



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 385

CAPE TOWN, 11 JULY 1997

KAAPSTAD, 11 JULIE 1997

No. 18128

PRESIDENT'S OFFICE

No. 940.

11 July 1997

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

No. 22 of 1997: Financial Institutions Amendment Act, 1997.

KANTOOR VAN DIE PRESIDENT

No. 940.

11 Julie 1997

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

No. 22 van 1997: Wysigingswet op Finansiële Instellings, 1997.

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.

ACT

To amend the Financial Institutions (Investment of Funds) Act, 1984, in order to substitute or delete certain definitions; to grant power to the registrar to institute certain civil proceedings in the High Court; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 2 July 1997.)

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

Amendment of section 1 of Act 39 of 1984, as amended by section 14 of Act 6 of 1987, section 23 of Act 51 of 1988, section 38 of Act 55 of 1989 and section 33 of Act 83 of 1992

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1. Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended—

(a) by the substitution for the definition of “financial institution” of the following definition:

“ ‘financial institution’ means—

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(a) any institution referred to in paragraph (a) or (b) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(b) any medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 62 of 1967);”;

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(b) by the deletion of the definition of “principal”;

(c) by the substitution for the definition of “registrar” of the following definition:

“ ‘registrar’ means in respect of a financial institution referred to—

(a) in paragraph (a) of the definition of ‘financial institution’ in this section, in relation to an institution referred to in—

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(i) paragraph (a) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, the ‘registrar’ as defined in any of the Acts referred to in that paragraph;

(ii) paragraph (b) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990, the ‘executive officer’ as defined in section 1 of that Act;

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om die Wet op Finansiële Instellings (Beleggings van Fondse), 1984, te wysig ten einde sekere omskrywings te vervang of te skrap; om bevoegdheid aan die registrateur te verleen om sekere siviele verrigtinge in die Hoë Hof in te stel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 2 Julie 1997.)*

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

Wysiging van artikel 1 van Wet 39 van 1984, soos gewysig deur artikel 14 van Wet 6 van 1987, artikel 23 van Wet 51 van 1988, artikel 38 van Wet 55 van 1989 en
5 artikel 33 van Wet 83 van 1992

1. Artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984, word hierby gewysig—

- (a) deur die omskrywing van “finansiële instelling” deur die volgende omskrywing te vervang:
- 10 “ ‘finansiële instelling’ —
- (a) enige instelling vermeld in paragraaf (a) of (b) van die omskrywing van ‘finansiële instelling’ in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990);
- 15 (b) enige mediese skema geregistreer ingevolge die Wet op Mediese Skemas, 1967 (Wet No. 62 van 1967);”;
- (b) deur die omskrywing van “prinsipaal” te skrap;
- (c) deur die omskrywing van “registrateur” deur die volgende omskrywing te vervang:
- 20 “ ‘registrateur’ ten opsigte van ’n finansiële instelling bedoel—
- (a) in paragraaf (a) van die omskrywing van ‘finansiële instelling’ in hierdie artikel, in verband met ’n instelling bedoel in—
- (i) paragraaf (a) van die omskrywing van ‘finansiële instelling’ in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, die ‘registrateur’ soos omskryf in enige van die Wette in daardie paragraaf vermeld;
- 25 (ii) paragraaf (b) van die omskrywing van ‘finansiële instelling’ in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, die ‘uitvoerende beampte’ soos omskryf in artikel 1 van daardie Wet;

- (b) in paragraph (b) of the definition of 'financial institution' in this section, the 'registrar' of medical schemes as defined in section 1 of the Medical Schemes Act, 1967;" and
- (d) by the substitution for the definition of "trust property" of the following definition:
- " 'trust property' means any corporeal or incorporeal, movable or immovable asset kept in trust."

Amendment of section 5 of Act 39 of 1984, as amended by section 15 of Act 6 of 1987

2. Section 5 of the Financial Institutions (Investment of Funds) Act, 1984, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), may at any time at the direction of the registrar of a financial institution referred to in **[the said] this Act**, inspect the affairs of a **[board of executors, trust company or other company]** person who is a financial institution mentioned in **[paragraph (g) of]** the definition of 'financial institution' in section 1, but who is not otherwise subject to inspection in terms of the Inspection of Financial Institutions Act, 1984, and of a nominee company controlled by **[the financial institution in respect of which the registrar concerned was appointed]** that person, in order to ascertain whether the provisions of this Act are being complied with.”;
- and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) The registrar of a financial institution referred to in this Act may cause the affairs of any **[company which]** person who is not a financial institution mentioned in the definition of 'financial institution' in section 1 of this Act, but who he or she has reasonable cause to believe **[holds]** invests, keeps in safe custody or otherwise controls or administers trust property, to be inspected in order to ascertain whether the provisions of this Act are applicable to it.”.

Insertion of sections 6A and 6B in Act 39 of 1984

3. The following sections are hereby inserted after section 6 of the Financial Institutions (Investment of Funds) Act, 1984:

“Civil proceedings by registrar

- 6A.** (1) Despite anything to the contrary contained in any other law, but subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and any provision in such other law relating to jurisdiction, procedure and evidence, the registrar has *locus standi in judicio* to institute and conduct proceedings in the High Court having jurisdiction (after this referred to as the court) in an instance where no other statutory provision makes such provision, if he or she has reasonable cause to believe that it is necessary or desirable for him or her to do so in order—
- (a) to discharge any duty or responsibility imposed on him or her in terms of any law;
- (b) to compel any person to comply with any law or to cease contravening a law;
- (c) to compel any person to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law; or
- (d) to obtain a declaratory order on any point of law relating to any law or to the business of a financial institution in general,

- (b) in paragraaf (b) van die omskrywing van 'finansiële instelling' in hierdie artikel, die 'registrator' van mediese skemas soos omskryf in artikel 1 van die Wet op Mediese Skemas, 1967;" en
- (d) deur die omskrywing van "trustgoed" deur die volgende omskrywing te vervang:
- "'trustgoed' enige liggaamlike of onliggaamlike, roerende of onroerende bate wat in trust gehou word."

Wysiging van artikel 5 van Wet 39 van 1984, soos gewysig deur artikel 15 van Wet 6 van 1987

2. Artikel 5 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984, word hierby gewysig—

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

- (1) 'n Inspekteur wat kragtens artikel 2 van die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), aangestel is, kan te eniger tyd in opdrag van die registrator van 'n finansiële instelling in [genoemde] hierdie Wet bedoel, die sake van 'n [eksekuteurskamer, trustmaatskappy of ander maatskappy] persoon wat 'n finansiële instelling is, vermeld in [paragraaf (g) van] die omskrywing van 'finansiële instelling' in artikel 1, maar wat nie andersins aan inspeksie ingevolge die Wet op Inspeksie van Finansiële Instellings, 1984, onderworpe is nie, en van 'n benoemde maatskappy wat beheer word deur [die finansiële instelling ten opsigte van wie die betrokke registrator aangestel is] daardie persoon, inspekteer, ten einde vas te stel of die bepalings van hierdie Wet nagekom word."; en

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

- "(2) Die registrator van 'n finansiële instelling in hierdie Wet bedoel, kan die sake van enige [maatskappy] persoon anders as 'n finansiële instelling in die omskrywing van 'finansiële instelling' in artikel 1 van hierdie Wet vermeld wat hy of sy op redelike gronde vermoed trustgoed belê, in veilige bewaring hou of andersins beheer of administreer, laat inspekteer met die doel om vas te stel of die bepalings van hierdie Wet [daarop] op daardie persoon van toepassing is."

Invoeging van artikels 6A en 6B in Wet 39 van 1984

3. Die volgende artikels word hierby na artikel 6 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984, ingevoeg:

"Siviele verrigtinge deur registrator

- 6A. (1) Nieteenstaande enigiets tot die teendeel in enige ander wet, maar behoudens die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), en die bepalings van sodanige ander wet met betrekking tot jurisdiksie, prosedure en bewyslewering, het die registrator *locus standi in judicio* om verrigtinge in die Hoë Hof met regsbevoegdheid (hierna verwys as die hof) in te stel en te voer in 'n geval waar geen ander statutêre bepaling reeds daarvoor voorsiening maak nie, indien hy of sy op redelike grond vermoed dat dit nodig of wenslik vir hom of haar is om dit te doen—

- (a) ten einde enige plig of verantwoordelikheid kragtens enige wet aan hom of haar opgelê, uit te voer;
- (b) ten einde enige persoon te verplig om aan enige wet te voldoen of om op te hou om 'n wet te oortree;
- (c) ten einde enige persoon te verplig om te voldoen aan 'n regmatige versoek, lasgewing of instruksie wat deur die registrator kragtens 'n wet gerig, uitgereik of gegee is; of
- (d) ten einde 'n verklarende bevel te verkry aangaande enige regspunt met betrekking tot enige wet of in die algemeen met betrekking tot die besigheid van 'n finansiële instelling,

subject to any additional procedural requirements which the court may impose in any particular instance to ensure fair and equitable legal proceedings.

(2) In paragraphs (a), (b), (c) and (d) of subsection (1) 'law' means this Act, the Inspection of Financial Institutions Act, 1984, or 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, 1967, and includes any subordinate measure made under or in terms of any such Act.

Restriction on powers of registrar

6B. Despite any other provision of this Act, the registrar may not in respect of an exchange, member or stock-broker referred to in paragraph (a)(v) or (vi) of the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990, make an application under section 6 or institute or conduct proceedings under section 6A unless—

(a) he or she has consulted with the committee or executive committee of the exchange in question; and

(b) he or she and the committee or executive committee are satisfied that no other adequate remedy is available.”.

Amendment of section 1 of Act 55 of 1989, as amended by section 29 of Act 97 of 1990, section 23 of Act 54 of 1991, section 36 of Act 83 of 1992, section 1 of Act 55 of 1995 and section 1 of Act 73 of 1996

4. Section 1 of the Financial Markets Control Act, 1989, is hereby amended by the substitution for the definition of “unsolicited call” of the following definition:

“ ‘unsolicited call’, in relation to entering into an agreement in respect of listed financial instruments, means a personal visit made to someone or an oral communication made to someone without an express or tacit invitation from such person, but excluding any personal visit or oral communication made to someone on whose behalf the business of buying and selling of listed financial instruments has previously been carried on by the person who made that personal visit or oral communication, [a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), a member of a financial exchange or] a financial institution referred to in paragraph [(a)] (b) [(c), (d), (e), (f) or (h)] of the definition of ‘financial institution’ in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), or paragraph (a) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).”.

Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992 and section 67 of Act 104 of 1993

5. Section 1 of the Financial Services Board Act, 1990, is hereby amended—

(a) by the substitution for the definition of “financial institution” of the following definition:

“ ‘financial institution’ means—

- (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

onderworpe aan enige bykomende prosedurele vereistes wat die hof in enige spesifieke geval mag stel ten einde regverdigde en billike regsverrigtinge te verseker.

- (2) In paragrafe (a), (b), (c) en (d) van subartikel (1) beteken 'wet' hierdie Wet, die Wet op Inspeksie van Finansiële Instellings, 1984, of 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, 1967, met inbegrip van enige regulasie, reël, statuut, kennisgewing of ander ondergeskikte maatreël kragtens of ingevolge enige sodanige Wet uitgevaardig.

Beperking op bevoegdhede van registrateur

- 6B.** Nieteenstaande enige ander bepaling van hierdie Wet, mag die registrateur nie kragtens artikel 6 ten opsigte van 'n beurs, lid of effektemakelaar bedoel in paragraaf (a)(v) of (vi) van die omskrywing van 'finansiële instelling' in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, 'n aansoek bring of kragtens artikel 6A 'n geding instel of voer nie tensy—

- (a) hy of sy met die komitee of uitvoerende komitee van die betrokke beurs oorleg gepleeg het; en
(b) hy of sy en die komitee of uitvoerende komitee tevrede is dat daar geen ander geskikte remedie beskikbaar is nie."

Wysiging van artikel 1 van Wet 55 van 1989, soos gewysig deur artikel 29 van Wet 97 van 1990, artikel 23 van Wet 54 van 1991, artikel 36 van Wet 83 van 1992, artikel 1 van Wet 55 van 1995 en artikel 1 van Wet 73 van 1996

4. Artikel 1 van die Wet op Beheer van Finansiële Markte, 1989, word hierby gewysig deur die omskrywing van "ongevraagde uitnodiging" deur die volgende omskrywing te vervang:

- "'ongevraagde uitnodiging', met betrekking tot die aangaan van 'n ooreenkoms ten opsigte van genoteerde finansiële instrumente, 'n persoonlike besoek aan iemand gebring of 'n mondelinge mededeling aan iemand gedoen sonder uitdruklike of stilswyende uitnodiging van so iemand, maar met uitsondering van so 'n persoonlike besoek gebring, of so 'n mondelinge mededeling, aan iemand ten behoeve van wie vantevore die besigheid van koop en verkoop van genoteerde finansiële instrumente gedryf is deur die persoon wat daardie persoonlike besoek gebring of mondelinge mededeling gedoen het, [**'n effektemakelaar soos omskryf in artikel 1 van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), 'n lid van 'n finansiële beurs, of** 'n finansiële instelling genoem in paragraaf [(a)] (b) [(c), (d), (e), (f) of (h)] van die omskrywing van 'finansiële instelling' in artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984 (Wet No. 39 van 1984), of paragraaf (a) van die omskrywing van 'finansiële instelling' in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990)."

Wysiging van artikel 1 van Wet 97 van 1990, soos gewysig deur artikel 1 van Wet 41 van 1992 en artikel 67 van Wet 104 van 1993

5. Artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, word hierby gewysig—

- (a) deur die omskrywing van "finansiële instelling" deur die volgende omskrywing te vervang:
" 'finansiële instelling'—
(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

- 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; 5
- (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 'stock-broker' 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; 10
- (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; 15
- (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 20*bis* of the Insurance Act, 1943; 20
- (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; 25
- (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 30
- (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); "; and 35 40
- (b) by the addition of the following definition:
- " 'trust property' means 'trust property' as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)."

Short title and commencement

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6. This Act is called the Financial Institutions Amendment Act, 1997, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

- 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 'geregisteerde versekeraar' soos in artikel 1(1) van die Wet op Versekering, 1943 (Wet No. 27 van 1943), omskryf;
- (viii) enige agent, makelaar of ander persoon in artikel 20*bis* van die Wet op Versekering, 1943, beoog;
- (ix) enige persoon wat, ingevolge artikel 60 van die Wet op Versekering, 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 Versekering, 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;"; en
- (b) deur na die omskrywing van "raad" die volgende omskrywing in te voeg:
 " 'trustgoed' trustgoed soos in artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984 (Wet No. 39 van 1984), omskryf;".

50 Kort titel en inwerkingtreding

6. Hierdie Wet heet die Wysigingswet op Finansiële Instellings, 1997, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

