



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENCY

KANTOOR VAN DIE PRESIDENSIE

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.

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.

**B**E 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;

- (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;”;
- (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;”;
- (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
- (d) by the deletion in subsection (1) of the definition of “registered”.

#### 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,

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.”.

#### Amendment of section 9 of Act 124 of 1993

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.”.

#### Amendment of section 12 of Act 124 of 1993

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—”.

**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). 5 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— 15
    - (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;

- (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;
- (c) that an interest which any person has in the institution concerned is inconsistent with a provision of this Act; 5
- (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;
- (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; 15
- (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

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 20

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: 40  
 "(1) Subject to the provisions of subsection (2), an institution that is [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, 45  
 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

(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.

(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—

(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—

(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."

### Amendment of section 22 of Act 124 of 1993

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

(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—";

(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

(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"

**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: 5  
 “(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: 10  
 “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—”; and
- (c) by the substitution for paragraph (c) of subsection (4) of the following paragraph: 15  
 “(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;”.

**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: 20

- “(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.”. 25

**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.”. 30

**Amendment of section 26 of Act 124 of 1993**

17. Section 26 of the principal Act is hereby amended— 35
- (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: 40  
 “(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).”.

**Amendment of section 27 of Act 124 of 1993**

18. Section 27 of the principal Act is hereby amended— 45
- (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). 50

**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: 5

“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—”.

**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**

**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.** 15

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

(3) The reregistration of an institution in terms of this section shall be subject *mutatis mutandis* to section 15. 20

(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.

(5) No fees shall be payable in respect of a reregistration in terms of this section.”. 25 30

**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**

**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.”.** 35

**Amendment of section 37 of Act 124 of 1993** 40

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 45

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: 5

“(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.”.

#### 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: 10

“(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.”. 15

#### 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: 20

“(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” 25

#### 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.”. 30

#### 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.”. 35 40

#### 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: 45

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

- (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: 10
- “(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.”; 15
- (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 20
- (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)] 25 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. 30
- (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.”. 35

#### 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 55

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: 5  
 “(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” 10

#### 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.” 15

#### 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: 20  
 “(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.” 25

#### 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 : 30  
 “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—”

#### 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: 35  
 “(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).” 40

#### 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: 45  
 “(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

Act No. 54, 1999

MUTUAL BANKS AMENDMENT ACT, 1999

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