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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KAAPSTAD, 29 JUNIE 1973.

DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 1119. 29th June, 1973.

No. 1119. 29 Junie 1973.

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. 67 of 1973: Financial Institutions Amendment Act, 1973.

No. 67 van 1973: Wysigingswet op Finansiële Instellings, 1973.

Act No. 67, 1973

FINANCIAL INSTITUTIONS AMENDMENT ACT, 1973.

ACT

To amend the provisions of the Stock Exchanges Control Act, 1947, to provide for the appointment of auditors by stockbrokers and carriers against shares; to amend the provisions of the Banks Act, 1965, relating to the acceptance of savings deposits from companies with limited liability; to amend the provisions of the Building Societies Act, 1965, relating to definitions, the acceptance of savings deposits from companies with limited liability, and the conditions and limitations governing the issue of subscription shares; in order to increase the capital amount which may be advanced in respect of housing loans which are repayable over a period of thirty years; to increase the maximum amount of any single advance which certain societies may make; to reduce the amount which a society may advance against the security of a reducible mortgage of certain immovable property; to empower the Minister to prescribe certain additions to the basic lending rate of a society in the case of certain advances; to empower the Minister to prescribe certain limits on the total amounts which may be advanced in respect of certain types of advances; to prohibit advances against the security of a mortgage of immovable property used for industrial purposes; and to amend the said provisions relating to collateral security which may be accepted by a society; to amend the provisions of the Securities' Transfer Act, 1965, relating to definitions, and the manner in which securities may be transferred; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 19th June, 1973.)

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

Insertion of section
21C in Act 7 of
1947.

1. The following section is hereby inserted in the Stock Exchanges Control Act, 1947, after section 21B:

“Appoint-
ment of
auditor.

21C. (1) Every stockbroker and carrier against shares shall appoint an auditor registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), who engages in public practice as contemplated in that Act and who has no direct or indirect financial interest in the business carried on by such broker or carrier.

(2) No director or employee of a stockbroker or of a carrier against shares, no member of a stock exchange and no firm of which any such

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director, employee or member is a member or employee, shall be appointed as an auditor of that stockbroker or carrier against shares.

(3) Every stockbroker and carrier against shares shall within thirty days—

(a) of the date of commencement of this section, if prior to such date he appointed an auditor as contemplated in subsection (1); or

(b) of the date of appointment of an auditor under this section,

as the case may be, apply to the Registrar for his approval of the appointment in question.

(4) The Registrar may, without assigning any reason therefor, refuse to approve any appointment of an auditor or may withdraw his prior approval of such appointment, and thereupon the auditor concerned shall vacate his office as auditor of the stockbroker or carrier against shares concerned.

(5) When the Registrar has in terms of subsection (4) refused to approve or has withdrawn his approval of the appointment of an auditor, or whenever for any other reason an auditor vacates his office as auditor of a stockbroker or carrier against shares, the stockbroker or carrier against shares concerned shall appoint some other person as auditor, but again subject to the approval of the Registrar.

(6) Where the auditor of a stockbroker or carrier against shares is a partnership, such auditor shall for the purposes of subsection (5) be deemed not to have vacated his office by reason of a change in the composition of the partnership, as long as not less than half the number of the partners in the reconstituted partnership are persons who were, as at the date when the appointment of the partnership as auditor was last approved by the Registrar, partners therein.”

Amendment of section 22 of Act 7 of 1947, as substituted by section 32 of Act 86 of 1971.

2. Section 22 of the Stock Exchanges Control Act, 1947, is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) cause such records to be audited, not later than the thirty-first day of May of the year in question, or such later date as the Registrar may allow, in respect of each year ending upon the last day of February, or such other day as the Registrar may approve, by an auditor whose appointment has been approved by the Registrar in terms of section 21C.”

Amendment of section 25 of Act 7 of 1947, as substituted by section 37 of Act 86 of 1971.

3. Section 25 of the Stock Exchanges Control Act, 1947, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) contravenes or fails to comply with the provisions of section 2 (1) (b), (c), (d), (e) or (f), 9C (3), 19, 19A, 20, 21 or 21C (1), (2), (3), (4) or (5);”

Amendment of section 21 of Act 23 of 1965, as amended by section 5 of Act 23 of 1970 and section 16 of Act 91 of 1972.

4. Section 21 of the Banks Act, 1965, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) A banking institution shall not accept savings deposits from any company with limited liability, other than an association registered in terms of section 21 of the Companies Act, 1926 (Act No. 46 of 1926), unless deposits in the account in question are accepted subject to the conditions that only one withdrawal may

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be made per month and that each deposit or withdrawal shall amount to not less than one hundred rand.”.

Amendment of section 1 of Act 24 of 1965, as amended by section 1 of Act 64 of 1968.

5. Section 1 of the Building Societies Act, 1965, is hereby amended by the insertion after the definition of “discount house” of the following definition:

“‘dwelling house’ includes a unit as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), and used or intended to be used for residential purposes;”.

Amendment of section 26 of Act 24 of 1965, as amended by section 6 of Act 64 of 1968, section 7 of Act 23 of 1970 and section 18 of Act 91 of 1972.

6. Section 26 of the Building Societies Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A society shall not accept savings deposits from any company with limited liability other than an association registered in terms of section 21 of the Companies Act, 1926 (Act No. 46 of 1926), unless—

- (a) the deposits are accepted subject to the conditions that only one withdrawal may be made per month and that each deposit or withdrawal shall amount to not less than one hundred rand; or
- (b) the moneys so invested with the society represent deposits referred to in paragraphs (a) and (b) of the proviso to section 25 (2) of the Rents Act, 1950 (Act No. 43 of 1950).”.

Amendment of section 28 of Act 24 of 1965, as amended by section 3 of Act 99 of 1967, section 7 of Act 64 of 1968 and section 8 of Act 23 of 1970.

7. Section 28 of the Building Societies Act, 1965, is hereby amended—

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

“(1) A society shall not issue any shares other than—

- (a) shares for an indefinite period, which shall be paid-up shares and of which the shareholder shall not be entitled at any time to demand redemption, and which the society shall, subject to the provisions of this section, be entitled to redeem after six months’ notice to the shareholder;
- (b) fixed period shares, which shall be—
 - (i) paid-up shares issued for periods of not less than five years;
 - (ii) subscription shares calculated to mature after the expiry of a period of not less than three years,

and of which the shareholder shall not be entitled to demand redemption and which the society shall not be entitled to redeem before the period of issue has expired or the share has matured: Provided that no society with total assets as set out in any item of the first column in the table hereunder, shall issue to any one person such subscription shares amounting, in the aggregate, exclusive of any dividend, to a sum exceeding the sum set out opposite that item in the second column of such table.

TABLE

Total assets as at the close of the last preceding financial year	Maximum aggregate subscription shares
Under R200 000	R15 000
R200 000 and under R500 000	R30 000
R500 000 and under R2 000 000	R60 000
R2 000 000 and under R10 000 000	R90 000
R10 000 000 and under R20 000 000	R120 000
R20 000 000 and over	R150 000"

and

- (b) by the insertion after subsection (1) of the following subsections:

"(1A) A society shall require in respect of every application for subscription shares a statement in which the total amount of subscription shares issued by societies to the applicant and which have not matured, is stated by him, and subject to the provisions of the proviso to subsection (1), the society shall not issue any subscription shares to the applicant if the aggregate of such shares and any other subscription shares already held by him, exclusive of any dividend, would exceed one hundred and fifty thousand rand.

(1B) A society shall not issue a subscription share to any limited liability company other than an association registered in terms of section 21 of the Companies Act, 1926 (Act No. 46 of 1926).

(1C) A society may, except in the case of any subscription share issued before 24 March 1965 to any limited liability company other than an association registered in terms of section 21 of the Companies Act, 1926 (Act No. 46 of 1926), at any time before the expiry of the period after which a subscription share is calculated to mature, at the request of the shareholder, extend such period for a further period of not less than twelve months after the expiry of which such share is calculated to mature, in which event such share shall mature after the expiry of such period of extension, and the society may thereafter from time to time similarly extend the total period after the expiry of which such share is calculated to mature, in which case such share shall mature after the expiry of any further period of such extension.

(1D) A society shall not issue a subscription share in respect of which the periodical contributions are required to be made otherwise than in equal monthly instalments, except in cases where dividends on shares in or interest on deposits with a building society are used as such contributions, in which cases the contributions may be made in equal three-monthly or six-monthly instalments.

(1E) A society shall not transfer a subscription share from one person to another person except in the following cases:

- (a) from parent to child or from grandparent to grandchild and conversely;
- (b) from a deceased estate to a beneficiary;
- (c) any other case approved by the registrar.

(1F) Where the period of any subscription share has been extended in terms of subsection (1C) or any subscription share has been transferred in terms of subsection (1E), the periodical contributions shall be continued."

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Amendment of section 38 of Act 24 of 1965, as amended by section 14 of Act 58 of 1966 and section 11 of Act 64 of 1968.

8. 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
- (b) within a period of not more than twenty 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 repayments of such advance.”

Amendment of section 40 of Act 24 of 1965, as amended by section 13 of Act 64 of 1968 and section 10 of Act 23 of 1970.

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

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

“(1) (a) A society with total assets as set out in any item of the first column of the table hereunder shall not make against the security of a mortgage of immovable property an advance exceeding the amount set out opposite that item in the second column of the said table: Provided that in the case of a society whose first financial year has not yet expired such advance may not exceed an amount, not exceeding one hundred thousand rand, fixed by the registrar in respect of such last-mentioned society:

TABLE

Total assets at the close of the last preceding financial year	Maximum advance
R2 000 001 to R5 000 000	R200 000
R5 000 001 to R20 000 000	R400 000
R20 000 001 to R200 000 000	R600 000
More than R200 000 000	R1 000 000

- (b) A society whose total assets did not exceed two million rand at the close of its last preceding financial year, shall not make against the security of a mortgage of immovable property an advance exceeding an amount, not exceeding one hundred thousand rand, fixed by the registrar in respect of such society.”; and
- (b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provisions of subsection (6) a permanent society shall not on the security of a reducible mortgage of immovable property advance more than eighty per cent of the value reasonably determined of the property hypothecated or the lease

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or licence ceded: Provided that if collateral security is furnished it may advance an amount—

- (a) not exceeding the value so determined of the said property, lease or licence; and
- (b) not exceeding the sum of—
 - (i) eighty per cent of the value so determined of the said property, lease or licence; plus
 - (ii) the value of the collateral security calculated as provided in section 46 (2).”.

Substitution of section 42 of Act 24 of 1965.

10. The following section is hereby substituted for section 42 of the Building Societies Act, 1965:

“Powers of Minister in respect of interest rates on certain mortgages.

42. (1) The Minister may, after consultation with the Association of Building Societies of South Africa, by notice in the *Gazette* prescribe that the interest rates charged by a society in respect of existing and future advances of the nature and amount specified in the notice, excluding—

- (a) any advance against the security of a mortgage of immovable property on which a dwelling house has been or is to be erected and where the outstanding amount of the loan does not exceed fifteen thousand rand; and
- (b) any advance to an officer of the society against the security of a mortgage of immovable property on which a dwelling house has been or is to be erected,

shall, as from a date or dates specified in the notice, exceed the basic lending rate of the society by at least the differences specified in the said notice: Provided that a society shall not in terms of this subsection be required to increase the interest rate in respect of a loan if in terms of a mortgage the society may not do so.

(2) For the purposes of this section ‘basic lending rate’ means the interest rate charged by a society in respect of the greater portion, by value, of its advances against the security of mortgage of immovable property on which a dwelling house has been or is to be erected and where the loan or any outstanding amount of a loan does not exceed fifteen thousand rand.

(3) In the case of advances against the security of a mortgage of immovable property on which a dwelling house has been erected and where the outstanding amount of the loan in question exceeds fifteen thousand rand or any amount specified by the Minister in a notice referred to in subsection (1), interest on the full balance of the loan shall be paid at the increased rate applicable to such an outstanding amount in terms of such a notice, until the outstanding amount has been reduced to below the aforementioned limit, whereupon interest shall be paid at the rate which in terms of such a notice is applicable to such a lower outstanding amount.

(4) The Minister may from time to time by notice in the *Gazette* amend or withdraw a notice issued by him under subsection (1).

(5) Any person who fails to comply with any provision of a notice issued by the Minister under subsection (1) shall be guilty of an offence.”.

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Substitution of section 44 of Act 24 of 1965

11. The following section is hereby substituted for section 44 of the Building Societies Act, 1965:

"Limitation of total amount of certain advances.

44. (1) The Minister may by notice in the *Gazette* prescribe which percentage of the total amount of advances or re-advances against the security of the mortgage of immovable property granted by a society during any financial year may be advances or re-advances against the security of the mortgage of immovable property—

- (a) on which a dwelling house has been or is to be erected and where the outstanding amount exceeds an amount specified in the notice;
- (b) on which flats have been or are to be erected; and
- (c) which is or is to be used for business purposes: Provided that the percentage prescribed in respect of advances or re-advances contemplated in paragraph (c) may not exceed five per cent.

(2) For the purposes of this section—

- (a) 'flats' means buildings, other than dwelling houses, used for residential purposes and includes grouped dwelling units of whatever kind, erected on any one hypothecated piece of land;
- (b) the use of immovable property for the purposes of any building more than fifty per cent of the floor area of which is used for residential purposes or purposes incidental thereto shall not be deemed to constitute use of such immovable property for business purposes; and
- (c) the use of any building for the purposes of an hotel or a boarding house or similar business shall not be deemed to constitute use for residential purposes.

(3) The Minister may from time to time by notice in the *Gazette* amend or withdraw a notice issued by him under subsection (1).

(4) Any person who fails to comply with any provision of a notice issued by the Minister under subsection (1) shall be guilty of an offence."

Amendment of section 45 of Act 24 of 1965.

12. Section 45 of the Building Societies Act, 1965, is hereby amended by the addition of the following paragraph:

"(d) advance money against the security of a mortgage of immovable property used for industrial purposes."

Amendment of section 46 of Act 24 of 1965.

13. Section 46 of the Building Societies Act, 1965, is hereby amended—

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

"(1) Save in the case of an advance to an officer of the society or an advance the amount of which does not exceed ten thousand rand, and where a dwelling house is or is to be erected on the hypothecated property in question, a society shall, notwithstanding the provisions of section 40, accept as collateral security for the purposes of subsection (2) or (4) of section 40, security in any of the forms specified in paragraph (d), (e) or (g) of subsection (2) only if additional security is furnished in any of the forms specified in paragraph (a), (b) or (c) of subsection (2), to an amount equal to at least one half of the difference between the amount advanced and the amount which the society

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may advance in terms of subsection (2) or (4) of section 40 if no collateral security is furnished.”;

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

“(e) consists of a bank guarantee, an insurer’s guarantee policy or any other form of guarantee or suretyship acceptable to the society, be taken at the full amount guaranteed;”;

(c) by the deletion of paragraph (f) of subsection (2).

Amendment of section 1 of Act 69 of 1965.

14. (1) Section 1 of the Securities’ Transfer Act, 1965, is hereby amended—

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

“‘security’ means any fully paid up share, stock, debenture, debenture stock, loan stock, unit in a unit portfolio or other security, other than a bearer security, which is included in the list of securities referred to in paragraph (a) of section 9 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947), that may be dealt in on a stock exchange licensed under section 5 of that Act, and includes any right of option to acquire such a security, whether fully paid up or not, included in the said list;”;

(b) by the substitution for the definition of “stock exchange transaction” of the following definition:

“‘stock exchange transaction’ means a transaction for the purchase and sale of any security in which each party thereto is either—

(a) a member of a stock exchange which is licensed under section 5 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947), or is a person in any country other than the Republic, any part of whose regular business in such other country consists of the buying and selling of securities as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947); or

(b) a person acting through the agency of such a member or of a person referred to in paragraph (a).”.

(2) Subsection (1) shall be deemed to have come into operation on 30 August 1971.

Amendment of section 2 of Act 69 of 1965.

15. Section 2 of the Securities’ Transfer Act, 1965, is hereby amended by the addition of the following subsection:

“(5) Notwithstanding anything contained in this Act a transfer of a security after the publication of a notice in the *Gazette* in terms of subsection (4), by means of a securities transfer form or a brokers transfer form which was in use prior to any such publication, shall, for the purposes of this Act, and whether effected before or after the commencement of the Financial Institutions Amendment Act, 1973, be deemed to be a transfer by means of a valid securities transfer form or brokers transfer form.”.

Short title and commencement.

16. (1) This Act shall be called the Financial Institutions Amendment Act, 1973, and the provisions of sections 10, 11 and 13 thereof shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of the different provisions referred to in that subsection.