

(28 October 1998 – 11 May 2000)

[This version applied as from **28 October 1998**, i.e. the date of commencement of the Inspection of Financial Institutions Act 80 of 1998 - to – **11 May 2000**, the day before commencement of the Financial Services Board Amendment Act 12 of 2000]

INSPECTION OF FINANCIAL INSTITUTIONS ACT 80 OF 1998

Government Notice 1384 in Government Gazette 19404, dated 28 October 1998. Commencement date: 28 October 1998.

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

(English text signed by the President)

(Assented to 20 October 1998.)

ACT

To provide for the inspection of the affairs of financial institutions; the inspection of the affairs of unregistered entities conducting the business of financial institutions; and for matters connected therewith.

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

1. Definitions
2. Appointment of inspectors
3. Inspection of institutions
4. Powers of inspectors relating to institutions
5. Powers of inspectors relating to other persons
6. Time and place of examinations
7. Right to legal professional privilege
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10. General disclosure
11. Costs of inspections
12. Offences and penalties
13. Repeal and amendment of laws
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1. Definitions

In this Act, unless the context indicates otherwise-

Prepared by:

In partnership with:

"associated institution" means-

- (a) any person, partnership, company or trust in which, or in the business of which, a financial institution, or unregistered person, has or had a direct or indirect interest;
- (b) 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 unregistered person;
- (c) a participating employer in a pension fund organisation;
- (d) 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;

"company" includes a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

"document" includes books, records, securities or accounts, and any information, including information stored or recorded electronically, digitally, photographically, magnetically or optically;

"financial institution" means-

- (a) any institution referred to in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- (b) a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967);

"inspector" means a person appointed as an inspector under section 2;

"institution" means a financial institution, an associated institution and an unregistered person;

"legal representative" means an attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), and an advocate as defined in section 1 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964);

"registered", in relation to a financial institution, includes provisionally registered;

"registrar" means the executive officer defined in section 1 of the Financial Services Board Act, 1990, but in relation to a medical scheme registered in terms of the Medical Schemes Act, 1967, the registrar of medical schemes appointed under section 13 of that Act;

"unregistered person" means a person, partnership, company or trust inspected under section 3(2).

2. Appointment of inspectors

- (1) The registrar may from time to time appoint inspectors under this Act.
- (2) The registrar must furnish every inspector with a certificate of appointment signed by the registrar.
- (3) An inspector must, before commencement of an inspection or the examination of any person, produce his or her certificate of appointment.
- (4) An inspector may, with the consent of the registrar, appoint any person to assist him or her in carrying out an inspection.

3. Inspection of institutions

- (1) The registrar may at any time instruct an inspector to carry out an inspection of the affairs, or any part of the affairs, of a financial institution or associated institution.
- (2) If the registrar has reason to believe that a person, partnership, company or trust which is not registered or approved as a financial institution, is carrying on the business of a financial institution, he or she may instruct an inspector to inspect the affairs, or any part of the affairs, of such a person, partnership, company or trust.
- (3) Any person who holds shares in an institution as a nominee or in trust on behalf of another person, must upon the request of an inspector or the registrar, disclose the name of that other person.
- (4) Before the registrar instructs an inspector to carry out an inspection he or she must take all reasonable steps to ensure that the person so instructed will be able to report objectively and impartially on the affairs of the institution.

4. Powers of inspectors relating to institutions

- (1) In carrying out an inspection of the affairs of an institution under section 3 an inspector may-
 - (a) administer an oath or affirmation or otherwise examine any person who is or formerly was a director, servant, employee, partner, member or shareholder of the institution;
 - (b) at any time without prior notice enter and search any premises occupied by the institution and require the production of any document relating to the affairs of that institution;

- (c) open any strongroom, safe or other container in which he or she suspects any document of the institution is kept;
 - (d) examine and make extracts from and copies of any document of the institution or, against the issue of a receipt, remove such document temporarily for that purpose;
 - (e) against the issue of a receipt, seize any document of the institution which in his or her opinion may afford evidence of an offence or irregularity;
 - (f) retain any seized document for as long as it may be required for any criminal or other proceedings.
- (2) An institution or its authorised representative may, during normal office hours, examine and make extracts from any document seized from the institution under subsection (1)(e), under the supervision of the registrar or an inspector.

5. Powers of inspectors relating to other persons

- (1) In order to carry out an inspection of the affairs of an institution under section 3, an inspector may-
- (a) administer an oath or affirmation or otherwise examine any person, if he or she has reason to believe that such person may be able to provide information relating to the affairs of the institution;
 - (b) on the authority of a warrant, at any time without prior notice-
 - (i) enter any premises and require the production of any document relating to the affairs of the institution;
 - (ii) enter and search any premises for any documents relating to the affairs of the institution;
 - (iii) open any strongroom, safe or other container which he or she suspects contains any document relating to the affairs of the institution;
 - (iv) examine, make extracts from and copy any document relating to the affairs of the institution or, against the issue of a receipt, remove such document temporarily for that purpose;
 - (v) against the issue of a receipt, seize any document relating to the affairs of the institution, which, in his or her opinion, may afford evidence of an offence or irregularity;

- (vi) retain any seized document for as long as it may be required for criminal or other proceedings,

but an inspector may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph.

(2)

- (a) A warrant contemplated in subsection (1)(b) may be issued, on application of an inspector, by a judge or magistrate who has jurisdiction in the area where the premises in question is located.
- (b) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the affairs of the institution being inspected, is kept at the premises concerned.

- (3) Any person from whom a document has been seized under subsection (1)(b)(v), or his or her authorised representative, may examine such document and make extracts therefrom under the supervision of the registrar or an inspector during normal office hours.

6. Time and place of examinations

- (1) An inspector may determine the time and place of any examination in terms of section 4 or 5 and may determine who may be present at such an examination.
- (2) Despite the provisions of subsection (1), a person examined in terms of section 4 or 5, whether under oath or otherwise, may have his or her legal representative present.

7. Right to legal professional privilege

Section 4 or 5 shall not be construed so as to infringe upon the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney, whether in writing or verbally, so as to enable him or her to provide advice, or render other legal assistance to or defend the client in connection with an offence under any law with which he or she is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to instituting criminal proceedings is being conducted against him or her.

8. Observance of secrecy

A person carrying out an inspection under this Act, including a person appointed in terms of section 2(4), must preserve, or aid in preserving, secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties and may not communicate any such matter to any

person except the registrar, or unless a court of law orders such communication, or insofar as such communication is necessary to properly carry out the inspection.

9. Disclosure to certain affected parties

If the registrar has reason to believe that-

- (a) an offence or irregularity has been committed relating to the affairs of an institution inspected under this Act; or
- (b) an institution so inspected is in an unsound financial condition,

he or she may convey any information obtained during an inspection to-

- (i) any department or organ of State;
- (ii) any regulatory authority;
- (iii) any self-regulating association or organisation;
- (iv) any statutory board charged with supervisory or regulatory duties;
- (v) any shareholder, partner, member, director, auditor, accounting officer, liquidator, curator, executor or trustee of an institution inspected under this Act;
- (vi) any participating employer in a pension fund organisation inspected under this Act;
- (vii) an authority contemplated in section 22(2) of the Financial Services Board Act,

if the person or entity referred to in subparagraphs (i) to (vii) is affected by, or has an interest in, such information.

10. General disclosure

- (1) If as a result of an inspection under this Act, the registrar deems it necessary to convey information to any person, group of persons or entity not provided for in section 9, or to publish information, he or she may-
 - (a) if it is an unregistered person, convey or publish such information after affording that person an opportunity to state his or her case;

- (b) if it is a financial institution, apply to a judge or magistrate in chambers for an order to convey such information in any manner which the judge or magistrate may determine.
- (2) An application contemplated in subsection (1)(b) must-
 - (a) be lodged in writing with the registrar of the High Court or the clerk of the Magistrate's Court, as the case may be;
 - (b) state briefly the reasons for the application.
- (3) On receipt of an application in terms of subsection (1), the registrar or clerk of the court must without delay cause it to be placed before a judge or magistrate in chambers.
- (4) An application in terms of subsection (1) must be heard *in camera*.
- (5) The judge or magistrate referred to in subsection (1)(b) must without delay make a ruling regarding-
 - (a) the manner in which service of such application must take place on the financial institution concerned;
 - (b) the time within which and the manner in which such financial institution must respond to the application; and
 - (c) the date and time on which the application will be heard,having due regard to the urgency of the matter.
- (6) The judge or magistrate referred to in subsection (1)(b) may make any order regarding the publication or disclosure of the information as he or she deems fit, and may make any order as to costs.
- (7) When making an order in terms of subsection (6), the judge or magistrate must take into account-
 - (a) the interest of the public;
 - (b) the interest of any person or group of persons affected by the information;
 - (c) the interest of the financial institution concerned;
 - (d) the nature of the information;
 - (e) the reliability of the information;

- (f) the possibility that an offence or irregularity has been committed,

and may take into account any other factor which he or she deems appropriate.

11. Costs of inspections

All expenses necessarily incurred by and the remuneration of any inspector appointed under section 2 may be recovered from-

- (a) a person who has applied for an inspection of an institution, and the registrar may require such person to furnish such security as the registrar may deem satisfactory and sufficient to cover such expenses and remuneration; or
- (b) the institution being inspected, if the registrar so decides, after having considered the results of the inspection.

12. Offences and penalties

A person who-

- (a) when requested by an inspector to take an oath or to make an affirmation, refuses to do so;
- (b) without lawful excuse refuses or fails to answer a question put by an inspector and relating to the affairs of an institution being inspected;
- (c) wilfully gives any false information to an inspector;
- (d) without lawful excuse refuses or fails to comply with any reasonable request by an inspector in the exercise of his or her powers or the performance of his or her duties;
- (e) wilfully hinders an inspector in the exercise of his or her powers or the performance of his or her duties;
- (f) contravenes section 8,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

13. Repeal and amendment of laws

- (1) The Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), is hereby repealed.

- (2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

14. Short title

This Act is called the Inspection of Financial Institutions Act, 1998.