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CURATORSHIPS OF FINANCIAL
INSTITUTIONS

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...➤ CURATORSHIPS OF FINANCIAL INSTITUTIONS

The [Financial Institutions \(Protection of Funds\) Act 28 of 2001](#)

Ovation Preservation Pension Fund and Others v
Executive Officer Financial Services Board
(519/2007) [2008] ZASCA 82; 2009 (1) SA 485 (SCA)
(2 June 2008)



Curatorship is no guarantee.

By the time it is implemented damage is often terminal.

1st Provisional then decide.

Curatorship – Liquidation- Other



The origin of the form of curatorship arising in cases of this nature appears to have been s 6 of the Financial Institution (Investment of Funds) Act 56 of 1964.

That Act was replaced by the Financial Institution (Investment of Funds) Act 35 of 1984,. In turn, the 1984 Act was in due course repealed and replaced by the current FI Act, s 5(5).



Sections (5)(b) and (f) are open ended and extend a wide discretion to the court.

Definition includes pension funds, friendly societies, unit trust schemes, participation bond schemes, stock exchanges, registered insurers, insurance brokers and mutual banks etc.

The legislature gave the court a wide discretion to craft out an appropriate order.



An order in terms of s 5 is that it vests in the curator the management and control of the business of the institution.

The order neither changes the nature of the trust assets held by the institution nor extinguishes the institution's contractual rights and obligations, and certainly does not vest ownership of the trust assets in the institution.

By its very nature, the order impacts upon the institution and, for the institution to be steered through a crisis, drastic steps might have to be taken, even if they impinge upon the rights of third parties.



The curatorship is there to protect the assets of investors,

Investors should bear any costs in respect of the curatorship intended to benefit them. Indeed,

No person other than the persons in whose favour the curatorship was granted should bear any costs related thereto in the event of the institution's funds being insufficient.

S 5(5)(a) which specifically authorises the issue of an order suspending legal proceedings against an institution for the duration of its curatorship.



There are also sound policy reasons justifying a restriction on disinvestment.

A suggestion of financial instability on the part of an institution will inevitably result in it being flooded with investors seeking to withdraw their investments, threatening its very existence



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THANK YOU