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PRESIDENT'S OFFICE

No. 940.

11 July 1997

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

No. 22 of 1997: Financial Institutions Amendment Act, 1997

KANTOOR VAN DIE PRESIDENT

No. 940.

11 Julie 1997

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

No. 22 van 1997: Wysigingswet op Finansiële Instellings, 1997.

GENERAL EXPLANATORY NOTE:

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

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

ACT

To amend the Financial Institutions (Investment of Funds) Act, 1984, in order to substitute or delete certain definitions; to grant power to the registrar to institute certain civil proceedings in the High Court; and to provide for matters connected therewith.

*(Afrikaans text signed by the President.)
(Assented to 2 July 1997.)*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 39 of 1984, as amended by section 14 of Act 6 of 1987, section 23 of Act 51 of 1988, section 38 of Act 55 of 1989 and section 33 of Act 83 of 1992

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

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

“ ‘financial institution’ means—

(a) any institution referred to in paragraph (a) or (b) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(b) any medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 62 of 1967);”;

(b) by the deletion of the definition of “principal”;

(c) by the substitution for the definition of “registrar” of the following definition:

“ ‘registrar’ means in respect of a financial institution referred to—

(a) in paragraph (a) of the definition of ‘financial institution’ in this section, in relation to an institution referred to in—

(i) paragraph (a) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, the ‘registrar’ as defined in any of the Acts referred to in that paragraph;

(ii) paragraph (b) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, the ‘executive officer’ as defined in section 1 of that Act;

- (b) in paragraph (b) of the definition of 'financial institution' in this section, the 'registrar' of medical schemes as defined in section 1 of the Medical Schemes Act, 1967;" and
- (d) by the substitution for the definition of "trust property" of the following definition:
- " 'trust property' means any corporeal or incorporeal, movable or immovable asset kept in trust."

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Amendment of section 5 of Act 39 of 1984, as amended by section 15 of Act 6 of 1987

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

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- (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 (Act No. 38 of 1984), may at any time at the direction of the registrar of a financial institution referred to in **[the said]** this Act, inspect the affairs of a **[board of executors, trust company or other company]** person who is a financial institution mentioned in [paragraph (g) of] the definition of 'financial institution' in section 1, but who is not otherwise subject to inspection in terms of the Inspection of Financial Institutions Act, 1984, and of a nominee company controlled by [the financial institution in respect of which the registrar concerned was appointed] that person, in order to ascertain whether the provisions of this Act are being complied with.”;

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and

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

“(2) The registrar of a financial institution referred to in this Act may cause the affairs of any **[company which]** person who is not a financial institution mentioned in the definition of 'financial institution' in section 1 of this Act, but who he or she has reasonable cause to believe [holds] invests. keeps in safe custody or otherwise controls or administers trust property, to be inspected in order to ascertain whether the provisions of this Act are applicable to it.”.

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Insertion of sections 6A and 6B in Act 39 of 1984

3. The following sections are hereby inserted after section 6 of the Financial Institutions (Investment of Funds) Act, 1984:

“Civil proceedings by registrar

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6A. (1) Despite anything to the contrary contained in any other law, but subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and any provision in such other law relating to jurisdiction, procedure and evidence, the registrar has *locus standi in judicio* to institute and conduct proceedings in the High Court having jurisdiction (after this referred to as the court) in an instance where no other statutory provision makes such provision, if he or she has reasonable cause to believe that it is necessary or desirable for him or her to do so in order—

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- (a) to discharge any duty or responsibility imposed on him or her in terms of any law;

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- (b) to compel any person to comply with any law or to cease contravening a law;

- (c) to compel any person to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law; or

- (d) to obtain a declaratory order on any point of law relating to any law or to the business of a financial institution in general,

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subject to any additional procedural requirements which the court may impose in any particular instance to ensure fair and equitable legal proceedings.

(2) In paragraphs (u), (b), (c) and (d) of subsection (1) 'law' means this Act, the Inspection of Financial Institutions Act, 1984, or any other Act referred to in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990, or the Medical Schemes Act, 1967, and includes any subordinate measure made under or in terms of any such Act.

Restriction on powers of registrar

6B. Despite any other provision of this Act, the registrar may not in respect of an exchange, member or stock-broker referred to in paragraph (a)(v) or (vi) of the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990, make an application under section 6 or institute or conduct proceedings under section 6A unless—

(a) he or she has consulted with the committee or executive committee of the exchange in question; and

(b) he or she and the committee or executive committee are satisfied that no other adequate remedy is available."

Amendment of section 1 of Act 55 of 1989, as amended by section 29 of Act 97 of 1990, section 23 of Act 54 of 1991, section 36 of Act 83 of 1992, section 1 of Act 55 of 1995 and section 1 of Act 73 of 1996

4, Section 1 of the Financial Markets Control Act, 1989, is hereby amended by the substitution for the definition of "unsolicited call" of the following definition:

" 'unsolicited call', in relation to entering into an agreement in respect of listed financial instruments, means a personal visit made to someone or an oral communication made to someone without an express or tacit invitation from such person, but excluding any personal visit or oral communication made to someone on whose behalf the business of buying and selling of listed financial instruments has previously been carried on by the person who made that personal visit or oral communication, [a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), a member of a financial exchange or] a financial institution referred to in paragraph [(a)](b) [(c), (d), (e), (f) or (h)] of the definition of 'financial institution' in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), or paragraph (a) of the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990)."

Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992 and section 67 of Act 104 of 1993

5. Section 1 of the Financial Services Board Act, 1990, is hereby amended—

(a) by the substitution for the definition of "financial institution" of the following definition:

" 'financial institution' means—

- (a) (i) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the investments of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;
- (ii) any friendly society registered in terms of the Friendly

- Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;
- (iii) any 'unit trust scheme' as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or any management company or trustee in relation to such a scheme; 5
 - (iv) any 'scheme' as defined in section 1 of the Participation Bonds Act, 1981 (Act No. 55 of 1981), or any manager or nominee company in relation to such a scheme;
 - (v) any 'stock exchange', 'member' or 'stock-broker' as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any person referred to in section 4(1) of that Act managing investments as contemplated in that section; 10
 - (vi) any 'financial exchange', 'member' or 'recognised clearing house' as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any person referred to in section 5(1) of that Act managing investments as contemplated in that section; 15
 - (vii) any 'registered insurer' as defined in section 1(1) of the Insurance Act, 1943 (Act No. 27 of 1943);
 - (viii) any agent, broker or other person contemplated in section 20*bis* of the Insurance Act, 1943; 20
 - (ix) any person deemed, in terms of section 60 of the Insurance Act, 1943, to be carrying on insurance business in the Republic;
 - (x) any person rendering or who is to render services contemplated in section 23A(1) of the Insurance Act, 1943; 25
 - (xi) any 'central securities depository' or a 'depository institution' as defined in section 1 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992), or any member of such a securities depository;
- (b) (i) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), which deals with trust property as a regular feature of its business; or 30
- (ii) any other person who or which deals with trust property as a regular feature of his, her or its business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988); "and 35 40
- (b) by the addition of the following definition:
- “ ‘trust property’ means ‘trust property’ as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984).”.

Short title and commencement

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6. This Act is called the Financial Institutions Amendment Act, 1997, and comes into operation on a date determined by the President by proclamation in the *Gazette*.