



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

WET

Om die wette betreffende die belegging, veilige bewaring en administrasie van fondse en trustgoed deur finansiële instellings te konsolideer en om vir toekomstige aanpassings voorsiening te maak.

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

PRYS (AVB ingesluit 30c PRICE (GST included)

BUITELANDS 40c ABROAD

POSVRY · POST FREE

Vol. 226

KAAPSTAD, 11 APRIL 1984

No. 9156

CAPE TOWN, 11 APRIL 1984

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 661.

11 April 1984

No. 661.

11 April 1984

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:—

No. 39 van 1984: Wet op Finansiële Instellings (Belegging van Fondse), 1984.

No. 39 of 1984: Financial Institutions (Investment of Funds) Act, 1984.

Wet No. 39, 1984

WET OP FINANSIËLE INSTELLINGS (BELEGGING VAN FONDSE),
1984

WET

Om die wette betreffende die belegging, veilige bewaring en administrasie van fondse en trustgoed deur finansiële instellings te konsolideer en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 20 Maart 1984.)

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) “finansiële instelling”— 5
 - (a) ’n versekeraar wat ingevolge die Versekeringswet, 1943 (Wet No. 27 van 1943), geregistreer is;
 - (b) ’n pensioenfondseorganisasie wat ingevolge die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), geregistreer is; 10
 - (c) ’n onderlinge hulpvereniging wat ingevolge die Wet op Onderlinge Hulpverenigings, 1956 (Wet No. 25 van 1956), geregistreer is;
 - (d) ’n bankinstelling wat ingevolge die Bankwet, 1965 (Wet No. 23 van 1965), geregistreer is; 15
 - (e) ’n bouvereniging wat ingevolge die Bouverenigingswet, 1965 (Wet No. 24 van 1965), geregistreer is;
 - (f) ’n effekte-trustskema soos in die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), omskryf; 20
 - (g) ’n eksekuteurskamer of ’n trustmaatskappy of enige ander maatskappy wat enige trustgoed belê, in veilige bewaring hou, beheer of administreer;
 - (h) ’n bestuurder wat ingevolge die bepalings van die Wet op Deelnemingsverbande, 1981 (Wet No. 55 van 1981), ’n skema beheer of administreer; (i) 25
- (ii) “geregistreer”, met betrekking tot ’n finansiële instelling wat kragtens ’n Parlements wet geregistreer moet word, ook voorlopig geregistreer; (iii) 30
- (iii) “prinsipaal” enige persoon of liggaam van persone, hetsy met regs persoonlikheid beklee al dan nie, vir wie of waarvoor ’n finansiële instelling ingevolge ’n volmag of mondelinge of ander ooreenkoms trustgoed belê, in veilige bewaring hou, beheer of administreer; (ii) 35
- (iv) “trustgoed” enige bate wat deur of namens ’n finansiële instelling in sy hoedanigheid van administrateur, trustee of kurator uit hoofde van ’n testament, akte van oormaking of hofbevel, of as agent vir so ’n administrateur, trustee of kurator of ander prinsipaal, gehou of geadministreer word. (iv) 40

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 39, 1984

ACT

To consolidate the laws relating to the investment, safe custody and administration by financial institutions of funds and trust property and to provide for matters incidental thereto.

*(English text signed by the State President.)
(Assented to 20 March 1984.)*

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

1. In this Act, unless the context indicates otherwise—

Definitions.

(i) “financial institution” means—

- 5 (a) an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943);
- (b) a pension fund organization registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- 10 (c) a friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (d) a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965);
- (e) a building society registered in terms of the Building Societies Act, 1965 (Act No. 24 of 1965);
- 15 (f) a unit trust scheme as defined in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);
- (g) a board of executors or a trust company or any other company which invests, keeps in safe custody, controls or administers any trust property;
- 20 (h) a manager who in terms of the provisions of the Participation Bonds Act, 1981 (Act No. 55 of 1981), controls or administers a scheme; (i)
- (ii) “principal” means any person or body of persons, corporate or unincorporate, for whom or for which a financial institution invests, keeps in safe custody, controls or administers trust property under power of attorney or in terms of a verbal or other agreement; (iii)
- 25 (iii) “registered”, in relation to a financial institution which requires registration under an Act of Parliament, includes provisionally registered; (ii)
- 30 (iv) “trust property” means any asset held or administered by or on behalf of a financial institution in its capacity as an administrator, trustee or curator by virtue of a will, deed of settlement or order of court or as an agent for any such an administrator, trustee or curator or other principal. (iv)
- 35

Wet No. 39, 1984

WET OP FINANSIËLE INSTELLINGS (BELEGGING VAN FONDSE),
1984

Pligte van persone
wat werk met
fondse van, en met
trustgoed wat
beheer word deur,
finansiële
instellings.

2. 'n Direkteur, amptenaar, werknemer of agent van 'n finansiële instelling of van 'n benoemde maatskappy wat deur 'n finansiële instelling beheer word, wat fondse van die instelling of enige trustgoed wat deur of namens die instelling vir die een of ander bevoordeelde of prinsipaal gehou word, belê, in veilige bewaring hou of andersins beheer of administreer— 5

(a) moet, by die maak van 'n belegging, of by die veilige bewaring, beheer of administrasie van daardie fondse, die hoogste goeie trou handhaaf en behoorlike sorg en vlyt aan die dag lê; 10

(b) moet, by die maak van 'n belegging of by die veilige bewaring, beheer, administrasie of vervreemding van die trustgoed, die hoogste goeie trou handhaaf en, behoudens die bepalinge van die stuk of ooreenkoms waardeur die betrokke trust of agentuur opgerig is, die gebruikelike sorg en vlyt beoefen wat van 'n trustee vereis word by die uitoefening of verrigting van sy bevoegdhede en pligte; en 15

(c) mag nie die fondse of trustgoed vervreem, belê, verpand, verhipotekeer of andersins beswaar of daarvan gebruik maak of 'n garansie gee (hetsy, in die geval van 'n versekeraar, daardie garansie in 'n polis vervat word al dan nie) op 'n wyse wat bereken is om regstreeks of onregstreeks 'n onregmatige voordeel vir homself of vir iemand anders ten koste van die betrokke instelling, trust, bevoordeelde of prinsipaal te verkry nie. 25

Bekendmaking van
belang.

3. (1) 'n Direkteur, amptenaar, werknemer of agent van 'n finansiële instelling of van 'n benoemde maatskappy wat deur 'n finansiële instelling beheer word, wat 'n besluit neem, of aan 'n besluit deelneem, om uit die fondse van die instelling of uit enige trustgoed wat deur of namens die instelling vir die een of ander bevoordeelde of prinsipaal gehou word, 'n belegging in die aandele van, of 'n lening, hetsy gesekureer of ongesekureer, te maak aan, 'n maatskappy of firma waarin hy 'n regstreekse of onregstreekse persoonlike belang het, hetsy by wyse van aan-deelhouding of die verhouding van krediteur en debiteur of andersins, moet skriftelik of andersins die belang aan die raad van direkteure of ander beherende liggaam van die finansiële instelling of benoemde maatskappy, na gelang van die geval, bekend maak voordat daardie belegging of lening gemaak word: Met dien verstande dat 'n bestuurder, takbestuurder of ander amptenaar van 'n bankinstelling soos omskryf in die Bankwet, 1965 (Wet No. 23 van 1965), wat handel binne die perke van die bevoegdheid wat behoorlik deur die raad van direkteure van die betrokke bankinstelling aan hom gedelegeer is vir die uitvoering van sy normale pligte, vrygestel is van die verpligting om enige belang aldus bekend te maak. 35 40 45

(2) 'n Aantekening van elke bekendmaking van belang ingevolge subartikel (1) aan 'n raad van direkteure of ander beherende liggaam wat die aard en omvang van die belang aandui, moet gemaak word in die notule van die vergadering van daardie raad of beherende liggaam waarby die bekendmaking plaasvind of oorweeg word. 50

Belegging van
trustgoed.

4. (1) Wanneer 'n finansiële instelling wat trustgoed in sy hoedanigheid van administrateur, trustee, kurator of agent hou, deur die stuk of ooreenkoms waarkragtens die trustgoed geadministreer word, gelas word, of daar van hom vereis word, om daardie goed op naam van 'n bepaalde of bepaalbare persoon of persone of op naam van die betrokke trust of prinsipaal of op naam van die finansiële instelling in sy hoedanigheid van administrateur, trustee, kurator of agent te belê, mag geen direkteur, amptenaar, werknemer of agent van daardie instelling die goed of, wanneer registrasie gewoonlik vereis word om die belegging te voltooi, die belegging laat registreer nie, behalwe op naam van daardie persoon of persone of van daardie trust of prinsipaal of op naam van daardie instelling in sy hoedanigheid van administrateur, trustee, kurator of agent, na gelang van die geval, of, indien om die een of ander rede belegging of registrasie op dié 55 60 65

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 39, 1984

2. A director, official, employee or agent of a financial institution or of a nominee company controlled by a financial institution who invests, keeps in safe custody or otherwise controls or administers any funds of the institution or any trust property held by or on behalf of the institution for any beneficiary or principal—

Duties of persons dealing with funds of, and with trust property controlled by, financial institutions.

- (a) shall, in the making of an investment or in the safe custody, control or administration of those funds, observe the utmost good faith and exercise proper care and diligence;
- (b) shall, in the making of an investment or in the safe custody, control, administration or alienation of the trust property, observe the utmost good faith and, subject to the terms of the instrument or agreement by which the trust or agency concerned has been created, exercise the usual care and diligence required of a trustee in the performance or discharge of his powers and duties; and
- (c) shall not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee (whether or not, in the case of an insurer, such guarantee is incorporated in a policy) in a manner calculated to gain directly or indirectly any improper advantage for himself or any other person at the expense of the institution, trust, beneficiary or principal concerned.

3. (1) A director, official, employee or agent of a financial institution or of a nominee company controlled by a financial institution who takes, or takes part in, any decision to make out of the funds of the institution or out of any trust property held by or on behalf of the institution for any beneficiary or principal, an investment in the shares of, or to grant a loan, whether secured or unsecured, to, a company or firm in which he has a direct or indirect personal interest, whether by way of shareholding or the relationship of creditor and debtor or otherwise, shall declare, in writing or otherwise, that interest to the board of directors or other governing body of the financial institution or nominee company, as the case may be, before that investment or loan is made: Provided that a manager, branch manager or other official of a banking institution as defined in the Banks Act, 1965 (Act No. 23 of 1965), who acts within the limits of authority which has been properly delegated to him by the board of directors of the banking institution concerned for the execution of his normal duties, is exempt from the obligation of thus declaring any interest.

Declaration of interest.

(2) A record of every declaration of interest in terms of subsection (1) to a board of directors or other governing body, indicating the nature and extent of the interest, shall be made in the minutes of the meeting of that board or governing body at which the declaration is made or considered.

4. (1) Where a financial institution holding trust property in its capacity as administrator, trustee, curator or agent is directed or required by the instrument or agreement under which the trust property is being administered, to invest that property in the name of a specified or ascertainable person or persons or in the name of the trust or principal concerned or in the name of the financial institution in its capacity as administrator, trustee, curator or agent, no director, official, employee or agent of that institution shall invest the property or, where registration is usually required to complete the investment, cause the investment to be registered, otherwise than in the name of such person or persons or of that trust or principal or in the name of that institution in its capacity as administrator, trustee, curator or agent, as the case may be, or, if for any reason investment or

Investment of trust property.

Wet No. 39, 1984

WET OP FINANSIËLE INSTELLINGS (BELEGGING VAN FONDSE),
1984

wyse nie volgens wet bewerkstellig kan word nie, behalwe op die wyse in subartikel (2) beoog.

(2) Behoudens die bepalinge van subartikel (3) mag geen direkteur, amptenaar, werknemer of agent van 'n finansiële instelling by ontstentenis van 'n lasgewing bedoel in subartikel (1) sulke trustgoed belê of, wanneer registrasie gewoonlik vereis word om die belegging te voltooi, die belegging laat registreer nie, behalwe—

(a) op naam van die betrokke trust of prinsipaal of op naam van die instelling in sy hoedanigheid van administrateur, trustee, kurator of agent, na gelang van die geval; of

(b) onderworpe aan duidelike identifikasie van die trustgoed of belegging in die boeke van die finansiële instelling as goed of 'n belegging wat aan 'n vermelde trust of prinsipaal behoort, op naam van 'n benoemde maatskappy wat so deur die finansiële instelling wat beheer daarvoor uitoefen, beheer word dat hy geen verpligtings aangaan nie behalwe namens 'n trust of prinsipaal vir wie se voordeel hy bates hou en in elke geval in 'n mate wat nie die waarde van die bates wat aan die trust of prinsipaal behoort, te bowe gaan nie.

(3) Waar die statute van 'n maatskappy die registrasie van aandele of obligasies van daardie maatskappy op naam van 'n trust of van 'n finansiële instelling in sy hoedanigheid van administrateur, trustee of kurator of van 'n benoemde maatskappy verbied, moet die aandele of obligasies wat aan 'n trust behoort, onderworpe aan die identifikasie in subartikel (2) vermeld en nadat sekerheid deur die finansiële instelling aan die Meester van die Hooggeregshof tot sy bevrediging verskaf is (indien bevredigende sekerheid nie reeds ingevolge die Trustgelde Beskermings Wet, 1934 (Wet No. 34 van 1934), verskaf is nie), geregistreer word op naam van 'n direkteur of bestuurder van die finansiële instelling self, en die direkteur of bestuurder hou daarop die aandele of obligasies in 'n fidusiële hoedanigheid ten behoeve van die betrokke trust.

(4) Die bepalinge van hierdie artikel is van toepassing ook in gevalle waar 'n finansiële instelling uit hoofde van 'n testament, akte van oormaking, hofbevel, volmag of ooreenkoms die amp van administrateur, trustee, kurator of agent gesamentlik met 'n ander persoon of ander persone beklee.

(5) Ondanks andersluidende bepalinge van die een of ander wet of die gemene reg, maak trustgoed wat uitdruklik op naam van 'n finansiële instelling in sy hoedanigheid van administrateur, trustee, kurator of agent, na gelang van die geval, geregistreer is, onder geen omstandighede deel van die bates van die finansiële instelling uit nie.

Inspeksie-
bevoegdhede.

5. (1) 'n Inspekteur wat kragtens artikel 2 van die Wet op Inspeksie van Finansiële Instellings, 1984, aangestel is, kan te eniger tyd in opdrag van die registrateur van finansiële instellings die sake van 'n eksekuteurskamer, trustmaatskappy of ander maatskappy vermeld in paragraaf (g) van die woordomscrijwing van "finansiële instelling" in artikel 1 van hierdie Wet en van 'n benoemde maatskappy wat deur 'n finansiële instelling beheer word, inspekteer ten einde vas te stel of die bepalinge van hierdie Wet nagekom word.

(2) Die registrateur van finansiële instellings kan die sake van enige maatskappy wat hy op redelike gronde vermoed trustgoed in bewaring hou of administreer, laat inspekteer met die doel om vas te stel of die bepalinge van hierdie Wet daarop van toepassing is.

(3) Die bepalinge van die Wet op Inspeksie van Finansiële Instellings, 1984, is van toepassing ten opsigte van 'n inspeksie wat ingevolge subartikel (1) of (2) uitgevoer word.

Aanstelling van
kurator.

6. (1) Indien as gevolg van 'n inspeksie van die sake van 'n finansiële instelling kragtens die een of ander wet die registrateur van finansiële instellings van oordeel is dat dit om watter rede ook al wenslik is om dit te doen, kan hy sonder kennisge-

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 39, 1984

registration in that manner cannot legally be effected, otherwise than in the manner contemplated in subsection (2).

(2) Subject to the provisions of subsection (3) no director, official, employee or agent of a financial institution shall, in the absence of a direction referred to in subsection (1), invest such trust property or, where registration is usually required to complete the investment, cause the investment to be registered, otherwise than—

(a) in the name of the trust or principal concerned or in the name of the institution in its capacity as administrator, trustee, curator or agent, as the case may be; or

(b) subject to clear identification of the trust property or investment in the books of the financial institution as being property or an investment belonging to a specified trust or principal, in the name of a nominee company which shall be so controlled by the financial institution which exercises control over it that it incurs no liabilities other than on behalf of a trust or principal for whose benefit it holds assets and in each case to an extent not exceeding the value of the assets belonging to the trust or principal.

(3) Where the articles of association of a company prohibit the registration of shares or debentures of that company in the name of a trust or of a financial institution in its capacity as administrator, trustee or curator or of a nominee company, the shares or debentures belonging to a trust shall be registered, subject to the identification mentioned in subsection (2) and upon security being furnished by the financial institution to the Master of the Supreme Court to his satisfaction (if satisfactory security has not already been furnished in terms of the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934)), in the name of a director or manager of the financial institution itself, and that director or manager shall thereupon hold those shares or debentures in a fiduciary capacity on behalf of the trust concerned.

(4) The provisions of this section also apply in cases where a financial institution by virtue of a will, deed of settlement, order of court, power of attorney or agreement holds office as an administrator, trustee, curator or agent jointly with another person or other persons.

(5) Notwithstanding anything to the contrary in any law or the common law contained, trust property which is expressly registered in the name of a financial institution in its capacity as administrator, trustee, curator or agent, as the case may be, shall not under any circumstances form part of the assets of the financial institution.

5. (1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984, may at any time at the direction of the registrar of financial institutions inspect the affairs of a board of executors, trust company or other company mentioned in paragraph (g) of the definition of "financial institution" in section 1 of this Act and of a nominee company controlled by a financial institution, in order to ascertain whether the provisions of this Act are being complied with.

Powers of inspection.

(2) The registrar of financial institutions may cause the affairs of any company which he has reasonable cause to believe holds or administers trust property, to be inspected in order to ascertain whether the provisions of this Act are applicable to it.

(3) The provisions of the Inspection of Financial Institutions Act, 1984, apply in respect of an inspection carried out in terms of subsection (1) or (2).

6. (1) If as a result of an inspection of the affairs of a financial institution under any law, the registrar of financial institutions is of the opinion that it is for any reason desirable to do so, he may without notice to the financial institution apply to a division of

Appointment of curator.

Wet No. 39, 1984

WET OP FINANSIËLE INSTELLINGS (BELEGGING VAN FONDSE),
1984

wing aan die finansiële instelling by 'n afdeling van die Hooggereshof wat regsbevoegdheid het (hieronder die hof genoem) aansoek doen om die aanstelling van 'n kurator om die besigheid of 'n deel van die besigheid van daardie finansiële instelling te beheer en te bestuur. 5

(2) Na aanleiding van 'n aansoek ingevolge subartikel (1) kan die hof—

(a) 'n kurator voorlopig aanstel om die besigheid of 'n deel van die besigheid van daardie finansiële instelling te beheer en te bestuur op die voorwaardes en vir die tydperk wat die hof goedvind; en 10

(b) gelyktydig 'n bevel *nisi* toestaan waarby die finansiële instelling aangesê word om op 'n dag in die bevel vermeld redes aan te voer waarom die aanstelling van die kurator nie bekragtig behoort te word nie. 15

(3) Op aansoek van die finansiële instelling kan die hof die keerdag vervroeg mits aan die registrateur van finansiële instellings nie minder nie as 48 uur kennis van die aansoek gegee is.

(4) As die hof by die verhoor ingevolge die bevel *nisi* oortuig is dat dit wenslik is om dit te doen, kan die hof die aanstelling van die kurator bekragtig. 20

(5) Die kurator handel onder die toesig van die hof, en hy kan by die hof aansoek doen om instruksies met betrekking tot enige aangeleentheid wat uit die beheer en bestuur van die besigheid van die finansiële instelling voortvloei of daarmee in verband staan. 25

(6) Die kurator moet aan die registrateur van finansiële instellings die inligting betreffende die sake van die finansiële instelling verskaf wat hy van tyd tot tyd verlang, en moet aan hom kennis gee van enige aansoek wat hy ingevolge subartikel (5) by die hof doen. 30

(7) Die registrateur van finansiële instellings is geregtig om by 'n aansoek deur die kurator ingevolge subartikel (5) persoonlik of deur 'n verteenwoordiger aangehoor te word, en hy kan self 'n aansoek by die hof doen met betrekking tot die beheer en bestuur van die besigheid van die finansiële instelling deur die kurator. 35

(8) Die kurator is geregtig om uit die fondse van die finansiële instelling die besoldiging te ontvang wat die hof vasstel.

(9) Die hof kan te eniger tyd by bewys van goeie gronde die aanstelling van die kurator intrek. 40

Aantekeninge en inskrywings in rekeningboeke as getuienis toelaatbaar.

7. Die aantekeninge van 'n finansiële instelling en van 'n benoemde maatskappy of trust deur daardie instelling beheer of geadministreer en die rekeningboeke van daardie instelling, maatskappy of trust is, in enige verrigtinge ingevolge hierdie Wet, toelaatbaar as *prima facie*-bewys van die aangeleenthede, transaksies en rekeninge daarin opgeteken, by die voorlegging van 'n geskrif wat 'n beëdigde verklaring heet te wees van een van die direkteure, amptenare, werknemers of agente van die instelling of maatskappy of van 'n inspekteur kragtens die Wet op Inspeksie van Finansiële Instellings, 1984, aangestel, of van ander voldoende getuienis, ten effekte dat daardie aantekeninge of rekeningboeke die gewone aantekeninge en rekeningboeke van die instelling, maatskappy of trust is of was en dat die aantekeninge of inskrywings in die rekeningboeke in die gewone loop van die besigheid bygehou of gedoen is. 50 55

Bepalings met betrekking tot vervreemding van bates van 'n finansiële instelling of trustgoed in sekere gevalle.

8. Indien 'n direkteur, amptenaar, werknemer of agent van 'n finansiële instelling of van 'n benoemde maatskappy wat deur so 'n instelling beheer word, enige fondse of ander bates van die instelling of enige trustgoed in stryd met, of sonder om te voldoen aan, die bepalinge van hierdie Wet heet te vervreem aan 'n ander persoon, is die vervreemding ongeldig tensy daardie ander persoon bewys lewer dat hy ten tyde van die verkryging onbewus was van die oortreding of nie-nakoming en geen rede gehad het om dit te vermoed nie, en dat hy die fondse, bates of trustgoed, na gelang van die geval, teen 'n geldwaardige teenprestasie verkry het. 60 65

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 39, 1984

the Supreme Court having jurisdiction (hereinafter referred to as the court) for the appointment of a curator to take control of and to manage the whole or any part of the business of that financial institution.

5 (2) Upon an application in terms of subsection (1) the court may—

(a) provisionally appoint a curator to take control of and to manage the whole or any part of the business of that financial institution upon such conditions and for such period as it deems fit; and

10 (b) simultaneously grant a rule *nisi* calling upon the financial institution to show cause upon a day mentioned in the rule why the appointment of the curator should not be confirmed.

15 (3) Upon the application of the financial institution the court may anticipate the return day if not less than 48 hours' notice of such application has been given to the registrar of financial institutions.

(4) If at the hearing pursuant to the rule *nisi* the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.

(5) The curator shall act under the control of the court, and he may apply to the court for instructions in regard to any matter arising out of or in connection with the control and management of the business of the financial institution.

(6) The curator shall furnish the registrar of financial institutions with such information concerning the affairs of the financial institution as he may from time to time require, and shall give him notice of any application which he may make to the court in terms of subsection (5).

(7) The registrar of financial institutions is entitled to be heard personally or by a representative at any application by the curator in terms of subsection (5), and he may himself make an application to the court with reference to the control and management of the business of the financial institution by the curator.

(8) The curator is entitled to receive such remuneration out of the funds of the financial institution as the court may direct.

(9) The court may at any time cancel the appointment of the curator on good cause shown.

40 7. The records of a financial institution and of a nominee company or trust controlled or administered by that institution and the books of account of the institution, company or trust are, in any proceedings under this Act, admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on the production of a document purporting to be an affidavit by one of the directors, officials, employees or agents of the institution or company or by an inspector appointed under the Inspection of Financial Institutions Act, 1984, or of other sufficient evidence, to the effect that those records or books of account are or have been the ordinary records and books of account of the institution, company or trust and that those records have been kept or those entries have been made in the books of account in the ordinary course of business.

Records and entries in account books admissible in evidence.

55 8. If a director, official, employee or agent of a financial institution or of a nominee company controlled by such an institution purports to alienate any funds or other assets of the institution or any trust property to another person in contravention of or without complying with the provisions of this Act, the alienation is invalid unless that other person proves that at the time of the acquisition he was not aware of and had no reason to suspect the contravention or non-compliance and that he acquired the funds, assets or trust property, as the case may be, for valuable consideration.

Provisions relating to alienation of assets of a financial institution or trust property in certain cases.

Wet No. 39, 1984

WET OP FINANSIËLE INSTELLINGS (BELEGGING VAN FONDSE),
1984

Misdrywe.

9. (1) 'n Persoon wat 'n bepaling van hierdie Wet oortree of versuim om te voldoen aan 'n bepaling daarvan waaraan dit sy plig is om te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000 of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar of met daardie boete sowel as daardie gevangenisstraf, en is daarbenewens teenoor die betrokke finansiële instelling, trust, bevoordeelde of prinsipaal aanspreeklik vir enige wins deur hom gemaak en vir enige skade deur die instelling, trust, bevoordeelde of prinsipaal gely as gevolg van daardie oortreding of versuim. 5

(2) 'n Hof wat 'n direkteur van 'n finansiële instelling aan 'n misdryf ingevolge subartikel (1) skuldig bevind, kan, benewens enige straf wat hy oplê, beveel dat die direkteur vir die tydperk wat die hof onder die omstandighede goedvind, nie as 'n direkteur van enige finansiële instelling mag dien nie. 10

Toepassing in
Suidwes-Afrika.

10. Hierdie Wet en enige wysiging daarvan is van toepassing ook in die gebied Suidwes-Afrika, met inbegrip van die Oostelike Caprivi Zipfel. 15

Herroeping van
wette.

11. (1) Behoudens die bepalings van subartikel (2) word die wette in die Bylae vermeld hierby herroep in die mate in die 20 derde kolom daarvan uiteengesit.

(2) Enigiets gedoen of geag gedoen te gewees het kragtens 'n bepaling van 'n wet wat by subartikel (1) herroep word, en wat kragtens 'n bepaling van hierdie Wet gedoen sou kon word, word geag kragtens laasgenoemde bepaling gedoen te wees. 25

Kort titel.

12. Hierdie Wet heet die Wet op Finansiële Instellings (Belegging van Fondse), 1984.

Bylae

WETTE HERROEP

Nommer en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 56 van 1964	Wet op Finansiële Instellings (Belegging van Fondse), 1964	Die geheel
Wet No. 36 van 1981	Wysigingswet op Finansiële Instellings, 1981	Artikel 22

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 39, 1984

9. (1) A person who contravenes any provision of this Act or fails to comply with any provision thereof with which it is his duty to comply, is guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 10 years or to both that fine and that imprisonment, and is in addition liable to the financial institution, trust, beneficiary or principal concerned for any profit made by him and for any damage suffered by the institution, trust, beneficiary or principal as a result of the contravention or failure. Offences.
- 10 (2) A court which convicts a director of a financial institution of an offence in terms of subsection (1) may, in addition to any penalty it may impose, order that the director shall not serve as a director of any financial institution for such period as the court may in the circumstances deem fit.
- 15 10. This Act and any amendment thereof also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel. Application to South West Africa.
- 20 11. (1) Subject to the provisions of subsection (2) the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof. Repeal of laws.
- (2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under the last-mentioned provision.
- 25 12. This Act is called the Financial Institutions (Investment of Funds) Act, 1984. Short title.

Schedule

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act No. 56 of 1964	Financial Institutions (Investment of Funds) Act, 1964	The whole
Act No. 36 of 1981	Financial Institutions Amendment Act, 1981	Section 22

FINANCIAL INSTITUTIONS (INVESTMENT OF FUNDS) ACT, 1984

Act No. 38, 1984

9. (1) A person who contravenes any provision of this Act or fails to comply with any provision thereof which it is his duty to comply, is guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 10 years or to both that fine and that imprisonment, and is in addition liable to the financial institution, trust, beneficiary or principal concerned for any profit made by him and for any damage suffered by the institution, trust, beneficiary or principal as a result of the contravention or failure.
10. (2) A court which convicts a director of a financial institution of an offence in terms of subsection (1) may, in addition to any penalty it may impose, order that the director shall not serve as a director of any financial institution for such period as the court may in the circumstances deem fit.
11. (1) Subject to the provisions of subsection (2) the laws repealed or mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which could be done under a provision of this Act is deemed to have been done under the last-mentioned provision.
12. This Act is called the Financial Institutions (Investment of Funds) Act, 1984.
13. This Act and any amendment thereof also apply in the territory of South West Africa, including the Eastern Caprivi South West Africa.

Schedule

Laws Repealed

Number and year of law	Short title	Extent of repeal
Act No. 56 of 1964	Financial Institutions (Investment of Funds) Act, 1964	The whole
Act No. 38 of 1981	Financial Institutions Amendment Act, 1981	Section 22