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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 987.

20 Mei 1988

No. 987.

20 May 1988

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:—

— 51 van 1988: Wysigingswet op Finansiële Instellings, 1988.

No. 51 of 1988: Financial Institutions Amendment Act, 1988.

FINANCIAL INSTITUTIONS AMENDMENT ACT, 1988

Act No. 51, 1988

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 authorize the Registrar of Insurance to delegate or assign any power or duty assigned to him by the said Act to an officer or employee in the public service; and to further regulate the compulsory investment by insurers in certain kinds of assets; to amend the Pension Funds Act, 1956, so as to substitute the definition of "dependant"; to authorize the Registrar of Pension Funds to delegate or assign any power or duty assigned to him by the said Act to an officer or employee in the public service; to add certain insurance policies to the classes of assets in which a registered fund shall hold a minimum percentage of the aggregate value of all the assets of the fund; and to further regulate the disposition of pension benefits upon the death of a member of a registered fund; to amend the Friendly Societies Act, 1956, so as to authorize the Registrar of Friendly Societies to delegate or assign any power or duty assigned to him by the said Act to an officer or employee in the public service; to amend the Unit Trusts Control Act, 1981, so as to substitute the definitions of "licensed stock exchange", "recognized stock exchange" and "securities"; to authorize the Registrar of Unit Trust Companies to delegate or assign any power or duty assigned to him under the said Act to an officer or employee in the public service; to further define the nature of and to increase the amount of share capital and non-distributable reserves to be held by management companies of unit trust schemes; to further regulate the powers of the said Registrar in regard to the registration of management companies of unit trust schemes; to increase the minimum amount of investment of a management company in a unit portfolio and to extend the powers of the said Registrar in regard to such amount; and to prevent a close corporation from acting as trustee of a unit trust scheme; to amend the Participation Bonds Act, 1981, so as to empower the said Registrar to impose further conditions in regard to certain schemes; to grant certain powers in regard to advertisements, brochures and other similar documents to the said Registrar; and to create a certain offence relating to advertisements, brochures and other similar documents; to amend the Inspection of Financial Institutions Act, 1984, and the Financial Institutions (Investment of Funds) Act, 1984, so as to make the provisions of the said Acts applicable to close corporations; to amend the Stock Exchanges Control Act, 1985, so as to substitute the definitions of "Registrar" and "securities"; to provide for the designation of a Regis-

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trar and Deputy Registrar of Stock Exchanges; to authorize the said Registrar to delegate or assign any power or duty assigned to or imposed upon him by or under the said Act to an officer or employee in the public service; to substitute or delete certain expressions; to empower the said Registrar to allow the publication of particulars of securities outside the Republic; to provide for the determination of the date on which certain rules shall come into operation; to authorize a stock-broker to sell certain securities held by him or which are in his custody; and to authorize the president of a stock exchange to sign certain forms on behalf of a registered owner of securities; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 5 May 1988.)

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

1. The following section is hereby inserted in the Insurance Act, 1943, after section 2B:

Insertion of section 2C in Act 27 of 1943.

5 "Delegation of powers and assignment of duties.
10 **2C. The Registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him by this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned."**

2. Section 17 of the Insurance Act, 1943, is hereby amended by the substitution for subsection (2) of the following subsection:

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 and section 4 of Act 86 of 1984.

15 "(2) [(a)] The assets referred to in subsection (1) (b) shall, subject to the provisions of subsections (2A) and (3), include assets of the kinds mentioned in Part I of the Third Schedule having an aggregate value not less than—
20 (i) thirty-three per cent of the amount of net liabilities referred to in subsection (1) (b), excluding such net liabilities in respect of long-term insurance business carried on with pension funds and retirement annuity funds; [and]
25 (ii) subject to any exemption under section 18ter fifty-three per cent of the amount of the said net liabilities in respect of long-term insurance business carried on with pension funds and retirement annuity funds, [but subject to any exemption under section 18ter] excluding such net liabilities in respect of
30 long-term insurance business carried on under policies referred to in paragraph (j) of subsection (1) of section 19 of the Pension Funds Act, 1956 (Act No. 24 of 1956); and
35 (iii) one hundred per cent of the amount of the said net liabilities in respect of long-term insurance business carried on under policies referred to in paragraph (j) of subsection (1) of section 19 of the Pension Funds Act, 1956."

3. Section 1 of the Pension Funds Act, 1956, is hereby amended by the substitution for the definition of "dependant" of the following definition:

Amendment of section 1 of Act 24 of 1956, as amended by

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“dependant”, in relation to a member, means—

- (a) a person **[considered by the person managing the business of the fund concerned as being in fact dependent on the member for maintenance, regardless of whether or not] in respect of whom the member is legally liable for [the] maintenance [of such person];**
- (b) **[and includes] a person [who is in fact not dependent on the member] in respect of whom the member is not legally liable for maintenance, if such person [is]—**
 - (i) **was upon the death of the member in fact dependent on the member for maintenance; or**
 - [(i) the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion; or]**
 - (ii) **a child or descendant of a child of the member or the spouse of such child or descendant;**
- [who in accordance with the rules of the fund may become entitled to a benefit]**
- (c) **a person in respect of whom the member would have become legally liable for maintenance, had the member not died;”.**

section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978 and section 38 of Act 99 of 1980.

4. The following section is hereby inserted in the Pension Funds Act, 1956, after section 3:

Insertion of section 3A in Act 24 of 1956.

3A. The registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him by this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.”.

5. 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, section 17 of Act 86 of 1984 and section 11 of Act 50 of 1986.

- (a) by the addition to subsection (1) of the following paragraph:
 - “(j) policies issued to the fund concerned by an insurer lawfully carrying on long-term insurance business within the meaning of the Insurance Act, 1943 (Act No. 27 of 1943)—**
 - (aa) under which the extent of the benefits is to be calculated with reference to the market value of the insurer’s assets of the classes mentioned in paragraphs (a) to (i) of this subsection; and**
 - (bb) which the registrar has approved on such conditions as he may determine.”; and**
- (b) by the substitution for subsection (2) of the following subsection:
 - “(2) For the purposes of subsection (1), the aggregate value of the assets of a fund shall not include any policies of insurance (other than policies mentioned in paragraph (j) of subsection (1)) issued by a person lawfully carrying on insurance business within the meaning of the Insurance Act, 1943 (Act No. 27 of 1943).”.**

6. Section 37C of the Pension Funds Act, 1956, is hereby amended—

Amendment of section 37C of Act 24 of 1956, as inserted by section 24 of

- (a) by the insertion after paragraph (b) of the following paragraph:

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- 5 “(bA) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member; to receive the benefit—
- 10 (i) so much of the benefit as is, in the opinion of the person managing the business of the fund, required for the maintenance of the dependant or dependants, shall be paid to such dependant or dependants; and
- 15 (ii) the balance of the benefit shall, subject to the proviso to paragraph (b), be paid to the nominee.”; and
- 15 (b) by the addition of the following subsection, the existing section becoming subsection (1):
- 20 “(2) For the purpose of this section, a payment by a registered fund to a dependant shall be deemed to include a payment made by the fund to a trustee contemplated in the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934), for the benefit of a dependant contemplated in this section.”.

Act 101 of 1976 and substituted by section 41 of Act 99 of 1980.

7. The following section is hereby inserted in the Friendly Societies Act, 1956, after section 4:
- 25 “Delegation of powers and assignment of duties. 4A. The registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him by this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.”.
- 30

Insertion of section 4A in Act 25 of 1956.

8. Section 1 of the Unit Trusts Control Act, 1981, is hereby amended—
- 35 (a) by the substitution for the definition of “licensed stock exchange” of the following definition: “‘licensed stock exchange’ means a stock exchange licensed under the Stock Exchanges Control Act, [1947] 1985 (Act No. [7] 1 of [1947] 1985);”;
- 40 (b) by the substitution for the definition of “recognized stock exchange” of the following definition: “‘recognized stock exchange’ means a stock exchange licensed under the Stock Exchanges Control Act, [1947] 1985 (Act No. 1 of 1985), or a stock exchange outside the Republic recognized by the registrar for the purposes of this Act;”;
- 45 (c) by the substitution for the definition of “securities” of the following definition: “‘securities’ means shares, stock, units in a unit trust scheme in property shares, debentures, debenture stock and debenture bonds, and includes unsecured notes, whether or not they have inherent option rights or are convertible;”.
- 50

Amendment of section 1 of Act 54 of 1981.

9. The following section is hereby inserted in the Unit Trusts Control Act, 1981, after section 2:
- 55 “Delegation of powers and assignment of duties. 2A. The registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to him under this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.”.

Insertion of section 2A in Act 54 of 1981.

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10. Section 3 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: Amendment of section 3 of Act 54 of 1981.
- 5 “(b) has a paid-up share capital and **[a capital reserve] non-distributable reserves** which together amount to not less than **[R600 000] R2 000 000** actually employed or immediately available for employment in its unit trust business.”.
11. Section 4 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution in subsection (3) for the words following paragraph (c) of the following words: Amendment of section 4 of Act 54 of 1981.
- 15 “he shall, subject to the provisions of subsection (4) and on such conditions as he may deem fit, register the applicant as a management company and issue to it a certificate of registration in the prescribed form.”.
12. The following section is hereby substituted for section 9 of the Unit Trusts Control Act, 1981: Substitution of section 9 of Act 54 of 1981.
- 20 “Management company to make investment in every unit portfolio. 9. (1) Every management company shall of its own resources have at all times invested in every unit portfolio an amount equal to at least 10 per cent of the value of the underlying securities in such unit portfolio, and shall hold the units in respect of such investment as beneficial owner: Provided that the registrar may, on application by a management company, determine that the amount so invested by that company shall not be required to exceed **[R200 000] R1 000 000**.
- 25 (2) The registrar may in his discretion at any time revoke a determination referred to in the proviso to subsection (1).”.
- 30
13. Section 20 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: Amendment of section 20 of Act 54 of 1981.
- 35 “(b) a company or institution, excluding a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984), incorporated under a special Act;”.
14. The following section is hereby substituted for section 26 of the Unit Trusts Control Act, 1981: Substitution of section 26 of Act 54 of 1981.
- 40 “Powers of inspection. 26. (1) In addition to the powers and duties conferred or imposed upon him by this Act, the registrar shall have all the powers and duties conferred or imposed upon him by the Inspection of Financial Institutions Act, **[1962] 1984** (Act No. **[68] 38** of **[1962] 1984**).
- 45 (2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, **[1962] 1984**.”.
15. Section 29 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: Amendment of section 29 of Act 54 of 1981.
- 55 “(b) has a paid-up share capital and **[a capital reserve] non-distributable reserves** which together amount to not less than **[R1 000 000] R2 000 000** actually employed or immediately available for employment in its unit trust business; and”.

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16. Section 30 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution in subsection (3) for the words following paragraph (d) of the following words:

Amendment of section 30 of Act 54 of 1981.

5 "he shall, on such conditions as he may deem fit, register the applicant as a management company in property shares and issue to it a certificate of registration in the prescribed form."

17. Section 39 of the Unit Trusts Control Act, 1981, is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 39 of Act 54 of 1981.

10 "(3) In the application of section 427 (2) of the said Act in respect of a management company, section 346 (4) (a) shall be construed as if the words 'or to the Registrar of Unit Trust Companies appointed under the Unit Trusts Control Act, [1947] 1981', were inserted after the words 'shall be lodged with the Master' in that section."

18. Section 10 of the Participation Bonds Act, 1981, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

Amendment of section 10 of Act 55 of 1981.

20 "The rules referred to in subsection (1) shall be deemed to include any conditions imposed by the registrar under section 37 (2) (a) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), in relation to the scheme, as well as any other conditions the registrar may from time to time impose in relation to the scheme for the purposes of this Act, and shall include—"

19. The following section is hereby substituted for section 13 of the Participation Bonds Act, 1981:

Substitution of section 13 of Act 55 of 1981.

30 "Powers of inspection. 13. (1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, [1962] 1984 (Act No. [68] 38 of [1962] 1984), may at any time at the direction of the Registrar of Financial Institutions inspect the affairs of a scheme and of a manager and of a nominee company in relation to that scheme.

35 (2) The provisions of the Inspection of Financial Institutions Act, [1962] 1984, shall apply in respect of an inspection carried out in terms of subsection (1)."

40 20. The following section is hereby inserted in the Participation Bonds Act, 1981, after section 14:

Insertion of section 14A in Act 55 of 1981.

45 "Registrar's powers in regard to certain advertisements, brochures and other similar documents. 14A. Notwithstanding anything to the contrary in any law contained, the registrar may, if he is of the opinion that the terms of any advertisement, brochure or other similar document relating to a scheme and proposed to be published or being published by a manager or its authorized agent are misleading or for any other reason objectionable, direct such manager or such agent, as the case may be, not to publish or to cease the publication of the advertisement, brochure or document concerned or to effect such adjustments thereto as he may deem fit."

21. The following section is hereby substituted for section 15 of the Participation Bonds Act, 1981:

Substitution of section 15 of Act 55 of 1981.

55 "Offences. 15. Any person who—
(a) contravenes or fails to comply with any provision of this Act or of a rule of a scheme with which it is his duty to comply;

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- (b) fails to comply with a direction under section 14A, shall be guilty of an offence and liable on conviction, if no penalty is specially prescribed in this Act for such contravention or default, to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.
- 5
22. Section 1 of the Inspection of Financial Institutions Act, 1984, is hereby amended by the insertion after the definition of “auditor” of the following definition:
“company” includes a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);”.
- 10 Amendment of section 1 of Act 38 of 1984, as amended by section 106 of Act 82 of 1986.
23. Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended by the insertion before the definition of “financial institution” of the following definition:
“company” includes a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);”.
- 15 Amendment of section 1 of Act 39 of 1984.
24. Section 1 of the Stock Exchanges Control Act, 1985, is hereby amended—
- 20 (a) by the substitution for the definition of “Registrar” of the following definition:
“Registrar” means the Registrar of Stock Exchanges designated under section 2;”; and
- 25 (b) by the addition to paragraph (ii) of the definition of “securities” of the word “or” and the addition to the said definition of the following paragraph:
“(iii) treasury bills, bankers’ acceptances, negotiable certificates of deposit issued by a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or by a mutual building society registered under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or by a building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), or any other similar short-term instruments designated by the Registrar by notice in the Gazette, or options on or rights to such bills, acceptances, certificates or instruments;”.
- 30
- 35
- 40 25. The following section is hereby substituted for section 2 of the Stock Exchanges Control Act, 1985:
- Substitution of section 2 of Act 1 of 1985.
- “Registrar of Stock Exchanges. 2. (1) The Minister shall designate an officer in the public service as Registrar of Stock Exchanges, who shall, subject to the control of the Minister, exercise all the powers and perform all the duties assigned to or imposed upon the Registrar by or under this Act.
- 45 (2) The Minister may designate an officer in the public service as Deputy Registrar of Stock Exchanges, who shall, subject to the control and directions of the Registrar, be competent to exercise any power and perform any duty which the Registrar is permitted or required to perform.
- 50 (3) There shall be a right of appeal to the Minister against a decision of the Registrar, and such appeal shall be prosecuted in the manner and within the time prescribed.”.
- 55

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26. The following section is hereby inserted in the Stock Exchanges Control Act, 1985, after section 2: Insertion of section 2A in Act 1 of 1985.
- 5 “Delegation of powers and assignment of duties.” **2A. The Registrar may, subject to such conditions as he may determine, delegate or assign any power or duty assigned to or imposed upon him by or under this Act to an officer or employee in the public service, but shall not thereby be divested or relieved of a power or duty so delegated or assigned.”**
- 10 27. Section 3 of the Stock Exchanges Control Act, 1985, is hereby amended— Amendment of section 3 of Act 1 of 1985, as amended by section 15 of Act 50 of 1986.
- 15 (a) by the substitution for paragraph (c) of subsection (3) of the following paragraph:
 “(c) **[the Electricity Supply Commission] Eskom; or**”;
- 20 (b) by the substitution for paragraph (v) of subsection (3) of the following paragraph:
 “(v) the Rand Water Board or **[the Electricity Supply Commission] Eskom** or the Land and Agricultural Bank of South Africa; or”; and
- 25 (c) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (7) of the following subparagraphs:
 “(i) it is a regular feature of his business to buy and sell securities on behalf of other persons or on his own account or on behalf of other persons and on his own account; **[and]**
 (ii) he holds himself out **[to members of the public]** as a person who buys and sells securities;”.
- 30 28. Section 6 of the Stock Exchanges Control Act, 1985, is hereby amended by the addition of the following subsection: Amendment of section 6 of Act 1 of 1985.
- 35 “(3) **Notwithstanding the provisions of subsection (1), the Registrar may, subject to such conditions as he may determine from time to time, authorize any other person to enter into or carry on a scheme or arrangement in pursuance of which particulars are published outside the Republic of securities which such other person desires to buy or to sell.”**
- 40 29. Section 12 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for subsection (5) of the following subsection: Amendment of section 12 of Act 1 of 1985.
- 45 “(5) (a) **No addition to or alteration (other than a suspension) of the rules of an association which is the holder of a stock exchange licence shall be valid unless it has been approved by the Registrar, and if he approves thereof, such addition or alteration shall come into operation on a date mentioned in the approval.**
- 50 (b) If the Registrar does not disapprove of an addition to or alteration of the rules referred to in paragraph (a) within a period of two months after the expiry of the period referred to in subsection (7), he shall be deemed to have approved thereof, and such addition or alteration shall come into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.”.
- 55 30. Section 22 of the Stock Exchanges Control Act, 1985, is hereby amended— Amendment of section 22 of Act 1 of 1985.
- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 “(b) **sell for the purchaser's account so much of any other securities belonging to the purchaser and held by or in the custody of the stock-broker or so**

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5 much of any other securities to be delivered to the
stock-broker in respect of any transaction in con-
nection with securities previously entered into on
behalf of the purchaser as may be necessary to rea-
lize an amount equal to the amount still owing,
after the sale of securities in terms of paragraph
(a), in respect of the securities purchased on behalf
of the purchaser.”;

10 (b) by the substitution for paragraph (b) of subsection (3)
of the following paragraph:
“(b) sell for the purchaser’s account so much of any
other securities belonging to the purchaser and
held by or in the custody of the stock-broker or so
much of any other securities to be delivered to the
15 stock-broker in respect of any transaction in con-
nection with securities previously entered into on
behalf of the purchaser as may be necessary to rea-
lize an amount equal to the amount still owing,
after the sale of securities in terms of paragraph
20 (a), in respect of the securities purchased on behalf
of the purchaser.”; and

 (c) by the substitution for paragraph (b) of subsection (4)
of the following paragraph:
25 “(b) sell for the purchaser’s account so much of any
other securities belonging to the purchaser and
held by or in the custody of the stock-broker or so
much of any other securities to be delivered to the
stock-broker in respect of any transaction in con-
nection with securities previously entered into on
30 behalf of the purchaser as may be necessary to
realize an amount equal to the amount still owing,
after the sale of securities in terms of paragraph
(a), in respect of the securities purchased on behalf
of the purchaser.”.

35 31. Section 23 of the Stock Exchanges Control Act, 1985, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: Amendment of section 23 of Act 1 of 1985.

 “(b) other securities belonging to the purchaser and held by
or in the custody of the stock-broker or so much of
40 other securities to be delivered to the stock-broker in
respect of a transaction in connection with securities
previously entered into on behalf of such person.”.

 32. The following section is hereby inserted in the Stock Exchanges Control Act, 1985, after section 23: Insertion of section 23A in Act 1 of 1985.

45 “Signing of certain forms on behalf of registered owner of securities. 23A. If securities were sold by a stock-broker in
compliance with the provisions of sections 22 or 23
and the stock-broker is unable to obtain a form pre-
scribed by any law for the purposes of transferring
such securities to the purchaser thereof and duly
50 signed by the registered owner of such securities or
his nominee, the president may sign such form on
behalf of such owner.”.

 33. This Act shall be called the Financial Institutions Amendment Act, 1988. Short title and commencement.

55 (2) Sections 3 and 6 (a) shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.