

NATIONAL TREASURY

DRAFT AMENDMENTS TO REGULATIONS IN TERMS OF FINANCIAL SECTOR REGULATION ACT, 2017

Draft amendments to the Financial Sector Regulations (“the Regulations”), made in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), and which were published in Government Notice No. R405 of 29 March 2018, as amended, are set out in the Schedule, and are published for public comment.

Amendments are proposed to regulations 3, 9, 10 and 11 of the current regulations to streamline and simplify the process to finalise the appointments process for the Commissioner and Deputy Commissioners of the FSCA, so that the transitional phase may be terminated as soon as possible.

Amendments proposed to regulation 3 of the Regulations are intended to provide for a more effective transitional management committee during the transitional period until the Commissioner of the Financial Sector Conduct Authority (“FSCA”) assumes office.

Amendments proposed to regulations 9 to 11 of the Regulations are intended to provide for a more efficient and streamlined appointment process for the Commissioner and Deputy Commissioners of the FSCA.

Written comments on the draft amendment to the Financial Sector Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on 24 January 2020. Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

SCHEDULE

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing Regulations.
- _____ Words underlined with a solid line indicate insertions in existing Regulations.
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Interpretation

1. In this Schedule, “Regulations” means the Financial Sector Regulations made in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), and published in Government Notice No. R405 of 29 March 2018, as amended.

Amendment of regulation 1

2. Regulation 1 of the Regulations is amended by the repeal of the definition of “Ministerial Panel”.

Amendment of regulation 3

3. Regulation 3 of the Regulations is amended by—

(a) the substitution in subregulation (1) for paragraph (a) of the following paragraphs:

“(a) A transitional management committee is established and continues in existence until a date determined by the Minister by publishing a notice in the *Government Gazette* at least 30 days before the date of termination.

(aA), The termination date determined in terms of paragraph (a) may only be after the Commissioner and at least two Deputy Commissioners have been appointed[, which].

(aB) The transitional management committee must perform the functions of the Executive Committee of the Financial Sector Conduct Authority, to facilitate **[the disestablishment of the Financial Services Board and]** the functioning of the Financial Sector Conduct Authority in an efficient and effective manner with the least disruption, until **[the person appointed as the Commissioner has commenced service]** until the date determined in paragraph (a).”;

(b) the substitution in subregulation (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) **[a person]** persons with knowledge and expertise relevant to the objective of the Financial Sector Conduct Authority set out in section 57 of the Act, nominated by the Minister;”;

(c) the insertion in subregulation (1) after paragraph (b) of the following paragraph:

“(bA) Persons referred to in paragraph (b)(iii) may be seconded to the Financial Sector Conduct Authority from another organ of state.”;

(d) the substitution in subregulation (1) for paragraph (d) of the following paragraph:

“(d) The **[Chairperson of the Financial Services Board]** Minister must appoint a member of the transitional management, committee referred to in paragraph (b) to perform the functions of the Commissioner in terms of the Act, until the person appointed as the Commissioner has commenced service.”;

(e) the substitution in subregulation (3) for paragraph (b) of the following paragraph:

“(b) The remuneration and benefits of the **[member]** members of the transitional management committee referred to in subregulation (1)(b)(iii), as determined by the Minister, must be paid from the funds of the Financial Sector Conduct Authority, unless otherwise provided in the secondment agreement of a member who is seconded in terms of subregulation (1)(bA).”;

(f) the substitution for subregulation (4) of the following subregulation:

“(4)(a) The terms of appointment of members of the transitional management committee --

(i) commence on the date of appointment indicated in their letter of appointment; and

(ii) continue, and existing contracts of employment, if applicable, are extended until the date of termination of the committee in terms of subregulation (1)(a).

(b) Despite paragraph (a), members of the transitional management committee must continue to fulfil all necessary functions subsequent to that date necessary to ensure the tabling of the annual report and financial statements of the Financial Sector Conduct Authority for which the transitional management committee is responsible;”; and

(g) the insertion after subregulation (5) of the following subregulation:

“(6) Persons may be seconded from another organ of state to positions in the Financial Sector Conduct Authority.”.

Amendment of regulation 9

4. Regulation 9 of the Regulations is amended by—

(a) the substitution in subregulation (2)(a) for subparagraphs (ii) and (iii) of the following subparagraph:

“(ii) a Deputy Governor of the Reserve Bank or another staff member of the Reserve Bank nominated by the Governor;

(iii) the Commissioner of the National Consumer Commission appointed in terms of section 87 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), **[or]** that Commissioner’s nominee, an acting Commissioner, or that Acting Commissioner’s nominee;”;

(b) the insertion after subregulation (3) of the following subregulation:

“(3A) If a vacancy arises on the Shortlisting Panel, the functions and processes of the Shortlisting Panel are not affected, and the Panel may continue to perform its functions and processes with the participation of the new member who fills the vacancy in accordance with subsection (2).”;

(c) the substitution in subregulation (6)(a) for subparagraph (ii) of the following subparagraph:

“(ii) assess whether the **[interviewed]** candidates satisfy the appointment criteria; and”;

(d) the substitution in subregulation (6)(a) for subparagraph (iii) of the following subparagraph:

“(iii) submit a shortlist of one or more suitable candidates for each advertised position of Commissioner or Deputy Commissioner to the Minister for consideration for appointment.”; and

(e) the substitution in subregulation (6) for paragraph (c) of the following paragraph:

“(c) If the Shortlisting Panel determines that there are not sufficient candidates that are suitable to be shortlisted for interviewing **[by the Ministerial Panel]** for an advertised position from the applications received by the date referred to in regulation 7(1)(c), to meet the requirements of paragraph (a), the Panel **[must without delay advise the Minister accordingly]** may utilise headhunting to identify additional suitable candidates for shortlisting, and the National Treasury **[must]** may re-advertise the position.”.

Substitution of regulation 10

5. Regulation 10 of the Regulations is repealed, and is substituted with the following regulation:

“Appointment by Minister

10. (1)The Minister must consider the list submitted by the Shortlisting Panel referred to in regulation 9(6)(a)(iii) when appointing the Commissioner or a Deputy Commissioner.

(2) If the Minister decides that there is not a candidate on the list that is suitable for appointment as Commissioner or a Deputy Commissioner, the Minister may request the National Treasury to re-advertise the position, and the Shortlisting Panel to identify additional suitable candidates for appointment.

(3) Upon the appointment by the Minister of a candidate as the Commissioner or a Deputy Commissioner, the following must be made public:

(a) The recommendations made by the Shortlisting Panel regarding the appointment to the position; and

(b) if the Minister appoints a candidate who was not included on the list submitted by the Shortlisting Panel referred to in regulation 9(6)(a)(iii), the Minister’s reasons for making the appointment.”.

Amendment of regulation 11

6. Regulation 11 of the Regulations is amended by the substitution for the words preceding paragraph (a) of the following words:

“11. When determining whether a candidate is suitable to be shortlisted and recommended for appointment as the Commissioner or a Deputy Commissioner, the Shortlisting **[and Ministerial Panels]** Panel must, in addition to the appointment criteria in section 61 of the Act, assess whether a candidate has—“.

Commencement

7. These amendments of the Regulations come into effect on the date of publication in the *Gazette*.