



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 518.

6 March 1987

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

No. 6 of 1987: Financial Institutions Amendment Act, 1987.

No. 518.

6 Maart 1987

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

No. 6 van 1987: Wysigingswet op Finansiële Instellings, 1987.

Act No. 6, 1987

FINANCIAL INSTITUTIONS AMENDMENT ACT, 1987

## 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 South African Reserve Bank Act, 1944, so as to empower the said Bank to appoint inspectors to inspect the affairs of a "banking institution" as defined in the Banks Act, 1965, a "mutual building society" as defined in the Mutual Building Societies Act, 1965, and a "building society" as defined in the Building Societies Act, 1986; to amend the Banks Act, 1965, so as to provide for the designation by the Reserve Bank of a Registrar and Deputy Registrar of Banks and for the granting to the Registrar of powers to delegate; and to transfer to the Registrar certain administrative functions presently performed by the Minister; to amend the Mutual Building Societies Act, 1965, so as to provide for the granting to the Registrar of powers to delegate; and to provide that certain functions shall be performed by the Registrar of Building Societies instead of the Minister; to amend the Building Societies Act, 1986, so as to provide for the designation by the Reserve Bank of a Registrar and Deputy Registrar of Building Societies and for the granting to the Registrar of powers to delegate; to amend the Inspection of Financial Institutions Act, 1984, so as to delete the expressions "banking institution", "mutual building society" and "building society" from the definition of "financial institution" and to provide that the "registrar" as defined in the Act shall not have any powers in respect of the said bodies; to amend the Financial Institutions (Investment of Funds) Act, 1984, so as to provide that a "building society" in terms of the Building Societies Act, 1986, shall be a "financial institution"; to provide that the powers of the Registrar of Financial Institutions with regard to the appointment of a curator may also be exercised by the Registrar of Banks and the Registrar of Building Societies; and to provide that certain provisions regarding the admissibility of an affidavit shall also apply with regard to an affidavit made by an inspector appointed by the South African Reserve Bank; to amend the Finance Act, 1978, so as to further empower the Minister of Finance to enter into agreements with insurers binding the Government to make payments to insurers in respect of certain losses; and to provide for matters in connection therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 2 March 1987.)*

## Act No. 6, 1987

## FINANCIAL INSTITUTIONS AMENDMENT ACT, 1987

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

Amendment of section 8 of Act 29 of 1944, as amended by section 32 of Act 36 of 1950, section 3 of Act 87 of 1969, section 2 of Act 49 of 1973 and section 1 of Act 47 of 1984.

1. Section 8 of the South African Reserve Bank Act, 1944, is hereby amended by the addition to subsection (1) of the following paragraph:

“(p) exercise the powers assigned to the bank by the Banks Act, 1965 (Act No. 23 of 1965), the Mutual Building Societies Act, 1965 (Act No. 24 of 1965) and the Building Societies Act, 1986 (Act No. 82 of 1986).”

Insertion of section 8A in Act 29 of 1944.

2. The following section is hereby inserted in the South African Reserve Bank Act, 1944, after section 8:

“Appoint-  
ment of in-  
spectors.

8A. (1) The bank may appoint inspectors (in either a full-time or a temporary capacity) to carry out inspections of the affairs, or any portion thereof, of a banking institution as defined in the Banks Act, 1965 (Act No. 23 of 1965), a mutual building society as defined in the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and a building society as defined in the Building Societies Act, 1986 (Act No. 82 of 1986).

(2) The provisions of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), except sections 2 and 7, shall *mutatis mutandis* apply to an inspection carried out in terms of subsection (1).

(3) Every inspector so appointed shall be furnished with a certificate stating that he has been appointed as an inspector under this Act.”

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, section 22 of Act 86 of 1984 and section 10 of Act 106 of 1985.

3. Section 1 of the Banks Act, 1965, is hereby amended by the substitution for the definition of “Registrar” of the following definition:

“‘Registrar’ means the Registrar of Banks [appointed] designated in terms of section 3;”

Substitution of section 3 of Act 23 of 1965.

4. The following section is hereby substituted for section 3 of the Banks Act, 1965:

“Registrar  
and Deputy  
Registrar  
of Banks.

3. (1) There shall be an office in Pretoria as part of the Reserve Bank, for the registration of banking institutions and bank controlling companies and for the administration of this Act, and [the State President shall, subject to the laws governing the public service, appoint] at the head of such office shall be [an officer] a person to be styled the Registrar of Banks, who shall, subject to the approval of the Minister, be designated by the Reserve Bank from among its officers or employees, and who shall per-

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form, under the control of the said Bank and in accordance with the directions issued by that Bank from time to time and subject to appeal to the Minister, the functions assigned to him by this Act.

(2) The [Minister] Reserve Bank may, subject to the [laws governing the public service] approval of the Minister, from among its officers or employees [appoint a] designate a person as Deputy Registrar of Banks, who may, subject to the control and directions of the Registrar, do anything that may lawfully be done by the Registrar.

(3) The Registrar may with the approval of the Reserve Bank—

- (a) delegate to an officer or employee of the Reserve Bank any power conferred upon the Registrar by or under this Act; or  
 (b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this Act.

(4) Any delegation under subsection (3) (a) shall not prevent the exercise of the relevant power by the Registrar himself.

[3] (5) Every appeal to the Minister in terms of this section shall be noted and prosecuted in the manner and within the time prescribed by regulation.

Amendment of section 4 of Act 23 of 1965, as amended by section 23 of Act 86 of 1984 and section 12 of Act 106 of 1985.

5. Section 4 of the Banks Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who intends to carry on the business of a banking institution in the Republic, may apply to the Registrar for permission to establish 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].”

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 and section 21 of Act 106 of 1985.

6. Section 16 of the Banks Act, 1965, is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(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*.”

Amendment of section 35 of Act 23 of 1965.

7. Section 35 of the Banks Act, 1965, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the banking institution concerned fails to pay the remuneration of any auditor appointed under subsection (2) the [Minister] Registrar shall pay such remuneration [out of public funds] and the Registrar shall recover from that banking institution an amount equal to that remuneration.”

Insertion of section 3A in Act 24 of 1965.

8. The following section is hereby inserted in the Mutual Building Societies Act, 1965, after section 3:

3A. (1) The registrar may with the approval of the Reserve Bank—

- (a) delegate to any officer or employee of the Reserve Bank any power conferred upon the registrar by or under this Act; or  
 (b) authorize any such officer or employee to per-

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form any duty assigned to the registrar by or under this Act.

(2) Any delegation under subsection (1) (a) shall not prevent the exercise of the relevant power by the registrar himself.”

Amendment of section 67 of Act 24 of 1965, as amended by section 14 of Act 64 of 1968 and section 56 of Act 101 of 1976.

9. Section 67 of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (12) of the following subsection:

“(12) In the event of an appointment in terms of subsection (11) the registrar shall, in consultation with the auditor, determine the remuneration to be paid to the auditor by the society for his services, and if the society fails to pay the remuneration the [Minister] registrar shall pay such remuneration [out of public funds] and the registrar shall recover from the society an amount equal to that remuneration.”

Substitution of section 4 of Act 82 of 1986.

10. The following section is hereby substituted for section 4 of the Building Societies Act, 1986:

“Building Societies Office. 4. For the registration of building societies and control companies and for the other purposes of this Act there shall be an office in Pretoria called the Building Societies Office, and at the head of such office shall be a person to be styled the Registrar of Building Societies.”

Substitution of section 5 of Act 82 of 1986.

11. The following section is hereby substituted for section 5 of the Building Societies Act, 1986:

“Registrar and Deputy Registrar of Building Societies. 5. (1) The Reserve Bank shall, subject to the approval of the Minister, designate an officer or employee in its service as Registrar of Building Societies, who shall perform, under the control of the said Bank and in accordance with the directions issued by that Bank from time to time, the functions assigned to the Registrar by or under this Act.  
(2) The Reserve Bank may, subject to the approval of the Minister, designate an officer or employee in its service as Deputy Registrar of Building Societies, who shall, subject to the control and directions of the Registrar, be competent to perform any function which the Registrar is permitted or required to perform.”

Substitution of section 6 of Act 82 of 1986.

12. The following section is hereby substituted for section 6 of the Building Societies Act, 1986:

“Registrar may assign certain functions to officers of Reserve Bank. 6. (1) The Registrar may with the approval of the Reserve Bank—  
(a) delegate to any officer or employee [in the public service] of the Reserve Bank any power conferred upon the Registrar by or under this Act; or  
(b) authorize any such officer or employee to perform any duty assigned to the Registrar by or under this Act.  
(2) Any delegation under subsection (1) (a) shall not prevent the exercise of the relevant power by the Registrar himself.”

Amendment of section 1 of Act 38 of 1984, as amended by section 106 of Act 82 of 1986.

13. Section 1 of the Inspection of Financial Institutions Act, 1984, is hereby amended—

- (a) by the deletion of paragraphs (d) and (e) of the definition of “financial institution”; and  
(b) by the deletion of paragraphs (d) and (e) of the definition of “registrar”.

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Amendment of  
section 1 of  
Act 39 of 1984.

14. Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended—

- (a) by the substitution for paragraph (e) of the definition of “financial institution” of the following paragraph:  
“(e) a mutual building society registered in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or a building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986)”; and
- (b) by the insertion after the definition of “registered” of the following definition:  
“‘registrar’ means the registrar appointed under the Acts referred to in paragraph (a), (b), (c), (d), (e) or (f), as the case may be, of the definition of ‘financial institution’”;

Amendment of  
section 5 of  
Act 39 of 1984.

15. Section 5 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
“(1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984, may at any time at the direction of the registrar of a financial [institutions] institution referred to in the said Act, inspect the affairs of a board of executors, trust company or other company mentioned in paragraph (g) of the definition of ‘financial institution’ in section 1 of this Act and of a nominee company controlled by [a] the financial institution in respect of which the registrar concerned was appointed, in order to ascertain whether the provisions of this Act are being complied with.”; and
- (b) by the substitution for subsection (2) of the following subsection:  
“(2) The registrar of a financial [institutions] institution referred to in this Act may cause the affairs of any company which he has reasonable cause to believe holds or administers trust property, to be inspected in order to ascertain whether the provisions of this Act are applicable to it.”.

Amendment of  
section 6 of  
Act 39 of 1984.

16. Section 6 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended:

- (a) by the substitution for subsection (1) of the following subsection:  
“(1) If as a result of an inspection of the affairs of a financial institution under any law, the registrar of a financial [institutions] institution is of the opinion that it is for any reason desirable to do so, he may without notice to the financial institution concerned apply to a division of the Supreme Court having jurisdiction (hereinafter referred to as the court) for the appointment of a curator to take control of and to manage the whole or any part of the business of that financial institution.”;
- (b) by the substitution for subsection (3) of the following subsection:  
“(3) Upon the application of the financial institution the court may anticipate the return day if not less than 48 hours’ notice of such application has been given to the registrar of that financial [institutions] institution.”; and
- (c) by the substitution for subsections (6), (7) and (8) of the following subsections:  
“(6) The curator shall furnish the registrar of the

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financial [institutions] institution concerned with such information concerning the affairs of [the] that financial institution as he may from time to time require, and shall give him notice of any application which he may make to the court in terms of subsection (5). 5

(7) The registrar of the financial [institutions] institution concerned is entitled to be heard personally or by a representative at any application by the curator in terms of subsection (5), and he may himself make an application to the court with reference to the control and management of the business of [the] that financial institution by the curator. 10

(8) The curator is entitled to receive such remuneration out of the funds of the financial institution concerned as the court may direct." 15

Amendment of section 7 of Act 39 of 1984.

17. The following section is hereby substituted for section 7 of the Financial Institutions (Investment of Funds) Act, 1984:

"Records and entries in account books admissible in evidence. 7. The records of a financial institution and of a nominee company or trust controlled or administered by that institution and the books of account of the institution, company or trust are, in any proceedings under this Act, admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on the production of a document purporting to be an affidavit by one of the directors, officials, employees or agents of the institution or company or by an inspector appointed under the Inspection of Financial Institutions Act, 1984, or section 8A of the South African Reserve Bank Act, 1944 (Act No. 29 of 1944), or of other sufficient evidence, to the effect that those records or books of account are or have been the ordinary records and books of account of the institution, company or trust and that those records have been kept or those entries have been made in the books of account in the ordinary course of business." 20 25 30 35

Amendment of section 6 of Act 94 of 1978, as amended by section 16 of Act 113 of 1984 and section 18 of Act 77 of 1986.

18. Section 6 of the Finance Act, 1978, is hereby amended—

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

"(a) No person, whether as insurer or insured, shall after the commencement of section 18 of the Financial Institutions Amendment Act, 1987, within or outside the Republic enter into an insurance contract in terms of which the insurer assumes the obligation in respect of property situated in the Republic, including the territorial waters of the Republic, to indemnify, in terms of the policy issued by virtue of such contract, the owner of such policy against loss of or damage to property, including consequential loss referred to in paragraph (a) of subsection (1), unless— 40 45 50

(i) the insurer is a registered insurer who has entered into an agreement contemplated in subsection (1); or

(ii) the insurer referred to in subparagraph (i) has declared in writing that he is not prepared to assume such obligation or any part of such obligation or any other obligation in connection with such property, whether on the conditions contemplated in such insurance contract or on any other conditions."; and 55 60

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

“(2) For the purpose of this section “loss of or damage to property” means any loss of or damage to property related to or caused by—

- (a) any political riot or commotion;
- (b) any insurrection, rebellion or revolution;
- (c) any labour unrest, strike or lock-out;
- (d) any other act arising from, or caused by, any event referred to in paragraph (a), (b), or (c) committed by any person or persons with the intention to cause loss of, or damage to property, excluding loss or damage directly related to or caused by theft or attempted theft;”
- (e) any attempt to cause any event referred to in paragraph (a), (b) or (c) or any attempt to commit any act referred to in paragraph (d); or
- (f) any action of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any event or act referred to in paragraph (a), (b), (c), (d) or (e).”

Short title and commencement.

19. (1) This Act shall be called the Financial Institutions Amendment Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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