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THE PRESIDENCY

No. 1238

23 November 2001

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

No. 28 of 2001: Financial Institutions (Protection of Funds) Act, 2001.

DIE PRESIDENSIE

No. 1238

23 November 2001

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

No. 28 van 2001: Wet op Finansiële Instellings (Beskerming van Fondse), 2001.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 28, 2001

FINANCIAL INSTITUTIONS
(PROTECTION OF FUNDS) ACT, 2001*(English text signed by the President.)
(Assented to 12 November 2001.)*

ACT

To provide for, and consolidate the laws relating to, the investment, safe custody and administration of funds and trust property by financial institutions; to enable the registrar to protect such funds and trust property; to repeal the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); to improve the enforcement powers of the registrar; and to provide for matters incidental thereto.

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

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—5
“company” includes a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);
“financial institution” means—10
- (a) any person or institution referred to in the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
or
-
1. In terms of section 1 of the Financial Services Board Act, 1990, a “financial institution” is defined as—10
- (a)(i) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the investments of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;
 - (ii) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;
 - (iii) any ‘unit trust scheme’ as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or any management company or trustee in relation to such a scheme;
 - (iv) any ‘scheme’ as defined in section 1 of the Participation Bonds Act, 1981 (Act No. 55 of 1981), or any manager or nominee company in relation to such a scheme;
 - (v) any ‘stock exchange’, ‘member’ or ‘stockbroker’ as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any person referred to in section 4(1) of that Act managing investments as contemplated in that section;
 - (vi) any ‘financial exchange’, ‘member’ or ‘recognised clearing house’ as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any person referred to in section 5(1) of that Act managing investments as contemplated in that section;
 - (vii) any ‘registered insurer’ as defined in section 1(1) of the Insurance Act, 1943 (Act No. 27 of 1943);
 - (viii) any agent, broker or other person contemplated in section 20bis of the Insurance Act, 1943;
 - (ix) any person deemed, in terms of section 60 of the Insurance Act, 1943, to be carrying on insurance business in the Republic;
 - (x) any person rendering or who is to render services contemplated in section 23A(1) of the Insurance Act, 1943;
 - (xi) any ‘central securities depository’ or a ‘depository institution’ as defined in section 1 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992), or any member of such a securities depository;
- (b) (i) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), which deals with trust property as a regular feature of its business; or
- (ii) any other person who or which deals with trust property as a regular feature of his, her or its business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988);’

*(Engelse teks deur die President geteken.)
(Goedgekeur op 12 November 2001.)*

WET

Om voorsiening te maak vir die belegging, veilige bewaring en administrasie van fondse en trustgoed deur finansiële instellings, en om wette wat daarop betrekking het, te konsolideer; om die Wet op Finansiële Instellings (Belegging van Fondse), 1984 (Wet No. 39 van 1984), te herroep; om die afdwingingsbevoegdhede van die registrator te verbeter; en om vir bykomstige aangeleenthede voorsiening te maak.

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

INLEIDENDE BEPALINGS

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—5
“benoemde maatskappy” 'n maatskappy, beheer deur 'n finansiële instelling, wat—10
- (a) ingelyf is kragtens die bepalings van die Maatskappylwet, 1973 (Wet No. 61 van 1973);
 - (b) as hoofogmerk het om op te tree as benoemde vir, of verteenwoordiger van, enige persoon by die hou van enige eiendom in trust vir sodanige persoon of persone;
 - (c) verhinder word deur sy akte van oprigting om enige ander verpligte op te loop as daardie teenoor die persone namens wie dit bates hou, in die mate van hul onderskeie regte op, en belang in, sodanige bates; en15
 - (d) 'n onherroeplike skriftelike ooreenkoms aangegaan het met 'n finansiële instelling wat die maatskappy beheer, en ingevolge waarvan sodanige finansiële instelling onderneem het om al die uitgawes van, en verbandhoudend met, sy oprigting, werkzaamhede en likwidasie te betaal;
- “finansiële instelling”**—20

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- (b) any medical scheme contemplated in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

“institution”, for the purposes of sections 5, 6, 9 and 10, means—

- (a) a financial institution;
(b) any person, partnership, company or trust in which, or in the business of which, a financial institution or an unregistered person has or had a direct or indirect interest;
(c) any person, partnership, company or trust which has or had a direct or indirect interest in a financial institution or unregistered person, or in the business of a financial institution or an unregistered person; 10
(d) a participating employer in a pension fund organisation;
(e) any person, partnership, company or trust that controls, manages or administers the affairs or part of the affairs of a financial institution or an unregistered person; or
(f) any unregistered person; 15

“nominee company” means a company, controlled by a financial institution, which—

- (a) is incorporated under the provisions of the Companies Act, 1973 (Act No. 61 of 1973);
(b) has as its principal object to act as nominee for, or representative of, any person in the holding of any property in trust for such person or persons; 20
(c) is precluded by its memorandum of association from incurring any liabilities other than those to the persons on whose behalf it holds assets, to the extent of their respective rights to, and interest in, such assets; and
(d) has entered into an irrevocable written agreement with a financial institution which controls the company, and in terms of which such financial institution 25 has undertaken to pay all the expenses of, and incidental to, its formation, operations and liquidation;

“registrar” means—

- (a) the registrar as defined in any of the Acts referred to in paragraph (a) of the definition of ‘financial institution’ in section 1 of the Financial Services Board 30 Act, 1990;
(b) the executive officer defined in section 1 of the Financial Services Board Act, 1990; or
(c) the registrar of medical schemes referred to in section 1 of the Medical Schemes Act, 1998; 35

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- (a) enige persoon of instelling bedoel in die omskrywing van "finansiële instelling" in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990); of
 - (b) enige mediese skema beoog in artikel 1 van die Wet op Mediese Skemas, 1998 (Wet No. 131 van 1998);
- "instelling"**, by die toepassing van artikels 5, 6, 9 en 10—
- (a) 'n finansiële instelling;
 - (b) enige persoon, vennootskap, maatskappy of trust waarin, of in die besigheid waarvan, 'n finansiële instelling of 'n ongeregistreerde persoon 'n regstreekse of onregstreekse belang het of gehad het;
 - (c) enige persoon, vennootskap, maatskappy of trust wat 'n regstreekse of onregstreekse belang in 'n finansiële instelling of ongeregistreerde persoon, of in die besigheid van 'n finansiële instelling of ongeregistreerde persoon het of gehad het;
 - (d) 'n deelnemende werkgewer in 'n pensioenfondsorganisasie;
 - (e) enige persoon, vennootskap, maatskappy of trust wat die sake of deel van die sake van 'n finansiële instelling of 'n ongeregistreerde persoon beheer, bestuur of administreer;
 - (f) enige ongeregistreerde persoon;
- "maatskappy"** ook 'n beslote korporasie bedoel in die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984);
- "ongeregistreerde persoon"** enige persoon, vennootskap, maatskappy of trust wat nie geregistreer, goedgekeur of andersins gemagtig is deur die registrator kragtens 'n betrokke wet om die besigheid van 'n finansiële instelling te bedryf nie,

1. 'n "Finansiële instelling" word ingevolge artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, omskryf as—

- '(a) (i) enige pensioenfondsorganisasie geregistreer ingevolge die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), of enige persoon bedoel in artikel 13B van daardie Wet wat die beleggings van so 'n pensioenfonds administreer of die toedeling van voordele waarvoor voorsiening gemaak word in die statute van so 'n pensioenfonds;
- (ii) enige onderlinge hulpvereniging geregistreer ingevolge die Wet op Onderlinge Hulpverenigings, 1956 (Wet No. 25 van 1956), of enige persoon belas met die bestuur van die sake van so 'n vereniging;
- (iii) enige "effekte-trustskema" soos omskryf in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), of enige bestuursmaatskappy of trustee met betrekking tot so 'n skema;
- (iv) enige "skema" soos omskryf in artikel 1 van die Wet op Deelnemingsverbande, 1981 (Wet No. 55 van 1981), of enige bestuurder of genomineerde maatskappy met betrekking tot so 'n skema;
- (v) enige "effektebeurs", "lid" of "effektemakelaar" soos omskryf in artikel 1 van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), of enige persoon bedoel in artikel 4(1) van daardie Wet wat beleggings bestuur soos in daardie artikel beoog;
- (vi) enige "finansiële beurs", "lid" of "erkende verrekeningshuis" soos omskryf in artikel 1 van die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), of enige persoon in artikel 5(1) van daardie Wet bedoel wat beleggings bestuur soos in daardie artikel beoog;
- (vii) enige "geregistreerde versekeraar" soos in artikel 1(1) van die Wet op Versekeringsverbande, 1943 (Wet No. 27 van 1943), omskryf;
- (viii) enige agent, makelaar of ander persoon in artikel 20bis van die Wet op Versekeringsverbande, 1943, beoog;
- (ix) enige persoon wat, ingevolge artikel 60 van die Wet op Versekeringsverbande, 1943, geag word versekeringsbesigheid in die Republiek te bedryf;
- (x) enige persoon wat dienste lewer of staan te lewer soos in artikel 23A(1) van die Wet op Versekeringsverbande, 1943, beoog;
- (xi) enige "sentrale effektebewaarnemer" of 'n "bewaarnemende instelling" soos omskryf in artikel 1 van die Wet op die Veilige Bewaring van Effekte, 1992 (Wet No. 85 van 1992), of enige lid van so 'n sentrale effektebewaarnemer;
- (b) (i) 'n bank soos omskryf in artikel 1(1) van die Bankwet, 1990 (Wet No. 94 van 1990), of 'n onderlinge bank soos omskryf in artikel 1(1) van die Wet op Onderlinge Banke, 1993 (Wet No. 124 van 1993), wat met trustgoed as 'n staande kenmerk van sy besigheid werk; of
- (ii) enige ander persoon wat met trustgoed as 'n staande kenmerk van sy of haar besigheid werk, maar wat nie geregistreer, gelisensieer, erken, goedgekeur of andersins gemagtig is om aldus ingevolge enige Wet anders as die Maatskappywet, 1973 (Wet No. 61 van 1973), die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), en die Wet op die Beheer oor Trustgoed, 1988 (Wet No. 57 van 1988), te werk nie;

"trust property" means any corporeal or incorporeal, movable or immovable asset invested, held, kept in safe custody, controlled, administered or alienated by any person, partnership, company or trust for, or on behalf of, another person, partnership, company or trust, and such other person, partnership, company or trust is hereinafter referred to as the principal;

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"unregistered person" means any person, partnership, company or trust not registered, approved or otherwise authorised by the registrar under a relevant law to carry on the business of a financial institution, but who or which carries on such business or a business corresponding to a business normally carried on by a financial institution.

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CHAPTER 1

FUNDS AND TRUST PROPERTY HELD BY FINANCIAL INSTITUTIONS

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

2. A director, member, partner, official, employee or agent of a financial institution or of a nominee company who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property—

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- (a) must, with regard to such funds, observe the utmost good faith and exercise proper care and diligence;
- (b) must, with regard to the trust property and the terms of the instrument or agreement by which the trust or agency in question has been created, observe the utmost good faith and exercise the care and diligence required of a trustee in the exercise or discharge of his or her powers and duties; and
- (c) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for himself or herself or for any other person to the prejudice of the financial institution or principal concerned.

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Declaration of interest

3. (1) A director, member, partner, official, employee or agent of a financial institution or of a nominee company who takes part in a decision to invest any of the funds of the financial institution or any trust property in a company or other undertaking in which he or she has a direct or indirect financial interest, must declare that interest in writing to the board of management or other governing body of the financial institution or nominee company, indicating the nature and extent of such interest, before such decision is made.

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(2) For the purposes of subsection (1), 'invest' includes—

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- (a) the purchase of shares in a company, or of an interest in a close corporation or partnership;
- (b) the granting of a secured or unsecured loan.

(3) A declaration of interest made in terms of subsection (1) must be recorded in the minutes of the meeting of the board or governing body at which the declaration is made or considered.

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Investment of trust property

4. (1) A director, member, partner, official, employee or agent of a financial institution which administers trust property under any instrument or agreement may not cause such trust property to be invested otherwise than in a manner directed in, or required by, such instrument or agreement.

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maar wat sodanige besigheid bedryf of 'n besigheid wat ooreenstem met 'n besigheid normaalweg deur 'n finansiële instelling bedryf;

"registrator"—

- (a) die registrator soos omskryf in enige van die Wette vermeld in paragraaf (a) van die omskrywing van "finansiële instelling" in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990;
- (b) die uitvoerende beampete omskryf in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990; of
- (c) die registrator van mediese skemas bedoel in artikel 1 van die Wet op Mediese Skemas, 1998;

"trustgoed" enige liggaaamlike of onliggaaamlike, roerende of onroerende goed, belê, gehou, in veilige bewaring gehou, beheer, gadministreer of vervreem deur enige persoon, vennootskap, maatskappy of trust vir, of namens, 'n ander persoon, vennootskap, maatskappy of trust, en hierna word na sodanige ander persoon, vennootskap, maatskappy of trust verwys as die prinsipaal.

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HOOFSTUK 1**FONDSE EN TRUSTGOED GEHOU DEUR FINANSIEËLE INSTELLINGS****Pligte van persone wat werk met fondse van, en met trustgoed beheer deur, finansiële instellings**

2. 'n Direkteur, lid, vennoot, beampete, werknemer of agent van 'n finansiële instelling of van 'n benoemde maatskappy, wat enige fondse van die finansiële instelling of enige trustgoed belê, hou, in veilige bewaring hou, beheer, administreer of vervreem—

- (a) moet, met betrekking tot sodanige fondse, die hoogste goeie trou handhaaf en behoorlike sorg en vlyt aan die dag lê;
- (b) moet, met betrekking tot die trustgoed, en die bepalings van die instrument of ooreenkoms waardeur die betrokke trust of agentskap opgerig is, die hoogste goeie trou handhaaf en die sorg en vlyt aan die dag lê wat van 'n trustee vereis word by die uitoefening of verrigting van sy of haar bevoegdhede en pligte; en
- (c) mag nie die fondse of trustgoed vervreem, belê, verpand, verhipotekeer of andersins beswaar of daarvan gebruik maak of 'n garansie gee op 'n wyse wat bereken is om regstreeks of onregstreeks 'n onbehoorlike voordeel vir hom- of haarself of vir enige ander persoon ten koste van die betrokke finansiële instelling of prinsipaal te verkry nie.

Bekendmaking van belang

3. (1) 'n Direkteur, lid, vennoot, beampete, werknemer of agent van 'n finansiële instelling of van 'n benoemde maatskappy wat deelneem aan 'n besluit om enige van die fondse van die finansiële instelling of enige trustgoed in 'n maatskappy of ander onderneming waarin hy of sy 'n regstreekse of onregstreekse finansiële belang het, te belê, moet daardie belang skriftelik openbaar maak aan die raad van beheer of ander bestuursliggaam van die finansiële instelling of benoemde maatskappy, met 'n aanduiding van die aard en omvang van sodanige belang, voordat sodanige besluit geneem word.

(2) By die toepassing van subartikel (1), sluit "belê" in—

- (a) die koop van aandele in 'n maatskappy, of van 'n belang in 'n beslote korporasie of vennootskap;
- (b) die toestaan van 'n versekerde of onversekerde lening.

(3) 'n Openbaarmaking van belang ingevolge subartikel (1) moet aangeteken word in die notule van die vergadering van die raad of beheerliggaam waarby die openbaarmaking gedoen of oorweeg word.

Belegging van trustgoed

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4. (1) 'n Direkteur, lid, vennoot, beampete, werknemer of agent van 'n finansiële instelling wat trustgoed kragtens enige instrument of ooreenkoms administreer, mag sodanige trustgoed nie anders laat belê as op die wyse aangewys in, of vereis deur, sodanige instrument of ooreenkoms nie.

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(2) In the absence of a direction or requirement referred to in subsection (1), a director, member, partner, official, employee or agent of a financial institution may not cause any trust property to be invested otherwise than in the name of—

- (a) the principal concerned;
- (b) the financial institution in its capacity as administrator, trustee, curator or agent; or
- (c) a nominee company.

(3) (a) Despite subsections (1) and (2)—

- (i) where the articles of association of a company prohibit the registration of its shares or debentures in the name of—
 - (aa) a trust;
 - (bb) a financial institution in its capacity as administrator, trustee or curator; or
 - (cc) any nominee; and
- (ii) where such shares or debentures form part of trust property administered by a financial institution,

those shares or debentures must be registered in the name of a director, member, partner or manager of that financial institution.

(b) The director, member, partner or manager must hold those shares or debentures in a fiduciary capacity on behalf of the principal concerned.

(c) Prior to the registration of any shares or debentures in the name of a director, member, partner or manager as contemplated in paragraph (a), the financial institution concerned must furnish security to the satisfaction of the Master of the High Court, if such security has not already been furnished in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

(4) A financial institution must keep trust property separate from assets belonging to that institution, and must in its books of account clearly indicate the trust property as being property belonging to a specified principal.

(5) Despite anything to the contrary in any law or the common law, trust property invested, held, kept in safe custody, controlled or administered by a financial institution or a nominee company under no circumstances forms part of the assets or funds of the financial institution or such nominee company.

(6) This section also applies in a case where a financial institution invests, holds, keeps in safe custody, controls, administers or alienates trust property under any instrument or agreement jointly with another person.

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CHAPTER 2**ENFORCEMENT****Appointment of curator**

5. (1) The registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.

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(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 the institution on such conditions and for such a period as the court deems fit; and
- (b) simultaneously grant a rule *nisi* calling upon the institution and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.

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

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(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 court may make an order with regard to—

- (a) the suspension of legal proceedings against the institution for the duration of the curatorship;
- (b) the powers and duties of the curator;
- (c) the remuneration of a curator appointed provisionally under subsection (2)(a) or finally under subsection (4);

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- (2) In die afwesigheid van 'n aanwysing of vereiste bedoel in subartikel (1) mag 'n direkteur, lid, vennoot, beampte, werknemer of agent van 'n finansiële instelling nie enige trustgoed anders laat belê nie as in die naam van—
- (a) die betrokke prinsipaal;
 - (b) die finansiële instelling in sy hoedanigheid as administrateur, trustee, kurator of agent; of
 - (c) 'n benoemde maatskappy.
- (3) (a) Ondanks subartikels (1) en (2)—
- (i) waar die akte van oprigting van 'n maatskappy die registrasie verbied van sy aandele of skuldbriewe in die naam van—
 - (aa) 'n trust;
 - (bb) 'n finansiële instelling in sy hoedanigheid as administrateur, trustee of kurator; of
 - (cc) enige benoemde; en
 - (ii) waar sodanige aandele of skuldbriewe deel vorm van trustgoed geadministreer deur 'n finansiële instelling,
- moet daardie aandele of skuldbriewe in die naam van 'n direkteur, lid, vennoot of bestuurder van daardie finansiële instelling geregistreer word.
- (b) Die direkteur, lid, vennoot of bestuurder moet daardie aandele of skuldbriewe in 'n vertrouenshoedanigheid namens die betrokke prinsipaal hou.
- (c) Die betrokke finansiële instelling moet, voor die registrasie van enige aandele of skuldbriewe in die naam van 'n direkteur, lid, vennoot of bestuurder soos beoog in paragraaf (a), sekuriteit verskaf tot bevrediging van die Meester van die Hoë Hof, indien sodanige sekuriteit nog nie ingevolge die Wet op die Beheer van Trustgoed, 1988 (Wet No. 57 van 1988), verskaf is nie.
- (4) 'n Finansiële instelling moet trustgoed afsonderlik hou van bates wat aan daardie instelling behoort, en moet in sy rekeningboeke die trustgoed duidelik aandui as goed wat aan 'n vermelde prinsipaal behoort.
- (5) Ondanks enigtes tot die teendeel in enige wet of die gemene reg, maak trustgoed belê, gehou, in veilige bewaring gehou, beheer of geadministreer deur 'n finansiële instelling of 'n benoemde maatskappy onder geen omstandighede deel uit van die bates of fondse van die finansiële instelling of sodanige benoemde maatskappy nie.
- (6) Hierdie artikel is ook van toepassing waar 'n finansiële instelling kragtens enige instrument of ooreenkoms trustgoed gesamentlik met 'n ander persoon belê, gehou, in veilige bewaring gehou, beheer, geadministreer of vervreem.

HOOFSTUK 2

AFDWINGING

Aanstelling van kurator

5. (1) Die registrateur kan, by bewys van goeie gronde by 'n afdeling van die Hoë Hof wat oor regsbevoegdheid beskik, aansoek doen om die aanstelling van 'n kurator om beheer te neem oor die geheel of enige gedeelte van die besigheid van 'n instelling en dit te bestuur.
- (2) Op 'n aansoek ingevolge subartikel (1) kan die hof—
- (a) 'n kurator voorlopig aanstel om beheer te neem oor die geheel of enige gedeelte van die besigheid van die instelling en dit te bestuur op die voorwaardes en vir die typerk wat die hof goedvind; en
 - (b) terselfdertyd 'n bevel *nisi* uitrek wat die instelling en ander belanghebbendes oproep om op 'n dag vermeld in die bevel rede aan te toon waarom die aanstelling van die kurator nie bekragtig behoort te word nie.
- (3) Die hof kan op aansoek van die instelling die keerdag vervroeg indien nie minder nie as 48 uur kennis van sodanige aansoek aan die registrateur gegee is.
- (4) Indien die hof by die verhoor uit hoofde van die bevel *nisi* oortuig is dat dit wenslik is om dit te doen, kan die hof die aanstelling van die kurator bekragtig.
- (5) Die hof kan 'n bevel gee met betrekking tot—
- (a) die opskorting van regsverrigtinge teen die instelling vir die duur van die kuratorskap;
 - (b) die bevoegdhede en pligte van die kurator;
 - (c) die vergoeding van 'n kurator voorlopig kragtens subartikel (2)(a) of final kragtens subartikel (4) aangestel;

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- (d) the costs relating to any application made by the registrar under subsection (1);
- (e) the costs incurred by the registrar in respect of an inspection of the affairs of the institution concerned in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998); or
- (f) any other matter which the court deems necessary.
- (6) The curator acts under the control of the registrar who made the application under subsection (1), and may apply to that registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution.
- (7) The curator must furnish the registrar of the institution concerned with such information concerning the affairs of that institution as the registrar may require.
- (8) (a) Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.
- (b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of such application to the registrar or the curator, as the case may be, and such registrar or curator is entitled to be heard at such application.
- (9) The court may, on good cause shown, cancel the appointment of the curator at any time.
- Powers of registrar**
6. (1) The registrar may institute proceedings in the High Court having jurisdiction in order to—
- (a) discharge any duty or responsibility imposed on the registrar in terms of any law;
- (b) compel any institution to comply with any law or to cease contravening a law;
- (c) compel any institution to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law; or
- (d) obtain a declaratory order on any point of law relating to any law or to the business of an institution.
- (2) For the purpose of ensuring compliance with a law, or if the registrar has reason to believe that an institution is contravening or failing to comply with, or has contravened or failed to comply with, any provision of a law, the registrar may—
- (a) by notice direct that institution to—
- (i) furnish the registrar within a specified period with any specified information or documents in the possession or under the control of that institution and which relate to the matter of such contravention or failure;
- (ii) appear before the registrar at a specified time and place for questioning by the registrar in connection with such matter; or
- (iii) make arrangements to the satisfaction of the registrar for the discharge of all or any part of that institution's obligations in terms of such law;
- (b) if it appears that prejudice has occurred or might occur as a result of such contravention or failure to comply, apply to a court having jurisdiction for an order restraining such institution from continuing business or dealing with trust property pending an application to court by the registrar as contemplated in section 5, or pending the exercising of such other legal remedy as may be available to the registrar.
- (3) (a) If the registrar has reason to believe that a person has contravened a law, or has failed to comply with a request, directive or instruction made, issued or given by the registrar under such law, the registrar may publish a statement to that effect in such manner as the registrar considers appropriate.

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- (d) die koste met betrekking tot enige aansoek deur die registrator kragtens subartikel (1) gedoen;
- (e) die koste opgeloop deur die registrator met betrekking tot 'n inspeksie van die sake van die betrokke instelling ingevolge die Wet op Inspeksie van Finansiële Instellings, 1998 (Wet No. 80 van 1998); of
- (f) enige ander aangeleentheid wat die hof nodig ag.
- (6) Die kurator tree op onder die beheer van die registrator wat die aansoek kragtens subartikel (1) gedoen het, en kan by daardie registrator aansoek doen om instruksies met betrekking tot enige aangeleentheid wat voortspruit uit, of verband hou met, die beheer en bestuur van die besigheid van die instelling.
- (7) Die kurator moet aan die registrator van die betrokke instelling die inligting verskaf betreffende die sake van daardie instelling wat die registrator vereis.
- (8) (a) Enige persoon kan, by bewys van goeie gronde, aansoek doen by die hof om enige besluit geneem, of handeling verrig, deur die kurator of die registrator met betrekking tot enige aangeleentheid wat voortspruit uit, of verband hou met, die beheer en bestuur van die besigheid van 'n instelling wat onder kuratorskap geplaas is, tersyde te stel of te verander.
- (b) 'n Persoon wat 'n aansoek beoog in paragraaf (a) doen, met nie minder nie as 48 uur kennis van sodanige aansoek aan die registrator of kurator, na gelang van die geval, gee, en sodanige registrator of kurator is geregtig om by enige sodanige aansoek 20 aangehoor te word.
- (9) Die hof kan te eniger tyd, by bewys van goeie gronde, die aanstelling van die kurator kanselleer.
- ### Bevoegdhede van registrator
6. (1) Die registrator kan regstappe in die Hoë Hof wat oor regsbevoegdheid besik, 25 instel om—
- (a) enige plig of verantwoordelikheid na te kom wat op die registrator ingevolge enige wet opgelê word;
- (b) enige instelling te dwing om te voldoen aan enige wet of om enige oortreding van 'n wet te staak;
- (c) enige persoon te dwing om aan 'n wettige versoek, lasgewing of instruksie gerig, uitgereik of gegee deur die registrator kragtens 'n wet te voldoen; of
- (d) 'n verklarende bevel ten opsigte van enige regspunt met betrekking tot enige wet of die besigheid van 'n instelling te verkry.
- (2) Die registrator kan, ten einde voldoening aan 'n wet te verseker, of indien die registrator rede het om te glo dat 'n instelling enige bepaling van 'n wet oortree of versuim om daaraan te voldoen, of oortree het of versuim het om daaraan te voldoen—
- (a) by kennisgewing daardie instelling gelas om—
- (i) die registrator binne 'n vermelde tyelperk te voorsien van enige vermelde inligting of dokumente in die besit of onder die beheer van daardie instelling en wat betrekking het op die aangeleentheid van sodanige oortreding of versuim;
- (ii) voor die registrator op 'n vermelde tyd en plek te verskyn vir ondervraging deur die registrator in verband met sodanige aangeleentheid; of
- (iii) reëlings tot bevrediging van die registrator te tref vir die nakoming van alle, of enige deel van die, verpligte van daardie instelling ingevolge so 'n wet;
- (b) indien dit blyk dat nadeel voorgekom het of mag voorkom as 'n gevolg van so 'n oortreding of versuim om te voldoen, aansoek doen by 'n hof wat oor regsbevoegdheid besik om 'n bevel wat so 'n instelling daarvan weerhou om voort te gaan met besigheid of met trustgoed te handel hangende 'n aansoek deur die registrator by 'n hof soos beoog in artikel 5, of hangende die aanwending van enige ander regsremedie wat aan die registrator beskikbaar mag wees.
- (3) (a) Indien die registrator rede het om te glo dat 'n persoon 'n wet oortree het, of versuim het om te voldoen aan 'n versoek, lasgewing of instruksie gerig, uitgereik of gegee deur die registrator kragtens so 'n wet, kan die registrator 'n verklaring te dien effekte publiseer op die wyse wat die registrator geskik ag.

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(b) Before publishing a statement, the registrar must give the person concerned a notice warning it of the proposed publication of such statement, the reason therefor and the proposed date of publication.

(c) The person concerned may before the proposed date of publication of the statement make representations to the registrar concerning the proposed action. 5

(d) If the registrar thereafter decides to publish the statement, the registrar must, without delay, give the person concerned a notice which sets out the terms of the statement to be published.

(4) In paragraphs (a), (b), (c) and (d) of subsection (1), in subsection (2) and in subsection (3) ‘law’ means this Act, the Inspection of Financial Institutions Act, 1998, 10 any other Act referred to in the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, or the Medical Schemes Act, 1998, and includes any subordinate measure made under or in terms of any such Act.

(5) The registrar may take any reasonable steps, including the issue of an instruction to carry out an inspection in terms of the Inspection of Financial Institutions Act, 1998, 15 to ensure that an institution which is subject to an order of court made in terms of subsection (1) or (2) is complying with that order.

Declaration of certain practices as irregular or undesirable

7. (1) The registrar may, by notice in the *Gazette*, declare a specific practice or method of conducting business an ‘irregular or undesirable practice’ or an ‘undesirable method of conducting business’ for a specific category or categories of financial institutions, or 20 for all such institutions.

(2) The registrar may not issue a declaration referred to in subsection (1) unless the registrar—

(a) has invited interested persons to make written representations concerning the intended declaration so as to reach him or her within 21 days before the proposed date of publication of that notice; and 25

(b) has consulted with any advisory committee or board established in respect of the supervision, regulation and control of the financial institutions concerned.

(3) A financial institution may not, on or after the date of the notice referred to in subsection (1), carry on the relevant business practice or method of conducting business. 30

(4) The registrar may, by notice in the *Gazette*, direct a financial institution which carries on the relevant business practice or method of conducting business on or after the date of the notice referred to in subsection (1), to rectify, repair or repay to the satisfaction of the registrar anything which was caused by, or arose out of, that business practice or method of conducting business. 35

(5) A financial institution which is directed to rectify, repair or repay anything in terms of subsection (4), must do so within 60 days after the financial institution is so directed.

Restriction on powers of registrar

8. Despite any other provision of this Act, the registrar may not act under section 5, 40 6, or 7 in respect of a stock exchange, financial exchange, member or stock-broker referred to in paragraph (a)(v) and (vi) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, unless the registrar—

(a) has consulted with the committee or executive committee of the stock exchange or financial exchange in question; and 45

(b) is satisfied that no other adequate remedy is available.

Records and entries in books of account admissible in evidence

9. In any proceedings conducted in terms of this Act, the records and books of account of an institution, a nominee company or a trust administered by such institution are admissible as *prima facie* evidence of the matters, transactions and accounts recorded therein, if supported by an affidavit by a person who alleges in that affidavit that person— 50

(b) Die registrator moet, voor publikasie van 'n verklaring, die betrokke persoon in kennis stel en dit waarsku oor die voorgenome publikasie van sodanige verklaring, die rede daarvoor en die voorgestelde datum van publikasie.

(c) Die betrokke persoon kan voor die voorgestelde datum van publikasie van die verklaring vertoe aan die registrator met betrekking tot die voorgestelde optrede rig.

(d) Indien die registrator daarna besluit om die verklaring te publiseer, moet die registrator, sonder versuim, kennis aan die betrokke persoon gee wat die bepalings van die verklaring wat gepubliseer staan te word, uiteensit.

(4) In paragrawe (a), (b), (c) en (d) van subartikel (1), in subartikel (2) en in subartikel (3) beteken "wet" hierdie Wet, die Wet op die Inspeksie van Finansiële Instellings, 1998, enige ander Wet waarna verwys word in die omskrywing van "finansiële instelling" in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, of die Wet op Mediese Skemas, 1998, en ook enige ondergeskikte maatreël uitgevaardig kragtens of ingevolge enige sodanige Wet.

(5) Die registrator kan enige redelike stappe doen, met inbegrip van die uitreiking van 'n instruksie om 'n inspeksie uit te voer ingevolge dié Wet op die Inspeksie van Finansiële Instellings, 1998, om te verseker dat 'n instelling wat onderworpe is aan 'n hofbevel uitgereik ingevolge subartikel (1) of (2), aan daardie bevel voldoen.

Verklaring van sekere praktyke as onreëlmataig of onwenslik

7. (1) Die registrator kan, by kennisgewing in die *Staatskoerant*, 'n bepaalde praktyk of metode van besigheid dryf, verklaar as 'n "onreëlmataig of onwenslike praktyk" of 'n "onwenslike metode van dryf van besigheid" vir 'n bepaalde kategorie of kategorieë finansiële instellings, of vir alle sodanige instellings.

(2) Die registrator mag nie 'n verklaring bedoel in subartikel (1) uitreik nie tensy die registrator—

- (a) belanghebbende persone uitgenooi het om skriftelike vertoe met betrekking tot die voorgenome verklaring te rig om hom of haar binne 21 dae voor die voorgestelde datum van publikasie van daardie kennisgewing te bereik; en
- (b) oorleg gepleeg het met enige advieskomitee of raad ingestel ten opsigte van die toesig, regulering en beheer van die betrokke finansiële instellings.

(3) 'n Finansiële instelling mag nie, op of na die datum van die kennisgewing bedoel in subartikel (1), die betrokke besigheidspraktyk of metode om besigheid te dryf, bedryf nie.

(4) Die registrator kan, by kennisgewing in die *Staatskoerant*, 'n finansiële instelling wat op of na die datum van die kennisgewing bedoel in subartikel (1) die betrokke besigheidspraktyk of metode om besigheid te dryf, bedryf, gelas om tot bevrediging van die registrator enigiets wat veroorsaak is deur, of voortgespruit het uit, daardie besigheidspraktyk of metode om besigheid te dryf, reg te stel, te herstel of terug te betaal.

(5) 'n Finansiële instelling wat gelas is om enigiets reg te stel, te herstel of terug te betaal ingevolge subartikel (4) moet dit doen binne 60 dae nadat die persoon aldus gelas is.

Beperking op bevoegdhede van registrator

8. Ondanks enige ander bepaling van hierdie Wet, mag die registrator nie ten opsigte van 'n aandelebeurs, finansiële beurs, lid of aandelemakelaar bedoel in paragraaf (a)(v) en (vi) van die omskrywing van "finansiële instelling" in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, kragtens artikel 5, 6 of 7 optree nie, tensy die registrator—

- (a) oorleg gepleeg het met die komitee of uitvoerende komitee van die betrokke aandelebeurs of finansiële beurs; en
- (b) oortuig is dat geen ander toereikende remedie beskikbaar is nie.

Aantekeninge en inskrywings in rekeningboeke as getuienis toelaatbaar

9. Die aantekeninge en rekeningboeke van 'n instelling, 'n benoemde maatskappy of 'n trust beheer of geadministreer deur sodanige instelling, is in enige verrigtinge gevoer ingevolge hierdie Wet toelaatbaar as *prima facie*-getuienis van die aangeleenthede, transaksies en rekeninge daarin aangeteken, indien ondersteun deur 'n beëdigde verklaring deur 'n persoon wat in daardie verklaring beweer dat—

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- (a) (i) the person is a director, member, partner, official, employee or agent of such institution, nominee company or trust; or
(ii) the person is an inspector appointed under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), section 11 or 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), section 6 of the Banks Act, 1990 (Act No. 94 of 1990), or section 4 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); and
(b) such records or books of account are or have been the ordinary records and books of account of that institution, company or trust.

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Offences

10. (1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 15 years.

(2) A court may, in addition to any penalty it may impose in terms of subsection (1), order that such person—

- (a) pay the institution or principal concerned any profit he or she made; and
(b) compensate the institution or principal concerned for any damage suffered, as a result of the contravention or failure.

(3) A court may, in addition to any penalty imposed in terms of subsection (1) and an order made in terms of subsection (2), order that such person may not serve as a director, member, partner or manager of any financial institution for such period as the court may deem fit.

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Repeal of laws

11. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule, subject to the provisions of section 13.

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Status of footnote

12. (1) The footnote in section 1 has been inserted for ease of reference to the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

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(2) The footnote is not part of this Act and does not have the force of law.

Transitional provision

13. Anything done or deemed to have been done under any provision of a law repealed by section 11 and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

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Short title

14. This Act is called the Financial Institutions (Protection of Funds) Act, 2001.

- (a) die persoon—
 (i) 'n direkteur, lid, vennoot, beampte, werknemer of agent is van sodanige instelling, benoemde maatskappy of trust; of
 (ii) 'n inspekteur is wat aangestel is kragtens die Wet op die Inspeksie van Finansiële Instellings, 1998 (Wet No. 80 van 1998), artikel 11 of 12 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), artikel 6 van die Bankwet, 1990 (Wet No. 94 van 1990), of artikel 4 van die Wet op Onderlinge Banke, 1993 (Wet No. 124 van 1993); en
 (b) sodanige aantekeninge of rekeningboeke die gewone aantekeninge en rekeningboeke van daardie instelling, maatskappy of trust is of was.

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Misdrywe

10. (1) 'n Persoon wat 'n bepaling van hierdie Wet oortree of versuim om daaraan te voldoen, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 15 jaar.

(2) 'n Hof kan, benewens enige straf wat dit ingevolge subartikel (1) kan oplê, beveel dat so 'n persoon—

- (a) enige winste wat hy of sy gemaak het as 'n gevolg van die oortreding of versuim, aan die betrokke instelling of prinsipaal moet betaal; en
 (b) die betrokke instelling of prinsipaal moet vergoed vir enige skade gely as 'n gevolg van die oortreding of versuim.

(3) 'n Hof kan, benewens enige straf opgelê ingevolge subartikel (1) en 'n bevel gegee ingevolge subartikel (2), beveel dat so 'n persoon nie vir die tydperk wat die hof goedvind, mag dien as 'n direkteur, lid, vennoot of bestuurder van enige finansiële instelling nie.

Herroeping van wette

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11. Die wette vermeld in die Bylae word hierby, behoudens die bepalings van artikel 12, herroep in die mate in die derde kolom van die Bylae uiteengesit.

Status van voetnota

12. (1) Die voetnota in artikel 1 is ingevoeg vir die gerief van verwysing na die omskrywing van 'finansiële instelling' in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990).

(2) Die voetnota is nie deel van hierdie Wet nie en het nie regskrag nie.

Oorgangsbeleid

13. Enigets gedoen of geag gedoen te gewees het kragtens 'n bepaling van 'n wet herroep deur artikel 11 en wat kragtens 'n bepaling van hierdie Wet gedoen sou kon word, word geag kragtens die laasgenoemde bepaling gedoen te wees.

Kort titel

14. Hierdie Wet heet die Wet op Finansiële Instellings (Beskerming van Fondse), 2001.

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Number and year of law	Short title	Extent of repeal
Act No. 39 of 1984	Financial Institutions (Investment of Funds) Act, 1984	The whole
Act No. 6 of 1987	Financial Institutions Amendment Act, 1987	Sections 14, 15, 16 and 17
Act No. 51 of 1988	Financial Institutions Amendment Act, 1988	Section 23
Act No. 55 of 1989	Financial Markets Control Act, 1989	First item of Schedule
Act No. 83 of 1992	Financial Institutions Amendment Act, 1992	Section 33
Act No. 104 of 1993	Financial Institutions Second Amendment Act, 1993	Section 55
Act No. 22 of 1997	Financial Institutions Amendment Act, 1997	Sections 1, 2 and 3

BYLAE**WETTE HERROEP**

Nommer en jaar van wet	Kort titel	Omvang van herroeping	
Wet No. 39 van 1984	Wet op Finansiële Instellings (Belegging van Fondse), 1984	Die geheel	5
Wet No. 6 van 1987	Wysigingswet op Finansiële Instellings, 1987	Artikels 14, 15, 16 en 17	
Wet No. 51 van 1988	Wysigingswet op Finansiële Instellings, 1988	Artikel 23	10
Wet No. 55 van 1989	Wet op Beheer van Finansiële Markte, 1989	Eerste item van Bylae	
Wet No. 83 van 1992	Wysigingswet op Finansiële Instellings, 1992	Artikel 33	
Wet No. 104 van 1993	Tweede Wysigingswet op Finansiële Instellings, 1993	Artikel 55	15
Wet No. 22 van 1997	Wysigingswet op Finansiële Instellings, 1997	Artikels 1, 2 en 3	

