

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain uneven numbered pages as the other language is printed on even numbered pages.



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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CAPE TOWN, 22 JULY 1988

No. 11418

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1401.

22 Julie 1988

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

No. 96 van 1988: Wysigingswet op die Suid-Afrikaanse Reserwebank, Bankinstellings, Onderlinge Bouverenigings en Bouverenigings, 1988.

No. 1401.

22 July 1988

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

No. 96 of 1988: South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988.

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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.

# ACT

To amend the provisions of the South African Reserve Bank Act, 1944, so as to provide for the inspection of the affairs of certain persons or institutions suspected of carrying on the business of a banking institution, a mutual building society or a building society while not registered as such; to amend the provisions of the Banks Act, 1965, so as to further define certain expressions; to exclude mutual building societies from the application of the last-mentioned Act; to restrict the acquisition of banking institutions; to further regulate the minimum reserve balance and minimum liquid assets which a bank is required to maintain; to provide for the determination by regulation of the maximum amount which may be maintained with a banking institution on savings account; to further regulate the granting of loans by a banking institution to members of its affiliated group; to provide specifically that the consent of the Registrar of Banks is required for the establishment or acquisition, whether within or outside the Republic, by a banking institution of a subsidiary company; to further regulate the holding of shares in banking institutions and bank controlling companies and the rectification of such shareholdings which exceed the prescribed limits; to grant certain exemptions from stamp duty; to further regulate the submission of lists of shareholders to the Registrar of Banks by banking institutions; to further regulate the approval by the Registrar of Banks of the appointment of auditors by banking institutions; and to declare a certain failure to be an offence; to amend the provisions of the Mutual Building Societies Act, 1965, so as to further define certain expressions and, by means of the further definition of certain other expressions, to disqualify as liquid assets, for the purposes of the last-mentioned Act, deposits with a bank withdrawable on demand and to declare only those advances which have been granted irrevocably, to be one of the medium-term liabilities of a mutual building society for the purposes of the maintenance of its financial position; to authorize mutual building societies to issue certain debentures which may rank as unimpaired reserves and which shall for the purposes of the maintenance of the financial position of such societies not rank as liabilities; to further regulate the minimum reserve balance and minimum liquid assets which a mutual building society is required to maintain; to provide for the prescribing by regulation of the maximum amount which mutual building societies may quarterly accept by way of fixed deposits for periods shorter than 12 months; to further regulate the granting of advances by mutual building societies; to further regulate the amalgamation of mutual building societies and the transfer of their assets and liabilities; and to further regulate the submission by the Registrar of Building Societies of his annual report; to amend the Building Societies Act, 1986, so as to further define certain expressions and, by means of the further definition of certain other expressions, to disqualify as liquid assets, for the purposes of the last-mentioned Act, deposits with a bank withdrawable on demand and to provide that certain debentures issued by building societies shall not rank as

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a liability for the purposes of the maintenance by such societies of their financial position; to further determine the circumstances under which a person shall be deemed to control a building society; to fully exclude banks from the application of the last-mentioned Act; to further regulate the disclosure of the names of directors of building societies; to further regulate the holding of shares in building societies; to regulate the rectification of such shareholdings which exceed the prescribed limits; to further regulate the amalgamation of building societies and the transfer of their assets and liabilities; to provide for the prescribing by regulation of the maximum amount which building societies may quarterly accept by way of fixed deposits for periods shorter than 12 months; to further regulate the granting of advances by building societies; to provide that certain debentures issued by building societies may rank as share capital for particular purposes; to further regulate the minimum reserve balance and minimum liquid assets which a building society is required to maintain; to extend certain exemptions from stamp duty; to further regulate certain offences by directors or employees of building societies or control companies of building societies; and to further regulate the submission by the Registrar of Building Societies of his annual report; and to provide for matters connected therewith.

(English text signed by the State President.)  
(Assented to 6 July 1988.)

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

Insertion of section 8B in Act 29 of 1944

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

“Inspection of affairs of person, partnership, close corporation, company or other juristic person not registered as banking institution, mutual building society or building society

- 10           **8B. (1)** If the Governor or a Deputy Governor has reason to suspect that any person, partnership, close corporation, company or other juristic person who or which is not registered in terms of the Banks Act, 1965 (Act No. 23 of 1965), as a banking institution, in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), as a mutual building society or in terms of the Building Societies Act, 1986 (Act No. 15           82 of 1986), as a building society, is carrying on the business of a banking institution, a mutual building society or a building society, he may—
- (a) if it is so suspected that the business of a banking institution is being carried on, direct the Registrar of Banks referred to in section 3 of the Banks Act, 1965; or
- 20           (b) if it is so suspected that the business of a mutual building society or a building society is being carried on, direct the Registrar of Building Societies referred to in section 5 of the Building Societies Act, 1986, to cause the affairs or any part of the affairs of such person, partnership, close corporation, company or other juristic person to be inspected by an inspector appointed under section 8A (1), in order to establish whether or not the business of a banking institution, mutual building society or building society, as the case may be, is being carried on by that person, partnership, close corporation, company or other juristic person.
- 25           (2) The provisions of sections 4, 5, 8 and 9 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), shall apply *mutatis mutandis* in respect of an inspection carried out in terms of subsection
- 30           **(1).**”

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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, section 10 of Act 106 of 1985 and section 3 of Act 56 of 1987

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

(a) by the substitution in subsection (1) for the definition of “associate” of the following definition:

“‘associate’, in relation to a person, includes—

- 10 (a) the controlling company (if any) of that person;  
 (b) a subsidiary company of that person;  
 (c) a subsidiary company of any of the companies referred to in paragraphs (a) and (b);  
 15 (d) a controlling shareholder of that person or such a shareholder of his controlling company;  
 (e) a business partner of that person or of his controlling shareholder or of such a shareholder of that person’s controlling company or of any of the companies referred to in paragraphs (a), (b) and (c), provided such business partner is able, by virtue of his own  
 20 shareholding, to contribute to the influence which such person, controlling shareholder or company is able to exert as a shareholder; and  
 (f) any person who is a director or other executive officer of that person or of any of the companies referred to in paragraphs (a),  
 25 (b) and (c) or of any shareholder or business partner referred to in paragraph (d) or (e), provided such director or executive officer is able to contribute to the influence which such person, company, shareholder or business partner is able to exert by virtue of a shareholding;”;

30 (b) by the substitution in subsection (1) for paragraph (gA) of the definition of “liquid assets” of the following paragraph:

“(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 and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products, or to a control board established under the Marketing Act, 1968 (Act No. 59 of 1968), for the purchase of  
 35 agricultural products;” and  
 40 agricultural products;”;

(c) by the deletion of paragraph (g) of subsection (6).

Amendment of section 2 of Act 23 of 1965, as amended by section 38 of Act 101 of 1976, section 20 of Act 46 of 1984 and section 11 of Act 106 of 1985

45 3. Section 2 of the Banks Act, 1965, is hereby amended by the insertion in subsection (1) after the expression “local authority”, where it occurs the first time, of the words “or any mutual building society”.

Amendment of section 7 of Act 23 of 1965, as amended by section 39 of Act 101 of 1976 and section 13 of Act 106 of 1985

50 4. Section 7 of the Banks Act, 1965, is hereby amended—

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

“(1) No person shall carry on the business of a banking institution unless that person has been registered or provisionally registered as a bank or a discount house, and no person other than a registered bank or bank  
 55 controlling company shall without the consent of the Registrar acquire a registered banking institution.”;

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

“(1A) For the purposes of subsection (1), a registered banking institution shall be deemed to have been acquired if a group of persons acting in collaboration, have jointly and together with their associates, if any, acquired shares in the banking institution which enable such group to exercise control, *mutatis mutandis* in the manner contemplated in the definition of “bank controlling company”, over that banking institution.”; and

(c) by the addition of the following subsection:

“(3) The controlling company of a registered banking institution and its associates, if any, shall not without the written consent of the registrar, sell or otherwise dispose of such number of their shares in that banking institution as to render that company unable to continue exercising control over the banking institution.”.

15 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, section 21 of Act 106 of 1985 and section 6 of Act 6 of 1987

5. Section 16 of the Banks Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

20 “(1) A bank shall maintain a reserve balance with the Reserve Bank which, together with the [total] average daily amount of its Reserve Bank notes and subsidiary coin [and gold coin], calculated over all the days of the latest month in respect of which it has furnished a return to the Registrar in terms of section 13 (1) (a), amounts to not less than the sum of—

25 (a) eight per cent of its short-term liabilities to the public in the Republic, other than liabilities under acceptances; and

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

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

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, section 20 of Act 46 of 1984 and section 22 of Act 106 of 1985

35 6. Section 17 of the Banks Act, 1965, is hereby amended—

(a) by the substitution for paragraphs (iii) and (iv) of the proviso to subsection (1) of the following paragraphs, respectively:

40 “(iii) a 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 deposits included under the said paragraphs as well as the amounts owing to it by other banks, mutual building societies registered in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and building societies registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), and payable within the respective periods referred to in paragraphs (a), (b) and (c);

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

50 (b) by the addition to the proviso to subsection (1) of the following paragraph:

55 “(v) a bank may, in calculating the amount of its liquid assets on a particular day, take into account as the amount of its Reserve Bank notes, subsidiary coin and gold coin, the average daily amount of those

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assets, calculated according to the amounts thereof on all the days of the latest month in respect of which it has furnished to the Registrar a return in terms of section 13 (1) (a).”.

Amendment of section 21 of Act 23 of 1965, as amended by section 5 of Act 23 of 1970, section 16 of Act 91 of 1972, section 4 of Act 67 of 1973, section 20 of Act 80 of 1978 and section 27 of Act 86 of 1984

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

(a) by the substitution for subsection (4) of the following subsection:

10 “(4) (a) A banking institution shall not allow any one person to maintain with it a credit balance on savings account in excess of **[fifty thousand rand]** an amount prescribed by regulation: Provided that nothing in this subsection contained shall preclude an institution from crediting interest to a savings account.

15 (b) Where at the commencement of **[section 27 of the Financial Institutions Amendment Act, 1984,]** a regulation prescribing a limit contemplated in paragraph (a), the credit balance on a savings account lawfully exceeds **[the]** that limit **[prescribed in paragraph (a)],** or where a limit so prescribed is exceeded as a result of an amalgamation of banking institutions, or the taking over by a banking institution of the assets and liabilities of another banking institution, a mutual building society or a building society, such balance shall not by reason of the provisions of that paragraph be required to be reduced to the said limit: Provided that—

20 (i) no further amount other than interest shall be credited to such account so long as it shows a credit balance exceeding the said limit; and

25 (ii) if the balance in such account is at any time reduced to the said limit or less, that limit shall also apply to it.”; and

(b) by the deletion of subsection (7).

30 Amendment of section 21A of Act 23 of 1965, as inserted by section 47 of Act 101 of 1976 and amended by section 18 of Act 94 of 1977, section 31 of Act 103 of 1979 and section 106 of Act 82 of 1986.

8. Section 21A of the Banks Act, 1965, is hereby amended by the substitution, in paragraph (a) of subsection (4), for the words preceding the proviso of the following 35 words:

40 “The total amount owing to a banking institution in respect of loans and advances granted by it to members of its affiliated group, other than those to banking institutions, mutual building societies or building societies in that group and those to subsidiaries of the banking institution mentioned in subsection (1), plus the total amount of the banking institution’s investment in redeemable preference shares (excluding preference shares which can be converted into ordinary shares) issued by members of the said group shall not exceed an amount equal to five per cent of the banking institution’s total liabilities to the public.”.

45 Amendment of section 27A of Act 23 of 1965, as substituted by section 28 of Act 106 of 1985

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

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

50 27A. A banking institution shall not establish or acquire a subsidiary company within or outside the Republic 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 obtained.”.

55 Amendment of section 28 of Act 23 of 1965, as substituted by section 49 of Act 101 of 1976

10. Section 28 of the Banks Act, 1965, is hereby amended —

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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5 “Shares in a banking institution or bank controlling company shall not  
[register shares in it] be registered and shall also, after the commence-  
ment of the South African Reserve Bank, Banking Institutions,  
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1988, not be allowed to remain registered in the name of a nominee or  
any other person who is not the beneficial owner of the shares except  
in the following cases:”; and

(b) by the addition of the following subsection:

10 “(3) If as a result of the amendment of the provisions of subsection (2) by  
the provisions of the South African Reserve Bank, Banking Institutions,  
Mutual Building Societies and Building Societies Amendment Act, 1988,  
shares are, on or after the date of commencement of that amendment,  
registered contrary to the provisions of the said subsection as so amended,  
15 or if after the said date of commencement shares are, as a result of the sale  
or other disposal thereof, registered contrary to the provisions of the said  
subsection as so amended, the person in whose name such shares are  
registered as well as the beneficial owner of the shares shall within 45 days  
after the said date of commencement or the date of sale or other disposal  
20 of the shares, as the case may be, provide the banking institution or bank  
controlling company, as the case may be, wherein the shares in question are  
held, with details of the shares in question as well as the documents  
necessary for the transfer of the shares in the name of the beneficial owner  
of the shares, and the banking institution or bank controlling company  
25 shall, notwithstanding the provisions of subsections (1) and (3) of section  
28D, effect such transfer of the shares as soon as possible.”.

Amendment of section 28B of Act 23 of 1965, as inserted by section 50 of Act 101 of 1976

11. Section 28B of the Banks Act, 1965, is hereby amended by the substitution for the words “twenty-five thousand” of the words “one hundred thousand”.

30 Amendment of section 28D of Act 23 of 1965, as substituted by section 31 of Act 106 of 1985

12. Section 28D of the Banks Act, 1965, is hereby amended—

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

35 “Subject to the provisions of subsections (2) and (4) of this section and  
of sections 28 (3), 28B and 28E, a bank or bank controlling company  
shall not register shares in it in the name of a person other than a  
registered bank or a registered bank controlling company [or a  
company approved by the registrar in terms of section 12A (4)], except  
40 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—”;

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

45 “(3) A discount house shall not register shares in it in the name of a  
person (other than a [registered] bank controlling company registered in  
respect of that discount house) 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.”; and

(c) by the addition of the following subsections:

50 “(8) Where the total nominal value of shares in a banking institution or  
bank controlling company registered in the name of a financial company  
and of its associates or of any other person and of his associates, exceeds the  
relevant percentage referred to in subsection (1) or (3) as a result of—

55 (a) the application of the definition of ‘associate’ as amended by the  
provisions of the South African Reserve Bank, Banking Institutions-  
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1988, and of section 28 as so amended; or

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- (b) the amalgamation of the banking institution or bank controlling company with another banking institution or another bank controlling company, respectively; or
- 5 (c) the taking over by the banking institution of the assets and liabilities of another banking institution or of a building society or a mutual building society; or
- (d) an amalgamation of shareholders of the banking institution or bank controlling company or the taking over by one such shareholder of the assets and liabilities of another such shareholder, or the acquisition by
- 10 one such shareholder of control over another such shareholder, no further shares in the banking institution or bank controlling company in question shall be issued to or registered in the name of or transferred to that financial company or any of its associates or issued to or registered in the name of or transferred to that person or any of his associates as long as the relevant percentage is exceeded, and the said financial company or other
- 15 person in conjunction with the banking institution or bank controlling company in question, shall, within 45 days from the date of commencement of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, or the date on which the exceeding of the relevant percentage developed, whichever date is the latest, furnish the Registrar with particulars of the case and, within six months from the date of the said commencement or the date on which the exceeding of the relevant percentage developed, as the case may be, submit
- 20 to the Registrar a scheme whereby the shareholdings in question will within a period acceptable to the Registrar and in accordance with the conditions determined by the Registrar, be reduced to the extent that the requirements of subsection (1) or (3) relating to the relevant percentage will be complied with.
- (9) When and for so long as the total nominal value of shares in a banking institution or a bank controlling company registered in the name of a
- 30 financial company and of its associates or of another person and of his associates, plus the total nominal value of such shares registered in the name of —
- (a) any pension fund, established in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), of which the employees of that financial company or of any of its associates referred to in paragraph (a), (b), (c) or (d) of the definition of 'associate', or of that person or any of his associates referred to in the said paragraphs, are members; or
- 35 (b) any trust which is controlled or administered by that financial company or any of its associates or that person or any of his associates,
- 40 exceeds the relevant percentage referred to in subsection (1) or (3), the maximum votes that may, in respect of all the shares mentioned hereinbefore in this subsection, be cast in favour of or against any proposed resolution of the banking institution or bank controlling company in question, shall, notwithstanding anything to the contrary contained in any other Act, as from the date of commencement of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, be limited, in the case of a financial
- 45 company and its associates, to 30 per cent and, in the case of any other person and his associates, to 10 per cent of the voting rights attached to all the issued shares of the banking institution or bank controlling company in question."
- 50

**Insertion of section 30B in Act 23 of 1965**

13. The following section is hereby inserted in the Banks Act, 1965, after section 55 30A:

**"Exemption of certain transactions from stamp duty**

**30B. No stamp duty imposed by the Stamp Duties Act, 1968 (Act No. 77 of 1968), shall be payable in respect of the transfer of shares in a**

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banking institution or its subsidiary company, sold or disposed of in any other manner by such banking institution to its controlling company, if the sale or disposal has been approved by the Registrar."

Amendment of section 34 of Act 23 of 1965, as amended by section 52 of Act 101 of 5 1976

14. Section 34 of the Banks Act, 1965, is hereby amended by the substitution in the proviso to subsection (5) for the word "twenty-five" of the words "one hundred".

Amendment of section 35 of Act 23 of 1965, as amended by section 7 of Act 6 of 1987

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

15 "(f) Any banking institution shall, within thirty days of the date [of appointment of any auditor] on which a particular person is for the first time appointed as auditor under this subsection, apply to the Registrar in the form prescribed by regulation, for his approval of the appointment and shall, whenever any auditing firm of which less than half of the partners or directors involved in the auditing of the banking institution are persons who were partners in or directors of that firm on the date when the appointment of that firm as auditor was last approved by the Registrar, is appointed as auditor, so apply to the Registrar for his approval."

20 Amendment of section 49 of Act 23 of 1965, as amended by section 6 of Act 23 of 1970, section 32 of Act 86 of 1984 and section 36 of Act 106 of 1985

16. Section 49 of the Banks Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

25 "(1) Any person who contravenes any provision of this Act or fails to comply with any provision of this Act which imposes any duty upon him or with any direction issued by the Registrar under section 9 (1), shall be guilty of an offence."

30 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 69 of Act 4 of 1984, section 20 of Act 46 of 1984, section 34 of Act 86 of 1984, section 37 of Act 106 of 1985 and section 1 of Act 81 of 1986

17. Section 1 of the Mutual Building Societies Act, 1965, is hereby amended—

35 (a) by the substitution in subsection (1) for the definition of "bank" or "banker" of the following definition:

"'bank' or 'banker' means [a banking] an institution registered [otherwise than provisionally] as a bank under the Banks Act, 1965 (Act No. 23 of 1965) [which is required to maintain a reserve balance with the Reserve Bank];";

40 (b) by the substitution in subsection (1) for the definition of "building society" of the following definition:

"'building society' means an institution registered as a building society under the Building Societies Act, 1986 (Act No. 82 of 1986);"

45 (c) by the substitution in subsection (1) for the definition of "liability" of the following definition:

"'liability', in relation to a society, includes a liability towards the members of the society in respect of its share capital, but excludes a liability towards such members in respect of its reserves and excludes a liability in respect of debentures issued in terms of section 30 (4);";

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- (d) by the substitution in subsection (1) for paragraph (c) of the definition of "liquid assets" of the following paragraph:  
 "(c) loans to a discount house repayable on demand [and deposits with a bank withdrawable on demand];";
- 5 (e) by the substitution in subsection (1) for paragraph (f) of the definition of "liquid assets" of the following paragraph:  
 "(f) 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 and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products, or to a control board established under the Marketing Act, 1968 (Act No. 59 of 1968), for the purchase of agricultural products;";
- 10 (f) by the addition in subsection (1) to the definition of "liquid assets" of the following paragraph:  
 "(k) self-liquidating bills or promissory notes arising out of the movement of goods, with a maturity not exceeding one hundred and twenty days, or six months in the case of agricultural bills, and which are discountable by the Reserve Bank;";
- 15 (g) by the substitution in subsection (1) for paragraph (b) of the definition of "medium-term liability" of the following paragraph:  
 "(b) any amount which as at that day has not yet been paid out in respect of an advance irrevocably granted on or before that day;"; and
- 20 (h) by the substitution in subsection (1) for paragraph (d) of the definition of "urban immovable property" of the following paragraph:  
 "(d) any erf, lot, stand or other piece of land situated in a township as defined in section 1 of the Black Communities Development Act, 1984 (Act No. 4 of 1984), or contemplated in Proclamation No. R293 of 1962, or any premises in respect of which leasehold was granted under section 52 (5) of the said Act;";
- 25  
30

Amendment of section 30 of Act 24 of 1965, as substituted by section 20 of Act 81 of 35 1986

18. Section 30 of the Mutual Building Societies Act, 1965, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 "A permanent society shall manage its affairs in such a way that the sum of its unimpaired reserves and the outstanding amount in respect of debentures issued by it in terms of subsection (4) do not at any time during any quarter amount to less than the greater of—"; and
- 40 (b) by the addition of the following subsections:  
 "(4) A permanent society may, with the prior written approval of the registrar, by means of the issue of debentures obtain loan capital to supplement its unimpaired reserves for purposes of subsection (1) to the extent determined in subsection (5), provided the debentures are issued subject to—
- 45 (i) the condition that the debentures are issued for a minimum period of seven years;
- 50 (ii) the condition that the debentures may be repaid before maturity only at the option of the society and with the prior written approval of the registrar;
- 55 (iii) the condition that, notwithstanding the provisions of any other Act, in the event of the winding-up of the society the capital amount of the debentures shall not be repaid until the claims of other creditors have been fully satisfied; and

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(iv) such further conditions, if any, as the Minister may determine by regulation.

(5) The total amount of debentures issued under subsection (4) and not yet repaid, shall not at any time exceed an amount equal to twenty per cent of the amount which the society is required to maintain by way of unimpaired reserves in terms of subsection (1)."

Amendment of section 31 of Act 24 of 1965, as substituted by section 22 of Act 81 of 1986

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

(a) by the addition of the following proviso to subsection (1):

"Provided that—

(i) a society, in determining its liabilities referred to in paragraph (a), shall, in respect of each of its branches, including its head office, where the total amount of such liabilities can be determined daily, bring into account the average daily amount of such liabilities calculated according to the amounts thereof on all the days in the said preceding or penultimate month, instead of the amount of such liabilities as at the end of such preceding or penultimate month;

(ii) a society may, in calculating the amount of its liquid assets at any particular time, take into account as the amount of its Reserve Bank notes, subsidiary coin and gold coin, the average daily amount calculated according to the amounts of those assets held by the society on all the days of the latest month in respect of which a return in terms of section 34 has been certified as required by section 71A."; and

(b) by the substitution for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph:

"(ii) by a bank, another society or a building society [registered in terms of the Building Societies Act, 1986,] in so far as any such amount owed is a short-term liability for the bank, other society or building society concerned [excluding, in the case of a bank, deposits with the bank withdrawable on demand];"

Amendment of section 32 of Act 24 of 1965, as inserted by section 23 of Act 81 of 1986

20. Section 32 of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The credit balance in an account opened by a society in terms of subsection (1), together with the average daily amount of the society's Reserve Bank notes and subsidiary coin calculated according to the total amounts of those assets held by the society on all the days of the latest month in respect of which a return in terms of section 34 has been certified as required by section 71A, may at no time during any month amount to less than an amount equal to the sum of—

(a) 8 per cent (or such other percentage as may be fixed under subsection (4)) of its short-term liabilities; and

(b) 4 per cent (or such other percentage as may be so fixed) of its medium-term liabilities,

as at the last business day of the preceding month or, if the return in terms of section 34 has not yet at that particular time been certified as required by section 71A in respect of the said preceding month, as at the last business day of the penultimate month: Provided that a society, in determining its liabilities referred to in paragraph (a), shall, in respect of each of its branches, including its head office, where the total amount of such liabilities can be determined daily, bring into account the average daily amount of such liabilities calculated according to the amounts thereof on all the days in the said preceding or penultimate month, instead of the amount of such liabilities as at the end of such preceding or penultimate month."

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**Amendment of section 49 of Act 24 of 1965, as substituted by section 29 of Act 81 of 1986**

21. Section 49 of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for the words "five per cent" of the words "an amount equal to a 5 percentage prescribed by regulation".

**Amendment of section 49C of Act 24 of 1965, as inserted by section 29 of Act 81 of 1986**

22. Section 49C of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

- 10       “(1) A society shall not advance money by way of a housing advance or a business advance to any person against security of—
- 15       (a) a mortgage on immovable property or on any right to immovable property which is not urban immovable property or a right to urban immovable property;
- 20       (b) a second or subsequent mortgage on urban immovable property or on a right to urban immovable property unless the first mortgage or all mortgages, as the case may be, on such property or right ranking prior to that mortgage, is or are in favour of the society;
- 25       (c) a mortgage on urban immovable property or on any right to urban immovable property ranking *pari passu* with a mortgage in favour of another person on the same property or right;
- 30       [(d) a mortgage on urban immovable property used or intended for industrial purposes or on any right to urban immovable property which property is used or intended for industrial purposes;]
- 35       (e) a mortgage on a right to urban immovable property if that right is a lease of, or other right to occupy or use, the property—
- (i) having a remaining term of less than 20 years; or
- (ii) which is not at the discretion of the lessee, occupier or user renewable for a period of, or for continuous periods totaling, at least 20 years[; or],
- and a society shall not advance money to any person against security of [(f)] a fixed deposit which that person has invested with it or a share issued by it under section 28 to that person, unless the rate of interest payable on the advance is at least one per cent higher than the rate of interest payable on the fixed deposit or the rate of dividend payable on the share, as the case may be.”

**Amendment of section 49D of Act 24 of 1965, as inserted by section 29 of Act 81 of 1986**

23. Section 49D of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection:

- 40       “(2) The amount determined by a society in terms of subsection (1) in respect of any particular quarter shall not be less than an amount which, together with the total sum owing to it in respect of housing advances as at the last business day of the preceding quarter, equals [80 per cent] a percentage prescribed by regulation of its operating capital as at the said last business day of the said
- 45       preceding quarter.”

**Substitution of section 49E of Act 24 of 1965, as inserted by section 29 of Act 81 of 1986**

24. The following section is hereby substituted for section 49E of the Mutual Building Societies Act, 1965:

50       “Maximum extent of transactions in business advances and general advances

49E. The amount which a society applies during any particular quarter for business advances and general advances to persons other than its

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5 associates, shall, subject to compliance with the requirements of section 49D (1), not exceed an amount which, together with the total sum owing to it by persons other than its associates in respect of business advances and general advances as at the last business day of the preceding quarter, equals **[20 per cent]** a percentage prescribed by regulation of its operating capital as at the said last day of the said preceding quarter."

**Substitution of section 49F of Act 24 of 1965, as inserted by section 29 of Act 81 of 1986**

25. The following section is hereby substituted for section 49F of the Mutual Building Societies Act, 1965:

10 **"Maximum extent of transactions in general advances**

49F. The amount which a society applies during any particular quarter for general advances to persons other than its associates, shall, subject to compliance with the requirements of section 49D (1), not exceed an amount which, together with the total sum owing to it by persons other than its associates in respect of general advances as at the last business day of the preceding quarter, equals **[eight per cent]** a percentage prescribed by regulation of its operating capital as at the said last day of the said preceding quarter."

20 **Amendment of section 49H of Act 24 of 1965, as inserted by section 29 of Act 81 of 20 1986**

26. Section 49H of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Unless collateral security is furnished in favour of the society, a society shall not grant—

25 (a) a housing advance in excess of 90 per cent, in the case of a mortgage which provides for the redemption of the capital amount advanced by regular instalments which include interest on the outstanding amount, or in excess of 80 per cent, in the case of any other mortgage; or

(b) a business advance in excess of 80 per cent,

30 of the reasonably established value of the property or right which is mortgaged to the society: Provided that a society may in the case of an advance referred to in paragraph (a), in addition to the amount determined by the application of the applicable percentage referred to in that paragraph, also advance the full cost in respect of the registration of the property or right in the name of the

35 borrower."

**Repeal of section 49J of Act 24 of 1965, as inserted by section 29 of Act 81 of 1986**

27. Section 49J of the Mutual Building Societies Act, 1965, is hereby repealed.

**Substitution of section 55 of Act 24 of 1965**

28. The following section is hereby substituted for section 55 of the Mutual Building Societies Act, 1965:

**"Amalgamation and transfer of assets and liabilities**

55. (1) Two or more societies may with the written approval of the registrar amalgamate and become one society, and a society may with like approval transfer all or part of its assets and liabilities to another

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society or to a building society or a bank (registered as such otherwise than provisionally).

(2) The proposed terms and conditions of an amalgamation or transfer in terms of subsection (1) shall be submitted in advance to the registrar who shall, subject to the provisions of paragraphs (a) and (b) of subsection (3), approve of the proposal in question as drafted or with such modifications as he may deem necessary.

(3) No transaction involving the amalgamation of societies or the transfer of assets and liabilities from one society to another society or to a building society or a bank shall be of any force or effect unless—

(a) the registrar is satisfied that such transaction will not be detrimental to the public interest or cause undue hardship to the members of any of the societies concerned or of the society or building society or bank concerned, as the case may be;

(b) in the case of an amalgamation of two or more societies or the transfer of assets and liabilities from one society to another society, the agreement specifically provides that there shall be no division of the profits or of any of the reserves of the societies concerned among their members, but nothing in this paragraph shall be construed as preventing the making of reasonable provision out of the profits of a society for compensation to its officers (other than directors, alternate directors, local directors or members of local committees) for any resulting loss of office or for payment in recognition of past services rendered by such officers;

(c) the provisions of the agreement for the contemplated amalgamation or transfer are confirmed by special resolution by each of the societies concerned or by the society concerned and the building society or bank concerned, as the case may be.

(4) The notice concerning a special general meeting for the confirmation of any such amalgamation or transfer shall contain or have attached to it the complete terms and conditions of the relevant agreement.

(5) Notice of the passing of the special resolution concerning such amalgamation or transfer, together with a copy of such resolution and the full terms and conditions of the proposed amalgamation or transfer duly certified by two directors and the secretary of each of the [society] parties concerned, shall be sent by each of the [societies] parties affected to the registrar and shall be registered by him.

(6) The amalgamation or transfer shall take place upon the terms and conditions set forth in such resolution.

(7) Upon registration by the registrar of the appropriate notices—

(a) of any such amalgamation, the individual societies who were parties to the transaction shall be deemed to be dissolved and the registrar shall cancel their registration and at the same time and in their stead register the new society in terms of this Act;

(b) of any such transfer of all the assets and liabilities of a society, the society whose assets and liabilities are subject to transfer shall be deemed to be dissolved and its registration shall be cancelled by the registrar.

(8) The liquidator of a society which is being wound up voluntarily or by the court or the judicial manager of a society may transfer all the assets and liabilities of the society being wound up or under judicial management to another society, a building society or a bank: Provided that the provisions of paragraph (c) of subsection (3) and subsection (4) shall not apply to a society which is being wound up.

(9) Upon the registration by the registrar of the notice of the amalgamation of two or more societies or of the transfer of the assets and liabilities of any society to another society, a building society or a

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5 bank, all the assets and liabilities of the societies so amalgamated shall become assets and liabilities of the society registered in their stead, or, as the case may be, all, or, in the case of the transfer of only part of the assets and liabilities of a society, that part of, the assets and liabilities of the society transferring [its] assets and liabilities shall become assets and liabilities of the society or the building society or bank to which they are transferred.

10 (10) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or any immovable property which is transferred in accordance with the provisions or subsection (9) shall, upon production to him by the society or building society or bank concerned of such bond or of the title deeds of such immovable property and a certificate by the registrar of the registration by him of the notice of amalgamation or transfer, as the case may be, and without payment of transfer or stamp duty or registration fees or charges, make such endorsements upon such bond or title deeds and such entries in his registers as are necessary by reason of such amalgamation or transfer.

15 (11) The amalgamation of societies or transfer of assets and liabilities of a society under the provisions of this section shall not affect the rights of any creditor of any of the societies concerned or of the society or building society or bank concerned.

20 (12) In the case of a transfer of assets and liabilities of a society to a building society or a bank, provision may, subject to the provisions of subsection (14), be made in the relevant agreement for the transfer for compensation to members of the society, taking into account the unimpaired reserves of the society, by way of either a cash payment or a right to take up shares in the transferee institution or its control company, and provision may be so made for compensation to officers of the society *mutatis mutandis* in accordance with the provisions of subsection (3) (b).

25 (13) The basis on which and conditions subject to which compensation contemplated in subsection (12) to members shall take place, and also the amount of the unimpaired reserves of the society on the date of the latest quarterly return submitted to the registrar in terms of section 34A, and, in the case of cash payments, also the estimated total amount of such payments, shall be furnished in the relevant agreement for the transfer.

30 (14) A resolution to offer compensation referred to in subsection (12) to members, must be approved by both parties to the agreement for the transfer of assets and liabilities, by separate special resolution and shall provide that—

35 (a) only a member who on the day immediately prior to the date determined for the transfer of assets and liabilities held shares in the transferor society and which shares had been issued to such a member at least 12 months prior to that date, or which had been paid for out of the proceeds of shares redeemed by that society during the said 12 months, shall qualify for such compensation; and

(b) such a member shall nevertheless not be entitled to the compensation if he—

40 (i) is not resident in the Republic; or  
45 (ii) is a body corporate which is not incorporated in the Republic.

50 (15) Upon the transfer of assets and liabilities from a society to a building society or a bank, all investments in the form of shares issued by the society and which prior to the date of the transfer of its assets and liabilities have not yet been redeemed, shall be deemed to be fixed deposits with the transferee building society or bank.

55 (16) The conditions and any tax benefit which immediately prior to the date of transfer of assets and liabilities were applicable in respect of an investment in the form of shares referred to in subsection (15) shall, notwithstanding the provisions of that subsection but subject to the

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provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), continue to apply to the investment for a period of 10 years or until it is redeemed, whichever period expires first.”.

**Substitution of section 75 of Act 24 of 1965**

5 29. The following section is hereby substituted for section 75 of the Mutual Building Societies Act, 1965:

“Only a society may claim to be successor of or to be connected with a mutual building society

10 75. A person other than a society or agent of a society who in any letter, account or other document or by advertisement or in any other medium or manner of announcement to the public states that he is the successor of or has or had any connection with any mutual building society, shall be guilty of an offence.”.

**Amendment of section 76 of Act 24 of 1965**

15 30. Section 76 of the Mutual Building Societies Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection:

20 “(2) No officer of a society or firm in which such officer has a direct interest shall purchase or be interested in the purchase of any property owned by or mortgaged to the society [and sold by or at the instance of the society], unless the property is purchased at a duly advertised public sale or the sale is approved by the registrar.”.

**Substitution of section 83 of Act 24 of 1965**

31. The following section is hereby substituted for section 83 of the Mutual Building Societies Act, 1965:

25 “Annual report by Registrar

83. (1) The registrar shall as soon as may be practicable after the expiry of each financial year of mutual building societies submit to the Minister a report on his activities in terms of this Act during that financial year.

30 (2) The Minister shall table a copy of the report submitted to him in terms of subsection (1) in Parliament within 14 days after receipt thereof if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.”.

**Amendment of section 1 of Act 82 of 1986**

35 32. Section 1 of the Building Societies Act, 1986, is hereby amended—  
(a) by the substitution in subsection (1) for the definition of “associate” of the following definition:

“‘associate’, in relation to a person, includes—

- 40 (a) the controlling company, if any, of that person;  
(b) a subsidiary company of that person;  
(c) a subsidiary company of any of the companies referred to in paragraphs (a) and (b);  
(d) a controlling shareholder of that person or such a shareholder of his controlling company;  
45 (e) a business partner of that person or of his controlling shareholder or of such a shareholder of that person’s controlling company or of any of the companies referred to in paragraphs (a), (b) and (c), provided such business partner is able, by virtue of his own shareholding, to contribute to the influence which such person, controlling shareholder or company is able to exert as a share-  
50 holder; and

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- 5 (f) except in sections 70, 71 and 72, any person who is a director or other executive officer of that person or of any of the companies referred to in paragraphs (a), (b) and (c) or of any shareholder or business partner referred to in paragraph (d) or (e), provided such director or executive officer is able to contribute to the influence which such person, company, shareholder or business partner is able to exert by virtue of a shareholding;"
- 10 (b) by the substitution in subsection (1) for the definition of "liability" of the following definition:  
"liability", in relation to a building society, excludes a liability towards the members of the building society in respect of its share capital or reserves or towards debenture holders in respect of debentures issued by the building society in terms of section 77 (4);"
- 15 (c) by the substitution in subsection (1) for paragraph (c) of the definition of "liquid assets" of the following paragraph:  
"(c) loans to a discount house repayable on demand [and deposits with a bank withdrawable on demand];"
- 20 (d) by the substitution in subsection (1) for paragraph (f) of the definition of "liquid assets" of the following paragraph:  
"(f) bills issued by the Land and Agricultural Bank of South Africa 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 and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products, or to a control board established under the Marketing Act, 1968 (Act No. 59 of 1968), for the purchase of agricultural products;"
- 25 (e) by the addition in subsection (1) to the definition of "liquid assets" of the following paragraph:  
"(k) self-liquidating bills or promissory notes arising out of the movement of goods, with a maturity not exceeding one hundred and twenty days, or six months in the case of agricultural bills, and which are discountable by the Reserve Bank;"
- 30 (f) by the substitution in subsection (1) for paragraph (b) of the definition of "medium term liability" of the following paragraph:  
"(b) any amount which as at that day has not yet been paid out in respect of an advance irrevocably granted on or before that day;"
- 35 (g) by the substitution in subsection (1) for paragraph (d) of the definition of "urban immovable property" of the following paragraph:  
"(d) any erf, lot, stand or other piece of land situated in a township as defined in section 1 of the Black Communities Development Act, 1984 (Act No. 4 of 1984), or contemplated in Proclamation No. R293 of 1962, or any premises in respect of which leasehold was granted under section 52 (5) of the said Act;" and
- 40 (h) by the substitution for subsection (4) of the following subsection:  
"(4) For the purposes of this Act, a person shall be deemed to control a building society, if, in the case where that person is a company, the building society is a subsidiary of that company, or, whether or not that person is a company, if that person by himself or together with his associates—
- 45 (a) holds shares in the building society of which the total nominal value represents more than fifty per cent of the nominal value of all the issued shares of the building society, unless, due to limitations on the voting rights attached to the shares so held by the person and his associates, they are unable to exercise control over the building society; or
- 50 (b) is entitled to exercise more than fifty per cent of the voting rights in respect of the issued shares of that building society; or
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- (c) is entitled or has the power to determine the appointment of the majority of the directors of that building society, including—
- (i) the power to appoint or remove, without the concurrence of any other person, all or the majority of such directors;
  - (ii) the power to prevent any person from being appointed a director without his consent,
- and if a person's appointment as a director of the building society follows necessarily from his appointment as a director of the person first-mentioned in this subsection, the first-mentioned appointment shall for the purposes of this subsection be deemed to be an appointment by virtue of a power of the person so first-mentioned."

**Substitution of section 3 of Act 82 of 1986**

33. The following section is hereby substituted for section 3 of the Building Societies Act, 1986:

**"Exclusions**

3. Except where expressly stated otherwise, the provisions of this Act shall not apply to—

- (a) a bank [unless it applies more than 50 per cent of the funds which it acquires in the ordinary course of its business from the public, to grant housing or business advances]; and
- (b) a mutual building society."

**Amendment of section 11 of Act 82 of 1986**

34. Section 11 of the Building Societies Act, 1986, is hereby amended—

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

"(2) For the purposes of this section a person other than a bank accepting deposits or raising loans or in any other manner acquiring money from the public and applying more than half of that money to grant housing and business advances, shall be deemed to carry on business as, or in accordance with the business practice of, a building society."; and

- (b) by the addition of the following subsections:

"(4) A group of persons acting in collaboration shall not without the consent of the Registrar acquire shares in a registered building society or control company which shares, or which shares together with the total number of shares in that building society or control company held by those persons or their associates or which are acquired by such associates, will enable such group to exercise control over the building society or control company.

(5) The control company of a registered building society and its associates, if any, shall not without the written consent of the Registrar, sell or otherwise dispose of such number of their shares in that building society as to render that company unable to continue exercising control over the building society."

**Amendment of section 30 of Act 82 of 1986**

35. Section 30 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A company registered as a building society or as a control company shall continue to be a company under the Companies Act, and a provision of that Act shall, subject to subsection (2), continue to apply to any such company to the extent to which it is not inconsistent with a provision of this Act: Provided that—

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- (a) the provisions of the Companies Act governing the conversion of public companies into other forms of companies shall not apply to any such company; and
- (b) in the application, by virtue of the provisions of this subsection, of the provisions of section 171 (1) of the Companies Act in respect of a company referred to in this subsection, the reference in the said section 171 (1)—
- (i) to "director", shall be deemed to be a reference only to a member of the principal board of directors of the said company; and
- (ii) to "business letter", shall be deemed not to include a reference to any printed form of advice."

Amendment of section 37 of Act 82 of 1986

36. Section 37 of the Building Societies Act, 1986, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- "(1) Notwithstanding the Companies Act no building society or control company shall without the approval of the Registrar in writing—
- (a) allot or issue any of its shares to any person other than the intended beneficial shareholder [in the name of the nominee of that person]; [or]
- (b) [register the] transfer [of] any of its shares [to any person] in the name of [the nominee of that] a person other than the beneficial shareholder;
- or;
- (c) after the commencement of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.";
- (b) by the addition of the following subsection:
- "(3) If as result of the amendment of the provisions of subsection (1) by the provisions of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, shares are, on or after the date of commencement of that amendment, registered contrary to the provisions of the said subsection as so amended, or if after the said date of commencement shares are, as a result of the sale or other disposal thereof, registered contrary to the provisions of the said subsection as so amended, the person in whose name such shares are registered as well as the beneficial shareholder shall within 45 days after the said date of commencement or the date of the sale or other disposal of the shares, as the case may be, provide the building society or control company, as the case may be, wherein the shares in question are held, with details of the shares in question as well as the documents necessary for the transfer of the shares in the name of the beneficial shareholder, and the building society or control company shall, notwithstanding the provisions of subsection (1) of section 38, effect such transfer of the shares as soon as possible."

Amendment of section 38 of Act 82 of 1986

37. Section 38 of the Building Societies Act, 1986, is hereby amended by the addition of the following subsections:

- "(6) Where the total nominal value of shares in a building society or control company registered in the name of a person and of his associates, exceeds the percentage mentioned in subsection (1) (a) as a result of—
- (a) the application of the definition of "associate" as amended by the provisions of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988 and of section 37 as so amended; or

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- (b) the amalgamation of the building society or control company with another building society or control company, respectively; or
- (c) the taking over by the building society of assets and liabilities of another building society or a mutual building society; or
- 5 (d) the amalgamation of shareholders of the building society or control company or the taking over by one such shareholder of the assets and liabilities of another such shareholder, or the acquisition by one such shareholder of control over another such shareholder,
- 10 no further shares in the building society or control company in question shall be issued or transferred to that person or his associates as long as the said percentage is exceeded, and that person shall, in conjunction with the building society or control company in question, within 45 days from the date of commencement of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, or the date on which the exceeding of the relevant percentage developed, whichever date is the latest, furnish the Registrar with particulars of the case and, within
- 15 six months from the date of the said commencement or the date on which the exceeding of the relevant percentage developed, as the case may be, submit to the Registrar a scheme whereby the shareholdings in question will, within a period which is acceptable to the Registrar and in accordance with the conditions determined by the Registrar, be reduced to the extent that the requirements of subsection (1) (a) relating to the relevant percentage will be complied with.
- 20 (7) Where, in the circumstances referred to in subsection (6), the total nominal value of shares in a building society or control company registered in the name of foreign shareholders, exceeds the percentage referred to in subsection (1) (b), no additional shares shall be issued or transferred to any foreign shareholder as long as that percentage is so exceeded.
- 25 (8) When and for so long as the total nominal value of shares in a building society or a control company registered in the name of a person and of his associates, plus the total nominal value of such shares registered in the name of—
- 30 (a) any pension fund, established in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), of which the employees of that person or of any of his associates referred to in paragraph (a), (b), (c) or (d) of the definition of “associate”, are members; or
- 35 (b) any trust which is controlled or administered by that person or any of his associates,
- 40 exceeds the relevant percentage referred to in subsection (1) (a), the maximum votes that may, in respect of all the shares mentioned hereinbefore in this subsection, be cast in favour of or against any proposed resolution of the building society or control company in question, shall, notwithstanding anything to the contrary contained in any other Act, as from the date of commencement of the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988, be limited to 10 per cent of the voting rights attached to all the issued shares of the building society or control company in question.”
- 45

**Amendment of section 46 of Act 82 of 1986**

38. Section 46 of the Building Societies Act, 1986, is hereby amended by the 50 deletion of paragraph (f) of subsection (1).

**Amendment of section 52 of Act 82 of 1986**

39. Section 52 of the Building Societies Act, 1986, is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
- 55 “(1A) Notwithstanding anything to the contrary contained in the Companies Act but subject to the prior written approval of the Registrar—
- (a) two or more building societies may amalgamate and become one building society;

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- (b) a building society may transfer all or part of its assets and liabilities to another building society;
- (c) a building society may transfer all or part of its assets and liabilities to a bank registered otherwise than provisionally.”;
- 5 (b) by the substitution for subsection (3) of the following subsection:  
“(3) Notice of the passing of the special resolution concerning [such] a compromise, amalgamation, arrangement or take-over or arrangement for the transfer of assets and liabilities, referred to in subsection (1) or (1A), together with a copy of such resolution and the full terms and conditions of the proposed compromise, amalgamation, arrangement or take-over or arrangement for the transfer of assets and liabilities, duly certified by the chairman of the meeting at which such resolution was passed and the secretary of the building society or bank concerned, shall be sent by each of the building societies affected or, as the case may be, the building society and the bank concerned to the Registrar, and such notice shall be registered by the Registrar.”;
- 10
- (c) by the substitution for subsection (4) of the following subsection:  
“(4) Upon [sanctioning by the court] the registration by the Registrar of a notice referred to in subsection (3)—
- 15
- (a) of any amalgamation of two or more building societies, the registration of the individual building societies which were parties to the amalgamation shall be deemed to be cancelled and the Registrar shall withdraw those registrations and simultaneously register the new company as a building society; or
- 20
- (b) of any arrangement for the transfer of all the assets and liabilities of a building society, the registration of such building society shall be deemed to be cancelled and shall be withdrawn by the Registrar.”;
- 25
- (d) by the insertion in subsection (5) after the word “society” of the words “or bank”; and
- 30
- (e) by the addition of the following subsection:  
“(6) The conditions and any tax benefit which immediately prior to the date of a transfer, referred to in this section, of assets and liabilities were applicable in respect of an investment with the transferor building society on fixed deposit, which investment previously was an investment in the form of shares issued by a mutual building society in terms of section 28 of the Mutual Building Societies Act, 1965, shall, notwithstanding such a transfer of assets and liabilities but subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), remain applicable to the investment for a period of ten years or until it is redeemed, whichever period expires first.”.
- 35
- 40

**Amendment of section 65 of Act 82 of 1986**

40. Section 65 of the Building Societies Act, 1986, is hereby amended by the substitution for the words “five per cent” of the words “an amount equal to a prescribed percentage”.

**45 Amendment of section 68 of Act 82 of 1986**

41. Section 68 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A building society shall not advance money by way of a housing advance or a business advance to any person against security of—
- 50 (a) a mortgage bond on immovable property or on any right to immovable property which is not urban immovable property or a right to urban immovable property;
- (b) a second or subsequent mortgage on urban immovable property or on a right to urban immovable property unless the first mortgage or all mortgages, as the case may be, on such property or right ranking prior to that mortgage is or are in favour of the building society;
- 55 (c) a mortgage on urban immovable property or on any right to urban immovable property ranking *pari passu* with a mortgage in favour of another person on the same property or right;

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- 5 **[(d) a mortgage on urban immovable property used or intended for industrial purposes or on any right to urban immovable property which property is used or intended for industrial purposes;]**
- (e) a mortgage on a right to urban immovable property if that right is a lease of, or other right to occupy or use, the property—
- (i) having a remaining term of less than 20 years; or
- (ii) which is not at the discretion of the lessee, occupier or user renewable for a period of or for continuous periods totalling, at least 20 years, and a building society shall not advance money to any person against security of
- 10 **[(f)] its own shares [; or] nor against security of [(g)] any fixed deposit which that person has invested with it unless the rate of interest payable on the advance is at least one per cent higher than the rate of interest payable on the fixed deposit.”.**

**Amendment of section 69 of Act 82 of 1986**

- 15 **42.** Section 69 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) The amount determined by a building society in terms of subsection (1) in respect of any particular quarter shall not be less than an amount which, together with the total sum owing to it in respect of housing advances as at the
- 20 last business day of the preceding quarter, equals **[80 per cent]** a prescribed percentage of its operating capital as at the said last business day of the said preceding quarter.”.

**Substitution of section 70 of Act 82 of 1986**

- 25 **43.** The following section is hereby substituted for section 70 of the Building Societies Act, 1986:

**“Maximum extent of transactions in business advances and general advances**

- 30 **70.** The amount which a building society applies during any particular quarter for business advances and general advances to persons other than its associates, shall, subject to compliance with the requirements of section 69 (1), not exceed an amount which, together with the total sum owing to it by persons other than its associates in respect of business advances and general advances as at the last business day of the
- 35 preceding quarter, equals **[20 per cent]** a prescribed percentage of its operating capital as at the said last day of the said preceding quarter.”.

**Substitution of section 71 of Act 82 of 1986**

- 44.** The following section is hereby substituted for section 71 of the Building Societies Act, 1986:

**“Maximum extent of transactions in general advances**

- 40 **71.** The amount which a building society applies during any particular quarter for general advances to persons other than its associates, shall, subject to compliance with the requirements of section 69 (1), not exceed an amount which, together with the total sum owing to it by persons other than its associates in respect of general advances as at the last
- 45 business day of the preceding quarter, equals **[eight per cent]** a prescribed percentage of its operating capital as at the said last day of the said preceding quarter.”.

**Amendment of section 73 of Act 82 of 1986**

- 50 **45.** Section 73 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Unless collateral security is furnished in favour of the building society, a building society shall not grant—

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- (a) a housing advance in excess of 90 per cent, in the case of a mortgage which provides for the redemption of the capital amount advanced by regular instalments which include interest on the outstanding amount, or in excess of 80 per cent, in the case of any other mortgage; or
- 5 (b) a business advance in excess of 80 per cent, of the reasonably established value of the property or right which is mortgaged to the building society: Provided that a building society may in the case of an advance referred to in paragraph (a), in addition to the amount determined by the application of the applicable percentage referred to in that paragraph, also
- 10 advance the full cost in respect of the registration of the property or right in the name of the borrower.”.

**Repeal of section 75 of Act 82 of 1986**

46. Section 75 of the Building Societies Act, 1986, is hereby repealed.

**Amendment of section 77 of Act 82 of 1986**

- 15 47. Section 77 of the Building Societies Act, 1986, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- 20 “(1) A building society shall manage its affairs in such a way that the sum of its issued share capital and unimpaired reserves together with the amount of debentures referred to in subsection (4) does not at any time during any quarter amount to less than the greater of—”; and
- (b) by the addition of the following subsections:
- 25 “(4) Loan capital obtained by way of debentures, issued in terms of the provisions of section 36, may for the purposes of subsection (1) be reckoned as share capital to the extent determined in subsection (5), provided the debentures are issued subject to—
- (i) the condition that the debentures are issued for a minimum period of seven years;
- 30 (ii) the condition that the debentures may be repaid before maturity only at the option of the building society and with the prior written approval of the Registrar;
- (iii) the condition that, notwithstanding the provisions of any other Act, in the event of the liquidation of the building society, the capital amount of the debentures shall not be repaid until the claims of other creditors have been fully satisfied; and
- 35 (iv) such further conditions, if any, as the Minister may determine by regulation:
- (5) The total amount of debentures referred to in subsection (4), which have been issued and have not yet been repaid, shall not at any time exceed an amount equal to twenty per cent of the amount which a building society is required to maintain by way of share capital and unimpaired reserves in terms of subsection (1).”.
- 40

**Amendment of section 78 of Act 82 of 1986**

48. Section 78 of the Building Societies Act, 1986, is hereby amended by the 45 substitution for subsection (2) of the following subsection:
- “(2) The credit balance in an account opened by a building society in terms of subsection (1), together with the average daily amount of the building society’s Reserve Bank notes and subsidiary coin calculated according to the total amounts of those assets held by the building society on all the days of the latest month in respect of which a return in terms of section 84 has been certified as required by section 97, may at no time during any month amount to less than an amount equal to the sum of—
- 50 (a) 8 per cent (or such other percentage as may be fixed under subsection (4)) of its short-term liabilities; and

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- (b) 4 per cent (or such other percentage as may be so fixed) of its medium-term liabilities,  
as at the last business day of the preceding month or, if the return in terms of section 84 has not yet at that particular time been certified as required by section 97 in respect of the said preceding month, as at the last business day of the penultimate month: Provided that a building society, in determining its liabilities referred to in paragraph (a) shall, in respect of each of its branches, including its head office, where the total amount of such liabilities can be determined daily, bring into account the average daily amount of such liabilities calculated according to the amounts thereof on all the days in the said preceding or penultimate month, instead of the amount of such liabilities as at the end of such preceding or penultimate month.”.

**Amendment of section 79 of Act 82 of 1986**

49. Section 79 of the Building Societies Act, 1986, is hereby amended—
- (a) by the addition of the following proviso to subsection (1):  
“Provided that—
- (i) a building society, in determining its liabilities referred to in paragraph (a), shall, in respect of each of its branches, including its head office, where the total amount of such liabilities can be determined daily, bring into account the average daily amount of such liabilities calculated according to the amounts thereof on all the days in the said preceding or penultimate month, instead of the amount of such liabilities as at the end of such preceding or penultimate month;
- (ii) a building society may, in calculating the amount of its liquid assets at any particular time, take into account as the amount of its Reserve Bank notes, subsidiary coin and gold coin, the average daily amount calculated according to the amounts of those assets held by the building society on all the days of the latest month in respect of which a return in terms of section 84 has been certified as required by section 97.”; and
- (b) by the substitution for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph:  
“(ii) by a bank, another building society or a mutual building society in so far as any such amount owed is a short-term liability for the bank, other building society or mutual building society concerned [, excluding, in the case of a bank, deposits with the bank withdrawable on demand];”.

**Amendment of section 95 of Act 82 of 1986**

50. Section 95 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (4) of the following subsection:  
“(4) No stamp duty in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), shall be payable in respect of [the issue of shares]—
- (a) the issue of shares in the public company established by such conversion, to a control company registered in respect of it in terms of section 91 of this Act; [or]
- (b) the issue of shares in pursuance of any offer referred to in subsection (1): Provided that this paragraph shall not be construed as exempting from stamp duty any issue of shares to a person referred to in subsection (1) where such shares are issued to such person in pursuance of a public offer of shares contemplated in section 86 (3); or
- (c) the registration of the transfer of shares in the public company established by such conversion or in its subsidiary, which shares were sold or otherwise disposed of by that public company to a control company registered in respect of it in terms of section 91 of this Act, if such sale or disposal has been approved by the Registrar.”.

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**Amendment of section 105 of Act 82 of 1986**

51. Section 105 of the Building Societies Act, 1986, is hereby amended by the substitution for subsection (1) of the following subsection:

- 5 “(1) The Registrar shall as soon as may be practicable after **[31 December]** the expiry of each financial year of building societies submit to the Minister a report on his activities in terms of this Act during that financial year.”.

**Short title**

52. This Act shall be called the South African Reserve Bank, Banking Institutions, Mutual Building Societies and Building Societies Amendment Act, 1988.