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OFFICE OF THE PRESIDENCY

No. 1507.

15 December 1999

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

No. 54 of 1999: Mutual Banks Amendment Act, 1999.

KANTOOR VAN DIE PRESIDENSIE

No. 1507.

15 Desember 1999

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

No. 54 van 1999: Wysigingswet op Onderlinge Banke, 1999.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(*English text signed by the President.*)
(Assented to 9 December 1999.)

ACT

To amend the Mutual Banks Act, 1993, so as to delete a definition and to define or further define certain expressions; to extend the powers of the Registrar of Banks to hold discussions, with a view to achieving effective supervision, with the executive management of mutual banks or of their associates; to substitute for the concepts of provisional and final registration as a mutual bank the single concept of registration as a mutual bank; to delete residual references to terminating mutual building societies; to make other provision with regard to the payment of annual licence fees in respect of mutual bank business; to include employees of associates of mutual banks in the limit placed on the number of employees that may serve as directors of a mutual bank; to prohibit the appointment of officers of associates of mutual banks as auditors of such mutual banks; to provide more specific guidelines regarding matters to be reported to the said Registrar by the auditor of a mutual bank; to include employees of associates of mutual banks in the limit placed on the number of employees that may serve on a mutual bank's audit committee; to make further provision with regard to large exposures of mutual banks; to further regulate the furnishing by mutual banks of returns to the Registrar of Banks; to authorize the making of regulations with regard to the restriction of mutual banks' investments in immovable property and shares and of the granting by mutual banks of loans and advances to certain subsidiaries; and to further regulate the role of mutual banks as agents in the effecting of money-lending transactions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 124 of 1993, as amended by section 1 of Act 25 of 1994

1. Section 1 of the Mutual Banks Act, 1993 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion in subsection (1) after the definition of "director" of the following definition:

"'employee in charge of a risk management function', in relation to a mutual bank, means that employee of the mutual bank who is ultimately responsible for the management of one or more of the following types of risk to which the mutual bank is exposed, namely—

- (a) solvency risk;
- (b) liquidity risk;
- (c) credit risk;

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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.
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(*Engelse teks deur die President geteken.*)
(Goedgekeur op 9 Desember 1999.)

WET

Tot wysiging van die Wet op Onderlinge Banke, 1993, ten einde 'n omskrywing te skrap en sekere uitdrukkinge te omskryf of nader te omskryf; die bevoegdhede van die Registrateur van Banke uit te brei om, met die oog op die bewerkstelling van doelmatige toesighouding, samesprekings te voer met die uitvoerende bestuur van onderlinge banke of van hul geassosieerde; die begrippe van voorlopige en finale registrasie as 'n onderlinge bank deur die enkele begrip van registrasie as 'n onderlinge bank te vervang; oorblywende verwysings na tydelike onderlinge bouverenigings te skrap; ander voorsiening te maak met betrekking tot die betaling van jaarlikse lisensiegelde ten opsigte van onderlinge bankbesigheid; werknemers van geassosieerde van onderlinge banke in te sluit by die beperking wat geplaas word op die getal werknemers wat as direkteure van 'n onderlinge bank mag dien; die aanstelling van beampies van geassosieerde van onderlinge banke as ouditeure van sodanige onderlinge banke te verbied; meer spesifieke riglyne te verskaf aangaande aangeleenthede wat deur die ouditeur van 'n onderlinge bank aan genoemde Registrateur gerapporteer moet word; werknemers van geassosieerde van onderlinge banke in te sluit by die beperking wat geplaas word op die getal werknemers wat op 'n onderlinge bank se auditkomitee mag dien; verdere voorsiening te maak met betrekking tot groot blootstellings van onderlinge banke; die verstrekking deur onderlinge banke van opgawes aan die Registrateur van Banke verder te reël; die uitvaardiging te magtig van regulasies met betrekking tot die beperking op onderlinge banke se beleggings in onroerende goed en aandele en op die toestaan deur onderlinge banke van lenings en voorskotte aan sekere filiale; en die rol van onderlinge banke as agente by die bewerkstelling van geldleningstransaksies verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 124 van 1993, soos gewysig deur artikel 1 van Wet 25 van 1994

- 5 1. Artikel 1 van die Wet op Onderlinge Banke, 1993 (hieronder die Hoofwet genoem), word hierby gewysig—
 (a) deur in subartikel (1) die omskrywing van "geregistreer" te skrap;
 (b) deur in subartikel (1) paragraaf (b) van die omskrywing van "onderlinge bank" deur die volgende paragraaf te vervang:
 10 "(b) wat ingevolge hierdie Wet [voorlopig of finaal] as 'n onderlinge bank geregistreer is;";

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	(d) currency risk; (e) market risk (position risk); (f) interest rate risk; (g) counterparty risk; (h) technological risk; (i) operational risk; or (j) any other risk regarded as material by that mutual bank;”;	5
(b)	by the substitution in subsection (1) for the definition of “executive officer” of the following definition: “‘executive officer’, in relation to any institution— (a) that is not a mutual bank, includes any [general] manager [or deputy general manager] of [a mutual bank] such an institution; (b) that is a mutual bank, includes any employee of the mutual bank who is in charge of a risk management function of the mutual bank, and any manager of the mutual bank who is responsible, or reports, directly to the chief executive officer of the mutual bank;”;	10
(c)	by the substitution in subsection (1) for paragraph (b) of the definition of “mutual bank” of the following paragraph: “(b) that is [provisionally or finally] registered as a mutual bank in terms of this Act;”; and	15
(d)	by the deletion in subsection (1) of the definition of “registered”.	20

Amendment of section 4 of Act 124 of 1993

2. Section 4 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:	
“(3) Neither the provisions of this section nor any other provision of this Act shall be construed as prohibiting the Registrar from holding discussions, from time to time, with the chief executive officer of any mutual bank, or with any executive officer or employee [of that mutual bank], designated by such chief executive officer, of— (a) that mutual bank; or (b) any associate of that mutual bank,	25
with a view to achieving effective supervision [of such mutual bank] by the Registrar, on an individual or a consolidated basis, of that mutual bank or of that mutual bank and any of its associates.”.	30

Amendment of section 9 of Act 124 of 1993

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3. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:	
“(1) No person shall hold himself out to be a mutual bank unless such person is [provisionally or finally] registered as a mutual bank in terms of this Act.”.	40

Amendment of section 12 of Act 124 of 1993

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4. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:	
“The Registrar may at any time prior to the [provisional] registration, in terms of section 14, of a mutual bank revoke the authorization granted for the establishment of such mutual bank if the Registrar is satisfied that—”.	45

- (c) deur in subartikel (1) die omskrywing van "uitvoerende beampte" deur die volgende omskrywing te vervang:
- "uitvoerende beampte", met betrekking tot 'n instelling—
- (a) wat nie 'n onderlinge bank is nie, ook [**'n hoofbestuurder of adjunk-hoofbestuurder**] 'n bestuurder van so 'n [onderlinge bank] instelling;
- (b) wat 'n onderlinge bank is, ook enige werknemer van die onderlinge bank wat aan die hoof staan van 'n risikobestuursfunksie van die onderlinge bank, en enige bestuurder van die onderlinge bank wat verantwoordelik is, of verslag doen, regstreeks aan die hoof-uitvoerende beampte van die onderlinge bank;"; en
- (d) deur in subartikel (1) na die omskrywing van "waarde van aandeel" die volgende omskrywing by te voeg:
- "werknemer wat aan die hoof staan van 'n risikobestuursfunksie", met betrekking tot 'n onderlinge bank, daardie werknemer van die onderlinge bank wat in die finale instansie verantwoordelik is vir die bestuur van een of meer van die volgende tipes risiko waaraan die onderlinge bank blootgestel word, naamlik—
- (a) solvensierisiko;
- (b) likiditeitsrisiko;
- (c) kredietrisiko;
- (d) valutarisiko;
- (e) markrisiko (posisierisiko);
- (f) rentekoersrisiko;
- (g) teenpartyrisiko;
- (h) tegnologierisiko;
- (i) bedryfsrisiko; of
- (j) enige ander risiko wat deur daardie onderlinge bank as wesenlik geag word.".

30 Wysiging van artikel 4 van Wet 124 van 1993

2. Artikel 4 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

- "(3) Nog die bepalings van hierdie artikel nog enige ander bepaling van hierdie Wet word so uitgelê dat dit die Registrateur belet om van tyd tot tyd samesprekings te voer met die hoof- uitvoerende beampte van 'n onderlinge bank, of met 'n uitvoerende beampte of werknemer, [**van daardie onderlinge bank**] wat deur so 'n hoof- uitvoerende beampte aangewys is, van—
- (a) daardie onderlinge bank; of
- (b) enige geassosieerde van daardie onderlinge bank,
- met die oog op die bewerkstelliging van doelmatige toesighouding [**oor so 'n onderlinge bank**] deur die Registrateur, op 'n individuele of 'n gekonsolideerde grondslag, oor daardie onderlinge bank of oor daardie onderlinge bank en enige van sy geassosieerde.".

Wysiging van artikel 9 van Wet 124 van 1993

45 3. Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- "(1) Geen persoon mag homself as 'n onderlinge bank voordoen nie tensy so 'n persoon ingevolge hierdie Wet [**voorlopig of finaal**] as 'n onderlinge bank geregistreer is.".

50 Wysiging van artikel 12 van Wet 124 van 1993

4. Artikel 12 van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

- "Die Registrateur kan te eniger tyd voor die [**voorlopige**] registrasie, ingevolge artikel 14, van 'n onderlinge bank die magtiging toegestaan tot oprigting van so 'n onderlinge bank intrek indien die Registrateur daarvan oortuig is dat—".

Substitution of section 13 of Act 124 of 1993

5. The following section is hereby substituted for section 13 of the principal Act:

"Application for registration as mutual bank"

13. (1) An applicant to whom the Registrar has under section 11 granted authorization for the establishment of a mutual bank (hereinafter in this Chapter referred to as the institution) may at any time during the period of 12 months commencing on the date of the granting of the said authorization apply to the Registrar for the [provisional] registration of the institution as a mutual bank, provided such authorization has not been revoked in terms of section 12(1). 10

(2) An application under subsection (1) shall—

- (a) be made in the prescribed manner and on the prescribed form; and
- (b) be accompanied by—

(i) two copies of the institution's articles;

(ii) a written statement in which is set out—

(aa) the full and the abbreviated name of the institution as well as the literal translations thereof;

(bb) the address of the institution's head office as well as its postal address;

(cc) full particulars of the business the proposed mutual bank will conduct and of the manner in which such business will be conducted; and 20

(dd) the full names and the addresses of the [chairman] chairperson, the other directors and the executive officers of the institution; and 25

(iii) a list of proposed shareholders in the institution, setting out the full name, occupation and residential or business address of the subscriber, the number and type of shares he or she takes and the nominal value of such shares.

(3) The Registrar may require an applicant contemplated in subsection (1) to furnish him or her with such information or documents, in addition to information and documents furnished by the applicant in terms of subsection (2), as the Registrar may deem necessary. 30

(4) The application and every document lodged in terms of subsection (2) or (3) shall be signed by the [chairman] chairperson or the chief executive officer of the institution." 35

Substitution of section 14 of Act 124 of 1993

6. The following section is hereby substituted for section 14 of the principal Act:

"Granting or refusal of application for registration"

14. (1) Subject to the provisions of subsection (2), the Registrar shall, after considering all information and documents furnished to him or her in terms of section 13 for the purposes of an application under that section, grant such application if he or she is satisfied— 40

(a) that, according to its articles, the institution will be a mutual bank;

(b) that the methods of conducting the business of the proposed mutual bank, as laid down in its articles, are not undesirable; and 45

(c) that the articles of the institution are consistent with this Act and not undesirable for any reason.

(2) Notwithstanding the provisions of subsection (1), the Registrar may refuse an application for the [provisional] registration of an institution as a mutual bank if he or she is of the opinion— 50

(a) that any of the requirements specified in section 11(2) is no longer being complied with by or in respect of the institution concerned;

Vervanging van artikel 13 van Wet 124 van 1993

5. Artikel 13 van die Hoofwet word hierby deur die volgende artikel vervang:

“Aansoek om registrasie as onderlinge bank”

13. (1) 'n Aansoeker aan wie die Registrateur kragtens artikel 11 magtiging tot oprigting van 'n onderlinge bank verleen het (hieronder in hierdie Hoofstuk die instelling genoem), kan te eniger tyd gedurende die tydperk van 12 maande wat op die datum van die verlening van daardie magtiging 'n aanvang neem, by die Registrateur aansoek doen om die [voorlopige] registrasie van die instelling as 'n onderlinge bank, mits sodanige magtiging nie ingevolge artikel 12(1) ingetrek is nie.
- (2) 'n Aansoek kragtens subartikel (1) moet—
- (a) gedoen word op die voorgeskrewe wyse en op die voorgeskrewe vorm; en
 - (b) vergesel gaan van—
 - (i) twee afskrifte van die instelling se statute;
 - (ii) 'n geskrewe verklaring waarin uiteengesit word—
 - (aa) die volledige en die verkorte naam van die instelling sowel as die letterlike vertalings daarvan;
 - (bb) die adres van die instelling se hoofkantoor sowel as sy posadres;
 - (cc) volle besonderhede van die bedryf wat die beoogde onderlinge bank sal uitoefen en van die wyse waarop daardie bedryf uitgeoefen sal word; en
 - (dd) die volle name en die adresse van die voorsitter, die ander direkteure en die uitvoerende beampies van die instelling; en
 - (iii) 'n lys van voorgenome aandeelhouers in die instelling, waarin die volle naam, beroep en woon- of besigheidsadres van die ondertekenaar, die getal en soort aandele wat hy of sy neem en die nominale waarde van sodanige aandele aangegee word.
- (3) Die Registrateur kan van 'n aansoeker beoog in subartikel (1) vereis om die inligting of stukke wat die Registrateur nodig ag, aan hom of haar te verstrek, benewens inligting en stukke ingevolge subartikel (2) deur die aansoeker verstrek.
- (4) Die aansoek en elke stuk wat ingevolge subartikel (2) of (3) ingelewer word, moet deur die voorsitter of die hoof- uitvoerende beampte van die instelling onderteken word.”.

Vervanging van artikel 14 van Wet 124 van 1993

6. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

“Toestaan of weiering van aansoek om registrasie”

14. (1) Die Registrateur moet, behoudens die bepalings van subartikel (2), na oorweging van alle inligting en stukke wat ingevolge artikel 13 vir die doeleindes van 'n aansoek kragtens daardie artikel aan hom of haar verstrek is, daardie aansoek goedkeur indien hy of sy daarvan oortuig is—
- (a) dat, luidens sy statute, die instelling 'n onderlinge bank sal wees;
 - (b) dat die wyse waarop die beoogde onderlinge bank volgens sy statute sake gaan doen, nie ongewens is nie; en
 - (c) dat die statute van die instelling met hierdie Wet versoenbaar is en nie om enige rede ongewens is nie.
- (2) Ondanks die bepalings van subartikel (1) kan die Registrateur 'n aansoek om die [voorlopige] registrasie van 'n instelling as 'n onderlinge bank weier indien hy of sy van oordeel is—
- (a) dat daar nie langer deur of ten opsigte van die betrokke instelling aan die een of ander van die vereistes vermeld in artikel 11(2) voldoen word nie;

- (b) that the institution concerned, when [provisionally or finally] registered as a mutual bank, will probably not be able to comply with a provision of this Act, or is likely to pursue a practice contrary to a provision of this Act; 5
- (c) that an interest which any person has in the institution concerned is inconsistent with a provision of this Act;
- (d) that the interests of potential depositors with or borrowers from the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason; 10
- (e) that the name of the institution concerned—
- (i) is identical with a name under which an existing mutual bank [terminating mutual building society] or bank has already been [provisionally or finally] registered; 15
 - (ii) so closely resembles the name of an existing mutual bank [terminating mutual building society] or bank that the one is likely to be mistaken for the other;
 - (iii) is identical with, or closely resembles, the name under which any mutual bank or bank [or terminating mutual building society] or any institution that was registered under any law repealed by this Act, was previously registered and that there is reasonable ground for objection against the use of that name by the institution concerned; or 20
 - (iv) is likely to mislead the public; or
- (f) that the application does not comply with a requirement of this Act. 25
- (3) When the Registrar in terms of this section grants or refuses an application for [provisional] registration, [he] the Registrar shall give written notice of that fact to the applicant concerned.
- (4) If the Registrar in terms of this section grants an application for [provisional] registration he or she shall, subject to the provisions of section 15, and on payment by the applicant of the prescribed registration fee, [provisionally] register the institution concerned as a mutual bank and issue to the institution, on the prescribed form, a certificate of [provisional] registration as a mutual bank. 30
- (5) An institution that is for the first time [provisionally] registered as a mutual bank shall not commence doing business in that capacity until it has furnished proof to the Registrar that it complies with the provisions of section 48. 35
- (6) An institution that contravenes the provisions of subsection (5) shall be guilty of an offence.”. 40

Substitution of section 15 of Act 124 of 1993

7. The following section is hereby substituted for section 15 of the principal Act:

“Conditions of registration

15. (1) The [provisional] registration under section 14 of an institution as a mutual bank shall be [for a period of 12 months and shall be] subject to the prescribed conditions and to such further conditions, if any, as the Registrar may determine. 45
- [2) The Registrar may in his discretion and subject to the same or any other or further conditions, from time to time before its expiration renew such provisional registration for periods not exceeding 12 months at a time: Provided that— 50
- (a) no mutual bank shall remain provisionally registered as such for an aggregate period exceeding five years; and
 - (b) without derogating from the Registrar's discretion in terms of this subsection to grant or refuse the renewal of such provisional registration, the Registrar may accept the fact that the institution concerned has not, during the period of six months expiring on the 55

- (b) dat die betrokke instelling, wanneer hy [voorlopig of finaal] as 'n onderlinge bank geregistreer is, waarskynlik nie daartoe in staat sal wees om aan 'n bepaling van hierdie Wet te voldoen nie, of waarskynlik 'n praktyk wat in stryd met 'n bepaling van hierdie Wet is, sal navolgt;
- (c) dat 'n belang wat enige persoon in die betrokke instelling het, onversoenbaar met 'n bepaling van hierdie Wet is;
- (d) dat die belang van potensiële deposante by of leners van die betrokke instelling nadelig geraak sal word deur die wyse waarop die instelling volgens voorname sy bedryf sal uitoefen, of om enige ander rede;
- (e) dat die naam van die betrokke instelling—
- (i) dieselfde is as 'n naam waaronder 'n bestaande onderlinge bank [**tydelike onderlinge bouvereniging**] of bank reeds [voorlopig of finaal] geregistreer is;
 - (ii) soveel met die naam van 'n bestaande onderlinge bank [**tydelike onderlinge bouvereniging**] of bank ooreenstem dat die een waarskynlik met die ander verwant sal word;
 - (iii) dieselfde is as, of baie ooreenstem met, die naam waaronder 'n onderlinge bank of bank [**of tydelike onderlinge bouvereniging**] of enige instelling wat geregistreer was kragtens 'n wet wat deur hierdie Wet herroep is, voorheen geregistreer was en dat daar 'n redelike grond vir beswaar teen die gebruik van daardie naam deur die betrokke instelling bestaan; of
 - (iv) waarskynlik die publiek sal mislei; of
- (f) dat die aansoek nie aan 'n voorskrif van hierdie Wet voldoen nie.
- (3) Wanneer die Registrateur ingevolge hierdie artikel 'n aansoek om [**voorlopige**] registrasie toestaan of weier, moet [hy] die Registrateur die betrokke aansoeker skriftelik daarvan in kennis stel.
- (4) Indien die Registrateur ingevolge hierdie artikel 'n aansoek om [**voorlopige**] registrasie toestaan, moet hy of sy, behoudens die bepальings van artikel 15, en teen betaling deur die aansoeker van die voorgeskrewe registrasiegeld, die betrokke instelling [**voorlopig**] as 'n onderlinge bank registreer en op die voorgeskrewe vorm aan die instelling 'n sertifikaat van [**voorlopige**] registrasie as 'n onderlinge bank uitreik.
- (5) 'n Instelling wat vir die eerste maal as 'n onderlinge bank [**voorlopig**] geregistreer word, mag nie begin om in daardie hoedanigheid sake te doen nie alvorens hy aan die Registrateur bewys voorgelê het dat hy aan die bepальings van artikel 48 voldoen.
- (6) 'n Instelling wat die bepальings van subartikel (5) oortree, is aan 'n misdryf skuldig."

Vervanging van artikel 15 van Wet 124 van 1993

7. Artikel 15 van die Hoofwet word hierby deur die volgende artikel vervang:

"Voorwaardes van registrasie

15. (1) Die [**voorlopige**] registrasie kragtens artikel 14 van 'n instelling as 'n onderlinge bank [**geld vir 'n tydperk van 12 maande en**] is onderworpe aan die voorgeskrewe voorwaardes en die verdere voorwaardes, as daar is, wat die Registrateur bepaal.
- (2) **Die Registrateur kan na goeddunke en onderworpe aan die selfde of enige ander of verdere voorwaardes so 'n voorlopige registrasie voor die verstryking daarvan van tyd tot tyd hervuur vir tydperke van hoogstens 12 maande op 'n keer: Met dien verstande dat—**
- (a) geen onderlinge bank vir 'n totale tydperk van langer as vyf jaar voorlopig geregistreer mag bly nie; en
- (b) sonder om afbreuk te doen aan die diskresie van die Registrateur ingevolge hierdie subartikel om die hernuwing van so 'n voorlopige registrasie toe te staan of te weier, die Registrateur die feit dat die betrokke instelling nie gedurende die tydperk van ses

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last day of the period of 12 months referred to in subsection (1), conducted any business as a mutual bank, as a conclusive ground for the refusal of such a renewal.

(3)(2) In addition to any other condition which the Registrar may impose under subsection (1) [or (2), he] the Registrar may impose a condition requiring the institution concerned to take within a specified period such steps as may be necessary to alter its articles in accordance with the requirements of the Registrar. 5

(4) (a) An appeal in terms of section 7 by a mutual bank against the Registrar's refusal to renew or further renew its provisional registration shall, notwithstanding the provisions of section 7, be lodged before such provisional registration or renewed provisional registration expires. 10

(b) If the provisional registration or renewed provisional registration expires while an appeal referred to in paragraph (a) is being considered, such provisional registration or renewed provisional registration, as the case may be, shall be deemed to have been renewed or further renewed until the appellant is notified of the board of appeal's decision on the appeal.]". 15

Repeal of sections 16 and 17 of Act 124 of 1993

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8. Sections 16 and 17 of the principal Act are hereby repealed.

Amendment of section 18 of Act 124 of 1993

9. Section 18 of the principal Act is hereby amended—

- (a) by the insertion of the word "or" at the end of paragraph (a);
- (b) by the substitution for paragraph (b) of the following paragraph : 25
"(b) an application for [provisional or final] registration as a mutual bank, [or]"; and
- (c) by the deletion of paragraph (c).

Amendment of section 19 of Act 124 of 1993

10. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30

"(2) Whenever a juristic person registered under the Companies Act is [for the first time provisionally] registered as a mutual bank in terms of this Act, the Registrar shall in writing notify the Registrar of Companies of such registration, and upon receipt by the Registrar of Companies of such notice he or she shall 35 remove the name of such juristic person from the register of companies.".

Amendment of section 20 of Act 124 of 1993

11. Section 20 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
"(1) Subject to the provisions of subsection (2), an institution that is 40 [provisionally or finally] registered as a mutual bank shall not use, or refer to itself by, a name other than the name under which it is so registered, or any literal translation or abbreviation thereof that has been approved by the Registrar."; and
- (b) by the substitution for subsections (4) and (5) of the following subsections, respectively:

"(4) Any person who, in connection with any business conducted by [him] that person uses, or refers to himself or herself by, any name, description or symbol indicating, or calculated to lead persons to infer, that [he] that person is a mutual bank [provisionally or finally] registered as such under this Act, while [he] the person is not so registered as a mutual bank, shall be guilty of an offence. 50

- maande wat verstryk op die laaste dag van die tydperk van 12 maande bedoel in subartikel (1), enige sake as 'n onderlinge bank gedoen het nie, as 'n afdoende grond kan aanvaar vir die weiering van sodanige hernuwing.
- (3)](2) Benewens enige ander voorwaarde wat die Registrateur kragtens subartikel (1) [of (2)] kan ople, kan [hy] die Registrateur 'n voorwaarde ople wat die betrokke instelling verplig om binne 'n bepaalde tydperk die nodige stappe te doen om sy statute ooreenkomsdig die voorskrifte van die Registrateur te wysig.
- [(4) (a) 'n Appèl ingevolge artikel 7 deur 'n onderlinge bank teen die Registrateur se weiering om sy voorlopige registrasie te hernu of weer te hernu, moet, ondanks die bepalings van artikel 7, aangeteken word voordat sodanige voorlopige registrasie of hernude voorlopige registrasie verstryk.
- (b) Indien die voorlopige registrasie of hernude voorlopige registrasie verstryk terwyl 'n appèl bedoel in paragraaf (a) oorweeg word, word sodanige voorlopige registrasie of hernude voorlopige registrasie, na gelang van die geval, geag hernu of weer hernu te wees totdat die appellant van die appèlraad se beslissing oor die appèl verwittig word.]".

Herroeping van artikels 16 en 17 van Wet 124 van 1993

8. Artikels 16 en 17 van die Hoofwet word hierby herroep.

Wysiging van artikel 18 van Wet 124 van 1993

9. Artikel 18 van die Hoofwet word hierby gewysig—
- (a) deur die woord "of" aan die einde van paragraaf (a) in te voeg;
- (b) deur paragraaf (b) deur die volgende paragraaf te vervang:
- "(b) 'n aansoek om [voorlopige of finale] registrasie as 'n onderlinge bank, [of]"; en
- (c) deur paragraaf (c) te skrap.

Wysiging van artikel 19 van Wet 124 van 1993

10. Artikel 19 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Wanneer 'n regspersoon wat kragtens die Maatskappywet geregistreer is [vir die eerste maal voorlopig geregistreer word] as 'n onderlinge bank ingevolge hierdie Wet geregistreer word, moet die Registrateur die Registrateur van Maatskappye skriftelik van sodanige registrasie in kennis stel, en by ontvangs deur die Registrateur van Maatskappye van sodanige kennisgewing moet hy of sy die naam van sodanige regspersoon uit die register van maatskappye skrap."

Wysiging van artikel 20 van Wet 124 van 1993

- 40 11. Artikel 20 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- "(1) Behoudens die bepalings van subartikel (2) mag 'n instelling wat [voorlopig of finaal] as 'n onderlinge bank geregistreer is, nie 'n ander naam gebruik of op homself toepas nie as die naam waaronder hy aldus geregistreer is of 'n letterlike vertaling of 'n verkorting daarvan wat deur die Registrateur goedgekeur is.;"; en
- (b) deur subartikels (4) en (5) deur onderskeidelik die volgende subartikels te vervang:
- "(4) Iemand wat in verband met enige bedryf wat deur [hom] daardie persoon uitgeoefen word enige naam, beskrywing of teken gebruik of op [homself] sigself toepas wat aandui, of daarop gemik is om persone te laat aflei, dat [hy] daardie persoon 'n onderlinge bank is wat [voorlopig of finaal] kragtens hierdie Wet as sodanig geregistreer is, terwyl [hy] die persoon nie aldus as 'n onderlinge bank geregistreer is nie, is aan 'n misdryf skuldig.

(5) No person shall use in respect of any business a name or description that includes the words "building society", or any derivative thereof, unless the business concerned is a mutual bank or a bank [or a terminating mutual building society].".

Substitution of section 21 of Act 124 of 1993

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12. The following section is hereby substituted for section 21 of the principal Act:

"Cancellation or suspension of registration by Registrar

21. (1) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank [that is provisionally] registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such [provisional] registration if the institution has not conducted any business as a mutual bank during the period of six months commencing on the date on which the institution was [for the first time provisionally] registered as a mutual bank.

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(2) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank [that is provisionally or finally] registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such [provisional or final] registration if—

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(a) it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 18; or

(b) the institution concerned has failed to comply—

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(i) with a prescribed condition or a further condition, contemplated in section 15(1), to which its registration is subject; or

(ii) with a condition imposed by the Registrar under section 15(2).

(3) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank [that is finally] registered as such, with the consent of the Minister and by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct business as a mutual bank or is no longer in operation.".

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Amendment of section 22 of Act 124 of 1993

13. Section 22 of the principal Act is hereby amended—

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(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Registrar shall, before cancelling or suspending under section 21 the [provisional or final] registration of a mutual bank, in a written notice addressed to the [chairman] chairperson or chief executive officer of the institution concerned—";

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(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) call upon the institution to show cause within a period specified in the notice, which shall not be less than 30 days as from the date of the notice, why its [provisional or final] registration [as the case may be] should not be so cancelled or suspended."; and

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

"(a) proceed with the cancellation or suspension, in terms of section 21, of the [relevant] registration; or".

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(5) Niemand mag ten opsigte van enige sakeonderneming 'n naam of beskrywing gebruik wat die woord "bouvereniging", of enige daarvan afgeleide woord, insluit nie, tensy die betrokke sakeonderneming 'n onderlinge bank of 'n bank [of 'n tydelike onderlinge bouvereniging] is."

5 Vervanging van artikel 21 van Wet 124 van 1993

12. Artikel 21 van die Hoofwet word hierby deur die volgende artikel vervang:

"Intrekking of opskorting van registrasie deur Registrateur"

10 **21.** (1) Die Registrateur kan, behoudens die bepalings van artikel 22, in die geval van 'n onderlinge bank wat [**voorlopig**] as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige [**voorlopige**] registrasie intrek of onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien die instelling nie gedurende die tydperk van ses maande vanaf die datum waarop die instelling [**vir die eerste maal voorlopig**] as 'n onderlinge bank geregistreer is, enige sake as 'n onderlinge bank gedoen het nie.

15 (2) Die Registrateur kan, behoudens die bepalings van artikel 22, in die geval van 'n onderlinge bank wat [**voorlopig of finaal**] as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige [**voorlopige of finale**] registrasie intrek of, onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien—

- 20 (a) dit, na die oordeel van die Registrateur, verkry is op grond van onware of misleidende inligting wat deur enige persoon verstrek is en daardie persoon uit hoofde daarvan dat hy aldus sodanige inligting verstrek het, aan 'n misdryf ingevolge artikel 18 skuldig bevind is; of
 25 (b) die betrokke instelling versuum het om te voldoen aan—
 (i) 'n voorgeskrewe voorwaarde of 'n verdere voorwaarde, beoog in artikel 15(1), waaraan sy registrasie onderworpe is; of
 (ii) 'n voorwaarde kragtens artikel 15(2) deur die Registrateur opgelê.

30 (3) Die Registrateur kan, behoudens die bepalings van artikel 22, in die geval van 'n onderlinge bank wat [**finaal**] as sodanig geregistreer is, met die instemming van die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige registrasie intrek indien die instelling opgehou het om die bedryf van 'n onderlinge bank uit te oefen of nie langer in werking is nie.".

Wysiging van artikel 22 van Wet 124 van 1993

13. Artikel 22 van die Hoofwet word hierby gewysig—

- 40 (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 "Die Registrateur moet, voordat hy of sy kragtens artikel 21 die [**voorlopige of finale**] registrasie van 'n onderlinge bank intrek of opskort, in 'n skriftelike kennisgewing gerig aan die voorsitter of hoof- uitvoerende beampte van die betrokke instelling—";
 45 (b) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:
 "(c) die instelling aansê om binne 'n tydperk in die kennisgewing vermeld, wat nie minder as 30 dae vanaf die datum van die kennisgewing mag wees nie, redes aan te voer waarom sy [**voorlopige of finale**] registrasie [**na gelang van die geval**] nie aldus ingetrek of opgeskort behoort te word nie.;" en
 50 (c) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:
 "(a) voortgaan met die intrekking of opskorting ingevolge artikel 21 van die [**tersaaklike**] registrasie; of".

Amendment of section 23 of Act 124 of 1993

14. Section 23 of the principal Act is hereby amended—

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

“(1) The Registrar may by way of application on notice of motion apply to a competent court for an order cancelling or suspending the [provisional or final] registration of a mutual bank if, in the opinion of the Registrar, there are grounds, other than the grounds referred to in section 21, justifying such cancellation or suspension.”;

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“In addition to any other grounds that the court may consider sufficient to justify the granting of an order under subsection (1) cancelling or suspending the [provisional or final] registration of a mutual bank, such an order may be granted if the institution concerned—”;

(c) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

“(c) has failed to comply with a requirement of this Act that is applicable to it in its capacity as a [provisionally or finally] registered mutual bank;”.

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Amendment of section 24 of Act 124 of 1993

15. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Registrar may, in lieu of an application under section 23(1), by written notice to a [provisionally or finally registered] mutual bank in respect of which, in the opinion of the Registrar, any of the circumstances mentioned in section 23(4) is present, restrict the activities of the institution concerned as a mutual bank in such respects and on such conditions as the Registrar may specify in the notice.”.

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Substitution of section 25 of Act 124 of 1993

16. The following section is hereby substituted for section 25 of the principal Act:

“Cancellation of registration at request of mutual bank

25. The Registrar shall cancel the [provisional or final] registration [as the case may be] of a mutual bank upon submission to him or her by the institution concerned of a special resolution by its members authorizing such cancellation.”.

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Amendment of section 26 of Act 124 of 1993

17. Section 26 of the principal Act is hereby amended—

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

“(a) the [provisional or final] registration was suspended under section 21; or”; and

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

“(2) Application for an order discharging an order under section 23 whereby the [provisional or final] registration of a mutual bank has been suspended, may be made to the competent court referred to in section 23(2).”.

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Amendment of section 27 of Act 124 of 1993

18. Section 27 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) [provisional or final] registration of an institution as a mutual bank;

(b) cancellation or suspension of [such a] the registration of a mutual bank;”; and

(b) by the deletion of paragraph (c).

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Wysiging van artikel 23 van Wet 124 van 1993**14.** Artikel 23 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

5 “(1) Die Registrateur kan by wyse van aansoek na kennisgewing van mosie by 'n bevoegde hof 'n bevel tot intrekking of opskorting van die [voorlopige of finale] registrasie van 'n onderlinge bank aanvra indien daar na die oordeel van die Registrateur ander gronde as die gronde bedoel in artikel 21 bestaan wat sodanige intrekking of opskorting regverdig.”;

10 (b) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Benewens enige ander gronde wat die hof as voldoende mag beskou om 'n bevel kragtens subartikel (1) tot intrekking of opskorting van die [voorlopige of finale] registrasie van 'n onderlinge bank te regverdig, kan so 'n bevel verleen word indien die betrokke instelling—”; en

15 (c) deur paragraaf (c) van subartikel (4) deur die volgende paragraaf te vervang : “(c) in gebreke gevly het om te voldoen aan 'n vereiste van hierdie Wet wat op hom van toepassing is in sy hoedanigheid van 'n [voorlopig of finaal] geregistreerde onderlinge bank;”.

Wysiging van artikel 24 van Wet 124 van 1993**20 15.** Artikel 24 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

25 “(1) Die Registrateur kan, in plaas van 'n aansoek kragtens artikel 23(1), by skriftelike kennisgewing aan 'n [voorlopig of finaal geregistreerde] onderlinge bank ten opsigte waarvan, na die oordeel van die Registrateur, enige van die omstandighede vermeld in artikel 23(4) aanwesig is, die bedrywigheede van die betrokke instelling as 'n onderlinge bank beperk in die opsigte en onderworpe aan die voorwaardes wat die Registrateur in die kennisgewing vermeld.”.

Vervanging van artikel 25 van Wet 124 van 1993**16.** Artikel 25 van die Hoofwet word hierby deur die volgende artikel vervang:**30 “Intrekking van registrasie op versoek van onderlinge bank**

25. Die Registrateur moet die [voorlopige of finale] registrasie [na gelang van die geval] van 'n onderlinge bank intrek by voorlegging aan hom of haar deur die betrokke instelling van 'n spesiale besluit deur sy lede waarby sodanige intrekking gemagtig word.”.

35 Wysiging van artikel 26 van Wet 124 van 1993**17.** Artikel 26 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:
“(a) die [voorlopige of finale] registrasie kragtens artikel 21 opgeskort is; of”; en

40 (b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Aansoek om 'n bevel waarby 'n bevel kragtens artikel 23 tot opskorting van die [voorlopige of finale] registrasie van 'n onderlinge bank opgehef word, kan by die bevoegde hof bedoel in artikel 23(2) gedoen word.”.

Wysiging van artikel 27 van Wet 124 van 1993**45 18.** Artikel 27 van die Hoofwet word hierby gewysig—

(a) deur paragrawe (a) en (b) deur onderskeidelik die volgende paragrawe te vervang:

“(a) [voorlopige of finale] registrasie van 'n instelling as 'n onderlinge bank;
(b) intrekking of opskorting van [sodanige] die registrasie van 'n onder-

50 ling bank;”; en

(b) deur paragraaf (c) te skrap.

Amendment of section 28 of Act 124 of 1993

19. Section 28 of the principal Act is hereby amended by the deletion of paragraph (a).

Amendment of section 29 of Act 124 of 1993

20. Section 29 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Whenever an institution that is [provisionally or finally] registered as a mutual bank ceases to be registered as such, the Registrar may in writing order that institution—”.

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Insertion of section 30A in Act 124 of 1993

21. The following section is hereby inserted in the principal Act after section 30: 10

“Reregistration after commencement of Mutual Banks Amendment Act, 1999

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30A. (1) Every institution which on the date immediately preceding the date of commencement of the Mutual Banks Amendment Act, 1999 (hereinafter in this section referred to as the Amendment Act), is a mutual bank that has been provisionally or finally registered as such under the provisions of this Act as those provisions existed prior to the amendment thereof by the Amendment Act shall, in accordance with and subject to subsections (2) and (3), be reregistered as a mutual bank by the Registrar in terms of the provisions of this Act as so amended, as soon as is practicable after the said date of commencement.

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(2) The Registrar shall, when complying with subsection (1), issue to the institution in question a certificate of registration as a mutual bank.

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(3) The reregistration of an institution in terms of this section shall be subject *mutatis mutandis* to section 15.

(4) Upon the reregistration of an institution in terms of this section its previous provisional or final registration as a mutual bank, as the case may be, shall be deemed to have lapsed and any certificate of registration issued in respect thereof shall be deemed to have been cancelled.

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(5) No fees shall be payable in respect of a reregistration in terms of this section.”.

Substitution of section 31 of Act 124 of 1993

22. The following section is hereby substituted for section 31 of the principal Act:

“Annual licence

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31. A mutual bank shall obtain from the [receiver of revenue of the district in which its head office is situated] Registrar a [mutual bank] business licence pertaining to its particular business in respect of each year ending on the thirty-first day of December against payment of the prescribed licence fee.”.

Amendment of section 37 of Act 124 of 1993

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23. Section 37 of the principal Act is hereby amended by the substitution for subsection (12) of the following subsection:

“(12) Notwithstanding anything to the contrary in any law or the common law or in any agreement contained, not more than 49 per cent, rounded off to the next lower integral number, of the directors of a mutual bank shall be employees of that mutual bank or of any of its associates: Provided that in respect of any matter put to the vote at a meeting of the board of directors of a mutual bank such directors who are employees of that mutual bank or of any of its associates shall together not

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Wysiging van artikel 28 van Wet 124 van 1993

19. Artikel 28 van die Hoofwet word hierby gewysig deur paragraaf (a) te skrap.

Wysiging van artikel 29 van Wet 124 van 1993

20. Artikel 29 van die Hoofwet word hierby gewysig deur in subartikel (1) die 5 woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Wanneer 'n instelling wat [voorlopig of finaal] as 'n onderlinge bank geregistreer is, ophou om as sodanig geregistreer te wees, kan die Registrateur daardie instelling skriftelik gelas—”.

Invoeging van artikel 30A in Wet 124 van 1993

10 21. Die volgende artikel word hierby in die Hoofwet na artikel 30 ingevoeg:

“Herregistrasie na inwerkingtreding van Wysigingswet op Onderlinge Banke, 1999

15 30A. (1) Elke instelling wat op die datum onmiddellik voor die datum van inwerkingtreding van die Wysigingswet op Onderlinge Banke, 1999 (hieronder in hierdie artikel die Wysigingswet genoem), 'n onderlinge bank is wat voorlopig of finaal as sodanig geregistreer is kragtens die bepalings van hierdie Wet soos daardie bepalings gegeld het voor die 20 wysiging daarvan deur die Wysigingswet moet, so gou doenlik na genoemde datum van inwerkingtreding en ooreenkomsdig en behoudens subartikels (2) en (3), deur die Registrateur as 'n onderlinge bank herregistreer word ingevolge die bepalings van hierdie Wet soos aldus gewysig.

25 (2) Die Registrateur moet, wanneer subartikel (1) nagekom word, aan die betrokke instelling 'n sertifikaat van registrasie as 'n onderlinge bank uitreik.

(3) Die herregistrasie van 'n instelling ingevolge hierdie artikel is onderworpe, *mutatis mutandis*, aan artikel 15.

30 (4) By die herregistrasie van 'n instelling ingevolge hierdie artikel word sy vorige voorlopige of finale registrasie as 'n onderlinge bank, na gelang van die geval, geag te verval het en word enige registrasiesertifikaat ten opsigte daarvan uitgereik, geag gerojeer te wees.

(5) Geen gelde is ten opsigte van 'n herregistrasie ingevolge hierdie artikel betaalbaar nie.”.

Vervanging van artikel 31 van Wet 124 van 1993

35 22. Artikel 31 van die Hoofwet word hierby deur die volgende artikel vervang:

“Jaarlikse lisensie

40 31. 'n Onderlinge bank moet van die [ontvanger van inkomste van die distrik waarin sy hoofkantoor geleë is] Registrateur 'n [onderlinge banklisensie] bedryfslisensie met betrekking tot sy besondere bedryf verkry ten opsigte van elke jaar eindigende op die een-en-dertigste dag van Desember teen betaling van die voorgeskrewe lisensiegeld.”.

Wysiging van artikel 37 van Wet 124 van 1993

23. Artikel 37 van die Hoofwet word hierby gewysig deur subartikel (12) deur die volgende subartikel te vervang:

45 45. “(12) Ondanks andersluidende bepalings van enige wet of die gemene reg of van enige ooreenkoms, mag nie meer as 49 persent, afwaarts afgerekond tot die naaste heeltal, van die direkteure van 'n onderlinge bank werknekmers van daardie onderlinge bank of van enige van sy geassosieerdees wees nie: Met dien verstande dat ten opsigte van enige saak wat tot stemming gebring word op 'n vergadering van die raad van direkteure van 'n onderlinge bank, sodanige direkteure wat

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have a vote in excess of 49 per cent of the total vote cast by all the directors present and voting at that meeting.”.

Amendment of section 43 of Act 124 of 1993

24. Section 43 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of the proviso to subsection (1), the date on which a mutual bank is in terms of section 14(4) [provisionally] registered as a mutual bank shall be deemed to be the date of its incorporation.”.

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Amendment of section 45 of Act 124 of 1993

25. Section 45 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) Any such auditor shall be an accountant and auditor registered as such in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), who is engaged in public practice, and no officer of a mutual bank or of any of its associates, and no firm of which such an officer is a member or employee, shall be appointed as an auditor of that mutual bank.”.

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Amendment of section 46 of Act 124 of 1993

26. Section 46 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) which, in the opinion of such auditor, may [be of concern to depositors of the mutual bank concerned] endanger the mutual bank’s ability to continue as a going concern or may impair the protection of the funds of the mutual bank’s depositors or may be contrary to principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls; and”.

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Amendment of section 47 of Act 124 of 1993

27. Section 47 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) All of the members of the audit committee may be, and the majority of such members shall be, persons who are not employees of the mutual bank nor of any of its associates.”.

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Amendment of section 51 of Act 124 of 1993

28. Section 51 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A mutual bank shall not make investments with, or grant loans or advances or other credit to, any person, to an aggregate amount exceeding an amount representing a prescribed percentage of such mutual bank’s capital and reserves, without first having obtained the permission of its board, or of a committee appointed for such purpose by its board (at least one of the members of which committee shall be a [non-executive] director of the mutual bank who is not in its employ nor in the employ of any of its associates), to make such investments or to grant such loans, advances or other credit.”.

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Amendment of section 53 of Act 124 of 1993

29. Section 53 of the principal Act is hereby amended—

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

“(1) A mutual bank shall, in order to enable the Registrar to determine—

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werknelers van daardie onderlinge bank of van enige van sy geassosieerde is, gesamentlik nie 'n stem van meer as 49 persent sal hê nie van die totale getal stemme wat deur al die direkteure wat op daardie vergadering teenwoordig is en stem, uitgebring word.”.

5 Wysiging van artikel 43 van Wet 124 van 1993

24. Artikel 43 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) By die toepassing van die voorbehoudsbepaling by subartikel (1) word die datum waarop 'n onderlinge bank ingevolge artikel 14(4) as 'n onderlinge bank [voorlopig] geregistreer word, geag die datum van sy inlywing te wees.”.

Wysiging van artikel 45 van Wet 124 van 1993

25. Artikel 45 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

“(b) So 'n ouditeur moet 'n rekenmeester en ouditeur wees wat kragtens die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991), geregistreer is en wat 'n openbare praktyk beoefen, en geen amptenaar van 'n onderlinge bank of van enige van sy geassosieerde, en geen firma waarvan so 'n amptenaar 'n lid of 'n werkneler is, mag as 'n ouditeur van daardie onderlinge bank aangestel word nie.”.

20 Wysiging van artikel 46 van Wet 124 van 1993

26. Artikel 46 van die Hoofwet word hierby gewysig deur in subartikel (1) subparagraaf (ii) van paragraaf (b) deur die volgende subparagraaf te vervang:

“(ii) wat, na die oordeel van daardie ouditeur, [van belang vir die deposante van die betrokke onderlinge bank mag wees,] die vermoë van die onderlinge bank om as 'n lopende saak te bly funksioneer in gevaar kan stel of die beveiliging van die fondse van die deposante van die onderlinge bank kan benadeel of strydig kan wees met beginsels van gesonde bestuur (met inbegrip van risikobestuur) of neerkom op onvoldoende instandhouding van interne beheerraatreëls; en”.

30 Wysiging van artikel 47 van Wet 124 van 1993

27. Artikel 47 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Al die lede van die ouditkomitee kan, en die meerderheid van sodanige lede moet, persone wees wat nie werknelers van die onderlinge bank of van enige van sy geassosieerde is nie.”.

Wysiging van artikel 51 van Wet 124 van 1993

28. Artikel 51 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Onderlinge bank mag nie beleggings doen by, of lenings of voorskotte of ander krediet toestaan nie aan, 'n persoon tot 'n totale bedrag wat 'n bedrag oorskry wat 'n voorgeskrewe persentasie van so 'n onderlinge bank se kapitaal en reserwes verteenwoordig, tensy hy vooraf die toestemming verkry het van sy raad of van 'n komitee vir dié doel deur sy raad aangestel (ten minste een van die lede van welke komitee 'n [nie-uitvoerende] direkteur van die onderlinge bank moet wees wat nie in sy diens of in die diens van enige van sy geassosieerde is nie), om sodanige beleggings te doen of sodanige lenings, voorskotte of ander krediet toe te staan.”.

Wysiging van artikel 53 van Wet 124 van 1993

29. Artikel 53 van die Hoofwet word hierby gewysig—

50 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Onderlinge bank moet, ten einde die Registrateur in staat te stel om—

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- (a) whether the mutual bank is complying with the provisions of sections 48 and 50 of this Act or of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), as applied by section 49 of this Act; or
 (b) the nature and amounts of the mutual bank's assets, liabilities and contingent liabilities,
 furnish the Registrar, subject to the provisions of subsection [(2)] (3A), with [a return on the prescribed form and in respect of the prescribed period] returns.”;
 (b) by the deletion of subsection (2);
 (c) by the substitution for subsection (3) of the following subsection:
 “(3) A mutual bank shall, in addition to the returns referred to in subsection (1), [in respect of such period, at such times and on such a form as may be prescribed] furnish the Registrar, subject to subsection (3A), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.”;
 (d) by the insertion of the following subsection after subsection (3):
 “(3A) The returns referred to in subsections (1) and (3) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar in respect of such period, at such times and on such a form as may be prescribed.”; and
 (e) by the substitution for subsections (4) and (5) of the following subsections, respectively:
 “(4) A mutual bank shall [within such period as the Registrar may on the application of such mutual bank approve] furnish the Registrar, in respect of [that one] those of the respective returns referred to in [subsection (1)(b)] subsections (1) and (3) which most nearly [coincides] coincide with the end of the financial year of the mutual bank, with a report by the auditor of the mutual bank in which is stated whether or not [that return] those returns fairly and in conformity with generally accepted accounting practice [presents] present those affairs of the mutual bank to which the [return relates] returns relate, and the Registrar may, if he or she deems it necessary, require the mutual bank so to furnish him or her with such a report in respect of any other of those returns furnished during the financial year.
 (5) A mutual bank shall, at such times as may be prescribed, furnish the Registrar with [the] such further prescribed information [regarding its assets, liabilities and contingent liabilities] as the Registrar may require.”.

Amendment of section 55 of Act 124 of 1993

30. Section 55 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon paragraph (c) of the following words:

“does not at any time exceed [the] a prescribed amount [of its issued primary and secondary share capital and primary and secondary unimpaired reserve funds referred to in section 48, plus that part of the amount of any surplus resulting from a revaluation of assets and which in terms of paragraph (a) of the definition of ‘secondary unimpaired reserve funds’ in section 48 does not rank as secondary unimpaired reserve funds: Provided that if immovable property or an undertaking is bought in by a mutual bank to protect an investment (including a loan or an advance), the amount of such an investment shall for a period of five years from the date of purchase not be taken into account for the purposes of this subsection].”.

Amendment of section 56 of Act 124 of 1993

31. Section 56 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The sum of the amounts referred to in paragraphs (a), (b) and (c) of subsection (1) shall be calculated for the purposes of that subsection by deducting therefrom the amount by which the sum of the issued primary share capital and primary unimpaired reserve funds, referred to in section [55(1)] 48(1), of the

- (a) te bepaal of die onderlinge bank aan die bepalings van artikels 48 en 50 van hierdie Wet of van artikel 10A van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), soos deur artikel 49 van hierdie Wet toegepas, voldoen; of
- 5 (b) die aard en bedrae van die onderlinge bank se bates, laste en voorwaardelike laste vas te stel,
aan die Registrateur, behoudens die bepalings van subartikel [(2), 'n opgawe verstrek op die voorgeskrewe vorm en ten opsigte van die voorgeskrewe tydperk] (3A), opgawes verstrek.";
- 10 (b) deur subartikel (2) te skrap;
(c) deur subartikel (3) deur die volgende subartikel te vervang:
“(3) 'n Onderlinge bank moet, benewens die opgawes bedoel in subartikel (1), [ten opsigte van die tydperk, op die tye en op die vorm wat voorgeskryf word,] behoudens subartikel (3A) aan die Registrateur die voorgeskrewe opgawes verstrek, met inbegrip van opgawes wat betrekking het op die omvang en die bestuur van risikoblootstellings by die uitoefening van sy bedryf.”;
- 15 (d) deur die volgende subartikel na subartikel (3) in te voeg:
“(3A) Die opgawes bedoel in subartikels (1) en (3) moet ooreenkomstig algemeen aanvaarde rekeningkundige praktyk opgestel word en moet ten opsigte van die tydperk, op die tye en op die vorm wat voorgeskryf word aan die Registrateur verstrek word”; en
- 20 (e) deur subartikels (4) en (5) deur onderskeidelik die volgende subartikels te vervang:
“(4) 'n Onderlinge bank moet [, binne die tydperk wat die Registrateur op aansoek van sodanige onderlinge bank goedkeur,] ten opsigte van daardie [een] van die onderskeie opgawes in [subartikel (1)(b)] subartikels (1) en (3) bedoel wat die naaste saamval met die einde van die finansiële jaar van die onderlinge bank, aan die Registrateur 'n verslag verstrek van die ouditeur van die onderlinge bank waarin verklaar word of daardie [opgawe] opgawes daardie sake van die onderlinge bank waarop die [opgawe] opgawes betrekking het redelik en ooreenkomstig algemeen aanvaarde rekeningkundige praktyk weergee of nie, en die Registrateur kan, indien hy of sy dit nodig ag, van die onderlinge bank vereis om aldus so 'n verslag aan hom of haar te verstrek ten opsigte van enige ander van daardie opgawes wat gedurende die finansiële jaar verstrek word.
- 25 (5) 'n Onderlinge bank moet op die voorgeskrewe tye die verdere voorgeskrewe inligting [aangaande sy bates, laste en voorwaardelike laste] wat die Registrateur vereis aan die Registrateur verstrek.”

Wysiging van artikel 55 van Wet 124 van 1993

30. Artikel 55 van die Hoofwet word hierby gewysig deur in subartikel (1) die 40 woorde wat op paragraaf (c) volg deur die volgende woorde te vervang:
“op geen tydstip [die] 'n voorgeskrewe bedrag [van sy uitgereikte primêre en sekondêre aandelekapitaal en primêre en sekondêre onaangestaste reserwefondse bedoel in artikel 48, plus daardie gedeelte van die bedrag van enige oorskot wat voortspruit uit 'n herwaardering van bates en wat ingevolge paragraaf (a) van die omskrywing van 'sekondêre onaangestaste reserwefondse' in artikel 48 nie as sekondêre onaangestaste reserwefondse geld nie] oorskry nie [Met dien verstande dat indien onroerende goed of 'n onderneming deur 'n onderlinge bank ingekoop word om 'n belegging (met inbegrip van 'n lening of 'n voorskot) te beskerm, die bedrag van sodanige belegging vir 'n tydperk van vyf jaar vanaf die datum van die inkop nie vir die doeleindeste van hierdie subartikel in berekening gebring word nie].”.

Wysiging van artikel 56 van Wet 124 van 1993

31. Artikel 56 van die Hoofwet word hierby gewysig deur subartikel (2) deur die 55 volgende subartikel te vervang:
“(2) Die som van die bedrae bedoel in paragrawe (a), (b) en (c) van subartikel (1) word vir die doeleindeste van daardie subartikel bereken deur daarvan af te trek die bedrag waarmee die som van die uitgereikte primêre aandelekapitaal en primêre onaangestaste reserwefondse, bedoel in artikel [55(1)] 48(1), van die

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mutual bank exceeds the sum of the amounts referred to in paragraphs (a), (b) and (c) of section 55(1).”.

Amendment of section 59 of Act 124 of 1993

32. Section 59 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (e) of the following subparagraph:

“(ii) that the lender assumes, except in so far as he or she may in law have a right of recovery against the mutual bank, all risks connected with the placing by the mutual bank of the funds entrusted to it by the lender, as well as the responsibility to ensure that the mutual bank executes the lender’s instructions as recorded in the written contract of agency; and”.

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Amendment of section 62 of Act 124 of 1993

33. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A mutual bank that is [finally] registered as [a mutual bank] such in terms of this Act and that desires to carry on business as a bank may with the approval of the Registrar and under the authority of a special resolution adopted at a special general meeting of members of the mutual bank be converted into such a bank in accordance with the provisions of this Chapter.”.

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Amendment of section 68 of Act 124 of 1993

34. Section 68 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Within 14 days of any conversion in terms of section 67, the company established by the conversion shall forward two certified copies of its certificate of incorporation and its memorandum and articles of association to the Registrar, and upon receipt of such documents the Registrar shall, against payment of the prescribed registration fee, issue to it a certificate of [final] registration as a bank.”.

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Amendment of section 69 of Act 124 of 1993

35. Section 69 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words :

“The juristic person that existed as a mutual bank before the conversion shall, notwithstanding the conversion, continue to exist as a juristic person, but in the form of a public company deemed to be registered [finally] as a bank in terms of the Banks Act, 1990, and as from such conversion—”.

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Amendment of section 71 of Act 124 of 1993

36. Section 71 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Two or more mutual banks may with the written approval of the Registrar amalgamate and become one mutual bank, and a mutual bank may with like approval transfer all or part of its assets and liabilities to another mutual bank or to a bank [finally] registered as such in terms of the Banks Act, 1990 (Act No. 94 of 1990).”.

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Amendment of section 77 of Act 124 of 1993

37. Section 77 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When the affairs of a mutual bank have been completely wound up as contemplated in section 419(1) of the Companies Act, as applied by sections 74 and 75 of this Act, the responsible Master of the Supreme Court shall transmit to the Registrar a certificate to that effect and the Registrar shall upon receipt of such

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onderlinge bank die som van die bedrae bedoel in paragrawe (a), (b) en (c) van artikel 55(1) oorskry.”.

Wysiging van artikel 59 van Wet 124 van 1993

32. Artikel 59 van die Hoofwet word hierby gewysig deur in subartikel (1) 5 subparagraaf (ii) van paragraaf (e) deur die volgende subparagraaf te vervang:

“(ii) dat die uitlener, behalwe vir sover hy of sy regtens ’n verhaalsreg teenoor die onderlinge bank mag hê, alle risiko’s verbonde aan die plasing deur die onderlinge bank van die fondse deur die uitlener aan hom toevertrou, aanvaar asook die verantwoordelikheid om toe te sien 10 dat die onderlinge bank die uitlener se opdragte soos geboekstaaf in die skriftelike agentskapskontrak uitvoer; en”.

Wysiging van artikel 62 van Wet 124 van 1993

33. Artikel 62 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

15 “(1) ’n Onderlinge bank wat [finaal] as [**’n onderlinge bank**] sodanig ingevolge hierdie Wet geregistreer is en wat sake as ’n bank wil doen, kan met die goedkeuring van die Registrateur en op gesag van ’n spesiale besluit aangeneem op ’n buitengewone algemene vergadering van lede van die onderlinge bank, ooreenkomsdig die bepalings van hierdie Hoofstuk omskep word in so ’n bank.”.

20 Wysiging van artikel 68 van Wet 124 van 1993

34. Artikel 68 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

25 “(1) Binne 14 dae na ’n omskepping ingevolge artikel 67 moet die maatskappy wat deur die omskepping tot stand gekom het twee gewaarmerkte afskrifte van sy sertifikaat van inlywing en sy akte van oprigting en statute aan die Registrateur stuur, en by ontvangs van sodanige stukke reik die Registrateur, teen betaling van die voorgeskrewe registrasiegeld, aan hom ’n sertifikaat van [finale] registrasie as ’n bank uit.”.

Wysiging van artikel 69 van Wet 124 van 1993

30 **35.** Artikel 69 van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

35 “Die regspersoon wat voor die omskepping as ’n onderlinge bank bestaan het, bly ondanks die omskepping voortbestaan as ’n regspersoon, maar in die vorm van ’n publieke maatskappy wat geag word [finaal] as ’n bank ingevolge die Bankwet, 1990, geregistreer te wees, en vanaf sodanige omskepping—”.

Wysiging van artikel 71 van Wet 124 van 1993

36. Artikel 71 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

40 “(1) Twee of meer onderlinge banke kan met die skriftelike goedkeuring van die Registrateur saamsmelt en een onderlinge bank vorm, en ’n onderlinge bank kan met dergelike goedkeuring al of ’n gedeelte van sy bates en laste aan ’n ander onderlinge bank of aan ’n bank wat kragtens die Bankwet, 1990 (Wet No. 94 van 1990), [finaal] as sodanig geregistreer is, oordra.”.

45 Wysiging van artikel 77 van Wet 124 van 1993

37. Artikel 77 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

50 “(1) Wanneer die sake van ’n onderlinge bank heeltemal gelikwideer is, soos beoog in artikel 419(1) van die Maatskappywet soos toegepas deur artikels 74 en 75 van hierdie Wet, moet die verantwoordelike Meester van die Hooggereghof ’n sertifikaat te dien effekte aan die Registrateur stuur, en die Registrateur moet by

certificate cancel the [provisional or final] registration [as the case may be] of the mutual bank concerned.”.

Short title

38. This Act shall be called the Mutual Banks Amendment Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 5

ontvangs van sodanige sertifikaat die [voorlopige of finale] registrasie [na gelang van die geval] van die betrokke onderlinge bank kanselleer.”.

Kort titel

38. Hierdie Wet heet die Wysigingswet op Onderlinge Banke, 1999, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

