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No. 12564

KANTOOR VAN DIE STAATSPRESIDENT

No. 1440.

29 Junie 1990

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

No. 64 van 1990: Wysigingswet op Finansiële Instellings, 1990.

STATE PRESIDENT'S OFFICE

No. 1440.

29 June 1990

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

No. 64 of 1990: Financial Institutions Amendment Act, 1990.

FINANCIAL INSTITUTIONS AMENDMENT ACT, 1990

Act No. 64, 1990

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 Insurance Act, 1943, so as to abolish the security to be furnished by long-term insurers; to exempt the Minister from the obligation to prescribe the manner in which insurers must comply with additional asset requirements under certain circumstances; to increase the maximum permissible life insurance cover for children; and to further regulate the deposit of money and securities for certain purposes; to amend the Pension Funds Act, 1956, so as to further regulate the safe-keeping of the money and assets of pension funds; to determine the period within which pension funds must apply for approval of the appointment of auditors and valuers; and to provide for the delegation of certain powers of the Minister; to amend the Unit Trusts Control Act, 1981, so as to empower the Registrar to allow the use of the word "invest" in the name of any unit trust scheme; to amend the Stock Exchanges Control Act, 1985, so as to further define "securities"; to provide for the delegation of certain powers by the executive committee; and to further regulate the payment for and delivery of securities; to exempt the Minister of Finance and certain officers from liability in respect of actions *bona fide* performed by them under the said laws and certain other laws; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 21 June 1990.)

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

Amendment of section 4 of Act 27 of 1943, as amended by section 1 of Act 19 of 1945, section 3 of Act 73 of 1951, section 4 of Act 79 of 1959, section 10 of Act 64 of 1960, section 3 of Act 10 of 1965, section 2 of Act 39 of 1969, section 3 of Act 101 of 1976, section 2 of Act 103 of 1979, section 4 of Act 99 of 1980 and section 2 of Act 86 of 1984

1. Section 4 of the Insurance Act, 1943, is hereby amended by the deletion of paragraphs (c) and (d) of subsection (3)*bis*.

10 Repeal of section 6 of Act 27 of 1943, as substituted by section 6 of Act 10 of 1965 and amended by section 4 of Act 39 of 1969 and section 5 of Act 99 of 1980

2. Section 6 of the Insurance Act, 1943, is hereby repealed.

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Amendment of section 15 of Act 27 of 1943, as substituted by section 13 of Act 73 of 1951 and amended by section 10 of Act 79 of 1959, section 11 of Act 10 of 1965, section 3 of Act 41 of 1966, section 5 of Act 101 of 1976 and section 2 of Act 50 of 1986

3. Section 15 of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) The statement shall not include any amount representing expenses of administration, organization or business extension, or the purchase price of any business (apart from the value of any property belonging thereto), or any goodwill or item of a similar nature, or the value of any policy or contract of reinsurance which is the property of the insurer by whom the statement is prepared [or the amount deposited with the Treasury under section *four* or *six*].”.

Amendment of section 17 of Act 27 of 1943, as substituted by section 12 of Act 10 of 1965 and amended by section 4 of Act 41 of 1966, section 2 of Act 91 of 1972, section 6 of Act 101 of 1976, section 3 of Act 94 of 1977, section 2 of Act 80 of 1978, section 4 of Act 103 of 1979, section 2 of Act 36 of 1981, section 1 of Act 82 of 1982, section 4 of Act 86 of 1984, section 2 of Act 51 of 1988, section 1 of Act 53 of 1989 and section 11 of Act 54 of 1989

4. Section 17 of the Insurance Act, 1943, is hereby amended—

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

“(1) A domestic insurer who carries on long term insurance business shall in respect of such business—

(a) hold assets having an aggregate value not less than the amount of his net liabilities in respect of such business; and

(b) hold in the Republic assets of one or more of the kinds mentioned in the Third Schedule to this Act, having an aggregate value not less than the amount of his net liabilities in respect of such business carried on by him in the Republic

[and for the purposes of this sub-section money or approved securities deposited with the Treasury in terms of section *four* or *six* shall not be deemed to be assets held by the insurer].”; and

(b) by the deletion of subsection (5B).

Amendment of section 18 of Act 27 of 1943, as substituted by section 13 of Act 10 of 1965 and amended by section 5 of Act 41 of 1966, section 3 of Act 91 of 1972, section 7 of Act 101 of 1976, section 4 of Act 94 of 1977, section 3 of Act 80 of 1978, section 5 of Act 103 of 1979, section 3 of Act 36 of 1981, section 2 of Act 82 of 1982, section 5 of Act 86 of 1984, section 2 of Act 53 of 1989 and section 12 of Act 54 of 1989

5. Section 18 of the Insurance Act, 1943, is hereby amended—

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

“(1) Every foreign insurer who carries on long term insurance business in the Republic shall in respect of such business hold assets in the Republic of one or more of the kinds mentioned in the Third Schedule to this Act, having an aggregate value not less than the amount of his net liabilities in respect of such business carried on in the Republic [and for the purposes of this sub-section money or approved securities deposited by him with the Treasury in terms of section *four* or *six* shall not be deemed to be assets held by the insurer].”; and

(b) by the deletion of subsection (5B).

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Substitution of section 50 of Act 27 of 1943, as substituted by section 11 of Act 101 of 1976 and amended by section 13 of Act 99 of 1980

6. The following section is hereby substituted for section 50 of the Insurance Act, 1943:

5 **"Restriction of payments on death of children under fourteen years of age**

50. (1) No insurer shall insure the life of a child who is under the age of fourteen years for any sum of money which exceeds or which, when added at the commencement of the policy to any amount which to his knowledge is payable on the death of that child by any other insurer or by any friendly society, exceeds—

10 (a) **[two hundred and fifty rand] R10 000**, if the child is under six years of age; or

 (b) **[five hundred rand] R30 000**, if the child is six years old or older, but is under fourteen years of age:

15 Provided that the preceding provisions of this section shall not prohibit the issue of a policy providing for the payment, on the death of any child, of a sum not exceeding the aggregate of all the premiums paid in respect of the policy, plus interest on each premium at a rate not exceeding seven and a half per cent per annum, compounded yearly: Provided further

20 that the preceding provisions of this section shall not prohibit the allocation of profit in respect of a policy on the life of a child under the age of fourteen years, provided that it is done on the basis that the profit does not exceed the profit allocated in respect of such policy on the lives of persons above the said age.

25 (2) For the purposes of this section profit includes any valuable consideration provided by the insurer by virtue of the policy."

Amendment of section 76 of Act 27 of 1943, as substituted by section 9 of Act 41 of 1966 and amended by section 13 of Act 101 of 1976, section 11 of Act 86 of 1984, section 9 of Act 106 of 1985, section 7 of Act 53 of 1989 and section 18 of Act 54 of 1989

30 7. Section 76 of the Insurance Act, 1943, is hereby amended—

 (a) by the substitution in the Afrikaans text of subparagraph (iv) of paragraph (aA) of subsection (1) for the word "ondervindings" of the word "onderverdelings"; and

35 (b) by the substitution in paragraph (aB) of subsection (1) for the word "for" of the word "of".

Amendment of First Schedule to Act 27 of 1943, as substituted by section 34 of Act 10 of 1965

8. The First Schedule to the Insurance Act, 1943, is hereby amended—

40 (a) by the substitution for sections 1, 2, 3, 4 and 5 of the following sections, respectively:

 "1. Any money held by the Corporation for Public Deposits established by the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or approved [security which the Treasury holds at the commencement of the Insurance Amendment Act, 1965,] securities issued in the name of the Minister of Finance and held in trust on behalf of a person who is obliged to make a deposit under section [four or six] 60 of this Act, shall be deemed to be money or securities deposited by the said person under this Act.

45 2. Securities deposited or deemed to have been deposited [with the Treasury] under this Act shall be valued at their market value or their face value, whichever is the lower.

50 3. If at any time the value of any deposit made or deemed to have been made [with the Treasury] by any person (hereinafter called the depositor) under section 60 of this Act [in respect of any long term insurance business],

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falls short of the amount mentioned in the said section 60 **[four or six of this Act in respect of that business]**, the **[Treasury] registrar** shall, by notice in writing, call upon the depositor to make good the deficiency by a deposit of money or further approved securities, or of both money and approved securities, at the option of the depositor, and the depositor shall comply with the said written notice of the **[Treasury] registrar** within a period of thirty days as from the date thereof.

4. Once in any calendar year the **[Treasury] registrar** shall, at the request of a depositor, furnish him with a certificate **[of the fact that the Treasury holds a] in confirmation of the** deposit which he made under this Act, and of its value.

5. A depositor may at any time—

(a) withdraw any approved security or money which he has deposited **[with the Treasury]** in terms of this Act or which he, in terms of section 1, is deemed to have so deposited in respect of **[any] insurance business to the extent [by] to which** it is in excess of the value mentioned in section **[four or six] 60** of this Act in respect of that business; or

(b) substitute for any security so deposited or deemed to have been so deposited any money or any other approved security of the requisite value.”;

(b) by the deletion of section 6; and

(c) by the substitution for section 7 of the following section:

“7. A depositor shall be entitled to the income derived from any securities and money which he deposited or is in terms of section 1 deemed to have so deposited **[with the Treasury]** under this Act.”.

Amendment of section 5 of Act 24 of 1956, as amended by section 14 of Act 81 of 1957

9. Section 5 of the Pension Funds Act, 1956, is hereby amended—

(a) by the addition to subsection (2) of the following proviso:

“Provided that such money and assets may, subject to the conditions determined by the Minister by notice in the *Gazette*, also be kept in the name of the pension fund by one or more of the following institutions or persons, namely—

(a) a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

(b) an insurer registered or provisionally registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943);

(c) a banking institution registered or provisionally registered under the Banks Act, 1965 (Act No. 23 of 1965);

(d) a nominee company; or

(e) a person approved by the registrar, or who is a member of a category of persons approved by the registrar.”; and

(b) by the addition after subsection (2) of the following subsections:

“(3) For the purposes of this section, a nominee company is a company which—

(a) has as its principal object to act as representative of any person;

(b) is precluded by its memorandum of association from incurring any liabilities other than those to persons on whose behalf it holds property;

(c) has entered into an irrevocable agreement with another person in terms of which such other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation; and

(d) has been approved by the registrar, subject to such conditions as he may impose, including any guarantee for the fulfilment of any obligation in respect of the holding of such property, the generality of the afore-going provisions not being restricted by the provisions of this paragraph.

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(4) Notwithstanding the provisions of subsection (2), the registrar may permit money and assets to be kept in the name of a nominee company on behalf of the pension fund.”.

Amendment of section 9 of Act 24 of 1956, as substituted by section 12 of Act 65 of 1968

10. Section 9 of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every registered fund shall within 30 days—

- 10 (a) from the date of registration appoint an auditor; and
(b) from the date of the appointment apply to the registrar for approval of such appointment.”.

Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959, section 9 of Act 58 of 1966, section 1 of Act 80 of 1969, section 2 of Act 23 of 1970, section 7 of Act 91 of 1972, section 23 of Act 101 of 1976, section 11 of Act 94 of 1977, section 11 of Act 80 of 1978, section 14 of Act 103 of 1979, section 39 of Act 99 of 1980, section 14 of Act 82 of 1982, section 20 of Act 46 of 1984, section 17 of Act 86 of 1984, section 11 of Act 50 of 1986, section 5 of Act 51 of 1988 and section 8 of Act 53 of 1989

20 11. Section 19 of the Pension Funds Act, 1956, is hereby amended—

(a) by the deletion of paragraph (c) of subsection (6); and

(b) by the insertion after subsection (6) of the following subsection:

“(7) The Minister may in writing delegate to the registrar or any other officer in the public service any power conferred on the Minister by this section.”.

25 Amendment of section 38 of Act 54 of 1981

12. Section 38 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for subsection (3) of the following subsection:

- 30 “(3) No person shall carry on a unit trust scheme under a name which includes the word “invest” or any derivative thereof, except with the approval in writing of the registrar and on such conditions and to such extent as he may deem fit.”.

Amendment of section 1 of Act 1 of 1985, as amended by section 14 of Act 50 of 1986, section 24 of Act 51 of 1988, section 25 of Act 54 of 1989 and section 38 of Act 55 of 1989

35 13. Section 1 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution in the definition of “securities” for the words preceding paragraph (i) of the following words:

- 40 ““securities” includes stocks, shares, debentures (issued by a company having a share capital), notes, units of stock issued in place of shares, and options on stocks or shares or on such debentures, notes or units, and rights thereto, options on indices of information as issued by a stock exchange on prices of any of the afore-mentioned instruments, as well as any other instruments declared by the Registrar by notice in the Gazette to be securities, but excluding—”.

Amendment of section 16 of Act 1 of 1985

45 14. Section 16 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The committee may, subject to such conditions as it may determine, delegate or assign any power or duty conferred upon or assigned to it by or under paragraph (b) of subsection (1), to a subcommittee or such person as it

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deems fit, but shall not thereby be divested or relieved of any power or duty so delegated or assigned.”.

Amendment of section 27 of Act 1 of 1985

15. Section 27 of the Stock Exchanges Control Act, 1985, is hereby amended by
5 the insertion after subsection (3) of the following subsection:

“(3A) The provisions of sections 22, 23, 24 and 25 shall not apply to any
person who buys or sells options on securities or listed securities.”.

Amendment of section 29 of Act 1 of 1985

16. Section 29 of the Stock Exchanges Control Act, 1985, is hereby amended by
10 the addition of the following proviso:

“Provided that for the purposes of this section the following acts shall be
deemed to constitute effective delivery of securities to the client:

- (a) The physical handing over of securities to the client or his order or nominee;
- 15 (b) the lodgement of securities with a company transfer office for registration into the name of the client or his nominee in terms of a prior written instruction by the client, or the registration of securities into the name of the stock-broker’s nominee; or
- 20 (c) the posting to the client per registered post of securities, in terms of a prior written instruction, before the expiry of the afore-mentioned period of 14 business days.”.

Restriction of liability

17. The Minister of Finance, or any officer or contract worker in the employment
of the Department of Finance, shall not be liable in respect of any *bona fide* exercise
25 of any discretion in the performance of any duty imposed upon him under—

- (a) the Insurance Act, 1943 (Act No. 27 of 1943);
- (b) the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (d) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);
- 30 (e) the Participation Bonds Act, 1981 (Act No. 55 of 1981);
- (f) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (g) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
- (h) the Reinsurance of Material Damage and Losses Act, 1989 (Act No. 56 of 1989); and
- 35 (i) the Usury Act, 1968 (Act No. 73 of 1968).

Short title and commencement

18. (1) This Act shall be called the Financial Institutions Amendment Act, 1990.

(2) The provisions of this Act shall come into operation on a date fixed by the State
President by proclamation in the *Gazette*, with the exception that section 12 shall be
40 deemed to have come into operation on 6 July 1987.

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