



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1030.

28 Mei 1986

No. 1030.

28 May 1986

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

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

— 50 van 1986: Wysigingswet op Finansiële Instellings, 1986.

No. 50 of 1986: Financial Institutions Amendment Act, 1986.

**GENERAL EXPLANATORY NOTE:**

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_** Words underlined with solid line indicate insertions in existing enactments.

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# ACT

To amend the Insurance Act, 1943, so as to extend the powers of the registrar to cancel the registration of an insurer; to further limit the extent to which outstanding premiums in respect of short term and compulsory third party insurance business may be treated as assets by insurers; to further regulate the transmission of short-term insurance premiums received by intermediaries; to limit the insured sum and the scope of the risk under policies issued in pursuance of certain conditional transactions; to prohibit the acquisition without the registrar's prior consent of any interest of one-quarter or more in a registered insurer; to revise the prohibition concerning differentiation, inducement and granting of credit for the payment of premiums with regard to certain policies; to amend the Pension Funds Act, 1956, so as to extend the scope of the valuator's report on his investigation as to the financial condition of a pension fund; to impose on a pension fund the obligation to submit a scheme for the elimination of a deficiency reported by the valuator of a fund; to revise the conditions on which housing loans may be granted by registered pension funds to their members and to widen the scope of the prohibition relating to such loans; to authorize the registrar to prohibit undesirable practices and business methods by pension funds and to increase certain fines; to amend the Stock Exchanges Control Act, 1985, so as to extend the definition of "president" and to include the South African Reserve Bank as a designated institution in section 3 (3) of the said Act; and to provide for incidental matters.

(English text signed by the State President.)  
(Assented to 19 May 1986.)

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

1. Section 4ter of the Insurance Act, 1943, is hereby amended by the addition of the following subsections, the existing section 5 becoming subsection (1):

- “(2) When the registrar is satisfied that a registered insurer has ceased—
- (a) to issue in respect of any class of insurance business new policies of such a nature and volume as to warrant the continued registration of the insurer for that class of insurance business; or
- (b) to carry on his insurance business in a manner consistent with the provisions of this Act or which is otherwise desirable,

Amendment of section 4ter of Act 27 of 1943, as inserted by section 5 of Act 10 of 1965 and substituted by section 3 of Act 39 of 1969.

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the registrar may, with the consent of the Minister, by notice in writing prohibit such insurer, with effect from a date specified in the notice, from issuing any policy for that class of insurance business, if the registrar has notified the insurer of his intention to prohibit the issuing of policies for that class and of the reasons why he intends doing so, and has allowed the insurer a period of at least 30 days for making representations to him in connection with the proposed prohibition.

(3) When, after the commencement of the prohibition under subsection (2), the registrar is satisfied that the insurer is no longer liable under any policy issued before such commencement in respect of the class of insurance business in question he shall cancel the registration in respect of that class of insurance business.”.

2. Section 15 of the Insurance Act, 1943, is hereby amended, by the substitution in paragraph (d) for the words preceding subparagraph (i) of the following words:

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 and section 5 of Act 101 of 1976.

“In respect of any short term insurance business or compulsory third party insurance business, no outstanding premium (irrespective of whether or not it has been debited to an insurance broker or an agent of the insurer) shall be included in the statement if at the end of the financial year to which the statement relates and which ends before 1 January 1987, more than six months have elapsed since the date on which such premium became due by the owner of the policy in question or if at the end of the financial year to which the statement relates and which ends on or after 1 January 1987, more than two months have elapsed since the due date of the premium as contemplated in subsection (9) of section 20bis and the value of any other outstanding premiums or premiums debited to insurance brokers or agents of the insurer shall be shown at an amount which in the aggregate does not exceed the full amount of such premiums reduced by—”.

3. Section 20bis of the Insurance Act, 1943, is hereby amended—

Amendment of section 20bis of Act 27 of 1943, as inserted by section 17 of Act 10 of 1965 and amended by section 7 of Act 41 of 1966 and section 6 of Act 94 of 1977.

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

“(a) Every such agent, broker or person who receives such premiums on behalf of such insurer shall—

(i) in respect of premiums received before 1 January 1987, within fourteen days of receipt thereof, transmit the amount thereof to such insurer; or

(ii) forthwith deposit the amount thereof in a separate trust account and in respect of premiums received before [1 October 1977, within forty-five days, in respect of premiums received on or after 1 October 1977, but before 1 January 1979, within ninety days, and, in respect of premiums received on or after 1 January 1979 within sixty days] 1 January 1987, within sixty days, and in respect of premiums received on or after 1 January 1987, within thirty days of the end of the month during which such premiums were received by such agent, broker or person, transmit to such insurer all moneys so deposited, and for the purposes of this sub-

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paragraph premiums with a due date of 1 October 1977 or later shall be deemed to have been received on the due date of such premiums if not received on an earlier date; or

- 5 (iii) pay the amount thereof to such insurer, in respect of premiums received before **[1 January 1979, within ninety days, and, in respect of premiums received on or after 1 January 1979, within sixty days]** 1 January 1987, within sixty days, and in respect of premiums received on or after 1 January 1987, within thirty days of the end of the month during which such premiums were received by such agent, broker or person, and for the purposes of this subparagraph **[premiums with a due date earlier than 1 October 1977 shall be deemed to have been received on the date on which they became due to the insurer by the owners of the policies in question, if not received on an earlier date, and]** premiums with a due date of 1 October 1977 or later shall be deemed to have been received on the due date of such premiums, if not received on an earlier date.”;

- 25 (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

30 “(a) Every such agent, broker or person shall forthwith upon becoming indebted to any insurer, elect to remit in terms of either subparagraph (i) or subparagraph (ii) or subparagraph (iii) of paragraph (a) of subsection (2), and in writing advise such insurer of the election made by him, and any such agent, broker or person who desires to change his election, shall give not less than ninety days’ written notice of the change to every insurer to whom he has given notice of such election or of any such change: Provided that such agent, broker or person—

40 (i) shall not after the commencement of the Financial Institutions Amendment Act, 1986, elect to remit in terms of subparagraph (i) of paragraph (a) of subsection (2);

45 (ii) who, before such commencement elected to remit in terms of subparagraph (i) of paragraph (a) of subsection (2), shall change such election to an election to remit in terms of either subparagraph (ii) or (iii) of paragraph (a) of subsection (2), and give written notice of the election before 30 September 1986 to every insurer concerned.”;

- 50 (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

55 “(c) Such guarantee shall be in favour of the registrar and in a form prescribed by regulation for the benefit of all such insurers, and shall be for an amount certified by the auditor of the agent, broker or person concerned to be equal to not less than—

60 (i) for the period up to 31 December 1986, twenty-five per cent of the premiums which became due to registered insurers by such agent, broker or person in his last financial year after setting off any moneys which were owing to such agent, broker or person by such insurers,

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- 5 but shall not be for less than **[ten thousand rand or more than one hundred thousand rand or, with effect from 1 October 1977, for less than]** one hundred thousand rand or for more than two hundred and fifty thousand rand;
- 10 **(ii) with effect from 1 January 1987, 20 per cent of the premiums which became due to registered insurers by such agent, broker or person in his last financial year but shall not be for less than R100 000.”; and**
- (d) by the substitution for subsection (9) of the following subsection:
- 15 **“(9) For the purposes of this section—**  
**“deposit premium” means a provisional premium which is agreed upon in the event of it being impossible at the due date of the premium to determine the exact premium, and which represents a reasonable estimate of the premium;**  
**“due date” means—**
- 20 **(i) in relation to a premium [means]—**  
**(a) in the case of a new policy, the inception date of the policy;**  
**(b) in the case of an existing policy which has been renewed, the renewal date of the policy; and**  
**(c) in the case of any extension or other change of an existing policy, the inception date of such extension or other change;**
- 25 **(ii) in relation to an instalment of a premium, the inception date of the period in respect of which the instalment is payable;**
- 30 **“premium” includes a deposit premium and an instalment of a premium.”.**

35 4. Section 23C of the Insurance Act, 1943, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

- 40 **“(b) where it is required that a new policy is to be taken out—**  
**(i) [he informs the debtor that he has a free choice in respect of the insurer with and the intermediary through whom the policy is to be taken out; or**  
**(ii) ] to insure immovable property which has been or is to be mortgaged to secure a debt or other obligation, the premiums payable under the policy are reasonable in relation to premiums generally charged in respect of any such policy: Provided that a certificate from the registrar in which he states that in his opinion the premiums in question are reasonable, shall for the purposes of this subparagraph be sufficient proof of the reasonableness of such premiums; or**
- 45 **(ii) for any other purpose, or if the premiums payable under the policy are considered not to be reasonable as contemplated in subparagraph (i), he informs the debtor that he has a free choice in respect of the insurer with and the intermediary through whom the policy is to be taken out: Provided that if the policy is a life policy or a home service policy, the insured benefit shall be payable only upon the death or the disablement of the debtor and the amount of such benefit shall not exceed the expected amount of the debt as determined in terms of the loan agreement or other obligation arising from the transaction in question:**
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Amendment of section 23C of Act 27 of 1943, as inserted by section 9 of Act 99 of 1980.

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5                    Provided further that nothing in this proviso shall prevent an appropriate variation of the amount of the benefit if the actual amount of the debt or other obligation should subsequently prove to differ from the expected amount.”.

5. The following section is hereby substituted for section 27 of the Insurance Act, 1943:

10                    “Acquisition of shares or other interest to be approved by registrar.                    **27. No acquisition of shares or any other interest in the business of a registered insurer amounting to one-quarter or more of the value of all the shares or other interest in that business, shall be of any force or effect unless that acquisition has previously been approved by the registrar in writing.”.**

Substitution of section 27 of Act 27 of 1943, as amended by section 24 of Act 73 of 1951, section 21 of Act 10 of 1965 and section 10 of Act 39 of 1969.

15                    6. Section 27bis of the Insurance Act, 1943, is hereby repealed.

Repeal of section 27bis of Act 27 of 1943, as inserted by section 22 of Act 10 of 1965 and amended by section 11 of Act 39 of 1969.

7. The following section is hereby substituted for section 51 of the Insurance Act, 1943:

20                    “In life insurance business differentiation, inducements and credit for one-twelfth of first year’s premiums are prohibited.                    **51. (1) No insurer shall make or permit any differentiation as between one life policy and another, in regard to their terms and conditions unless the valuator of the insurer has satisfied himself that the differentiation is justified on actuarial grounds.**  
 25                    **(2) No person shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, to any other person, as an inducement to such other person to take out a domestic life policy any valuable consideration and no person shall knowingly receive as such an inducement any such valuable consideration.**  
 30                    **(3) No insurer shall assume an obligation under a domestic life policy, unless he has received at least one-twelfth of the first year’s premium or is satisfied that such portion of the premium will be paid by stop order, credit card, debit order or other instrument approved by the registrar.”.**

Substitution of section 51 of Act 27 of 1943.

35                    8. The following section is hereby substituted for section 59 of the Insurance Act, 1943:

“Application to home service business of sections 34, 36 to 51 and 57A.                    **59. The provisions of sections 34, 36 to [50] 51, both inclusive, and 57A shall apply *mutatis mutandis* in connection with home service business.”.**

Substitution of section 59 of Act 27 of 1943, as substituted by section 17 of Act 99 of 1980.

40                    9. Section 16 of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (7) of the following subsection:

45                    “(7) A report made by a valuator in terms of any of the preceding subsections shall include, where applicable, the following particulars, namely—  
 50                    (a) the number of persons in respect of whom liabilities have been calculated, subdivided into active members, deferred pensioners, and vested pensioners with their corresponding annual pensionable emoluments, annual deferred pensions, and annual vested pensions, respectively: Provided that where the number of active members, deferred pensioners or vested pensioners in any

Amendment of section 16 of Act 24 of 1956, as amended by section 16 of Act 86 of 1984.

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- group is less than five, the corresponding annual pensionable emoluments, annual deferred pensions or annual vested pensions, as the case may be, need not be shown;
- 5 (b) (i) a description of the classes of assets held by the fund;
- (ii) the balance sheet value of the nett assets of the fund after deduction of current liabilities and any liability arising from the pledge, hypothecation or other encumbrance of the assets of the fund, together with full particulars of such deductions;
- 10 (iii) the actuarial value of these nett assets for the purposes of a comparison with the fund's accrued liabilities;
- 15 (iv) a description of the basis employed in calculating the actuarial value of each of the various classes of assets together with adequate particulars of each basis so as to enable an independent valuator to judge the financial soundness of such basis;
- 20 (c) (i) the fund's accrued liabilities, with the same subdivision as contemplated in paragraph (a), but if the number of persons in any group is less than five, such group may be combined with another group, and for the purpose of this subsection 'accrued liabilities' means—
- 25 (aa) the actuarial liability in respect of past service benefits of active members, with due allowance for future salary increases where these affect the benefits in respect of past service and with due allowance for increases in pensions or deferred pensions at the rates stipulated in the rules of the fund; plus
- 30 (bb) the actuarial liabilities in respect of pensions in course of payment and deferred pensions, with due allowance for increases at the rates stipulated in the rules of the fund; plus
- 35 (cc) any other actuarial liability;
- (ii) a description of the basis employed in calculating the actuarial value of the accrued liabilities together with adequate particulars of the basis so as to enable an independent valuator to judge the financial soundness of such basis;
- 40 (d) a comparison of the actuarial value of assets with the accrued liabilities, on the bases contemplated in paragraphs (b) (iv) and (c) (ii), showing the resultant surplus or deficiency, and in the case of a deficiency, the percentage ratio of assets to liabilities;
- 45 (e) (i) in the case of a deficiency, the causes or probable causes thereof; and
- 50 (ii) the measures taken or recommended to eliminate any deficiency referred to in paragraph (d) and the expected period within which this will be achieved;
- (f) a comparison of contribution rates recommended for the future with those obtaining immediately before the valuation, subdivided for the various categories of members as appropriate and into rates for members, normal rates for employers to meet liabilities in respect of future service, and special rates for employers to amortize any deficiency as contemplated in paragraph (d), and showing the expected variations in contributions with the passage of time and the extent to which any surplus as contemplated in paragraph (d) has been taken into account; and
- 55 (g) such other particulars as the valuator deems relevant for the purposes of this Act.”.
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10. Section 18 of the Pension Funds Act, 1956, is hereby amended—

Amendment of section 18 of Act 24 of 1956.

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

5       “(1A) When any return under this Act indicates a deficiency in a registered fund, the fund shall, within three months from the date of such return, submit a scheme to the registrar setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, together with a report thereon by a valuator.”;

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

15       “(2) If the registrar finds that **[such] a scheme submitted in terms of subsection (1) or (1A)** is not inconsistent with the provisions of this Act and is satisfied that the arrangements set out therein should suffice to accomplish the objects of this section, he shall approve the scheme.”; and

20       (c) by the substitution for subsection (3) of the following subsection:

25       “(3) If the registrar is not satisfied regarding the matters referred to in subsection (2), he shall request the fund to make such amendments to the scheme, or to submit such new scheme, as will enable him to be so satisfied, and the fund shall comply with the request within a period prescribed by the registrar, not being less than 30 days from the date of the request, and shall at the same time furnish to the registrar a report on such amendments or such new scheme by the valuator or auditor mentioned in **[subsection] subsections (1) and (1A)**, and the provisions of subsection (2) shall apply to any such amended scheme or new scheme which the fund may submit.”.

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

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 and section 17 of Act 86 of 1984.

(a) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

40       “(b) A loan contemplated in paragraph (a) shall not be granted after the commencement of the Financial Institutions Amendment Act, 1986—

(i) unless secured by—

45       (aa) a first mortgage on the immovable property in respect of which it is granted; or

(bb) a pledge of the benefits to which the member is entitled in terms of the rules of the fund; or

(cc) both such mortgage and such pledge;

50       (ii) in respect of immovable property if the member concerned is liable to the fund in respect of a loan granted to him in respect of other immovable property;

(iii) at a lower rate of interest than that which may

55       (iv) unless the capital sum is redeemable over a period not exceeding 30 years in equal weekly or monthly instalments, which shall include the interest on the capital sum outstanding.”;

60       (b) by the substitution in subparagraphs (i) and (iii) of paragraph (c) of subsection (5) for the expression “seventy-five” of the expression “90”;

(c) by the insertion after paragraph (c) of subsection (5) of the following paragraph:



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“(cA) The percentages referred to in subparagraphs (i) and (iii) of paragraph (c), may be increased to 100 per cent, subject to the furnishing to the fund by the employer of the member of an irrevocable guarantee in respect of so much of the loan as may exceed 90 per cent.”; and

(d) by the substitution for subsection (5B) of the following subsection:

“(5B) Notwithstanding anything to the contrary contained in the rules of a registered fund, such a fund shall not, directly or indirectly, after the commencement of the Financial Institutions Amendment Act, [1976] 1986—

(a) grant a loan to a member or make any of its funds available, whether by way of an investment or otherwise, to be utilised in any manner by the fund or someone else for a loan to a member, other than a loan [contemplated in subsection (5)] for a purpose mentioned in paragraph (a) of subsection (5) and which complies with the provisions of paragraphs (b) and (c) of that subsection; or

(b) grant a loan to, or invest in the shares of—

(i) a company controlled by an officer or a member of the fund or a director of a company which is an employer participating in the scheme or arrangement whereby the fund has been established; or

(ii) a subsidiary company or a controlled company (as defined in the Companies Act, 1973 (Act No. 61 of 1973)), of such a first-mentioned company.”.

12. The following section is hereby inserted after section 32 of the Pension Funds Act, 1956:

Insertion of section 32A in Act 24 of 1956.

“Certain practices or methods of conducting business prohibited.

**32A. (1)** With the consent of the Minister the registrar may by notice in the *Gazette* declare a specific practice or method of conducting business to be an irregular or undesirable practice or an undesirable method of conducting business for any specified category of pension fund or for all pension funds: Provided that the Minister shall not consent to such declaration unless the registrar has given at least 30 days notice in the *Gazette* of his intention to make such declaration and has invited in the notice all interested persons to make written representations to him regarding the intended declaration, within 21 days of such notice.

(2) Any pension fund in question shall not, after the expiry of 21 days from the date of the said notice in the *Gazette*, employ any practice or method of conducting business which by virtue of such notice has been declared to be irregular or undesirable.

(3) The registrar may in writing direct any fund which, before or after the date of such notice, employed any practice or method of conducting business which by virtue of the said notice is irregular or undesirable, to rectify as required by the registrar, anything specified by the registrar which in the opinion of the registrar was caused by or arose out of such employment.

(4) Any pension fund which has been so directed

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to rectify anything, shall do so within 60 days after being so directed or within such longer period as the registrar may approve.”.

13. Section 37 of the Pension Funds Act, 1956, is hereby amended by the substitution in subsection (1) for paragraph (f) and the words following thereafter of the following paragraph and words respectively: Amendment of section 37 of Act 24 of 1956, as amended by section 14 of Act 65 of 1968 and section 19 of Act 86 of 1984.
- “(f) contravenes or fails to comply with the provisions of section 10, ~~or~~ 31, or 32A (2) or (4), shall be guilty of an offence, and liable on conviction—
- (i) in the case of an offence referred to in paragraph (a) to a fine not exceeding ~~R100~~ R200;
- (ii) in the case of an offence referred to in paragraph (b) or (c) to a fine not exceeding ~~R250~~ R500;
- (iii) in the case of an offence referred to in paragraph (d) or (e) to a fine not exceeding ~~R500~~ R1 000; and
- (iv) in the case of an offence referred to in paragraph (f) to a fine not exceeding R1 000 or, if the offender is an individual, to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.”.
14. Section 1 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for the definition of “president” of the following definition: Amendment of section 1 of Act 1 of 1985.
- “‘president’, in relation to a stock exchange, means the person [for the time being at the head of] appointed by the committee of such exchange as chief executive officer of that stock exchange or in his absence his deputy or, if there is no such chief executive officer or deputy, such other person as may be appointed by such committee to perform the functions which shall or may be performed by the president;”.
15. Section 3 of the Stock Exchanges Control Act, 1985, is hereby amended by the insertion after subparagraph (v) of the words following paragraph (g) of subsection (3) of the following subparagraph: Amendment of section 3 of Act 1 of 1985.
- “(vA) the South African Reserve Bank; or”.
16. Section 11 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for subsection (4) of the following subsection: Amendment of section 11 of Act 1 of 1985.
- “(4) On production by the juristic person referred to in subsection (2) of a relevant title deed or other deed or document, and of the relevant valid licence issued in terms of section ~~[5] 9~~, to a registrar or other officer charged with the maintenance of a register under any law, such registrar or officer shall effect all such alterations, endorsements or entries in his registers as may be necessary as a result of the acquisition of juristic personality by the stock exchange concerned in terms of the said subsection (2).”.
17. This Act shall be called the Financial Institutions Amendment Act, 1986. Short title.