the Secretary to the Treasury.” 5

Repeal of section 18 of Act 23 of 1965, as substituted by section 15 of Act 91 of 1972 and amended by section 17 of Act 94 of 1977, section 30 of Act 103 of 1979, section 17 of Act 82 of 1982 and section 26 of Act 86 of 1984.

23. Section 18 of the Banks Act, 1965, is hereby repealed.

Substitution of section 19 of Act 23 of 1965.

24. The following section is hereby substituted for section 19 of the Banks Act, 1965:

“Period for maintenance of prescribed minima.

19. A banking institution shall maintain any minimum amount prescribed by or under section *four-teen, fifteen, sixteen or seventeen [or eighteen]* at all times during the period from the date of certification under paragraph (a) or (c) of subsection (1) of section *thirteen* of the statement or return by reference to which that amount is determined, until the day 15 preceding the date on which the next succeeding such statement or return is so certified.”

Amendment of section 20 of Act 23 of 1965.

25. Section 20 of the Banks Act, 1965, is hereby amended—
(a) by the deletion in the second proviso to subsection (1) of the word “commercial”; and 20
(b) by the deletion of subsection (2).

Substitution of section 24 of Act 23 of 1965.

26. The following section is hereby substituted for section 24 of the Banks Act, 1965:

“Liquid assets may not be pledged or encumbered.

24. No portion of the assets constituting the liquid assets **[or the prescribed investments]** which a bank- 25
ing institution is, in terms of this Act, required to hold and maintain, shall be pledged or otherwise encumbered: Provided that the Minister may exempt any banking institution from the provisions of this section on such conditions and to such an extent and 30
for such a period as he may determine, if he is satisfied that special circumstances demand such action.”

Substitution of section 25 of Act 23 of 1965.

27. The following section is hereby substituted for section 25 of the Banks Act, 1965:

“Valuation of securities.

25. For the purpose of sections *seventeen [and 35
eighteen]* securities shall be valued at their market value, as certified by the **[secretary of the board of] Public [Debt] Investment Commissioners.”**

Substitution of section 27A of Act 23 of 1965, as inserted by section 48 of Act 101 of 1976.

28. The following section is hereby substituted for section 27A of the Banks Act, 1965: 40

“Banking institution’s subsidiary, branch office and other interests.

27A. A banking institution shall not establish or acquire a subsidiary company or open a branch office outside the Republic or acquire an interest in an undertaking referred to in section 13 (2) (b) unless the prior written authority of the Registrar has been 45
obtained.”

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Substitution of section 27C of Act 23 of 1965, as inserted by section 48 of Act 101 of 1976 and substituted by section 19 of Act 94 of 1977.

29. The following section is hereby substituted for section 27C of the Banks Act, 1965:

“Limitation on bank controlling company which controls a discount house. 27C. [A banking institution or a registered bank controlling company shall not without the written approval of the registrar, directly or indirectly control more than one banking institution in any class of banking institution mentioned in section 1 (1), or, in the case of a controlling banking institution, a banking institution of the same class as it: Provided that] A registered bank controlling company which controls a discount house shall not control any other banking institution.”

Insertion of section 27E in Act 23 of 1965.

30. The following section is hereby inserted in the Banks Act, 1965, after section 27D:

“Prohibition of certain business by bank controlling company outside Republic. 27E. A bank controlling company or its subsidiary which is not registered as a banking institution under this Act, shall not carry on outside the Republic the business of a banking institution (as defined in section 1 (2)).”

Substitution of section 28D of Act 23 of 1965, as inserted by section 50 of Act 101 of 1976 and amended by section 28 of Act 86 of 1984.

31. The following section is hereby substituted for section 28D of the Banks Act, 1965:

“Limitation of shareholding in a bank and bank controlling company. 28D. (1) Subject to the provisions of subsections (2) and (4) of this section and of sections 28B and 28E, a [banking institution (other than a discount house)] bank or a bank controlling company shall not register shares in it in the name of a person other than a registered [banking institution] bank or a registered bank controlling company or a company approved by the registrar in terms of section 12A (4), except in so far as the total nominal value of the shares which are to be registered together with those which are already registered in the name of—
(i) a financial company approved by the registrar in respect of such [banking institution] bank or bank controlling company for the purposes of this section, and its associates, does not exceed thirty per cent; and
(ii) any other person and his associates does not exceed ten per cent,
of the total nominal value of all the issued shares in the [banking institution] bank or bank controlling company.

(2) The Minister may, in special cases where he is satisfied that it is desirable in the public interest, authorize a [banking institution (other than a discount house)] bank or bank controlling company in writing to exceed the percentages mentioned in subsection (1) in respect of domestic shareholders, on the conditions and to the extent determined by the Minister.

(3) A discount house shall not register shares in it in the name of a person (other than a registered bank controlling company) and his associates of which the total nominal value exceeds ten per cent of the total nominal value of all the issued shares in the discount house.

(4) Shares which are transferred to the executor, administrator, curator, trustee or guardian in respect of the estate of a deceased shareholder of the banking institution or bank controlling company or of a shareholder whose estate has been sequestrated or of a shareholder who is otherwise incapable of contracting or the liquidator of a corporate body in the process of liquidation, which is a shareholder of the banking institution or bank controlling company, shall not be deemed to be registered in the name of

the shareholder *nomine officii* but shall be deemed to be registered in the name of the various beneficiaries: Provided that **[in the case where] the voting power that such a shareholder *nomine officii* [owing to the voting power attached to shares registered in his name, is able to control the banking institution or bank controlling company, the voting power which he] can exercise in respect of all the shares under his control shall, notwithstanding anything to the contrary contained in any other law, be limited to ten per cent of the votes attached to all the issued shares of the banking institution or bank controlling company.**

(5) Where at the commencement of the Financial Institutions Amendment Act, 1976, the total nominal value of shares in a **[banking institution (other than a discount house)] bank** or bank controlling company, registered in the name of a financial company and its associates or any other person and his associates, exceeds the relative percentage mentioned in subsection (1), the shares may, subject to the provisions of section 28E, remain so registered but, save with the approval of the Registrar, granted on such conditions as he deems necessary where he is satisfied—

- (i) that the interests of the **[banking institution] bank** or bank controlling company will otherwise be detrimentally affected; and
 - (ii) that compliance with the limits referred to in subsection (1) will not be unduly delayed,
- no further shares in the **[banking institution] bank** or bank controlling company shall be registered in the name of that shareholder or his associates as long as the relative percentage is exceeded.

(6) If at the commencement of the Financial Institutions Amendment Act, 1976, the total nominal value of shares in a discount house which is registered in the name of a person and his associates, exceeds the ratio referred to in subsection (3), no further shares shall be registered in the name of such person or that of his associates, and the discount house shall within six months from the date of the said commencement submit a scheme to the registrar whereby the shareholdings which exceed the limit mentioned in subsection (3) will be reduced within a period acceptable to the registrar to the extent that the required ratio will be complied with.

(6A) If as a result of the amalgamation of shareholders or the take-over of one shareholder by another after 1 August 1976, the total nominal value of shares in a discount house which are registered in the name of a person and his associates at the commencement of section 28 of the Financial Institutions Amendment Act, 1984, or thereafter exceeds the ratio referred to in subsection (3), no further shares shall be registered in the name of such person or the names of his associates, and the discount house shall within six months after the date of that commencement or, where any such exceeding takes place after that commencement, within six months from the date of the amalgamation or take-over in question, submit a scheme to the registrar whereby the shareholdings which exceed the limit mentioned in subsection (3) will be reduced, within a period acceptable to the registrar, to the extent that the required ratio will be complied with.

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(7) The provisions of subsections (5), (6) and (6A) shall not be construed as meaning that as long as the relative ratio is exceeded, shares may not be transferred within a group of associates.”.

Insertion of section 28G in Act 23 of 1965.

32. The following section is hereby inserted after section 28F of the Banks Act, 1965: 5

“Restriction on certain approval.

28G. After the coming into operation of the Financial Institutions Amendment Act, 1985, the registrar shall not grant approval under paragraph (i) of subsection (1) of section 28D to more than one financial company per banking institution or bank controlling company.”. 10

Substitution of section 29 of Act 23 of 1965, as substituted by section 51 of Act 101 of 1976.

33. The following section is hereby substituted for section 29 of the Banks Act, 1965:

“Limitation on certain activities of banks.

29. (1) A **[commercial]** bank which has a branch system and which accepts money on deposit which is withdrawable by cheque and which has been admitted to the clearing house of banks, shall not carry on any business in the Republic through a person who is not its full-time servant: Provided that such a bank may raise deposits through an agent and pay commission to such agent in respect thereof. 15

(2) A banking institution **[other than a commercial bank]** shall not without the written approval of the Registrar accept deposits of money withdrawable by cheque unless it offered that facility prior to 1 January **[1975] 1985**.”. 20

Amendment of section 30A of Act 23 of 1965, as inserted by section 11 of Act 82 of 1965 and substituted by section 20 of Act 94 of 1977.

34. Section 30A of the Banks Act, 1965, is hereby amended by the deletion of the word “general” in paragraph (a) of subsection (1). 30

Amendment of section 48 of Act 23 of 1965, as amended by section 25 of Act 36 of 1981 and section 31 of Act 86 of 1984.

35. Section 48 of the Banks Act, 1965, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) returns, statements and documents furnished in terms of section 13 (1) (a), (b), **[(c)]** (d) or (e) or section 34, 35 in respect of the last ten preceding calendar years.”.

Amendment of section 49 of Act 23 of 1965, as amended by section 6 of Act 23 of 1970 and section 32 of Act 86 of 1984.

36. Section 49 of the Banks Act, 1965, is hereby amended by the deletion in subsection (5) of the word “eighteen”.

Amendment of section 1 of Act 24 of 1965, as amended by section 1 of Act 64 of 1968, section 5 of Act 67 of 1973, section 54 of Act 101 of 1976, section 22 of Act 80 of 1978, section 50 of Act 99 of 1980, section 18 of Act 82 of 1982, section 20 of Act 46 of 1984 and section 34 of Act 86 of 1984.

37. Section 1 of the Building Societies Act, 1965, is hereby amended— 40

(a) by the substitution for the word “thirty”, wherever it appears in the definition of “medium-term liability”, of the word “thirty-one”;

(b) by the deletion of the definition of “prescribed investments”; and 45

(c) by the substitution for the word “thirty”, wherever it appears in the definition of “short-term liability”, of the word “thirty-one”.

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Amendment of section 29 of Act 24 of 1965, as amended by section 8 of Act 64 of 1968, section 2 of Act 91 of 1969, section 26 of Act 80 of 1978 and section 20 of Act 46 of 1984.

38. Section 29 of the Building Societies Act, 1965, is hereby amended—

- (a) by the deletion of the words “or prescribed investments”; and
- (b) by the insertion after paragraph (b) of the following paragraph:
 - “(c) in deposits, loans, bills, bonds and other securities which immediately prior to the commencement of section 37 of the Financial Institutions Amendment Act, 1985, constituted ‘prescribed investments’.”

Amendment of section 31 of Act 24 of 1965, as amended by section 9 of Act 64 of 1968 and section 27 of Act 80 of 1978.

39. Section 31 of the Building Societies Act, 1965, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 - “(a) **[thirty] twenty** per cent of its liabilities in respect of transmission deposits;”
- (b) by the deletion of subsection (1A); and
- (c) by the substitution in subsection (4) for the words “secretary of the board of public debt commissioners” of the words “Public Investment Commissioners”.

Repeal of section 32 of Act 24 of 1965, as amended by section 19 of Act 91 of 1972, section 22 of Act 94 of 1977, section 19 of Act 82 of 1982 and section 36 of Act 86 of 1984.

40. Section 32 of the Building Societies Act, 1965, is hereby repealed.

Amendment of section 38 of Act 24 of 1965, as amended by section 14 of Act 58 of 1966, section 11 of Act 64 of 1968, section 8 of Act 67 of 1973 and section 28 of Act 80 of 1978.

41. Section 38 of the Building Societies Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A reducible mortgage of immovable property shall provide for the repayment of the capital amount advanced [—
- (a) **within a period of not more than thirty years where such capital amount does not exceed twenty thousand rand and the mortgaged property is property on which a dwelling house has been or is to be erected; or**
 - (aA) **within a period of not more than twenty-five years where such capital amount exceeds twenty thousand rand but not thirty thousand rand and the mortgaged property is property on which a dwelling house has been or is to be erected; or**
 - (b) **within a period of not more than [twenty] thirty years [in all other cases]:** Provided that if any portion of the capital amount advanced has been repaid to and re-advanced by the society, the period within which the balance of such capital amount and the amount so re-advanced shall be repaid, shall be reckoned from the date of the re-advance: Provided further that where a society increases the rate of interest on an advance, this subsection shall not be so construed that it requires the society to increase the regular payments of such advance.”

Short title and commencement.

42. (1) This Act shall be called the Financial Institutions Amendment Act, 1985.

(2) Section 8 shall be deemed to have come into operation on 18 July 1984.

(3) Section 39 (a) shall be deemed to have come into operation on 1 March 1984.

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- (4) (a) Sections 18 (c), 19 and 35 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (b) Different dates may be so fixed in respect of the different sections mentioned in paragraph (a).