

REPUBLIC OF SOUTH AFRICA

FINANCIAL SECTOR REGULATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary
of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B XR]

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BILL

To confer functions on the Reserve Bank in respect of financial stability and the oversight of market infrastructure and payment systems; to establish the Financial Stability Oversight Committee and the Financial Sector Contingency Forum to assist the Reserve Bank in its role of financial stability oversight; to provide for the role of the financial sector regulators and other organs of state to assist the Reserve Bank in its role of financial stability oversight; to provide for mechanisms to manage systemic risks and systemic events; to establish authorities to supervise and regulate, on a consistent and comprehensive basis, the provision of financial products and financial services in South Africa, to maintain and enhance financial stability and to protect the interests of customers acquiring or using financial products and financial services; to establish the Prudential Authority and the Financial Sector Conduct Authority; to confer on the financial sector regulators functions and duties in terms of this Act and financial sector laws; to provide for co-ordination, co-operation, collaboration, consultation and consistency between the Prudential Authority, the Financial Sector Conduct Authority, the National Credit Regulator and other organs of state; to provide for the establishment of the Council of Financial Regulators; to provide for the establishment of the Financial Sector Inter-ministerial Council; to provide for making legislative instruments; to provide for prudential standards, conduct standards and joint standards; to provide for powers relating to the licensing of financial institutions; to provide for powers to gather information and to conduct on-site inspections and investigations; to provide for the regulation of significant owners and a framework for the supervision of financial conglomerates; to provide for enforcement powers; to establish the Financial Services Tribunal; to provide for procedures for taking, and for the appeal of, decisions made by financial sector regulators; to provide for the imposition of administrative penalties and related orders; to provide for a Council for a financial ombud service; to provide for the Council to oversee the ombud schemes; to provide for the recognition of recognised schemes; to lay down minimum requirements for schemes; to promote financial customer education with regard to schemes; to co-ordinate the activities of ombuds of recognised schemes with the activities of the statutory ombud schemes; to develop and promote best practices for complaint resolution; to provide for Regulation making powers by the Minister; to provide for certain requirements regarding the sharing of information, and the reporting of information to the financial sector regulators, inspectors and investigators; to provide for certain offences; to provide for the establishment and operation of the Financial Sector Information Register; to provide for transitional provisions; and to provide for matters connected therewith.

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

CHAPTER 1

INTERPRETATION, OBJECT AND ADMINISTRATION OF ACT

Part 1

Interpretation

Definitions

1. (1) In this Act, unless the context indicates otherwise–

“**Adjudicator**” means the Pension Funds Adjudicator appointed in terms of section 181, and includes a Deputy Adjudicator and an Acting Adjudicator;

“**administrative action**” has the meaning defined in section 1 of the Promotion of Administrative Justice Act;

“**administrative action committee**” means a committee established in terms of section 150;

“**administrative action procedure**” means a procedure adopted in terms of section 149;

“**administrative penalty**” means a penalty imposed in terms of section 151;

“**assessor**” means a person appointed as an assessor in terms of section 162(6);

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

“**business premises**” means a building or a part of a building that is used in connection with the carrying on of a business of providing a financial product or financial service;

“**Chair**” means the person holding the office of the Chair of the Tribunal in terms of section 155(4);

“**Chief Executive Officer**” means the Chief Executive Officer of the Prudential Authority appointed in terms of section 31(1), or a person acting as the Chief Executive Officer;

“**collective investment scheme**” has the meaning defined in section 1 of the Collective Investments Schemes Control Act, 2002 (Act No. 45 of 2002);

“**Commissioner**” means the Commissioner of the Financial Sector Conduct Authority appointed in terms of section 57(1), or a person acting as the Commissioner;

“**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);

“**company**” has the meaning defined in section 1 of the Companies Act;

“**Competition Act**” means the Competition Act, 1998 (Act No. 89 of 1998);

“**complainant**”, for the purposes of Chapter 16 means–

- (a) a specific client as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, who submits a complaint to the Ombud for Financial Services Providers;
- (b) a complainant as defined in section 1(1) of the Pension Funds Act;
- (c) a financial customer who submits a complaint to a recognised scheme;

“**complaint**”, for the purposes of Chapter 16 means–

- (a) in relation to a recognised scheme, an expression of dissatisfaction by a financial customer relating to a financial service or product provided or offered by a financial institution, or to an agreement with a financial institution in respect of its products or services, and in which it is alleged that–
 - (i) the financial institution has contravened or failed to comply with a provision of an agreement, law, standard, rule or a code of conduct which is binding on the financial institution or to which it subscribes;
 - (ii) the financial institution’s maladministration or wilful or negligent action or failure to act, has caused the financial customer harm, prejudice, distress or substantial inconvenience; or
 - (iii) the financial institution has treated the financial customer unfairly;
- (b) in relation to the Adjudicator, a complaint as defined in the Pension Funds Act, read with paragraph (b) of the definition of complainant; and
- (c) in relation to the Ombud for Financial Services Providers, a complaint as defined in the Financial Advisory and Intermediary Services Act, read with the definitions of client in section 1(1) of that Act and paragraph (a) of the definition of complainant;

“**conduct standard**” means a standard made in terms of section 95;

“**Consumer Protection Act**” means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**controlling company**” means the non-operating holding company of a financial conglomerate that is subject to Chapter 11;

“**contravention**” includes a non-compliance with a financial sector law, and an offence in terms of a financial sector law;

“**Council**” means the Financial Services Ombud Schemes Council referred to in section 168;

“**Council for Medical Schemes**” means the Council for Medical Schemes established in terms of section 3 of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

“**Council of Financial Regulators**” means the Council established in terms of section 79;

“**Council standard**” means a standard made by the Council, after having followed a procedure substantially similar to that required in terms of part 2 of Chapter 7;

“**Court**” means a Superior Court as defined in section 1 of the Superior Courts Act, 2013 (Act No. 10 of 2013);

“**credit agreement**” includes, but is not limited to, a credit agreement referred to in section 1 of the National Credit Act;

“**decision-maker**” means–

- (a) a financial sector regulator;

- (b) any other person who has made a decision in terms of a power conferred or a duty imposed on that person by or in terms of a financial sector law, and that financial sector law grants a right of appeal to the Tribunal to any person aggrieved by a decision of that person;
- (c) a statutory ombud;

“**designated authority**”, for the purposes of Part 1 of Chapter 17, means–

- (a) an organ of state responsible for the regulation, supervision or enforcement of legislation regulating the financial sector, taxation, the administration of justice, and law enforcement;
- (b) a body similar to an organ of state referred to in paragraph (a), that is designated in terms of the laws of a foreign country as being responsible for the regulation, supervision or enforcement of legislation regulating the financial sector, taxation, the administration of justice, and law enforcement;
- (c) a market infrastructure that is responsible for the supervision of persons authorised by that infrastructure in terms of the Financial Markets Act; or
- (d) an Ombud established in terms of a financial sector law or a recognised scheme, including a scheme that was recognised in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004);
- (e) a payment system management body as recognised and established in terms of section 3(3) of the National Payment System Act;

“**Deputy Commissioner**” means a person appointed as a Deputy Commissioner in terms of section 57(3), or a person acting as a Deputy Commissioner;

“**Deputy Governor**” means a person appointed in terms of section 4 or 6(1)(a) of the Reserve Bank Act as a Deputy Governor of the Reserve Bank;

“**director**” means a member or an alternate member of a governing body;

“**Director-General**” means the Director-General of the National Treasury, or a person acting as the Director-General;

“**disqualified person**” means a person who–

- (a) is engaged in the business of a financial institution, or has a direct material financial interest in a financial institution, except as a financial customer;
- (b) is a Member of the Cabinet referred to in section 91 of the Constitution, a Member of the Executive Council of a Province referred to in section 215 of the Constitution, a member of Parliament, a member of a provincial legislature, or a mayor or councillor of a municipal council;
- (c) is an office-bearer of, or is in a remunerated leadership position in, a political party;
- (d) has at any time been removed from an office of trust;
- (e) is or has been subject to disbarment;
- (f) is or has at any time been sanctioned for contravening a law relating to the regulation or supervision of financial institutions, or the provision of financial products or financial services;
- (g) is or has at any time been convicted of–
 - (i) theft, fraud, forgery, uttering of a forged document, perjury or an offence involving dishonesty, whether in the Republic or elsewhere;
 or

- (ii) an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992) or Parts 1 to 4, or sections 17, 20 or 21, of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a similar offence in terms of the law of a foreign country;
- (h) who is or has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993, came into operation, where the penalty imposed for the offence is or was imprisonment without the option of a fine;
- (i) is subject to a provisional sequestration order or is an unrehabilitated insolvent;
- (j) is disqualified from acting as a director or executive officer of a financial institution in terms of legislation; or
- (k) is declared by the High Court to be of unsound mind or mentally disordered, or is detained in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);

“**document**” includes books, records, securities or accounts, and any information, including information stored or recorded electronically, digitally, photographically, magnetically or optically, and any device by means of which information is recorded or stored;

“**eligible financial institution**” means any of the following:

- (a) a financial institution licensed or required to be licensed as a bank in terms of the Banks Act;
- (b) a financial institution licensed or required to be licensed as a long-term insurer in terms of the Long-term Insurance Act or a short-term insurer in terms of the Short-term Insurance Act;
- (c) a market infrastructure;
- (d) a financial institution prescribed in Regulations;¹

“**Executive Committee**” means the Committee established in terms of section 56;

“**Executive Committee member**” means the Commissioner or a Deputy Commissioner of the Financial Sector Conduct Authority;

“**Financial Advisory and Intermediary Services Act**” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**financial benchmark**” means an analysis by which the performance of an investment is assessed;

“**financial conglomerate**” means a group of companies that comprises –

- (a) one or more eligible financial institutions;
- (b) the holding companies, including any controlling companies, of an eligible financial institution;
- (c) their related persons or inter-related persons, including persons located or incorporated outside of the Republic; and
- (d) their associates as identified in the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body,

but excludes any holding company or similar entity that is incorporated outside of the Republic;

“**financial crime**” means each of the following:

¹ This definition is relevant only to Chapter 11, about the framework for the supervision of conglomerates.

- (a) an offence in terms of a financial sector law;
- (b) an offence in connection with the provision of a financial product or a financial service;
- (c) an offence related to the handling of the proceeds of crime;
- (d) an offence in terms of the Financial Intelligence Centre Act;

“**financial customer**” means a person to or for whom a financial product or a financial service is offered or provided, irrespective of the capacity in which the person is offered or receives the product or service, and includes the—

- (a) successor in title of the person; and
- (b) beneficiary of the product or service;²

“**financial education**” means a process by which members of the general public are aided to improve their understanding of financial products, financial services and financial concepts and risks and opportunities and, through instruction and objective information, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed choices, to know where to go for assistance, and to take other effective actions to improve their financial well-being;

“**financial inclusion**” means that households and businesses have transparent and fair access to, and can effectively use, appropriate financial products and financial services, which products and services are provided responsibly and sustainably in a well-regulated environment;

“**financial institution**” means—

- (a) a financial product provider;
- (b) a financial service provider;
- (c) a market infrastructure;
- (d) a payment system operator, excluding the Reserve Bank;
- (e) a settlement system;
- (f) a controlling company of a financial conglomerate;

and includes any person licensed or required to be licensed in terms of a financial sector law and the National Payment System Act;

“**financial institution representative**” means a representative as defined in section 1(1) of the Financial Advisory and Intermediary Services Act;

“**Financial Intelligence Centre**” means the Financial Intelligence Centre established in terms of section 2 of the Financial Intelligence Centre Act;

“**Financial Intelligence Centre Act**” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

“**Financial Markets Act**” means the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**financial product**” has the meaning defined in section 2;

“**financial product provider**” means a person that, as a business or as part of a business, provides a financial product;³

“**Financial Sector Conduct Authority**” means the authority established in terms of section 51;

“**financial sector law**” means—

² A beneficiary in terms of an insurance policy and a member of a pension fund are examples of a financial customer.

³ For example, if an insurance company issues an insurance policy to an insured, the policy is a financial product, and the insurance company is the financial product provider, because it assumes the obligation of paying out under the policy if a valid claim arises.

- (a) this Act;
- (b) a law listed in Schedule 1; and
- (c) legislative instruments made in terms of a law referred to in paragraphs (a) and (b);

“**financial sector regulator**” includes—

- (a) the Prudential Authority;
- (b) the Financial Sector Conduct Authority;
- (c) in respect of Chapters 1-6 and Part 1 of Chapter 17, the National Credit Regulator;
- (d) in respect of Chapter 9, the Council for Medical Schemes;

“**financial service**” has the meaning defined in section 3;

“**financial service provider**” means a person that, as a business or as part of a business, provides a financial service;

“**financial stability**” has the meaning defined in section 4;

“**Financial Stability Oversight Committee**” means the Committee established in terms of section 17;

“**financial system**” means the system of institutions and markets through which financial products and financial services are provided and traded, and includes the operation of a market infrastructure and a payment system;

“**financial year**” means the period of 12 months commencing on 1 April;

“**fit and proper requirement**” means a requirement made in terms of section 94 or 95;

“**foreign financial product**” means a product issued by a person located outside of the Republic, which in nature and character is essentially similar or corresponding to a financial product;

“**Friendly Societies Act**” means the Friendly Societies Act, 1956 (Act No. 25 of 1956);

“**fruitless and wasteful expenditure**” means expenditure which was made in vain and would have been avoided had reasonable care been exercised;

“**governing body**” means one or more persons, whether elected or not, which manages, controls, formulates the policy and strategy, directs the affairs, or has the authority to exercise the powers and perform any of the functions of a financial institution, and includes, but is not limited to—

- (a) the general partner of an *en commandite* partnership or any partner of any other partnership;
- (b) a member of a close corporation;
- (c) a trustee of a trust;
- (d) a board of directors of a company;
- (e) a board of a pension fund referred to in section 7A of the Pension Funds Act;

“**Governor**” means the person appointed in terms of section 4 or 6(1)(a) of the Reserve Bank Act as the Governor of the Reserve Bank;

“**group of companies**” has the meaning defined in section 1 of the Companies Act;

“**holding company**” means a company that, in terms of sections 2(2) and 3(1) of the Companies Act, is a holding company of another company;

“**Inter-ministerial Council**” means the Financial Sector Inter-ministerial Council established in terms of section 84;

“**inter-related**” has the meaning defined in section 1 of the Companies Act;

“**investigation**” means an enquiry—

- (a) to determine whether a person—

- (i) has contravened, or is in contravention of, a financial sector law; or
- (ii) has conducted or is conducting a regulated activity; or
- (b) to comply with a request pursuant to an agreement, communiqué or memorandum of understanding contemplated in section 197, of the affairs or part of the affairs of any person referred to in, or identified by the requesting regulatory authority acting in terms of an agreement, communiqué or memorandum of understanding;

“**irregular expenditure**” means expenditure incurred in contravention of, or that is not in accordance with, a requirement of any applicable legislation;

“**joint standard**” means a standard made in terms of section 96;

“**key person**” means—

- (a) any person responsible for managing or overseeing the activities relating to a financial product or financial service of a financial institution, including a director or senior manager;
- (b) the head of a risk management function and an actuarial function;
- (c) the head of internal audit, and any person appointed to oversee the financial institution’s compliance function and to monitor compliance (including a compliance officer);
- (d) a nominee;
- (e) the auditor and the valuer or valuation agent; and
- (f) a significant owner;

“**legislative instrument**” means subordinate legislation made in terms of a financial sector law, and includes—

- (a) regulations;
- (b) a prudential standard;
- (c) a conduct standard;
- (d) a joint standard;
- (e) an instrument identified as a legislative instrument in a financial sector law; and
- (f) an amendment to the instruments referred to in paragraphs (a) to (e);

“**leniency agreement**” means an agreement referred to in section 143;

“**levy**” means an operating levy or a special levy;

“**Levies Act**” means the Financial Sector Levies, Fees and Charges Act, 2015;

“**licence**” means a licence, registration, approval, recognition, permission, authority, consent or other authorisation, by whatever term it may be referred to, to be a financial institution, or to provide a financial product or financial service, in terms of a financial sector law;

“**Long-term Insurance Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

“**market infrastructure**” means each of the following:

- (a) a central securities depository;
- (b) a clearing house;
- (c) an exchange;
- (d) a trade repository;

as defined in section 1(1) of the Financial Markets Act;

“**member of the staff**” or “**staff member**”, in relation to—

- (a) a financial sector regulator, means an employee or person seconded to the regulator, and includes contractors, consultants and service providers to the regulator;

- (b) the Reserve Bank, means an employee of the Reserve Bank;
- “**Minister**” means the Minister of Finance;
- “**National Credit Act**” means the National Credit Act, 2005 (Act No. 34 of 2005);
- “**National Credit Regulator**” means the National Credit Regulator established in terms of section 12 of the National Credit Act;
- “**National Payment System Act**” means the National Payment System Act, 1998 (Act No. 78 of 1998);
- “**National Treasury**” means the National Treasury established in terms of section 5 of the Public Finance Management Act;
- “**nominee**” means a person who acts as the holder of assets in the person’s own name in trust on behalf of another person;
- “**non-compliance**” means any act or omission that constitutes a failure to comply with a provision of a financial sector law or the National Payment Systems Act or any order, determination, or directive made in terms of a financial sector law or the National Payment Systems Act, and which does not constitute a criminal offence in terms of a financial sector law or the National Payment Systems Act, and ‘fails to comply’, ‘failure to comply’ and ‘not complying’ have the same meaning;
- “**non-operating holding company**” means a holding company whose only business is the acquiring, holding and managing of another company or other companies.
- “**ombud**” means a person who is empowered in terms of a scheme to resolve a complaint;
- “**Ombud for Financial Services Providers**” means the Ombud for Financial Services Providers appointed in terms of section 181(1), and includes a Deputy and an Acting Ombud for Financial Services Providers;
- “**on-site inspection**” means an inspection at the business premises of a regulated person—
- (a) to determine compliance with a financial sector law; or
- (b) for the purpose of supervising regulated activities;
- “**operating levy**” means a levy imposed as an operating levy in terms of the Levies Act;
- “**organ of state**” has the meaning defined in section 239 of the Constitution;
- “**outsourcing**” means an arrangement of any form between a financial institution and another person, whether or not that person is a regulated person or is supervised in terms of any law, in terms of which that person performs a function or activity related to any aspect of the business of providing a financial service or a financial product, including any function or activity that enables the financial institution to provide a service or product, whether directly or indirectly, which would otherwise be performed by the financial institution itself, and includes—
- (a) an arrangement with a related party or inter-related party of the financial institution, and irrespective of that other person being located outside of the Republic; or
- (b) an arrangement with a person in terms of which that person (irrespective of the capacity in which that person acts) provides a financial product or financial service to a financial customer on behalf of a financial institution;
- “**Oversight Committee**” means the Committee established in terms of section 36;
- “**Oversight Committee member**” means the Governor or a Deputy Governor, including the Chief Executive Officer, acting as a member of the Oversight Committee;

“**participant**”, in relation to a scheme, means–

- (a) a financial institution which is a member of or takes part in a recognised scheme or its funding, and submits to the authority of the relevant ombud; or
- (b) a financial institution which is subject to the authority of a statutory scheme;

“**payment system**” has the meaning defined in section 1 of the National Payment System Act;

“**payment system operator**” means an operator of a payment system as defined in the National Payment System Act, excluding the Reserve Bank;

“**payment system participant**” means an entity that has been authorised, recognised, designated and granted access by the Reserve Bank or payment system operator to participate in a payment system;

“**Pension Funds Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**person**” means–

- (a) a natural person;
- (b) a partnership;
- (c) a trust;
- (d) an organ of state;
- (e) any company incorporated or registered in terms of any law;
- (f) any body of persons incorporated or unincorporated;

“**pooled fund**” means a collective investment undertaking, including investment compartments of a collective investment undertaking, constituted in any legal form, including in terms of a contract, by means of a trust, or in terms of statute, which–

- (a) raises capital from one or more investors, to facilitate the participation or interest in, subscription, contribution or commitment to a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the investors; and
- (b) does not require approval as a collective investment scheme in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

“**Protection of Personal Information Act**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**Prudential Authority**” means the authority established in terms of section 27;

“**prudential standard**” means a standard made in terms of section 94;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**recognised scheme**” means a scheme that has been granted recognition in terms of section 188;

“**regulated activity**” means any activity or a part of that activity regulated in terms of a financial sector law;

“**regulated person**” means–

- (a) a person who is licensed, appointed, or otherwise approved to perform an activity regulated in terms of a financial sector law;
- (b) any person who is part of a financial conglomerate;
- (c) a key person of a person referred to in paragraphs (a) or (b);

- (d) a financial institution representative;
- (e) a person to whom a person referred to in paragraphs (a) and (b) has outsourced the performance of a regulated activity or a part of a regulated activity;

“**regulator’s directive**” means a directive issued in terms of sections 132 to 135;

“**related**” has the meaning defined in section 1 of the Companies Act;

“**related party**”, of a person, means an individual who, or a juristic person that, is related to the person, as described in section 2 of the Companies Act;⁴

“**Register**” means the Financial Sector Information Register referred to in Part 4 of Chapter 17;

“**Reserve Bank**” means the South African Reserve Bank as referred to in section 223 of the Constitution, read with the Reserve Bank Act;

“**Reserve Bank Act**” means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

“**scheme**” means—

- (a) any scheme or arrangement established by or for a financial institution, or a group of financial institutions, in order to resolve financial customer complaints by an ombud—
 - (i) and includes any arrangement in terms of which the resolution of the complaint is effected by mediation, conciliation, recommendation, determination or arbitration;
 - (ii) but does not include any internal complaint resolution arrangement established by a financial institution, either with or without any affiliate or subsidiary of the institution; and
- (b) a statutory scheme;

“**section 25 memoranda of understanding**” means the memoranda of understanding referred to in section 25;⁵

“**section 77 memoranda of understanding**” means the memoranda of understanding referred to in section 77;⁶

“**securities**” means—

- (a) shares, depository receipts and other equivalent equities;
- (b) debentures, bonds and securitised debt;
- (c) money-market instruments;
- (d) derivative instruments;
- (e) notes;
- (f) instruments based on an index;
- (g) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (a), (b) and (c);

“**senior manager**” means—

⁴ Section 2 of the Companies Act describes individuals as related if they are married, live together in a relationship similar to a marriage or are separated by no more than two degrees of natural or adopted consanguinity or affinity. It also provides rules for determining when individuals and juristic persons are related, and when juristic persons are related to each other.

⁵ These memoranda of understanding are about financial stability matters.

⁶ These memoranda of understanding are about cooperation between the financial sector regulators.

- (a) the Chief Executive Officer or the person who is in charge of a financial institution;
- (b) a person who is directly accountable to the Chief Executive Officer or the person who is in charge of a financial institution;
- (c) a person other than a director who makes or participates in making decisions that—
 - (i) affect the whole or a substantial part of the business of a financial institution; or
 - (ii) have the capacity to significantly affect the financial institution’s financial standing; or
- (d) a person other than a director who oversees the enforcement of policies and the implementation of strategies approved by the governing body;

“**settlement system**” has the meaning defined in section 1 of the National Payment System Act;⁷

“**Short-term Insurance Act**” means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

“**significant owner**” means a significant owner as described in section 119;

“**special levy**” means a levy imposed as a special levy in terms of the Levies Act;

“**statutory ombud**” means the ombud determined by the Council to deal with a specific complaint in the circumstances contemplated in section 191;

“**statutory scheme**” means the Offices referred to in section 177, and the statutory ombud contemplated in section 191;

“**systemic event**” means an event or circumstance where—

- (a) a financial institution, or a group of financial institutions, cannot provide financial products or financial services that they have contractually undertaken to provide; or
- (b) there is a general failure in confidence of financial customers in the ability of one or more financial institutions to continue to provide financial products or services;

to an extent that may reasonably be expected to have a substantial adverse effect on the financial system and economic activity in the Republic, irrespective of the event or circumstance occurring or arising inside or outside the Republic;⁸

“**systemic risk**” means the risk that a systemic event will occur;

“**systemically important financial institution**” means a financial institution or a financial conglomerate designated in terms of section 73;

“**this Act**” includes the Schedules to, and the legislative instruments made in terms of, this Act;

“**Tribunal**” means the Financial Services Tribunal established in terms of section 153; and

“**winding-up**” means any process for dissolving a financial institution that includes the selling all assets, paying off creditors and distributing any remaining assets.

(2) In this Act, a word or expression derived from, or that is another grammatical form of a word or expression defined in subsection (1) has a corresponding meaning, unless the context indicates that another meaning is intended.

⁷ It is defined as “a system for the discharge of payment or settlement obligations or the discharge of payment and settlement obligations between participants in that system”.

⁸ Examples of systemic events include failures or breakdowns in elements of market infrastructure and insolvencies or suspected insolvencies of participants in markets or systems, or financial institutions, that have potential contagion effects.

(3) If there is an inconsistency between a provision of this Act and a provision of another financial sector law or the National Payment System Act, the provision of this Act prevails.

Financial products

2. (1) In this Act—

“**financial product**” means—

- (a) a participatory interest in a collective investment scheme;
- (b) an interest, subscription, contribution, or commitment in a pooled fund;
- (c) a long-term or a short-term policy, as defined in section 1(1) of the Long-term Insurance Act and section 1(1) of the Short-term Insurance Act, respectively;
- (d) a benefit provided by—
 - (i) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, to the members of the organisation by virtue of membership; or
 - (ii) a friendly society as defined in section 1(1) of the Friendly Societies Act, to the members of the society by virtue of membership;
- (e) a deposit as defined in section 1(1) of the Banks Act;
- (f) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);
- (g) a credit agreement;
- (h) a facility, arrangement or system that is designated by the Minister in terms of subsection (2) in Regulations as being a “financial product”;
- (i) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h).

(2) Subject to subsection (3), the Minister may, in terms of section 215 and in accordance with section 231(3), designate in Regulations as a “financial product”, a category or type of facility, arrangement, or system that—

- (a) is not already regulated in terms of a financial sector law; and
- (b) cannot be designated in Regulations in terms of another financial sector law to be regulated in terms of that financial sector law.

(3) The Minister may only designate a “financial product” in terms of subsection (2) if—

- (a) it would further the object of this Act to regulate the category or type of facility, arrangement or system; and
- (b) it is a category or type of facility, arrangement or system through which, or through the acquisition of which, a person conducts one or more of the following activities:
 - (i) lending, as referred to in subsection (4);
 - (ii) making a financial investment, as referred to in subsection (5);
 - (iii) managing financial risk, as referred to in subsection (6);
 - (iv) effecting a financial transaction, as referred to in subsection (7).

(4) “Lending” as referred to in subsection (3)(b)(i), means the utilisation of money or securities, or of the interest, fees or other income earned on money or securities—

- (a) for the granting by any person, acting as a lender in the person’s own name or through the medium of a trust or a nominee, of loans to other persons;
- (b) for the investment by any person, acting as an investor in the person’s own name or through the medium of a trust or a nominee; or

- (c) for the financing, wholly or to any material extent, by any person of any other business activity conducted by the person in the person's own name or through the medium of a trust or a nominee.
- (5) "Making a financial investment", as referred to in subsection (3)(b)(ii), takes place when—
- (a) an investor gives a contribution, in money or money's worth, to another person and any of the following apply:
 - (i) the other person uses the contribution to generate a financial return for the investor;
 - (ii) the investor intends that the other person will use the contribution to generate a financial return for the investor, even if no return is in fact generated;
 - (iii) the other person intends that the contribution will be used to generate a financial return for the investor, even if no return is in fact generated; and
 - (b) the investor has no day-to-day control over the use of the contribution to generate the return.⁹
- (6) "Managing financial risk", as referred to in subsection (3)(b)(iii), takes place when a person—
- (a) manages the financial consequences to the person of particular circumstances occurring or not occurring; or
 - (b) avoids or limits the financial consequences of fluctuations in, or in the value of, receipts or costs, including prices and interest rates.¹⁰
- (7) "Effecting a financial transaction", as referred to in subsection (3)(b)(iv), takes place when a person:
- (a) makes payments, or causes payments to be made; or
 - (b) provides for the buying, selling, clearing or settlement of securities, whether or not the person is acting as principal or agent in that transaction.

Financial services

3. (1) In this Act—

"**financial service**" means—

- (a) in relation to a financial product, foreign financial product, securities, market infrastructure or the payment system as applicable —
 - (i) promotion, marketing or distribution;
 - (ii) providing advice, recommendations or guidance;
 - (iii) dealing or making a market;
 - (iv) operating or managing, or providing administration services;
 - (v) services provided in relation to credit agreements, including legal services;

⁹ Examples of making a financial investment are paying money to a company for the issue of shares in the company, and making a contribution to a pension fund.

An example of an act that is *not* making a financial investment is the purchase of real property (while the property may generate a return, it is not a return generated by the use of the purchase money by another person). However, an investment in a property trust, property syndication or similar scheme, where the investor acquires an interest in the scheme, rather than an interest in the properties acquired or managed by the scheme, may be a financial investment.

¹⁰ Examples of managing a financial risk are taking out insurance and hedging a liability by acquiring a futures contract or entering into a currency swap.

Employing a security firm is *not* managing a financial risk (while it manages the risk that thefts will occur, it does not manage the financial consequences of thefts that do occur).

- (vi) services provided by payment system participants;
- (b) providing an intermediary service as defined in section 1(1) of the Financial Advisory and Intermediary Services Act;¹¹
- (c) securities services provided by a regulated person as defined in section 1(1) of the Financial Markets Act;
- (d) providing credit rating services as defined in section 1(1) of the Credit Rating Services Act, 2012 (Act No. 24 of 2012);
- (e) the calculation of a financial benchmark;
- (f) services related to an interest, subscription, contribution, or commitment in a pooled fund;
- (g) services related to the buying and selling of foreign exchange;
- (h) dealing with trust property, as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 23 of 2001), as a regular feature of business;
- (i) a service that is designated by the Minister in terms of subsection (2) in Regulations as a financial service.

(2) Subject to subsection (3), the Minister may, in terms of section 215 and in accordance with section 231(3), designate in Regulations a service provided by a person as a “financial service” that—

- (a) is not already regulated in terms of a financial sector law; and
- (b) cannot be designated in Regulations in terms of another financial sector law to be regulated in terms of that financial sector law.

(3) The Minister may only designate a “financial service” in terms of subsection (2) if—

- (a) a financial product cannot be designated by the Minister in terms of section 2(2) that the service is related to; and
- (b) doing so would further the object of this Act.

(4) For the purposes of subsection (1)(c), each of the following, whether done as a principal or as an agent, constitutes “dealing” in a financial product:

- (a) in relation to securities, or participatory interests in a collective investment scheme as defined in section 1 of the Collective Investments Schemes Control Act, 2002 (Act No. 45 of 2002), underwriting the securities or interests;
- (b) varying the terms of a financial product; or
- (c) disposing of a financial product.

(5) For the purposes of subsection (1)(c), “making a market” in a financial product takes place when—

¹¹ An intermediary service is defined (with some exceptions) as anything done for or on behalf of a client or financial product provider—

- the result of which is that a client may enter into, offers to enter into or enters into a transaction in respect of a financial product with a product provider; or
- with a view to—
 - buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product provider or in which the client has invested;
 - collecting or accounting for premiums or other money payable by the client to a product provider in respect of a financial product; or
 - receiving, submitting or processing a claim of a client against a product provider.

- (a) a person, through a facility, at a place or otherwise, states the prices at which the person offers to acquire or dispose of financial products, whether or not on the person's own account; and
- (b) other persons reasonably expect that they can enter into a transaction for those products at those prices,

but this subsection does not apply to an isolated transaction.

Financial stability

4. (1) For the purposes of this Act, there is said to be “**financial stability**” if–

- (a) financial institutions generally provide financial products and financial services without interruption and are capable of continuing to do so; and
- (b) there is general confidence in their ability to continue to do so.

(2) A reference in this Act to maintaining financial stability includes, where financial stability has been adversely affected, a reference to restoring financial stability.

Financial institutions that are not juristic persons

5. Where this Act or another financial sector law imposes an obligation on or in respect of a financial institution that is not a juristic person, the obligation is imposed on or with respect to the governing body.¹²

Part 2

Object, administration and application of Act

Object of Act

6. The object of this Act is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes–

- (a) financial stability;
- (b) the safety and soundness of financial institutions;
- (c) the fair treatment and protection of financial customers;
- (d) the efficiency and integrity of the financial system;
- (e) the prevention of financial crime;
- (f) financial inclusion; and
- (g) confidence in the financial system.

Administration of Act

7. The Minister is responsible for the administration of this Act.

¹² For example, in the case of a trust, the trustee.

CHAPTER 2

FINANCIAL STABILITY

Part 1

Reserve Bank's functions and powers

Reserve Bank's functions in relation to financial stability

8. (1) The Reserve Bank has the function, in addition to its primary objective as set out in section 224 of the Constitution, of maintaining, promoting and enhancing financial stability in the Republic.

(2) The Reserve Bank must exercise its powers as the Republic's central bank and its other powers conferred in terms of legislation in a way that will best—

- (a) maintain, protect and enhance financial stability in the Republic; and
- (b) if a systemic event has occurred or is imminent, restore or maintain financial stability in the Republic.

(3) When fulfilling its financial stability function referred to in subsection (1), the Reserve Bank must act within a policy framework agreed between the Minister and the Governor.

(4) When acting in terms of subsection (2), the Reserve Bank must act with due regard to, among other matters —

- (a) the roles of other organs of state exercising powers with respect to aspects of the South African economy; and
- (b) the desirability of balanced and sustainable economic growth in the Republic.

(5) In the event of any inconsistency between subsection (2) and any other legislation, subsection (2) prevails.

Reserve Bank to monitor and mitigate risks

9. The Reserve Bank must—

(a) monitor and keep under review—

- (i) the strengths and weaknesses of the financial system; and
- (ii) any risks to financial stability, and the nature and extent of those risks, including any risks contemplated in matters raised by members of the Financial Stability Oversight Committee or reported to the Reserve Bank by a financial sector regulator in terms of section 24(c); and

(b) take steps to mitigate risks to financial stability, including advising financial sector regulators, and any organ of state, of tools to use and measures to take to mitigate those risks.

Reserve Bank responsible for oversight of market infrastructure and payment systems

10. The Reserve Bank must—

- (a) regularly assess South Africa's observance of principles developed by international standard setting bodies for market infrastructure and payment systems; and

- (b) taking into account South Africa's own circumstances, with the concurrence of the relevant financial sector regulators, develop a supervisory framework that promotes the consistent implementation and application of the principles referred to in paragraph (a) to financial institutions, including through a common minimum level of risk-management, in order to make these financial institutions more resilient to financial crises, and participant defaults in particular.

Part 2

Managing systemic risks and systemic events

Identifying systemic events

11. (1) The Governor may, after having consulted the Minister, determine in writing that a specific event or circumstance, or a specific combination of events or circumstances, is a systemic event.

(2) A determination in terms of subsection (1) may be made whether or not the event or circumstance, or combination of events or circumstances, has already occurred or arisen.

(3) The Governor –

- (a) must regularly review a determination made in terms of this section; and
- (b) may at any time, after having consulted the Minister, amend or terminate the determination in writing.

(4) Part 1 of Chapter 7 does not apply to a determination made, amended or revoked in terms of this section.¹³

(5) For the purposes of this Part, a determination made or amended in terms of this section in writing is conclusive, and the determination may not be reviewed by or appealed to the Tribunal.

Reserve Bank's functions in relation to systemic events

12. (1) The Reserve Bank must take all reasonable steps–

- (a) to prevent systemic events from occurring; and
- (b) if a systemic event has occurred or is imminent, to –
 - (i) mitigate as soon as practicable the adverse effects of the event on financial stability; and
 - (ii) manage the systemic event and its effects.

(2) When acting in terms of subsection (1), the Reserve Bank must have due regard to the need to–

- (a) protect and maintain financial stability, and to do so in a way that minimises adverse effects on financial stability and economic activity;
- (b) ensure that financial products and financial services that are necessary to maintain financial stability continue to be provided;
- (c) protect, as appropriate, financial customers, including depositors, policyholders and investors; and
- (d) contain the cost to the Republic of the systemic event and the measures taken to manage it.

¹³ Part 1 of Chapter 7 imposes consultation requirements in respect of legislative instruments.

(3) The Governor may establish a management committee, consisting of senior representatives of the Reserve Bank, the financial sector regulators and other relevant organs of state, to assist with coordinating activities to manage a systemic event referred to in subsection (1)(b) and its effects.

Governor to consult with Minister

13. (1) If a systemic event has occurred or is imminent, the Governor must ensure that the Minister is kept informed of the event and of any actions being taken or proposed to manage the event and the effects of the event.

(2) The Governor must consult the Minister before any action is taken to manage a systemic event or its effects if the Minister or the Governor considers that the action—

(a) will or may have a material impact on public finances or the costs of borrowing; or

(b) will or may create a future financial commitment or a contingent liability.

(3) Action contemplated in subsection (2)(a) or (b) may only be taken —

(a) with the Minister's approval; and

(b) in accordance with any condition subject to which the Minister has given approval.

Reserve Bank directives to financial sector regulators

14. (1) If a systemic event has occurred or is imminent, the Governor may direct a financial sector regulator to—

(a) provide the Reserve Bank with information in the regulator's possession that is specified in the directive; or

(b) act in accordance with the directive in the exercise by the regulator of its powers, to the extent that the exercise of those powers is necessary or appropriate—

(i) to assist in preventing the systemic event from occurring; and

(ii) if an event has already occurred, to assist in mitigating the adverse effects of the event on financial stability.

(2) A directive in terms of subsection (1)(b)(ii) may include measures aimed at—

(i) supporting the restructuring or winding up of any financial institutions;

(ii) preventing or reducing the spread of risk, weakness or disruption through the financial system; and

(iii) increasing the resilience of financial institutions to risk, weakness or disruption.

(3) A financial sector regulator must comply with a directive issued to it in terms of subsection (1).

Financial sector regulators' responsibilities

15. If a systemic event has occurred or is imminent, a financial sector regulator must—

(a) provide the Reserve Bank with any information in the regulator's possession that may be relevant to managing the effects of the systemic event, including information on any actual or potential impact on public finances; and

- (b) consult the Governor before exercising any of its powers in a way that may affect measures that are being or are proposed to be taken to manage the systemic event or the effects of the systemic event.

Exercise of powers by other organs of state to be consistent with decisions and actions taken in terms of this Part

16. (1) If the Governor has, in terms of section 11, determined that a systemic event has occurred or is imminent, an organ of state exercising powers with respect to the financial system may not, without the approval of the Minister, acting in consultation with the Cabinet member responsible for that organ of state, exercise its powers in a way that will be inconsistent with a decision or action taken by the Governor or the Reserve Bank in terms of this Part to manage that systemic event or the effects of that systemic event.

(2) Any unresolved issues between the Minister and that Cabinet member, must be referred to Cabinet.

(3) This section does not apply to the financial sector regulators, as the financial sector regulators must, in the event of an actual or imminent systemic event, exercise their powers in accordance with section 15.

Part 3

Financial Stability Oversight Committee

Financial Stability Oversight Committee

17. (1) A committee called the Financial Stability Oversight Committee is established.

(2) The primary objectives of the Financial Stability Oversight Committee are to—

- (a) support the Reserve Bank in performing the Reserve Bank's functions in relation to financial stability; and
- (b) facilitate co-operation and collaboration between, and co-ordination of action among, the financial sector regulators and the Reserve Bank in respect of matters relating to financial stability.

Functions of Financial Stability Oversight Committee

18. The Financial Stability Oversight Committee has the following functions:

- (a) to serve as a forum for the senior representatives of the Reserve Bank and of each of the financial sector regulators to be informed, and to exchange views, about the respective activities of the Reserve Bank and the regulators relating to financial stability;
- (b) to advise the Governor on the designation of systemically important financial institutions;
- (c) to advise the Minister on matters relating to financial stability;
- (d) to make recommendations to relevant organs of state regarding actions that are appropriate for them to take to assist in managing or preventing risks to financial stability; and
- (e) any other function conferred on it in terms of legislation.

Membership of Financial Stability Oversight Committee

19. (1) The Financial Stability Oversight Committee consists of the following members:

- (a) the Governor;
- (b) the Deputy Governor responsible for financial stability matters;
- (c) the Chief Executive Officer;
- (d) the Commissioner;
- (e) the Chief Executive Officer of the National Credit Regulator;
- (f) the Director-General; and
- (g) any additional persons appointed by the Governor with the concurrence of the Minister.

(2) A member of the Committee appointed in terms of subsection (1)(g) holds office for the period, and on the terms, determined by the Governor.

Reserve Bank to provide administrative support for Financial Stability Oversight Committee

20. (1) The Reserve Bank must provide administrative support, and other resources, including financial resources, for the effective functioning of the Financial Stability Oversight Committee.

(2) The Reserve Bank must—

- (a) ensure that written minutes of each meeting of the Committee are kept; and
- (b) retain those minutes for at least seven years.

Meetings and procedure of Financial Stability Oversight Committee

21. (1) The Financial Stability Oversight Committee must meet at least once every three months.

(2) The Governor –

- (a) may convene a meeting of the Committee at any time; and
- (b) must convene a meeting if requested to do so by the Chief Executive Officer, the Commissioner or the Chief Executive Officer of the National Credit Regulator.

(3) (a) The Governor chairs a meeting of the Committee at which the Governor is present.

(b) If the Governor is not present at a meeting, the Deputy Governor responsible for financial stability matters chairs the meeting.

(4) (a) A member who is unable to attend a meeting may, after notice to the other members and with the concurrence of the person who will chair the meeting, nominate an alternate to attend that meeting in the member's absence.

(b) An alternate referred to in paragraph (a) has, for that meeting, the same rights as the member.

(5) The Committee may determine its procedures, including quorum requirements.

(6) The person chairing a meeting may invite any person, including a representative of an organ of state or a financial institution, to attend the meeting.

Financial stability review

22. (1) The Financial Stability Oversight Committee must at least every six months make and publish an assessment of the stability of the financial system (referred to as the “financial stability review”).

(2) A financial stability review must set out–

- (a) the Committee’s assessment of financial stability in the period under review;
- (b) the Committee’s identification of, and assessment of, the risks to financial stability in at least the next 12 months;
- (c) an overview of measures taken by the Reserve Bank and the financial sector regulators to identify and manage risks, weaknesses or disruptions in the financial system during the period under review and during at least the next 12 months; and
- (d) an overview of recommendations made by the Committee during the period under review and progress made in implementing those recommendations.

(3) A financial stability review may not include information, the publication of which in the review would pose an unjustifiable risk to financial stability.

(4) The Governor must submit a copy of a financial stability review to the Minister before it is published.

Part 4

Financial Sector Contingency Forum

Financial Sector Contingency Forum

23. (1) The Governor must establish the Financial Sector Contingency Forum, to assist the Financial Stability Oversight Committee in performing the Committee’s crisis management and preparedness functions.

(2) The Financial Sector Contingency Forum must be chaired by a Deputy Governor of the Reserve Bank, as appointed by the Governor.

(3) The Financial Sector Contingency Forum may consist of representatives from relevant industry bodies, the financial sector regulators and any relevant organ of state, entity or body, as determined by the chairperson of the Financial Sector Contingency Forum.

(4) The primary objectives of the Financial Sector Contingency Forum are to assist the Financial Stability Oversight Committee with–

- (a) the identification of potential threats of a systemic nature that may adversely impact the stability of the South African financial sector; and
- (b) the coordination of appropriate plans, mechanisms and structures to mitigate the threats identified in paragraph (a).

Part 5

Roles of financial sector regulators and other organs of state in maintaining financial stability

Relationship between Reserve Bank and financial sector regulators in relation to financial stability

24. (1) The financial sector regulators must—

- (a) provide assistance and information to the Reserve Bank in the performance of its functions with respect to financial stability that the Reserve Bank or the Financial Stability Oversight Committee may reasonably request;
- (b) cooperate and collaborate with the Reserve Bank, and with each other, to maintain, protect and enhance financial stability in the Republic;
- (c) promptly report to the Reserve Bank any matter of which the regulator becomes aware that poses or may pose a risk to financial stability; and
- (d) gather information from or about financial institutions that concerns financial stability.

(2) The Reserve Bank must, when acting in terms of its financial stability mandate, and when exercising its powers in terms of this Act, in accordance with its obligations in terms of section 76, take into consideration—

- (a) the views expressed and the information reported by the financial sector regulators;
- (b) the recommendations of the Financial Stability Oversight Committee; and
- (c) the object of this Act and the role, object, and functions of the financial sector regulators.

Memoranda of understanding between financial sector regulators and Reserve Bank relating to financial stability

25. (1) The financial sector regulators and the Reserve Bank must, as soon as reasonably practicable, but not later than six months after this Chapter takes effect, enter into memoranda of understanding determining and regulating their respective roles and duties in co-operating and collaborating with each other in relation to financial stability.

(2) The financial sector regulators and the Reserve Bank must review and update the memoranda of understanding as appropriate, but at least once every three years.

(3) A copy of a memorandum of understanding must upon being entered into or revised be submitted to the Minister and the Cabinet member responsible for trade and industry.

Roles of other organs of state in relation to financial stability

26. (1) An organ of state, other than a financial sector regulator, performing functions that impact on financial stability must —

- (a) in performing its functions, have due regard to the implications of its activities on financial stability; and
- (b) provide assistance to the Reserve Bank to maintain financial stability as the Reserve Bank or the Financial Stability Oversight Committee may reasonably request.

(2) This section does not apply to financial sector regulators, whose responsibilities with respect to financial stability are set out in section 24(1) and the memoranda of understanding referred to in section 25.

CHAPTER 3

PRUDENTIAL AUTHORITY

Part 1

Establishment, objectives and functions

Establishment of Prudential Authority

27. (1) An authority called the Prudential Authority is established, that operates within the administration of the Reserve Bank.

(2) The Prudential Authority is a juristic person.

(3) The Prudential Authority is not a public entity in terms of the Public Finance Management Act.

Objective of Prudential Authority

28. The objective of the Prudential Authority is to promote and enhance the safety and soundness of financial institutions that provide financial products, market infrastructures or payment systems, to—

- (a) protect financial customers, including depositors and policyholders, against the risk that those financial institutions may fail to meet their obligations; and
- (b) assist in maintaining financial stability.

Functions of Prudential Authority

29. (1) In order to achieve its objective, the Prudential Authority must –

- (a) regulate and supervise, in accordance with this Act, the financial sector laws, and the National Payment System Act, all financial institutions that provide financial products, or are market infrastructures and payment systems operators;
- (b) assist the Reserve Bank in exercising its functions relating to financial institutions providing a payment system or settlement system;
- (c) co-operate with and assist the Reserve Bank, the Financial Sector Conduct Authority and the National Credit Regulator, as may be required in terms of this Act;
- (d) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest;
- (e) co-operate with and assist the Financial Intelligence Centre in preventing and combating financial crime;
- (f) support sustainable competition in the provision of financial products through co-operating and collaborating with the Competition Commission;
- (g) support financial inclusion;
- (h) regularly review the perimeter and scope of financial sector regulation, in particular with respect to section 2(1)(a), and take steps to regulate risks identified that could undermine the achievement of its objective and functions;

- (i) conduct and publish, as appropriate, research concerning developments in or affecting the prudential regulation or supervision of financial institutions providing financial products, market infrastructures, and payment systems; and
 - (j) perform any other function assigned or delegated to the Prudential Authority in terms of any other provision of this Act, a financial sector law or other legislation.¹⁴
- (2) The Prudential Authority may do anything else necessary to achieve its objectives, including –
- (a) co-operating with its counterparts in other jurisdictions; and
 - (b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.
- (3) When performing its functions, the Prudential Authority must, to the extent that is practicable, have regard to international regulatory and supervisory standards set by bodies referred to in subsection (2)(b), while bearing in mind South African circumstances.
- (4) When performing its regulatory functions referred to in subsection (1)(a), the Prudential Authority must have a primarily pre-emptive, outcomes focused and risk-based approach, in terms of which it focuses its resources in areas that pose significant risks to the achievement of its objective.
- (5) The Prudential Authority must perform its functions without fear, favour or prejudice.

Part 2

Governance

Overall governance objective

30. The Prudential Authority must manage its affairs in an efficient and effective way, and establish and implement appropriate and effective governance systems and processes, having regard to, among other things, internationally accepted standards in these matters.

Chief Executive Officer

31. (1) The Governor must, with the concurrence of the Minister, appoint a Deputy Governor, other than the Deputy Governor responsible for financial stability, who has appropriate expertise in the financial sector, as the Chief Executive Officer of the Prudential Authority.

(2) When appointing a Deputy Governor as the Chief Executive Officer, that Deputy Governor and the Governor must agree, in writing, on the performance measures that will be used to assess the Deputy Governor's performance as the Chief Executive Officer, and the level of performance that must be achieved against those performance measures.

¹⁴ For example, the Authority has functions and duties in terms of the Financial Intelligence Centre Act.

(3) A disqualified person may not be appointed or hold office as the Chief Executive Officer.

Term of office of Chief Executive Officer

- 32.** (1) A person appointed in terms of section 31 as the Chief Executive Officer—
- (a) holds office for a term of office of not longer than five years, as the Governor may determine;
 - (b) is, at the expiry of that term of office, eligible for re-appointment for one further term; and
 - (c) must vacate office before the expiry of a term of office if that person –
 - (i) resigns as Chief Executive Officer, by giving three months written notice to the Governor, or a shorter period that the Governor may accept;
 - (ii) ceases to hold the office of Deputy Governor; or
 - (iii) is removed from office as Chief Executive Officer in terms of section 33.

(2) The Governor must, at least 90 days before the end of the Chief Executive Officer's first term of office, inform the Chief Executive Officer whether it is proposed to re-appoint that person as Chief Executive Officer.

Removal from office

33. (1) If the Chief Executive Officer becomes a disqualified person, the Governor must remove the Chief Executive Officer from office.

(2) The Governor may, with the concurrence of the Minister, remove the Chief Executive Officer from office if an independent inquiry¹⁵ established by the Governor, with the concurrence of the Minister, has found that the Chief Executive Officer—

- (a) is unable to perform the duties of office for health or other reasons;
- (b) has failed in a material way to achieve the level of performance against the performance measures agreed in terms of section 31(2);
- (c) has failed in a material way to discharge the responsibilities of office, including the responsibilities imposed in terms of legislation; or
- (d) has committed misconduct.

(3) If an independent inquiry has been established in terms of subsection (2), the Governor may suspend the Chief Executive Officer from office, pending a decision on the removal of the person.

(4) If the Chief Executive Officer is removed from office in terms of subsection (2), the Minister must submit the report and findings of the independent inquiry to the National Assembly.

Acting Chief Executive Officer

34. The Governor may appoint a senior staff member of the Prudential Authority or a Deputy Governor to act as Chief Executive Officer when the Chief Executive Officer is absent from office, or is otherwise unable to perform the functions of office.

Role of Chief Executive Officer

35. (1) Except in relation to the matters referred to in section 36(3)(b), the Chief Executive Officer—

¹⁵ Section 3 of the Promotion of Administrative Justice Act applies to the inquiry.

- (a) is responsible for the day-to-day management and administration of the Prudential Authority; and
- (b) must perform the functions of the Prudential Authority, including exercising the powers and carrying out the duties associated with those functions.

(2) When acting in terms of subsection (1), the Chief Executive Officer must implement the policies and strategies adopted by the Oversight Committee.

Oversight Committee

36. (1) A committee called the Oversight Committee is established for the Prudential Authority.

(2) The Oversight Committee consists of the Governor, the Chief Executive Officer and the other Deputy Governors.

(3) The Oversight Committee must—

- (a) generally oversee the management and administration of the Prudential Authority, to ensure that it is efficient and effective; and
- (b) act for the Prudential Authority in relation to the following matters:
 - (i) approval of the Chief Executive Officer entering into the section 25 memoranda of understanding, and amendments to the memoranda;¹⁶
 - (ii) adopting the supervisory strategy of the Prudential Authority, and amendments to it;¹⁷
 - (iii) adopting the administrative action procedures of the Prudential Authority, and amendments to those procedures;¹⁸
 - (iv) appointing members of committees of the Prudential Authority that are required or permitted by this Act, and giving directions regarding the conduct of the work of those committees;
 - (v) adopting estimates of expenditure and levy proposals;
 - (vi) any other matter assigned in terms of this Act or another financial sector law to the Oversight Committee.

Meetings of Oversight Committee

37. (1)(a) The Oversight Committee must meet as often as is necessary for the performance of its functions.

(b) An audio or audio visual conference among a majority of the members of the Oversight Committee which enables each participating member to hear and be heard by each of the other participating members must be regarded to be a meeting of the Committee, and each participating member must be regarded to be present at a meeting of the Committee.

(2) The Governor convenes the meetings of the Oversight Committee-at times and, except where subsection (1)(b) applies, at places determined by the Governor.

(3) A quorum for a meeting of the Oversight Committee is a majority of its members.

(4) (a) The Governor chairs meetings of the Oversight Committee at which the Governor is present.

¹⁶ See section 25.

¹⁷ See section 43.

¹⁸ See sections 147(b) and 149 .

(b) If the Governor is not present at a meeting, the Deputy Governor nominated by the Governor or selected in accordance with a procedure determined by the Governor, chairs the meeting.

(5) The Governor or the Deputy Governor chairing a meeting of the Oversight Committee may invite or allow any other person, including a representative of the Financial Sector Conduct Authority or the National Credit Regulator, to attend a meeting of the Committee, but a person who is invited has no right to vote at the meeting.

(6) The members may regulate proceedings at Oversight Committee meetings as they consider appropriate.

(7) The Chief Executive Officer must—

(a) ensure that written minutes of each meeting of the Oversight Committee are kept; and

(b) retain those minutes for at least seven years.

Disclosure of interests

38. (1) A member of the Oversight Committee must disclose, at a meeting of the Committee or in writing to each other member, any interest that—

(a) the member; or

(b) a person who is a related party to the member,

has in any matter that is or will be considered by the Committee.

(2) The disclosure referred to in subsection (1) must be given as soon as practicable after the member becomes aware of the interest in that matter.

(3) A member referred to in subsection (1) may not participate in the consideration and decision of that matter, unless—

(a) the member has disclosed the interest in accordance with subsection (1); and

(b) that interest is found by the other members to be trivial or irrelevant.

(4) For the purposes of subsections (1) and (3), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.

(5) For the purposes of this section, if—

(a) a related party of a member has an interest; and

(b) if the member had the interest, it could conflict with the proper performance of the functions of the member's office,

the member is deemed to have the interest, and this section applies accordingly.

(6) The Chief Executive Officer must take all reasonable steps to ensure that members of the Prudential Authority's staff¹⁹ and other persons performing or its functions or exercising its powers make timely, proper and adequate disclosure of their interests that could conflict with the performance of their functions.

(7) For the purposes of this section, a person does not have an interest that could conflict with the proper performance of the functions of a person's office merely because the person—

(a) is the Governor, a Deputy Governor or an employee of the Reserve Bank;
or

¹⁹ This includes contractors and secondees.

(b) is a financial customer of a financial institution.

(8) The Chief Executive Officer must maintain a register of all disclosures made and all consents given in terms of this section.

(9) This section applies in relation to a committee established for the Prudential Authority in the same manner that it applies to the Oversight Committee.²⁰

Decisions of Oversight Committee

39. (1) A question arising at a meeting of the Oversight Committee is determined by a majority of the votes of the members who are present and are eligible to vote.

(2) The person chairing the meeting has a deliberative vote and, if necessary, also a casting vote.

(3) A decision on a question arising at a meeting of the Committee is not invalid merely because—

- (a) there was a vacancy in the office of a member; or
- (b) a person who was not a member participated in the decision.²¹

Decisions without meetings

40. (1) If—

- (a) at a meeting, the Oversight Committee has resolved that resolutions may be passed in accordance with this section;
- (b) either—
 - (i) all of the members were informed in writing of the terms of a proposed resolution; or
 - (ii) reasonable efforts were made to inform them in writing of the terms of a proposed resolution; and
- (c) without meeting, a majority of the members indicate agreement with the proposed resolution and communicate that to the Chief Executive Officer by letter, fax or other electronic transmission,

the resolution is adopted on the date on which the last of those members indicates agreement with the resolution.

(2) When determining whether a resolution has been adopted in terms of subsection (1), a member who would have been prevented in terms of section 38 from deliberating on a resolution if the resolution had been considered at a meeting, is not counted as a member for the purposes of subsection (1)(b) and (c).

Governance and other committees for Prudential Authority

41. (1) The Oversight Committee must establish committees with the following functions:

- (a) reviewing, monitoring and advising the Committee on the risks faced by the Authority and its plans for managing those risks;
- (b) advising the Committee on measures that must be taken to ensure that the Authority complies with its obligations in relation to auditing and financial management.

(2) The Oversight Committee may—

²⁰ Section 41 requires the establishment of certain governance committees and permits the establishment of other committees. Section 150 provides for the establishment of administrative action committees.

²¹ In this case, only the votes of the members are counted.

- (a) establish committees with other relevant functions; and
- (b) confer other functions on a committee performing the functions referred to in subsection (1).

(3) A function referred to in subsection (1) may be performed by the corresponding committee of the Reserve Bank.

(4) A committee's membership is determined by the Oversight Committee, which may include a member of the Prudential Authority's staff, and persons who are not members of the Authority or its staff.

(5) A member of a committee holds office for the period, and on the terms, including terms regarding remuneration, that are determined by the Oversight Committee.

(6) A committee dealing with a matter referred to in subsection (1) must be chaired by a person other than the Governor, a Deputy Governor, the Chief Executive Officer or a staff member of the Prudential Authority, and a majority of the members of the committee must be independent.

(7) A disqualified person may not be a member of a committee.

(8) Subject to the directions of the Oversight Committee, a committee determines its procedure.

(9) The Chief Executive Officer must—

- (a) ensure that written minutes of each meeting of the committee are kept; and
- (b) retain those minutes for at least seven years.

Duties of Oversight Committee members

42. Each member of the Oversight Committee has the following duties, in addition to the member's other duties:

- (a) to act honestly in all matters related to the Prudential Authority;
- (b) to exercise powers, and discharge duties—
 - (i) in good faith;
 - (ii) for a proper purpose; and
 - (iii) with the degree of care and diligence that a reasonable person in the member's position would exercise.

(2) A person who—

- (a) is a member of the Oversight Committee; or
- (b) obtains information because the person is or has been a member of the Oversight Committee;

must not use that position or information to—

- (i) gain a personal advantage or an advantage for someone else;
- (ii) cause a detriment to the Prudential Authority's ability to perform its functions; or
- (iii) cause a detriment to another person.

(3) For the purposes of this section, "advantage" and "detriment" are not limited to financial advantage or detriment.

Supervisory strategy

43. (1) The Oversight Committee must, within six months after the effective date of this Chapter, adopt a supervisory strategy for the Prudential Authority's regulatory and supervisory functions.²²

(2) A supervisory strategy must—

- (a) set out the regulatory and supervisory priorities for the Prudential Authority for the next three years;
- (b) state the key outcomes of the strategy;
- (c) describe how the Prudential Authority proposes to perform its regulatory and supervisory functions, including—
 - (i) the principles to which it will have regard in performing those functions;
 - (ii) its approach to monitoring and supervision; and
 - (iii) its approach to enforcement;
- (d) describe how the Prudential Authority will perform its supervisory and regulatory functions consistently with the principles of—
 - (i) transparency;
 - (ii) openness to consultation; and
 - (iii) accountability; and
- (e) be consistent with relevant international principles.

(3) The Oversight Committee must review the supervisory strategy at least once every three years.

(4) The Oversight Committee must not adopt a supervisory strategy or an amendment to a supervisory strategy unless—

- (a) the Financial Sector Conduct Authority, the National Credit Regulator and the Minister have been provided with a draft of the strategy or amendment;
- (b) a reasonable period, of at least one month, has been provided for comments to be made on the draft; and
- (c) the Oversight Committee has considered any comment received.

(5) The Oversight Committee must take reasonable steps to minimise, to the extent that is practicable and appropriate, inconsistencies between the Prudential Authority's supervisory strategy and the Financial Sector Conduct Authority's supervisory strategy.

(6) The Chief Executive Officer must —

- (a) provide a copy of the Prudential Authority's supervisory strategy, and each amendment, as adopted, to the Minister, the Financial Sector Conduct Authority and the National Credit Regulator; and
- (b) publish the supervisory strategy and each amendment on the Prudential Authority's official website.

Delegations

44. (1) Except as provided in subsection (2), the Oversight Committee may not delegate a power or duty referred to in section 36(3)(a) or 36(3)(b)(i) to (v).²³

²² A supervisory strategy is a general guide, to promote accountability through transparency. It does not limit the ways in which the Authority may perform its functions.

²³ The effect of this section is that only the Oversight Committee can make these delegations.

(2) The Chief Executive Officer, with the approval of the Oversight Committee, may delegate any power or duty of the Prudential Authority in terms of a financial sector law, except this power of delegation and the powers referred to in subsection (1), to the Financial Sector Conduct Authority, in accordance with the section 77 memoranda of understanding, and the Chief Executive Officer may, at any time, amend or revoke a delegation.

(3) The Chief Executive Officer may, in writing, delegate any power or duty that the Chief Executive Officer may exercise or perform in terms of a financial sector law, except this power of delegation, to—

- (a) a member of the staff of the Prudential Authority;²⁴ and
- (b) the Reserve Bank,

and the Chief Executive Officer may, at any time, in writing, amend or revoke a delegation.

(4) A delegation in terms of subsection (3)(a) may be to a specified person or to the person holding a specified position.

(5) A delegation is subject to the limitations and conditions specified in the delegation.

(6) A delegation does not divest the Prudential Authority of responsibility in respect of the delegated power or duty.

(7) Anything done by a delegate in accordance with the delegation is deemed to be done by the Prudential Authority.

Part 3

Staff and resources

Staff and resources

45. (1) The Prudential Authority must determine the personnel, accommodation, facilities, the use of assets, and other services and resources that it requires for its effective functioning.

(2) The Prudential Authority may—

- (a) enter into secondment arrangements;
- (b) engage persons as contractors;
- (c) acquire and dispose of property; and
- (d) insure itself against any loss, damage, risk or liability that it may suffer or incur.

(3) The Prudential Authority may, when accepting a secondment of a person or engaging a person as a contractor, agree in writing with the person the performance measures that will be used to assess the person's performance, and the level of performance that must be achieved against those measures.

Provision of Resources by Reserve Bank to Prudential Authority

46. The Reserve Bank must provide the Prudential Authority with the personnel, accommodation, facilities, the use of assets and other services and resources that are determined in accordance with section 45(1).

²⁴ This includes contractors and secondees.

Duties of staff members²⁵

47. (1) A person who—

- (a) is a member of the staff of the Prudential Authority; or
- (b) obtains information because the person is or has been a member of the staff of the Prudential Authority;

must not use that position or information to—

- (i) gain a personal advantage or an advantage for someone else;
- (ii) cause a detriment to the Prudential Authority's ability to perform its functions; or
- (iii) cause a detriment to another person.

(2) For the purposes of this section, “advantage” and “detriment” are not limited to financial advantage or detriment.

Duties of Chief Executive Officer in relation to financial affairs of Prudential Authority

48. (1) The Chief Executive Officer must—

- (a) determine fees and charges for prudential supervision in terms of the Levies Act;
- (b) exercise the duty of utmost care to ensure the reasonable protection of the assets and records of the Prudential Authority;
- (c) act with fidelity, honesty, integrity and in the best interests of the Authority, in managing the financial affairs of the Prudential Authority;
- (d) on request, disclose to the Governor or the Minister all material facts relating to the affairs of the Prudential Authority, including those reasonably discoverable, that in any way may influence decisions or actions of the Governor or the Minister;
- (e) seek, within the Chief Executive Officer's sphere of influence, to prevent any prejudice to the financial interests of the Republic;
- (f) ensure that that Prudential Authority has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management;
 - (ii) an effective, efficient and transparent system of internal audit; and
 - (iii) a procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective;
- (g) must take appropriate and cost-effective steps to—
 - (i) collect revenue due to the Prudential Authority; and
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure that does not comply with the Prudential Authority's operational policies; and
 - (iii) manage available working capital efficiently and economically;
- (h) manage and safe-guard the assets of the Prudential Authority, and manage the revenue, expenditure and liabilities of the Prudential Authority;
- (i) generally ensure that the Prudential Authority complies with its obligations in terms of the law;

²⁵ This includes contractors and secondees.

- (j) establish systems and processes to ensure that effective and appropriate disciplinary steps are taken against any staff member of the Prudential Authority who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control systems of the Prudential Authority.

Chief Executive Officer to provide certain information

49. The Chief Executive Officer must provide to the Oversight Committee or the National Treasury the information, returns, documents, explanations and motivations that may be prescribed in Regulations, or that the National Treasury may require.

Annual reports and financial statements

- 50.** (1) The Chief Executive Officer must—
- (a) ensure that full and proper records of the financial affairs of the Prudential Authority are kept and maintained;
 - (b) prepare financial statements for each financial year in accordance with internationally recognised financial reporting standards;
 - (c) submit those financial statements within three months after the end of the financial year—
 - (i) to the auditors for auditing; and
 - (ii) to the National Treasury; and
 - (d) submit to the Minister within five months of the end of a financial year,—
 - (i) an annual report on the activities of the Prudential Authority during that financial year;
 - (ii) the financial statements for that financial year, after the statements have been audited; and
 - (iii) the report of the auditors on the financial statements.
- (2) The annual report and financial statements of the Prudential Authority in respect of a financial year must—
- (a) fairly present the state of affairs of the Authority, its business, its financial results, its performance against its objectives and its financial position as at the end of the financial year;
 - (b) include particulars of—
 - (i) any material losses through criminal conduct and any irregular expenditure or fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any disciplinary steps, including criminal investigations and prosecutions, taken as a consequence of losses, irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off;
 - (iv) any financial assistance received from the state and commitments made by the state on its behalf; and
 - (v) any other matters that may be prescribed by Regulations.
- (3) The Chief Executive Officer must submit to the Minister the report and statements referred to in subsection (1)(d), for tabling in Parliament.

CHAPTER 4

FINANCIAL SECTOR CONDUCT AUTHORITY

Part 1

Establishment, objectives and functions

Establishment of Financial Sector Conduct Authority

51. (1) An authority called the Financial Sector Conduct Authority is established.

(2) The Financial Sector Conduct Authority is a juristic person.

(3) The Financial Sector Conduct Authority is a national public entity for the purposes of the Public Finance Management Act, and the Commissioner is the accounting officer of the Authority for the purposes of that Act.

Objective of Financial Sector Conduct Authority

52. The objective of the Financial Sector Conduct Authority is to protect financial customers by—

- (a) ensuring that financial institutions treat financial customers fairly;
- (b) enhancing the efficiency and integrity of the financial system; and
- (c) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and financial capability.

Functions of Financial Sector Conduct Authority

53. (1) In order to achieve its objective, the Financial Sector Conduct Authority must—

- (a) regulate and supervise the conduct of financial institutions in accordance with the financial sector laws, to achieve the objective of the Authority;
- (b) co-operate with and support the Reserve Bank and the Financial Stability Oversight Committee in performing their functions with respect to financial stability;
- (c) co-operate with and support the Prudential Authority and the National Credit Regulator in accordance with this Act;
- (d) co-operate with the Council for Medical Schemes;
- (e) co-operate with the Financial Intelligence Centre, and assist in preventing and combating financial crime;
- (f) perform functions that are delegated to the Financial Sector Conduct Authority;
- (g) promote, to the extent consistent with achieving the Financial Sector Conduct Authority's objective, sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission;
- (h) support financial inclusion, with a focus on unserved and underserved persons;
- (i) regularly review the perimeter and scope of financial sector regulation, in particular with respect to sections 2(1)(a) and section 3, and take steps to

regulate risks identified that could undermine the achievement of its objective and functions;

- (j) administer the collection of levies and the distribution of amounts received in respect of levies;
- (k) conduct and publish, as appropriate, research relevant to its objectives concerning developments in financial products and financial services, including monitoring the extent to which the financial system is meeting the needs and reasonable expectations of financial customers, with a focus on the fairness, appropriateness and value for money of financial services;
- (l) perform any other function assigned or delegated to the Financial Sector Conduct Authority in terms of any other provision of this Act, a financial sector law or other legislation.²⁶

(2) The Financial Sector Conduct Authority may do anything else necessary to achieve its objectives, including –

- (a) co-operating with its counterparts in other jurisdictions; and
- (b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.

(3) When performing its functions, the Financial Sector Conduct Authority must, to the extent that is practicable, have regard to international regulatory and supervisory standards set by bodies referred to in subsection (2)(b), while bearing in mind South African circumstances.

(4) When performing its regulatory functions referred to in subsection (1)(a), the Financial Sector Conduct Authority must have a primarily pre-emptive, outcomes focused and risk-based approach, in terms of which it focuses its resources in areas that pose significant risks to the achievement of its objectives.

(5) The Financial Sector Conduct Authority must perform its functions without fear, favour or prejudice.

Financial education functions

54. In addition to its other functions, the Financial Sector Conduct Authority has the function of formulating and implementing strategies and programmes for financial education for the general public.

Part 2

Governance

Overall governance objective

55. The Financial Sector Conduct Authority must manage the affairs of the Authority in an efficient and effective way, and establish and implement appropriate and effective governance systems and processes, having regard, among other things, to internationally accepted standards in these matters.

²⁶ For example, the Authority has functions and duties under the Financial Intelligence Centre Act.

Executive Committee

56. (1) A committee called the Executive Committee is established for the Financial Sector Conduct Authority.

(2) The Executive Committee consists of the Commissioner and the Deputy Commissioners.

Commissioner and Deputy Commissioners

57. (1) The Minister must appoint a person who has appropriate expertise in the financial sector as the Commissioner of the Financial Sector Conduct Authority.

(2) The Commissioner is the chairperson of the Executive Committee.

(3) The Minister must appoint at least two, but no more than four, Deputy Commissioners.

(4) The Commissioner and Deputy Commissioners serve in an executive capacity.

(5) The Executive Committee may assign particular responsibilities to a Deputy Commissioner.

(6) The Commissioner may designate a Deputy Commissioner to act as Commissioner when the Commissioner is absent from office or is otherwise unable to perform the functions of office.

(7) A person may not be appointed to, or hold office as, Commissioner or Deputy Commissioner if the person—

(a) is a disqualified person; or

(b) is not permanently resident in the Republic.

(8) (a) When appointing the Commissioner in terms of this section, the Minister and the person appointed must agree, in writing, on the performance measures that will be used to assess the person's performance as Commissioner, and the level of performance that must be achieved against those measures.

(b) When a Deputy Commissioner is appointed in terms of this section, the Commissioner and the person appointed must agree, in writing, on the performance measures that will be used to assess the person's performance as a Deputy Commissioner, and the level of performance that must be achieved against those measures.

Terms of office of Commissioner and other Executive Committee members

58. (1) An Executive Committee member—

(a) holds office for a term of office of not longer than five years, as the Minister may determine;

(b) is, at the expiry of that term of office, eligible for re-appointment for one further term; and

(c) must vacate office before the expiry of a term of office if that person –

(i) resigns as member, by giving three months written notice to the Minister, or a shorter period that the Minister may accept; or

(ii) is removed from office as an Executive Committee member in terms of section 59.

(2) The Minister must, at least 90 days before the end of the Executive Committee member's first term of office, inform the member whether it is proposed to re-appoint that person as an Executive Committee member.

Removal from office

59. (1) If the Executive Committee member becomes a disqualified person, the Minister must remove the member from office.

(2) The Minister may remove a member from office if an independent inquiry²⁷ established by the Minister has found that the member—

- (a) is unable to perform the duties of office for health or other reasons;
- (b) has failed in a material way to achieve the level of performance against the performance measures agreed in terms of section 57(8);
- (c) has failed in a material way to discharge the responsibilities of office, including the responsibilities imposed in terms of legislation; or
- (d) has committed misconduct.

(3) If an independent inquiry has been established in terms of subsection (2) in respect of a member, the Minister may suspend the member from office pending a decision on the removal of the person.

(4) If the member is removed from office in terms of subsection (2), the Minister must submit the report and findings of the independent inquiry to the National Assembly.

Conditions of office

60. (1) Each member of the Executive Committee holds office on the terms and conditions specified in the member's appointment documents, including terms and conditions relating to remuneration, leave and other benefits.

(2) The terms and conditions of office of an Executive Committee member must not be reduced during the member's term of office.

Role of Commissioner

61. (1) Except in relation to the matters referred to in section 62, the Commissioner—

- (a) is responsible for the day-to-day management and administration of the Financial Sector Conduct Authority; and
- (b) may exercise the powers and perform the functions of the Authority, including exercising a power delegated to the Financial Sector Conduct Authority.

(2) When acting in terms of subsection (1), the Commissioner must implement the policies and strategies adopted by the Executive Committee.

Role of Executive Committee

62. The following powers and duties of the Financial Sector Conduct Authority must be exercised and performed by the Executive Committee and may not be delegated:

- (a) the general oversight, management and administration of the Authority, to ensure that it is efficient and effective;
- (b) entering into the section 25 memoranda of understanding, and amendments to the memoranda;
- (c) delegating powers of the Authority to the Prudential Authority or the National Credit Regulator in terms of section 70(4);

²⁷ Section 3 of the Promotion of Administrative Justice Act applies to the inquiry.

- (d) making conduct standards, and amendments to them;²⁸
- (e) adopting the supervisory strategy of the Authority, and amendments to it;²⁹
- (f) adopting estimates of expenditure and levy proposals;
- (g) making determinations of fees and charges in terms of the Levies Act;
- (h) adopting the administrative action procedures of the Authority, and amendments to them;³⁰
- (i) appointing members of committees required or permitted by this Act, and giving directions regarding the conduct of the work of those committees;
- (j) granting, issuing, varying, suspending or cancelling a licence;
- (k) any other matter assigned in terms of this Act or another financial sector law to the Executive Committee.

Meetings of Executive Committee

63. (1) (a) The Executive Committee must meet as often as is necessary for the performance of its functions.

(b) An audio or audio visual conference among a majority of the members of the Executive Committee which enables each participating member to hear and be heard by each of the other participating members must be regarded to be a meeting of the Committee, and each participating member must be regarded to be present at a meeting of the Committee.

(2) The Commissioner convenes the meetings of the Executive Committee, at times and, except where subsection (1)(b) applies, at places determined by the Commissioner.

(3) A quorum for a meeting of the Committee is a majority of its members.

(4) (a) The Commissioner chairs meetings of the Committee at which the Commissioner is present.

(b) If the Commissioner is not present at a meeting, the Deputy Commissioner acting in the Commissioner's place chairs the meeting.

(5) The person presiding at a meeting of the Committee may invite or allow any other person, including representatives of the Prudential Authority, the Reserve Bank or the National Credit Regulator, to attend a meeting of the Committee, but a person who is invited has no right to vote at the meeting.

(6) The members may regulate proceedings at Committee meetings as they consider appropriate.

(7) The Commissioner must—

(a) ensure that written minutes of each meeting of the Executive Committee are kept; and

(b) retain those minutes for at least seven years.

Disclosure of interests

64. (1) Each member of the Executive Committee must disclose, at a meeting of the Committee or in writing, to each other member any interest that—

(a) the member; or

²⁸ Section 70(1) allows the Authority to delegate to the Commissioner the power to make conduct standards urgently, and to cancel a licence urgently.

²⁹ See section 69.

³⁰ See sections 147(b) and 149.

(b) a person who is a related party to the member,
has in any matter that is or will be considered by the Committee.

(2) The disclosure referred to in subsection (1) must be given as soon as practicable after the member becomes aware of the interest in that matter.

(3) A member referred to in subsection (1) may not participate in the consideration and decision of that matter, unless—

- (a) the member has disclosed the interest in accordance with subsection (1); and
- (b) that interest is found by the other members to be trivial or irrelevant.

(4) For the purposes of subsections (1) and (3), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.

(5) For the purposes of this section, if—

- (a) a related party of a member has an interest; and
- (b) if the member had the interest, it could conflict with the proper performance of the functions of the member's office,

the member is deemed to have the interest, and this section applies accordingly.

(6) The Commissioner must take reasonable steps to ensure that members of the Financial Sector Conduct Authority's staff and other persons performing its functions or exercising its powers make timely, proper and adequate disclosure of interests that could conflict with the proper performance of their functions.³¹

(7) For the purposes of this section, a person does not have an interest that could conflict with the proper performance of the functions of office merely because the person is a financial customer of a financial institution.

(8) The Commissioner must record, and maintain a register of, all disclosures made and consents given in terms of this section.

(9) This section applies in relation to a committee established for the Financial Sector Conduct Authority in the same manner that it applies to the Executive Committee.³²

Decisions of Executive Committee

65. (1) A decision at a meeting of the Executive Committee is taken by a majority of the votes of the members who are present and eligible to vote.

(2) The person chairing the meeting has a deliberative vote and, if necessary, also a casting vote.

(3) A decision at a meeting of the Committee is not invalid merely because—

- (a) there was a vacancy in the office of a member;
- (b) a person who was not a member participated in the decision.³³

Decisions without meetings

66. (1) If—

- (a) at a meeting, the Executive Committee has resolved that resolutions of the Committee may be passed in accordance with this section; and

³¹ Staff members includes contractors and secondees.

³² Section 67 requires the establishment of certain governance committees. Section 150 provides for the establishment of an administrative action committee.

³³ In this case, only the votes of the members are counted.

- (b) either–
 - (i) all of the members were informed in writing of the terms of a proposed resolution; or
 - (ii) reasonable efforts were made to inform them in writing of the terms of a proposed resolution; and
- (c) without meeting, a majority of the members indicate agreement with the proposed resolution and communicate that to the Commissioner by letter, fax or other electronic transmission,

the resolution is passed on the date on which the last member indicates agreement with the resolution.

(2) When determining whether a resolution has been adopted in terms of subsection (1), a member who would have been prevented in terms of section 64 from deliberating on a resolution if the resolution had been put to a meeting, is not counted as a member for the purposes of subsection (1)(b) and (c).

Governance and other committees for Financial Sector Conduct Authority

67. (1) The Director-General must establish one or more committees with the following functions:

- (a) advising the Executive Committee on the remuneration policy of the Financial Sector Conduct Authority;
- (b) reviewing, monitoring and advising the Commissioner and the Executive Committee on the risks faced by the Authority and plans for managing those risks;
- (c) advising the Commissioner and the Executive Committee on measures that must be taken to ensure that the Authority complies with its obligations in relation to auditing and financial management.

(2) The Director-General may–

- (a) establish committees with other relevant functions; and
- (b) confer other functions on a committee performing functions referred to in subsection (1).

(3) A committee's membership is determined by the Director-General, which may include a member of the Financial Sector Conduct Authority's staff, and persons who are not members of the Authority or its staff.

(4) A member of a committee holds office for the period, and on the terms, including terms regarding remuneration, that are determined by the Director-General.

(5) A committee dealing with a matter referred to in subsection (1) must be chaired by a person who is not the Commissioner, a Deputy Commissioner or a staff member of the Financial Sector Conduct Authority, and a majority of the members of the committee must be independent.

(6) The Executive Committee may establish other committees for the Financial Sector Conduct Authority, with membership and functions determined by the Executive Committee.

(7) A disqualified person may not be a member of a committee.

(8) Subject to the directions of the Executive Committee, a committee determines its procedure.

(9) The Commissioner must–

- (a) ensure that written minutes of each meeting of a committee referred to in subsection (1) and (6) are kept; and

- (b) retain those minutes for at least seven years.

Duties of Executive Committee members

68. (1) Each member of the Executive Committee has the following duties, in addition to the member's other duties:

- (a) to act honestly in all matters related to the Financial Sector Conduct Authority;
- (b) to exercise powers, and discharge duties—
 - (i) in good faith;
 - (ii) for a proper purpose; and
 - (iii) with the degree of care and diligence that a reasonable person in the member's position would exercise.

(2) A person who—

- (a) is a member of the Executive Committee; or
- (b) obtains information because the person is or has been a member of the Executive Committee;

must not use that position or information to—

- (i) gain a personal advantage or an advantage for someone else;
- (ii) cause a detriment to the Financial Sector Conduct Authority's ability to perform its functions; or
- (iii) cause a detriment to another person.

(3) For the purposes of this section, "advantage" and "detriment" are not limited to financial advantage or detriment.

Supervisory strategy

69. (1) The Executive Committee must, within six months after the commencement of this Act, adopt a supervisory strategy for performing its regulatory and supervisory functions.³⁴

(2) A supervisory strategy must—

- (a) be consistent with relevant international principles;
- (b) set out the regulatory and supervisory priorities for the Financial Sector Conduct Authority for the next three years;
- (c) state the key outcomes of the strategy;
- (d) describe how the Financial Sector Conduct Authority proposes to perform its regulatory and supervisory functions, including—
 - (i) the principles to which it will have regard in performing those functions;
 - (ii) its approach to monitoring and supervision; and
 - (iii) its approach to enforcement; and
- (e) describe how the Financial Sector Conduct Authority will perform its supervisory and regulatory functions consistently with the principles of—
 - (i) transparency;
 - (ii) openness to consultation; and
 - (iii) accountability.

³⁴ A supervisory strategy is a general guide, to promote accountability through transparency. It does not limit the ways in which the Authority may perform its functions.

(3) The Executive Committee must review its supervisory strategy at least once every three years.

(4) The Executive Committee must not adopt a supervisory strategy or an amendment to a supervisory strategy unless—

- (a) the Prudential Authority, the National Credit Regulator and the Minister have been provided with a draft of the strategy or amendment;
- (b) a reasonable period, of at least one month, has been provided for comments to be made on the draft; and
- (c) the Executive Committee has considered any comment received.

(5) If the Minister agrees, the Financial Sector Conduct Authority's adopted supervisory strategy may be incorporated into its corporate plan in terms of section 52(b) of the Public Finance Management Act.

(6) The Executive Committee must take reasonable steps to minimise, to the extent that is practicable and appropriate, inconsistencies between the Financial Sector Conduct Authority's supervisory strategy and Prudential Authority's supervisory strategy.

(7) The Commissioner must –

- (a) provide a copy of the Financial Sector Conduct Authority's supervisory strategy, and each amendment, as adopted, to the Minister, the Prudential Authority and the National Credit Regulator; and
- (b) publish the supervisory strategy and each amendment on the Financial Sector Conduct Authority's official website.

Delegations

70. (1) Subject to section 62 and subsections (2) and (3), the Executive Committee may, by resolution, delegate any power or duty of the Financial Sector Conduct Authority in terms of a financial sector law, except this power of delegation and the powers referred to in subsection (6), to a member of the Committee, and the Committee may, at any time, amend or revoke a delegation.

(2) The Executive Committee may, in accordance with the Financial Sector Conduct Authority's administrative action procedures, delegate the power to impose those administrative penalties that are specified in the administrative action procedures to an Administrative Action Committee.

(3) The Executive Committee may not delegate the power to impose administrative penalties, other than strict liability penalties which are designated in a legislative instrument and the administrative action procedures, to a person or body other than an Administrative Action Committee.

(4) The Executive Committee may, by resolution, delegate any power or duty of the Authority in terms of a financial sector law, except this power of delegation, to the Prudential Authority, in accordance with the section 77 memoranda of understanding, and may, at any time, amend or revoke a delegation.

(5) The Commissioner may, in writing, delegate any power or duty of the Authority that the Commissioner may exercise or perform in terms of a financial sector law, except this power of delegation, to a member of the staff of the Authority or to a person referred to in section 6 of the Financial Advisory and Intermediary Services Act,³⁵ and the Commissioner may, at any time, amend or revoke a delegation.

³⁵ This includes contractors and secondees.

(6) A delegation in terms of subsection (1) or (5) may be to a specified person or to the person holding a specified position.

(7) A delegation is subject to the limitations and conditions specified in the delegation.

(8) A delegation does not divest the Financial Sector Conduct Authority or the Commissioner of responsibility in respect of the delegated power or duty.

(9) Anything done by a delegate in accordance with the delegation is deemed to be done by the Financial Sector Conduct Authority.

Part 3

Staff and resources

Staff and resources

71. (1) The Financial Sector Conduct Authority may—

- (a) engage persons as employees or contractors;
- (b) enter into secondment arrangements;
- (c) acquire and dispose of property; and
- (d) insure itself against any loss, damage, risk or liability that it may suffer or incur.

(2) The Financial Sector Conduct Authority must, when engaging a person as an employee or contractor, or accepting a secondment of a person, agree in writing with the person the performance measures that will be used to assess the person's performance, and the level of performance that must be achieved against those measures.

Duties of staff members³⁶

72. (1) A person who—

- (a) is a member of the staff of the Financial Sector Conduct Authority; or
- (b) obtains information because the person is or has been a member of the staff of the Financial Sector Conduct Authority;

must not use that position or information to—

- (i) gain a personal advantage or an advantage for someone else;
- (ii) cause a detriment to the Financial Sector Conduct Authority's ability to perform its functions; or
- (iii) cause a detriment to another person.

(2) For the purposes of this section, "advantage" and "detriment" are not limited to financial advantage or detriment.

³⁶ This includes contractors and secondees.

CHAPTER 5
SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS

Part 1

Designation of systemically important financial institutions

Designation of systemically important financial institutions

73. (1) (a) The Governor may, in writing, designate a financial institution or a financial conglomerate as a systemically important financial institution.

(b) The power of the Governor referred to in paragraph (a) may not be delegated.

(2) When acting in terms of subsection (1), the Governor must consider at least the following matters:

- (a) the size of the institution;
- (b) the complexity of the institution and its business affairs;
- (c) the interconnectedness of the institution with other financial institutions within and outside of South Africa;
- (d) whether there are readily available substitutes for the financial products and financial services that the institution provides.

(3) Subject to subsection (4), the Governor must not designate an institution in terms of subsection (1) unless the Governor has—

- (a) given the institution and the Financial Stability Oversight Committee notice of the proposed designation, and a statement of the basis on which the designation is proposed to be made;
- (b) invited the institution to make submissions on the proposal and given the institution a reasonable period to do so; and
- (c) when deciding whether to designate the institution as a systemically important financial institution, considered—
 - (i) any advice from the Financial Stability Oversight Committee; and
 - (ii) any submissions made by or for the institution.

(4) If a systemic event is occurring or is imminent, the Governor may designate a systemically important institution, without complying with the requirements of subsection (3).

(5) A decision made by the Governor in terms of this section may not be appealed to the Tribunal.³⁷

(6) The designation of an institution as a systemically important financial institution does not imply, or give rise to, any right for the institution to a guarantee or other credit support from the Government.

³⁷ Part 1 of Chapter 7, about consultation processes, does not apply to these determinations, as they are not legislative instruments.

Part 2

Powers in relation to systemically important financial institutions

Tools to achieve macroprudential outcomes or mitigate systemic risk

74. (1) To achieve macroprudential outcomes or mitigate systemic risk, the Reserve Bank may, after having consulted the Prudential Authority, impose through prudential standards that are issued by the Prudential Authority in accordance with Part 1 of Chapter 7, in relation to a systemically important financial institution or a class of financial institutions that is systemically important, requirements relating to any of the following matters:

- (a) capital requirements, which may include requirements in relation to counter-cyclical capital buffers;
- (b) leverage ratios;
- (c) liquidity;
- (d) organisational structures;
- (e) risk management arrangements, including guarantee arrangements;
- (f) recovery and resolution planning;
- (g) any other matter prescribed by Regulations made on the recommendation of the Governor.

(2) The financial sector regulators must exercise their powers to ensure that the standards referred to in subsection (1) are enforced.

(3) Requirements imposed in standards made in terms of subsection (1) are in addition to any other requirements in terms of a financial sector law.

Winding up, business rescue, amalgamations and mergers, and compromise arrangements of systemically important financial institutions

75. (1) None of the following actions may be taken in relation to a systemically important financial institution without the approval of the Reserve Bank:

- (a) suspending or cancelling a licence;
- (b) adopting a special resolution to wind up the institution voluntarily;³⁸
- (c) applying to a court for an order that the institution be wound up;³⁹
- (d) appointing a manager of the property of the institution;
- (e) appointing an administrator or curator to the institution;
- (f) placing an institution in business rescue or adopting a business rescue plan for the institution;⁴⁰
- (g) entering into an agreement for amalgamation or merger with a company;⁴¹
- (h) entering into a compromise arrangement with creditors of the institution.⁴²

(2) The Reserve Bank may take the following actions in relation to a systemically important financial institution, after having consulted the Prudential Authority and the Financial Sector Conduct Authority:

- (a) apply to a court for an order that the institution be wound up;⁴³
- (b) recommend the appointment of a manager of the property of the institution;

³⁸ See the Companies Act, section 80.

³⁹ See the Companies Act, section 81.

⁴⁰ See the Companies Act, Chapter 6.

⁴¹ See the Companies Act, section 113.

⁴² See the Companies Act, section 155.

⁴³ See the Companies Act, section 81.

- (c) appoint an administrator, or recommend the appointment of a curator to the institution;
 - (d) approving the placement of an institution in business rescue or the adoption of a business rescue plan for the institution;⁴⁴
 - (e) exercising any other power conferred on the Reserve Bank by legislation dealing with the resolution of financial institutions.
- (2) An action referred to in subsection (1) that is taken without the Reserve Bank's approval is of no legal force.

⁴⁴ See the Companies Act, Chapter 6.

CHAPTER 6
CO-ORDINATION, CO-OPERATION, COLLABORATION,
CONSULTATION AND CONSISTENCY

Part 1

Co-ordination, co-operation, collaboration, consultation and consistency

Co-ordination, co-operation, collaboration and consultation between financial sector regulators and the Reserve Bank

76. (1) The financial sector regulators and the Reserve Bank must co-ordinate, co-operate, collaborate and consult with each other in relation to performing their functions in terms of this Act and the other financial sector laws.

(2) Without limiting subsection (1), the financial sector regulators and the Reserve Bank must—

- (a) generally assist and support each other in achieving their objectives;
- (b) inform each other about, and share information about, matters of common interest;
- (c) coordinate their actions to the extent that is appropriate and practicable, in particular in relation to the same person or the same matter affecting different persons or interests, including in relation to—
 - (i) making standards, or other legislative instruments, including those provided for in terms of the National Credit Act;
 - (ii) licensing;
 - (iii) on-site inspections;
 - (iv) investigations;
 - (v) enforcement actions;
 - (vi) administrative actions;
 - (vii) information sharing;
 - (viii) recovery and resolution;
 - (ix) reporting by financial institutions (including statutory reporting and other data collection measures);
 - (x) other regulatory and supervisory activities; and
 - (xi) representation at international organisations;
- (d) minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;
- (e) develop, to the extent that is appropriate, consistent policy positions in relation to financial products and financial services, including for the purposes of presentation and negotiation at relevant national and international forums; and

- (f) interact with each other in relation to strategic directions and understandings of national and international regulatory challenges.

(3) The financial sector regulators and the Reserve Bank must at least annually as part of their annual reports, or upon request, report to the Minister, the Cabinet member responsible for trade and industry and Parliament, on steps taken to co-ordinate, co-operate, collaborate and consult with each other, including the memoranda of understanding required in section 77 and policy development.

Memoranda of understanding between financial sector regulators

77. (1) The financial sector regulators, and, to the extent that is relevant, the Reserve Bank, must, as soon as reasonably practicable, but not later than six months after the effective date of this Chapter, enter into memoranda of understanding with respect to the following matters:

- (a) how, in practice, they will comply with their duties to co-ordinate, co-operate, collaborate and consult with each other, including in relation to matters referred to in section 76(2)(c);
- (b) in respect of the Prudential Authority and the Financial Sector Conduct Authority, delegations of powers and duties between them;
- (c) how they will co-ordinate the performance of their functions in terms of the Financial Intelligence Centre Act;
- (d) how differences between them are to be resolved; and
- (e) any other matter that this Act or a financial sector law requires to be included in the memoranda of understanding.

(2) A failure by the financial sector regulators to enter into a memorandum of understanding within the period specified in subsection (1), does not affect the validity of any actions taken by any of the financial sector regulators in terms of any financial sector law.

(3) The financial sector regulators and the Reserve Bank must review and update the memoranda of understanding as appropriate, but at least once every three years.

(4) As soon as practicable after agreeing or amending the memorandum of understanding, the financial sector regulators and the Reserve Bank must provide a copy to the Minister and the Minister responsible for administering the National Credit Act.

Other organs of state

78. (1) An organ of state that has regulatory or supervisory functions in respect of a financial institution must, to the extent that is reasonably practicable, consult the financial sector regulators in relation to the exercise of the organ of state's powers in respect of the financial institution.

(2) A financial sector regulator may, in writing, request an organ of state that has regulatory or supervisory functions in respect of a financial institution to give the financial sector regulator information about actions that the organ of state has taken or proposes to take in relation to the financial institution.

(3) The organ of state must give the information in response to a request made by a financial sector regulator in terms of subsection (2), if it is reasonably practicable to do so.

(4) This section does not require the organ of state to do something that contravenes another law.

(5) (a) Section 18 (2) and (3) of the Competition Act applies, with the changes required by the context, to a merger which requires the approval of the Minister, the

Prudential Authority, or the Financial Sector Conduct Authority in terms of a financial sector law.

(b) For the purposes of paragraph (a), “merger” means a merger as defined in section 12 of the Competition Act.

(c) Section 116 (4) and (9) of the Companies Act applies, with the changes required by the context, to an amalgamation or a merger which requires the approval of the Minister, the Prudential Authority, or the Financial Sector Conduct Authority in terms of a financial sector law.

(d) For the purposes of paragraph (c), “amalgamation” or “merger” means an amalgamation or merger as defined in section 1 of the Companies Act.

Part 2

Council of Financial Regulators

Council of Financial Regulators

79. (1) A council called the Council of Financial Regulators is established.

(2) The function of the Council of Financial Regulators is to facilitate co-ordination, co-operation, collaboration, consultation and consistency, by allowing senior officers of its constituent institutions to discuss and inform themselves about matters of common interest, including strategic directions to be adopted, and understanding and meeting international and domestic regulatory challenges.

(3) The members of the Council of Financial Regulators are—

- (a) the Director-General;
- (b) the Director-General of the Department of Trade and Industry;
- (c) the Director-General of the Department of Health;
- (d) the Chief Executive Officer;
- (e) the Commissioner;
- (f) the Chief Executive Officer of the National Credit Regulator;
- (g) the Chief Executive Officer of the Council for Medical Schemes;
- (h) the Deputy Governor responsible for financial stability matters;
- (i) the head, however the position may be described, of any organ of state that the Minister determines;
- (j) the head, however the position may be described, of any other organisation that the Minister determines.

(4) This section does not limit the powers or duties of the Council of Financial Regulator’s constituent institutions, including other powers and duties in relation to consultation, co-operation and co-ordination.

Meetings of Council of Financial Regulators

80. (1) Meetings of the Council of Financial Regulators must be held at least twice a year, or more frequently as may be determined by the Director-General.

(2) The Director-General, or an alternate nominated by the Director-General, chairs the meetings of the Council of Financial Regulators .

(3) The Director-General must convene a meeting at the request of a member of the Council of Financial Regulators.

(4) A member of the Council of Financial Regulators may, with the concurrence of the Director-General, nominate a senior official of the member's organisation to act as alternate for the member at a particular meeting of the Council of Financial Regulators.

(5) Meetings of the Council of Financial Regulators are conducted in accordance with procedures determined by the Council of Financial Regulators.

Working groups and subcommittees of Council

81. (1) The Council of Financial Regulators must establish separate working groups and subcommittees in respect of the following matters:

- (a) enforcement;
- (b) policy and legislation;
- (c) standard-setting;
- (d) financial sector outcomes;
- (e) financial inclusion;
- (f) any other matter that the Director-General, after consulting the other members of the Council of Financial Regulators, considers should be dealt with by a working group or subcommittee.

(2) The membership, terms of reference and procedure of a working group or subcommittee are determined by the Council of Financial Regulators.

Terms of office

82. A member of the Council of Financial Regulators, or of a working group or subcommittee, other than a member referred to in section 79(3)(a) to (h) or an alternate of those members, holds office for the period, and on the terms, determined by the Minister.

Support of Council by Financial Sector Conduct Authority

83. (1) The Financial Sector Conduct Authority must provide administrative support, and other resources, including financial resources, for the Council of Financial Regulators, and working groups and subcommittees.

(2) The Authority must—

- (a) ensure that written minutes of each meeting of the Council, and each meeting of the working groups and subcommittees, are made;
- (b) retain those minutes for at least seven years.

Part 3

Financial Sector Inter-ministerial Council

Financial Sector Inter-ministerial Council

84. (1) A council called the Financial Sector Inter-ministerial Council is established.

(2) The function of the Inter-ministerial Council is to facilitate co-ordination, co-operation, collaboration, consultation and consistency, by providing a forum for the member Ministers to discuss and consider matters of common interest, including—

- (a) strategic policy objectives and priorities;

- (b) understanding and meeting international and domestic regulatory challenges;
- (c) the approach to regulation and the regulatory standards incorporated in–
 - (i) the financial sector laws;
 - (ii) other legislation impacting upon the financial sector; and
 - (iii) legislative instruments prescribed or made in terms of the legislation referred to in subparagraphs (i) and (ii).
- (3) The members of the Inter-ministerial Council are–
 - (a) the Minister;
 - (b) the Cabinet member responsible for trade and industry;
 - (c) the Cabinet member responsible for health;
 - (d) the Cabinet member responsible for economic development.

(4) (a) This Part does not limit the powers or duties of the member Ministers referred to in subsection (3), and the departments and organs of state that fall under the auspices of the member Ministers, including other powers and duties in relation to consultation, co-operation and co-ordination.

(b) This Part does not limit the ability of the member Ministers, and the departments and organs of state that fall under the auspices of the member Ministers, from engaging in any additional processes in relation to consultation, co-operation, co-ordination, and promoting consistency.

Meetings of Inter-ministerial Council

85. (1) Meetings of the Inter-ministerial Council take place at times and places determined by the Minister.

(2) The Minister, or an alternate nominated by the Minister, chairs the meetings of the Inter-ministerial Council.

(3) The Minister must convene a meeting at the request of a member of the Inter-ministerial Council.

(4) A member of the Inter-ministerial Council may, with the concurrence of the Minister, nominate the Director-General or another senior official of the member's department to act as alternate for the member at a particular meeting of the Inter-ministerial Council.

(5) The Minister may invite any other member of the Cabinet that is not a member of the Inter-ministerial Council to attend a meeting of the Inter-ministerial Council.

(6) Meetings of the Inter-ministerial Council are conducted in accordance with procedures determined by the Inter-ministerial Council.

Application, consultation, co-ordination, and consistency of financial sector laws and other legislation

86. The Consumer Protection Act does not apply to –

- (a) any function, act, transaction, goods, financial products or financial services that is or are subject to the National Payment System Act or a financial sector law, excluding the National Credit Act; or
- (b) the Prudential Authority, the Financial Sector Conduct Authority, the Oversight Committee, Executive Committee, the Chief Executive Officer, the Commissioner, or a Deputy Commissioner referred to in a financial sector law.

(2) (a) The Cabinet member responsible for trade and industry may request the Inter-ministerial Council to discuss and consider whether or not a provision in a financial sector law, or a legislative instrument that is issued or is proposed to be issued in terms of a financial sector law, provides for a standard of protection for financial customers that is of an equivalent or higher standard to the protection provided for financial customers in terms of the National Credit Act or the Consumer Protection Act.

(b) The Inter-ministerial Council, after considering a matter referred to it in terms of paragraph (a), may make recommendations regarding how a provision in a financial sector law or a legislative instrument may be appropriately amended or implemented, in order to ensure that it provides for a standard of protection for financial customers that is equivalent to or higher than the standard of protection that is provided in terms of the National Credit Act or the Consumer Protection Act.

Part 4

Consultation arrangements

Requirement to have consultation arrangements

87. (1) The financial sector regulators must have arrangements in place for consulting representatives of financial institutions and financial customers on—

- (a) the extent to which the policies and practices of the financial sector regulators are consistent with meeting their respective objectives in terms of the financial sector laws;
- (b) legislative instruments that are proposed to be made by the financial sector regulators.

(2) A financial sector regulator must publish its consultation arrangements on the regulator's official website.

(3) A financial sector regulator may put in place and engage in consultation arrangements in addition to those referred to in subsection (1).

Part 5

Consistency with comparable regulatory regimes

Consistency with comparable regulatory regimes

88. (1) The Reserve Bank, the Prudential Authority, and the Financial Sector Conduct Authority may, in accordance with this section, jointly deem the requirements imposed by a foreign jurisdiction as being equivalent to the requirements imposed in terms of the financial sector laws, if the legislative and regulatory framework established in that foreign jurisdiction meets the objects of the financial sector laws.

(2) When considering the equivalence of the regulatory regime in a foreign jurisdiction—

- (a) the Reserve Bank must assess the clarity and coverage of stability-related principles applied by the overseas regulator relative to the stability-related principles applied by the Reserve Bank;
 - (b) the Prudential Authority and the Financial Sector Conduct Authority must take into account the nature and intensity of the overseas regulator's oversight process, including direct comparison with the regime applied by the Prudential Authority and the Financial Sector Conduct Authority;
 - (c) the Prudential Authority and the Financial Sector Conduct Authority must take into account observed outcomes relative to those in South Africa, as reflected in an initial assessment of market infrastructures operating under the relevant overseas regime;
 - (d) the Prudential Authority and the Financial Sector Conduct Authority must take into account the need to prevent regulatory arbitrage.
- (2) The Reserve Bank, the Prudential Authority, and the Financial Sector Conduct Authority, after the assessments referred to above have been completed, may jointly recognise the regulatory regime in a foreign jurisdiction as being equivalent to the regulatory regime established in terms of the financial sector laws.
- (3) The Reserve Bank, the Prudential Authority and the Financial Sector Conduct Authority may jointly withdraw a recognition referred to in subsection (2), where the conditions set out in subsection (1) are no longer met.
- (4) In order to facilitate –
- (a) co-ordination, co-operation, collaboration, consultation, comparability and consistency between the financial sector regulators and financial sector regulators in foreign jurisdictions;
 - (b) consistency between the regulatory regime established in terms of the financial sector laws and the comparable regulatory regimes in other foreign jurisdictions; and
 - (c) consistency between the regulatory regime established in terms of the financial sector laws and international regulatory standards,
- the financial sector regulators may share information and enter into memoranda of understanding and other agreements as contemplated in section 197.

CHAPTER 7

LEGISLATIVE INSTRUMENTS

Part 1

Making legislative instruments

Application

89. (1) This Chapter applies to all financial sector laws, except as provided in this Act.

(2) This Chapter applies notwithstanding provisions relating to making legislative instruments in a financial sector law, except to the extent that the financial sector law contains provisions providing for matters and requirements that are additional to, and are not inconsistent with, this Part.⁴⁵

Consultation requirements

90. (1) Subject to section 91, the financial sector regulator who makes a legislative instrument, prior to making a legislative instrument, must –

(a) publish a draft of the instrument, accompanied by–

(i) a statement explaining –

(aa) the need for the instrument

(bb) the intended operation of the instrument;

(ii) a notice stating–

(aa) that any person may make a submission about the need for, and the content of, the instrument; and

(bb) where and how submissions may be made, and the period for making submissions, which must be at least 60 days; and

(b) engage in the regulator's consultation arrangements that are referred to in section 87(1)(b);

(2) The financial sector regulator must provide a copy of the documents referred to in subsection (1) to each financial sector regulator, the Reserve Bank and the Director-General.

(3) The financial sector regulator must, when deciding whether to make the legislative instrument, consider all of the submissions made, and the expected impact of the instrument.

(4) If the financial sector regulator proposes, whether or not as a result of the consultation process, to make a legislative instrument that is materially different in substance to the draft instrument that was published in terms of subsection (1), the financial sector regulator must, before making the instrument, again follow the procedure in subsection (1).

Urgency

91. (1) Subject to subsections (4) and (5), if the financial sector regulator who makes a legislative instrument considers on reasonable grounds that it is necessary to

⁴⁵ for example, by providing for additional criteria for revoking licences.

make a legislative instrument urgently, it may do so without having complied, or complied fully, with section 90.

(2) A legislative instrument made in terms of subsection (1) ceases to have effect at the end of 12 months after it comes into operation.

(3) Action taken by a financial sector regulator in terms of a legislative instrument made in terms of subsection (1) while the legislative instrument is in effect is valid, even if the legislative instrument subsequently ceases to have effect in terms of subsection (2).

(4) If a legislative instrument is made in terms of subsection (1), the financial sector regulator must, as soon as practicable after the instrument is made—

- (a) publish the instrument, accompanied by a statement stating—
 - (i) the need for the instrument;
 - (ii) the intended operation of the instrument;
 - (iii) the reasons for making the instrument without having complied, or complied fully, with section 90;
 - (iv) that any person may make a submission about the need for, and the content of, the instrument; and
 - (v) where and how submissions may be made, and the period for making submissions, which must be at least 60 days;
- (b) engage in the regulator's consultation arrangements that are referred to in section 87(1)(b); and
- (c) after considering all the submissions made and any other relevant matter, determine whether the instrument—
 - (i) should be repealed or allowed to lapse; or
 - (ii) should be remade, and, if so, whether it should be remade in an amended form.

Reports on consultation processes

92. (1) With each legislative instrument made by a financial sector regulator, the regulator must publish a report of the consultative process undertaken in respect of the instrument.

(2) A report in terms of this section must include—

- (a) a general account of the issues raised in submissions;
- (b) a response to the issues raised in submissions; and
- (c) a statement of the expected impact of the instrument.

Part does not limit consultation processes

93. This Part does not prevent a financial sector regulator from engaging in consultations in addition to those required by this Part.⁴⁶

⁴⁶ For example, by holding a public hearing.

*Part 2**Standards for financial institutions***Prudential standards⁴⁷**

94. (1) The Prudential Authority may make prudential standards with respect to the safety and soundness of financial institutions for the following purposes:

- (a) ensuring that financial product providers will be able to comply with their obligations to financial customers in relation to financial products;
- (b) ensuring that payment system operators, market infrastructures, participants in the payment system and members of market infrastructures, will be able to comply with their obligations to each other and financial customers, as applicable;
- (c) assisting in maintaining financial stability.

(2) Without limiting subsection (1), a prudential standard may make provision with respect to any of the following matters, to achieve a purpose set out in subsection (1):

- (a) financial soundness requirements, including in relation to—
 - (i) capital and liquidity;
 - (ii) valuation and provisioning requirements and methods;
 - (iii) asset quality;
 - (iv) investments;
 - (v) acquisitions and disposals;
 - (vi) use of financial instruments, including derivatives;
 - (vii) off balance sheet transactions;
 - (viii) insurance and, in the case of insurers, re-insurance arrangements; and
 - (ix) actuarial and accounting standards;
 - (x) transactions that may increase, encumber or reduce assets or liabilities;

or

 - (xi) shares, other securities or capital structures;
- (b) fit and proper person requirements for financial institutions and key persons, including—
 - (i) personal character qualities of honesty and integrity;
 - (ii) competence, including —
 - (aa) experience;
 - (bb) qualifications;
 - (iii) financial standing;
- (c) governance of financial institutions, including in relation to—
 - (i) the composition and governance of governing bodies;
 - (ii) the roles and responsibilities of governing bodies;
 - (iii) the structure of governing bodies, including the committees that must be established;
 - (iv) the duties of directors;
 - (v) the appointment, approval or notification, and the responsibilities and duties of key persons;

⁴⁷ Part 1 of Chapter 7 applies to prudential standards.
Prudential standards will be published on the Register.
Prudential standards can be applied to financial conglomerates in terms of Chapter 11.

- (vi) remuneration, reward and incentive arrangements for key persons or for persons to whom the financial institution has outsourced an activity;
 - (d) risk management arrangements;
 - (e) internal control arrangements;
 - (f) outsourcing and insourcing by financial institutions;
 - (g) data management;
 - (h) disclosure and reporting requirements for financial institutions, including requirements in relation to financial statements, accounting and auditing;
 - (i) the provision of reports and information to the Prudential Authority by financial institutions and key persons;
 - (j) outsourcing and insourcing arrangements;
 - (k) custody, separation and protection of financial products and funds;
 - (l) operational ability (including the adequacy and appropriateness of resources, including human resources, technical resources, and financial resources) of, or available to financial institutions;
 - (m) amalgamations, mergers, transfers, acquisitions or disposals;
 - (n) business continuity and disaster recovery plans; and
 - (o) recovery and resolution.
- (3) A prudential standard may apply to –
- (a) financial institutions, key persons, financial products, market infrastructures or payment systems generally; or
 - (b) particular categories or sub-categories of financial institutions, key persons, financial products, market infrastructures or payment systems.
- (4) A prudential standard may –
- (a) impose requirements for the approval of the Prudential Authority in respect of specified matters, including the appointment of key persons;
 - (b) impose limitations or prohibitions; or
 - (c) apply retrospectively.
- (5) A prudential standard with respect to accounting standards and requirements applies despite any contrary requirement in a legislative instrument made in terms of a law that applies to financial institutions.
- (6) The Prudential Authority may amend any prudential standard from time to time, and financial institutions and key persons must comply with the amended prudential standard within the period determined by the Prudential Authority.

Conduct standards⁴⁸

95. (1) The Financial Sector Conduct Authority may make conduct standards with respect to–

- (a) the conduct of regulated persons in relation to providing financial products or financial services;
- (b) financial products or financial services;
- (c) the conduct of a payment system operator or market infrastructure, provided that conduct has a material impact on a financial customer;

for the following purposes:

⁴⁸ Part 1 of Chapter 7 applies to conduct standards.
 Conduct standards will be published on the Register.
 Conduct standards can be applied to financial conglomerates in terms of Chapter 11.

- (i) ensuring the protection and fair treatment of financial customers;
 - (ii) enhancing the efficiency and integrity of and confidence in the financial system;
 - (iii) promotion of financial literacy and financial capability; and
 - (iv) assisting in maintaining financial stability.
- (2) Without limiting subsection (1), a conduct standard may make provision with respect to any of the following matters, to achieve a purpose set out in subsection (1):
- (a) fit and proper person requirements for financial institutions and key persons, including—
 - (i) personal character qualities of honesty and integrity;
 - (ii) competence, including –
 - (aa) experience;
 - (bb) qualifications;
 - (cc) knowledge testing
 - (iii) financial standing;
 - (b) governance of financial institutions, including in relation to—
 - (i) the composition and governance of governing bodies;
 - (ii) the roles and responsibilities of governing bodies;
 - (iii) the structure of governing bodies, including the committees that must be established;
 - (iv) the duties of directors;
 - (v) the appointment, approval or notification, and the responsibilities and duties of key persons;
 - (vi) remuneration, reward and incentive arrangements for key persons or for persons to whom the financial institution has outsourced an activity;
 - (c) risk management and compliance arrangements for financial institutions;
 - (d) internal control arrangements of financial institutions;
 - (e) standards of business conduct for financial institutions, including for their agents, employees, financial institution representatives, or persons whom they have mandated to perform an activity or to whom they have outsourced an activity;
 - (f) promotion, marketing, distribution of or access to financial products, financial services, market infrastructures or payment systems;
 - (g) disclosures in relation to financial products, financial services, market infrastructures or payment systems provided or offered to financial customers, including in relation to the format and timing of those disclosures;
 - (h) giving advice, recommendations or guidance to financial customers in relation to financial products, financial services or in relation to financial planning;
 - (i) ensuring that financial products or financial services, provided or offered to financial customers are suitable to their circumstances, financial situation, financial product experience and objectives;
 - (j) standards for financial products or financial services, including in relation to the design, pricing and valuation thereof and the applied methodologies;
 - (k) standards for price formation, orderly trading and transparency, for financial institutions operating a market infrastructure or payment system;
 - (l) standards for prospectuses of listed securities;
 - (m) standards for contracts or any other arrangements for the provision to financial customers of financial products, financial services, market infrastructures or

- payment systems, including standard provisions, and provisions that may not be included;
- (n) standards for the management and resolution of complaints, including the provision of appropriate redress;
 - (o) remuneration, rewards and incentives in relation to the provision of financial products, financial services, market infrastructures or payment systems, including remuneration payable to persons that promote, market, distribute or provide access to financial products;
 - (p) the execution of transactions by agents, employees or financial institution representatives, or financial customers or persons to whom they have outsourced an activity;
 - (q) preventing abusive market practices;
 - (r) the responsibility of financial institutions for the acts and omissions of their agents, employees, financial institution representatives, or persons to whom they have outsourced an activity;
 - (s) record keeping by financial institutions;
 - (t) disclosure and reporting requirements for financial institutions, including requirements in relation to financial statements, accounting and auditing;
 - (u) the provision of reports and information to the Financial Sector Conduct Authority by financial institutions and key persons;
 - (v) outsourcing and insourcing arrangements of financial institutions;
 - (w) custody, separation and protection of financial products and funds;
 - (x) in respect of financial institutions that do not provide financial products, market infrastructures or payment systems -
 - (i) financial soundness requirements, including in relation to—
 - (aa) capital and liquidity;
 - (bb) valuation and provisioning requirements and methods;
 - (cc) asset quality;
 - (dd) investments;
 - (ee) insurance;
 - (ii) operational ability (including the adequacy and appropriateness of resources, including human resources, technical resources, and financial resources) of, or available to financial institutions that do not provide financial products;
 - (iii) amalgamations, mergers, transfers or disposals of financial institutions or parts of the business of financial institutions;
 - (iv) business continuity and disaster recovery plans;
 - (v) recovery and resolution;
- (3) A conduct standard may apply to—
- (a) financial institutions, key persons, financial products, financial services, financial customers, financial institution representatives, market infrastructures or payment systems generally; or
 - (b) particular categories or sub-categories of financial institutions, key persons, financial products, financial services, financial institution representatives, financial customers, market infrastructures or payment systems.
- (4) A conduct standard may –
- (a) impose requirements for the approval of the Financial Sector Conduct Authority in respect of specified matters, including the appointment of key persons;
 - (b) prohibit certain conduct or products;

- (c) impose requirements regarding the circumstances in which, or conditions subject to which a person may perform or be appointed to perform activities for or on behalf of a financial institution; or
- (d) apply retrospectively.

(5) The Financial Sector Conduct Authority may amend any conduct standard from time to time and financial institutions and key persons must comply therewith within the period determined by the Financial Sector Conduct Authority.

Joint standards

96. (1) The Prudential Authority and the Financial Sector Conduct Authority may make standards jointly, if they consider it convenient and appropriate to do so.⁴⁹

(2) A joint standard may be issued by both the Prudential Authority and the Financial Sector Conduct Authority on any matter provided for in section 2(1)(h), section 94 or section 95, even if only one of the authorities is given the power to do so in terms of those sections.

(3) When it is in the interests of financial stability, the Prudential Authority or the Financial Sector Conduct Authority may issue standards jointly with the Reserve Bank, in relation to matters that either the Prudential Authority in terms of section 94, or the Financial Sector Conduct Authority in terms of section 95, as the case may be, may make standards on.

(4) Any standard made by the Prudential Authority or the Financial Sector Conduct Authority in relation to a payment system operator or a participant in the payment system must be issued as a joint standard with the South African Reserve Bank.

⁴⁹ For example, it may be appropriate to make standards jointly to reduce administrative burdens or duplication, in areas such as licensing processes.

CHAPTER 8

Licensing

Licensing of financial products, financial services, market infrastructures, payment system operators and payment system participants

97. (1) In respect of financial products, financial services, market infrastructures, payment system operators and payment system participants that are regulated in terms of another financial sector law or the National Payment System Act, subject to subsection (3), that legislation and the requirements specified in that legislation, apply in relation to the granting, issuing, imposing conditions on, varying, suspending and cancelling of a licence in respect of those financial products, financial services, market infrastructures, payment system operators and payment system participants.

(2) The financial sector regulator that is designated in Schedule 2 as the licensing authority for a financial sector law is responsible for granting, issuing, imposing conditions on, varying, suspending or cancelling a licence in terms of the financial sector law.

(3) Sections 98, 109, 110, and 203 apply to the licensing of financial products and financial services that are regulated in terms of any financial sector law.

(4) Sections 99 to 108 only apply in relation to the licensing of financial products and financial services which are designated either as financial product in terms of section 2(2), or a financial service in terms of section 3(2).

Licence required for providing financial products, financial services, market infrastructures or payment systems

98. (1) No person may provide a financial product, financial service, market infrastructure or payment system in the Republic, unless that person is licensed in terms of a financial sector law or the National Payment System Act.

(2)(a) A financial sector regulator may exempt a specified provider of a financial product, a financial service, or a market infrastructure from having to be licensed.

(b) An exemption referred to in paragraph (a) may be made by –

- (i) in the case of a financial product provider, subject to section 231, mark, the Prudential Authority;
- (ii) in any other case, the Financial Sector Conduct Authority.

Requirements for licensing

99. (1) A financial sector regulator must determine in standards requirements for the licensing of an applicant for a licence, including requirements relating to–

- (a) the institutional form of an applicant;
- (b) an applicant's business activities, including any limitation on specified business activities;
- (c) the name or proposed name of an applicant.

(2) A financial sector regulator may determine different licensing requirements for different categories or sub-categories of applicants.

(3) An application for a licence must be made in the manner and contain the information determined in standards by the financial sector regulator, and an applicant must demonstrate to the satisfaction of the regulator that–

- (a) it complies and will continue to comply with the requirements of any financial sector law applicable to the applicant; and

(b) the issue of the licence will not be contrary to the interests of financial customers, the financial sector or the public interest.

(4) A financial sector regulator, in respect of an application for a licence, may require a person to furnish additional information and require that person to verify that information or any information that accompanied the application in the manner specified by the financial sector regulator.

(5) The financial sector regulator is not required to consider an application until all of the information that has been requested in terms of subsection (4) is provided.

Licensing

100. (1) An application for a licence must be made to –

- (a) in the case of a financial product provider, subject to section 231, the Prudential Authority;
- (b) in the case of a payment system operator or a payment system participant, to the Reserve Bank;
- (c) in any other case, the Financial Sector Conduct Authority.

(2) (a) A financial sector regulator must, on granting an application, issue a licence to a financial institution and publish a notice of the licensing on the regulator's official web site.

(b) The licence must specify –

- (i) the category and subcategories of financial products, financial services, market infrastructures, payment systems and financial customers in respect of which the financial institution is licensed;
- (ii) any conditions subject to which the licence is granted.

Matters to be considered for licensing

101. When considering an application for the issue or renewal of a licence, the matters that a financial sector regulator must consider include–

- (a) the risk of a contravention of a financial sector law;
- (b) any matter specified in a financial sector law and the objectives of a financial sector law;
- (c) any relevant information derived from whatever source.

Licensing application deemed to be refused

102. (1) If–

- (a) an application is made to a financial sector regulator for the issue or renewal of a licence ; and
- (b) at the end of the a period of 90 days after the application is submitted to the financial sector regulator, or a longer period that may be determined by the financial sector regulator in terms of section 217,⁵⁰ the regulator has not given the applicant notice of the regulator's decision regarding the application,

the application is deemed to have been refused.

(2) If a financial sector regulator requested additional information in terms of section 99(4), or in terms of a similar provision of the financial sector law in terms of which the application was made, then the period between when the notice requesting

⁵⁰ A decision period may be extended – see section 217.

the additional information was given to the applicant and when the information sought was provided by the applicant to the financial sector regulator is not considered when determining whether the period referred to in subsection (1)(b) has ended.

Licences may be subject to conditions

103. (1) Subject to section 109, a licence may be issued or renewed subject to conditions specified in the licence.

(2) The conditions must be imposed to assist in achieving the objects of this Act.

Licences may be varied

104. (1) Subject to section 109, the financial sector regulator that issued a licence may, by notice to the licensee, vary the licence by—

- (a) imposing a condition on the licence;
- (b) varying a condition;
- (c) omitting a condition; or
- (d) varying any category or sub-category of financial products, financial services, market infrastructure or payment system that the licensee is authorised to provide or any category or sub-category of financial customer to whom those products and services may be provided.

(3) The regulator must publish the variation of a licence on its official website.

Licensees' reporting obligations

105. (1) A licensed financial institution must report any of the following matters, without delay, to the financial sector regulator that granted the licence:

- (a) the fact that the licensed financial institution has contravened, is contravening or is likely to contravene a financial sector law;
- (b) the licensed financial institution has become aware that information given in connection with the application for the licence was false or misleading in a material respect; or
- (c) an event or circumstance occurs that is specified in a condition of a licence or a standard.

(2) Subsection (1) also applies in relation to events and circumstances that occur while a licence is suspended.

Licences cannot be transferred

106. A licence cannot be transferred from the licensee to another person.

Cancellation of licences

107. (1) Subject to section 109, the financial sector regulator that issued the licence must, by notice to the licensee, cancel the licence if—

- (a) the licensee makes a written request for the licence to be cancelled;
- (b) the licensee, being a natural person—
 - (i) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury;
 - (ii) is finally sequestrated; or
 - (iii) dies;
- (c) the licensee, being any other person, is finally liquidated or dissolved;
- (d) the business of the licensee relating to a financial service or financial product has become dormant;

- (e) the licensee is not or has not been carrying out a licensed activity within a period of 12 months;
- (2) The licensee, a key person of the licensee or another person in control of the affairs of the licensee, as the case may be, must notify the regulator in writing of the occurrence of a circumstance contemplated in subsection (1)(b) to (e).
- (3) The regulator must publish the cancellation of a licence on its official website, the Register and, if necessary, in any other appropriate media.
- (4) The regulator may refuse a request for cancellation of a licence in terms of this section if it would not be in the best interest of financial customers or frustrate the objects of a financial sector law.
- (5) A cancellation of a licence takes effect on a date specified by the regulator.
- (6) The regulator may impose conditions to which the cancellation is subject, including that arrangements to the satisfaction of the regulator must be made regarding the financial customers of the licensee, the orderly resolution of the business of the licensee or any other matter to meet the objects of a financial sector law.

Licences may be suspended or withdrawn

108. (1) Subject to section 109, the financial sector regulator that issued a licence may, by notice to the licensee, suspend or withdraw the licence if—

- (a) in the case of a suspension, it appears to the regulator or, in the case of a withdrawal, the regulator is satisfied that –
 - (i) the licensee is not satisfactorily carrying out any of the licensed activities;
 - (ii) a condition of the licence has not been complied with;
 - (iii) the licensee contravened a financial sector law;
 - (iv) the licensee failed to comply with, a regulator’s directive, an enforceable undertaking, a court order secured in terms of a financial sector law or a decision of the Tribunal;
 - (v) the licensee contravened a law of a foreign country that corresponds to a financial sector law;
 - (vi) information provided in relation to the application for the licence or a renewal of the licence was false or misleading in a material respect; or
 - (vii) it is necessary to do so to prevent a contravention of a financial sector law; or
 - (b) fees or charges payable in respect of the licence, or the levy or an administrative penalty payable by the licensee, and any interest payable, are unpaid and have been unpaid for at least 14 days after they became payable.
- (3) The financial sector regulator may, by notice to the licensee, at the time when the licence is suspended or withdrawn, or at a later time, impose conditions on the licensee related to the suspension or withdrawal.
- (4) A person who engages in conduct that contravenes a condition imposed on the licensee by a financial sector regulator in terms of subsection (3), commits an offence as referred to in section 203(3).
- (5) A notice of suspension in terms of subsection (1) must state that the licence may be cancelled after the end of 30 days after the notice is given.

(6) A licence has no effect while it is suspended, but the suspension of a licence does not affect any obligation that the licensee has as a licensee.⁵¹

(7) If a licence is suspended, the financial sector regulator that suspended it may at any time revoke the suspension.

(8) Subject to any contrary provision in a financial sector law, the suspension or withdrawal of a licence takes effect from the day the notice of suspension or withdrawal is issued by the regulator.

(9) The regulator must publish the suspension or withdrawal and the reasons for the suspension or withdrawal on the regulator's official website and, if necessary, in any other appropriate media.

Concurrence requirements

109. (1) The issue, variation, cancellation, suspension and withdrawal of licences in terms of sections 99 to 108, or in terms of another financial sector law, in accordance with section 97(1), are subject to this section, and this section applies despite any contrary provision in a financial sector law.

(2) A financial sector regulator must not—

- (a) issue, renew or vary a licence;
- (b) cancel, suspend or withdraw a licence, including at the licensed financial institution's request;
- (c) revoke a suspension of a licence; or
- (d) grant an exemption in terms of section 98(2);

unless—

- (i) the other financial sector regulator has concurred;
- (ii) in accordance with the section 77 memorandum of understanding, it has been agreed that the other regulator's concurrence may be assumed in respect of matters that do not relate to the objectives of the other financial sector regulator; or
- (iii) in the case of a systemically important financial institution, the Reserve Bank has concurred.⁵²

Obligation of licensed financial institution in respect of licence

110. (1) A financial institution must ensure that—

- (a) a reference to the fact that a licence is held is contained in all business documentation, advertisements and other promotional material; and
- (b) its licence is at all times available to any person requesting proof of its licence status in terms of authority of a law or for the purpose of entering into a business relationship with the financial institution.

⁵¹ For example, reporting obligations.

⁵² The other financial sector regulator's consideration of an application will be limited to matters relating to its objective— see sections 28 and 52.

CHAPTER 9
INFORMATION GATHERING, ON-SITE INSPECTIONS AND
INVESTIGATIONS

Part 1

Preliminary

Application

111. In addition to the Prudential Authority and the Financial Sector Conduct Authority, this Chapter applies to the Council for Medical Schemes, and for the purposes of this Chapter, “financial sector regulator” means the Prudential Authority, the Financial Sector Conduct Authority, and the Council for Medical Schemes.

Part 2

*Obligations to provide information to financial sector regulators*⁵³

Information requests

112. (1) (a) In addition to any other power to request information, a financial sector regulator may require a person to furnish the regulator, within a specified period, with specified information or documents, in the form and manner specified by the regulator.

(b) Without limiting paragraph (a), a financial sector regulator may require information from –

- (i) a person with whom a financial institution has entered into any arrangement regarding financial products or financial services;
- (ii) a key person of a financial institution.

(c) Information requested may include–

- (i) qualitative or quantitative elements;
- (ii) historic, current or prospective elements;
- (iii) data from internal or external sources; and
- (iv) any appropriate combination of the types of information referred to in subparagraphs (i) to (iii).

Reviews and other powers of financial sector regulator

113. (1) A financial sector regulator may, at any time, require a regulated person to demonstrate compliance with a financial sector law.

(2) A financial sector regulator may at any time direct a regulated person to have its accounts, records or financial statements audited by the auditor of that regulated person, or by another auditor identified by the financial sector regulator, at the cost of the regulated person, and to submit the results of the audit to the financial sector regulator within a specified time.

⁵³ Prudential standards and conduct standards may also include requirements to provide information to financial sector regulators.

(3) A financial sector regulator may, at any time, if the regulator has a concern that a financial sector law may have been contravened, and a matter must be examined or verified, direct a regulated person to secure the examination or verification of the matter by a person nominated by the financial sector regulator, at the cost of the regulated person, by a specified date or within a specific period, in the form, manner and containing the information required by the financial sector regulator.

(4) A financial sector regulator may, at any time, hold discussions with a regulated or a key person, or any related party of a regulated person, for the purposes of –

- (a) effective supervision by the financial sector regulator; or
- (b) bringing to the attention of the person any material concern of the financial sector regulator, with a view to taking timely preventive and corrective measures to resolve the concern.

Part 3

On-site inspections

On-site inspections

114. (1) A financial sector regulator may conduct an on-site inspection at any time.

(2) An on-site inspection must be conducted with strict regard to decency and good order.

(3) When conducting an on-site inspection, a financial sector regulator has a right of access to any business document and may–

- (a) at any time during business hours–
 - (i) enter a regulated person’s business premises, and that person must, upon request, provide reasonable access to the premises and provide any document relating to the on-site inspection;
 - (ii) examine, make extracts from and copy any business document;
 - (iii) question any person whom the financial sector regulator believes may have information relevant to the inspection;
 - (iv) where it appears to the financial sector regulator that a contravention of a financial sector law has occurred or is likely to occur–
 - (aa) issue an instruction prohibiting the removal or destruction of any business document; or
 - (bb) against a receipt, remove any business document to prevent its concealment, removal, dissipation or destruction until the completion of any proceedings or administrative action;
- (b) instruct the regulated person to produce at a specified time and place and in the manner determined by the financial sector regulator–
 - (i) a specified business document or a business document of a specified description in the possession or under the control of the regulated person; or
 - (ii) furnish the financial sector regulator with information in respect of that business document; and
- (c) instruct a person that is in possession of or has under the person’s control a business document relating to the business of the regulated person to –
 - (i) produce that business document; or

(ii) furnish the financial sector regulator with information in respect of that business document, at a specified time, place and in the manner determined by the financial sector regulator.

(4) (a) A regulated person may, during normal office hours and under the supervision of the financial sector regulator, examine and make extracts from any document removed from that person in terms of subsection (3)(a)(iv)(bb).

(b) A financial sector regulator may refuse a regulated person access to a document if the person may use the information contained in that document to the detriment of the on-site inspection or of financial customers, or to hinder any proceedings or administrative action.

Part 4

Investigations

Appointment of investigators and instructing investigations

115. (1) A financial sector regulator may appoint investigators from time to time.

(2) A financial sector regulator may, at any time, instruct an investigator to carry out an investigation, –

- (a) if the financial sector regulator reasonably suspects that a person has contravened, or is in contravention of, a financial sector law; or
- (b) to determine whether a person has conducted or is conducting a regulated activity; or
- (c) in order to comply with a request by a requesting authority pursuant to an agreement, communiqué or memorandum of understanding contemplated in section 197, of the affairs or part of the affairs of a person.

(3) An investigator may, with the consent of the financial sector regulator, appoint any person to assist in carrying out an investigation.

Powers of investigators regarding examinations

116. (1) When carrying out an investigation, an investigator may summon any person, whom the investigator has reason to suspect may be able to provide information relating to the investigation, or is in possession of, or has under the person's control, any document relating to the investigation to–

- (a) appear to be examined; or
- (b) lodge the document with the investigator; or
- (c) lodge the document with the investigator and be examined;

at a time and place specified in the summons.

(2) An investigator may–

- (a) administer an oath or affirmation, or otherwise examine any person referred to in subsection (1); and
- (b) examine and copy or, against the issue of a receipt, retain any document referred to in subsection (1) for as long as it may be required.

(3) An investigator may determine the time and place of any examination in terms of subsection (1), and may determine who may be present at an examination.

(4) Despite subsection (3), a person examined in terms of this section may have a ‘legal practitioner’ as defined in the Legal Practice Act, 2014 (Act No. 28 of 2014) present as a legal representative.⁵⁴

(5) A person examined in terms of subsection (1) must answer each question truthfully and to the best of that person’s ability, but–

- (a) the person is not obliged to answer any question on good cause shown, including the right not to answer if the answer is self-incriminating; and
- (b) the investigator examining the person must inform the person of the right not to answer a question in the circumstances described in subparagraph (a).

(6)(a) Despite subsection (5) (a), where an investigator, after consultation with the financial sector regulator, is satisfied that a matter under investigation will not be referred for criminal prosecution and that it will be in the public interest to obtain information, the investigator may oblige a person to answer even if the answer is self-incriminating.

(b) No self-incriminating answer given or statement made pursuant to subparagraph (a), is admissible as evidence against the person who gave the answer or made the statement in any criminal proceedings, except in criminal proceedings for perjury.

Powers of investigators regarding searches

117. (1) When carrying out an investigation, an investigator may, on the authority of a warrant, at any time, without prior notice–

- (a) enter and search the premises referred to in the warrant and require the production of any document relating to the investigation;
- (b) cause to be opened any strongroom, safe or other container in which the investigator reasonably suspects that any document relating to the investigation is kept;
- (c) examine and make extracts from and copies of any document relating to the investigation or, against the issue of a receipt, remove the document temporarily for that purpose;
- (d) use any computer system on the premises, or require the assistance of any person on the premises to use that computer system, to–
 - (i) search any data contained in or available to that computer system; or
 - (ii) reproduce any record from that data;
- (e) seize any output from that computer for examination and copying;
- (f) against the issue of a receipt, seize any document if the investigator has reason to suspect that the document contains information relevant to the investigation; and
- (g) retain any seized document for as long as it may be required.

(2) (a) A person or the person’s authorised representative may, during normal office hours, examine, copy and make extracts from any document seized or retained in terms of subsection (1) from the person, under the supervision of the financial sector regulator or an investigator.

⁵⁴ In that Act, “legal practitioner” is defined as “an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30, respectively;”. Sections 24 and 30 provide that a person may practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of that Act. If this Act has not commenced when this Bill is tabled, the reference should be “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)”.

(b) The financial sector regulator or an investigator may refuse a person access to a document if the person may use the information contained in the document to the detriment of the investigation or of financial customers.

(3) An investigator may enter premises without the authority of a warrant as contemplated in subsection (1), if—

- (a) the person in control of the premises consents to the search; or
- (b) the investigator on reasonable ground believes that—
 - (i) a warrant will be issued if it is applied for; and
 - (ii) that the delay in obtaining the warrant is likely to defeat the purpose of search.

(4) (a) A warrant contemplated in subsection (1) may be issued on application of an investigator, by a judge or magistrate who has jurisdiction in the area where the premises referred to in subparagraph (b)(ii) are located.

(b) A warrant may only be issued if it appears from information under oath that there is a reasonable suspicion that—

- (i) a contravention of a financial sector law has taken place, is taking place, or is likely to take place; and
- (ii) a document relating to the investigation is kept at the premises concerned.

(5) Any entry upon or search of the premises in terms of this section must be—

- (a) executed by day, unless the execution of the warrant by night is justifiable and necessary; and

(b) conducted with strict regard to decency and good order, including the protection of a person's right to—

- (i) respect for and protection of dignity;
- (ii) freedom and security; and
- (iii) personal privacy.

(6) An investigator may be accompanied and assisted by a police officer or a person appointed in terms of section 115(3) during the entry and search of the premises, provided that only those members of the police force or assistants whose presence is necessary for the purposes of conducting the investigation, may enter the premises.

(7) When entering any premises to conduct a search, an investigator —

- (a) must inform the person in charge of the premises, if a person is present—

- (i) of the purpose of the entry;
- (ii) that the person has the right to be present, or to appoint a delegate to be present, during the search; and
- (iii) of that person's right to claim the existence of legal professional privilege in respect of a relevant document;

(b) must affix a copy of the warrant to the premises at a prominent and visible place, if a person is not present at the premises;

(c) where applicable, produce the warrant issued in terms of subsection (4);

(d) must only undertake actions that are reasonably necessary for the purpose of the search or investigation; and

(e) may, either before or after complying with paragraph (a), take those steps that the investigator considers necessary to prevent persons present on the premises from concealing, destroying or tampering with any document located on the premises.

(8) (a) If, during the carrying out of a search, a person alleges the existence of legal professional privilege as contemplated in subsection (7)(a)(iii), the investigator—

- (i) must seal the relevant document in the presence of the person;
- (ii) may remove the sealed document after issuing a receipt;
- (iii) must, within a reasonable period, hand the sealed document in at the Secretary of the Tribunal who heads the Secretariat contemplated in section 159 for safe custody.

(b) The person that claimed the existence of legal professional privilege must, within seven days after seizure of the document, apply to the High Court referred to in subsection (4)(a) for a determination of whether the privilege applies to the document in question.

(c) If no application is made within the period referred to in paragraph (b), the Secretary may release the document into the custody of the investigator, who may use the document for the purposes of the investigation.

Costs of investigations

118. All expenses necessarily incurred by and the remuneration of any investigator or assistant appointed in terms of section 115(3) may be recovered from—

- (a) a person who has lodged the complaint on which the investigation is based, if, considering the results of the investigation, the complaint is frivolous, and the financial sector regulator may require the person to furnish security that the financial sector regulator determines is satisfactory and sufficient to cover the expenses and remuneration; or
- (b) any person, when it appears after considering the outcome of an investigation, that the person has contravened a financial sector law, and where the financial sector regulator does not impose an administrative penalty as contemplated in section 151.

CHAPTER 10

SIGNIFICANT OWNERS

Significant owners

119. (1) For the purposes of a financial sector law, a person is a significant owner of a financial institution if that person, directly or indirectly, alone or together with a related or inter-related person –

- (a) has the power to appoint a person to be a director of the governing body of the financial institution;
 - (b) must consent to the appointment of a person as a director of a governing body of the financial institution;
 - (c) in the case of a financial institution that is a company, –
 - (i) holds 15% or more of the issued shares of the financial institution, or a lower percentage prescribed by the Minister in Regulations;
 - (ii) is able to exercise or control the exercise of 15% or more of the voting rights associated with securities of that financial institution, or a lower percentage prescribed by the Minister in Regulations, whether pursuant to a shareholder agreement or otherwise; or
 - (iii) holds rights in relation to the financial institution that, if exercised, would result in that person –
 - (aa) holding 15% or more of the securities of that financial institution, or a lower percentage prescribed by the Minister in Regulations;
 - (bb) having the ability to exercise or control 15% or more of the voting rights attached to shares or other securities of the financial institution, or a lower percentage prescribed by the Minister in Regulations; or
 - (cc) having the ability to dispose or direct the disposing of 15% or more of the financial institution's securities or a lower percentage prescribed by the Minister in Regulations;
 - (d) in the case of a financial institution that is a close corporation, owns 15% of the members' interest, or controls directly, or has the right to control, 15% of members' votes in the close corporation, or a lower percentage prescribed by the Minister in Regulations;
 - (e) in the case of a financial institution that is a trust, controls or has the ability to control 15% of the votes of the trustees, appoint 15% or more of the trustees, or to appoint or change any beneficiaries of the trust, or a lower percentage prescribed by the Minister in Regulations;
 - (f) has the ability to materially influence the strategy of a financial institution in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise a form of control referred to in paragraphs (a) to (e); or
 - (g) is declared in terms of subsection (3) to be a significant owner of a financial institution.
- (2) The Minister and a financial sector regulator are not, in that capacity,

significant owners of a financial institution.

- (3)(a) A financial sector regulator may declare in writing that a specified person is or is not a significant owner of a specified financial institution.
- (b) A declaration referred to in paragraph (a) may be made by –
- (i) the Prudential Authority, in the case of a significant owner of a financial product provider, a payment system operator or a market infrastructure, or a significant owner of an entity that is part of a regulated financial conglomerate;
 - (ii) the Financial Sector Conduct Authority, in the case of a significant owner of a financial services provider that is not a financial product provider.
- (4) A declaration that a specified person is a significant owner of a specified financial institution may not be made unless the financial sector regulator has–
- (a) given notice to the other financial sector regulator of the proposed declaration and a reasonable period, of at least 14 days, to make comments about the matter;
 - (b) considered any submissions made by or for the person, and any comment made by the other financial sector regulator, and the financial sector regulator is satisfied that the person is in a position to control or exert significant influence over the business or financial operations of the financial institution.

Approvals relating to significant owners

- 120.** (1) No person may without the approval of a financial sector regulator, –
- (a) become a significant owner of a financial institution;
 - (b) dispose of an interest in a financial institution or a related party of that financial institution in a manner that will result in that person no longer being a significant owner of that financial institution.
- (2) An approval referred to in subsection (1) may be given by –
- (a) in the case of a significant owner of a financial product provider, a payment system operator or a market infrastructure, or a significant owner of an entity that is part of a regulated financial conglomerate, the Prudential Authority;
 - (b) in the case of a significant owner of a financial services provider that is not a financial product provider, the Financial Sector Conduct Authority.
- (3) The financial sector regulator may grant an approval –
- (a) if the financial sector regulator is satisfied that the –
 - (i) holding and the likely influence of the proposed significant owner, will result in, or will continue to result in, the sound and prudent management and the financial soundness of the financial institution;
 - (ii) approval will not be contrary to the interests of financial customers or the public interest;
 - (b) subject to the aggregate value of the interest held by the significant owner and related parties of the significant owner not exceeding the percentage that may be determined by the financial sector regulator, without further approval in terms of this section.
- (4) A financial sector regulator may make any approval subject to any

conditions.

(5) If –

- (a) the Prudential Authority, in respect of a financial product provider or a significant owner of an entity that is part of a regulated financial conglomerate;
- (b) the Financial Sector Conduct Authority, in respect a financial services provider that is not a financial product provider,

is satisfied that the retention of a particular interest by a particular significant owner will be prejudicial to the financial institution or the financial customers of the financial institution, the financial sector regulator may, in addition to any other action that the financial sector regulator may take in terms of a financial sector law, –

- (i) direct that owner to reduce, within a specified period, the proportion of the voting rights or the interest held by that owner in the financial institution to a percentage specified; or
- (ii) direct that owner to dispose of, within a specified period, the full interest held by that owner in the financial holding company, directly or indirectly, alone or with a related party;
- (iii) take any other action the financial sector regulator may deem appropriate; and
- (iv) limit, with immediate effect, the voting rights that may be exercised by that owner by virtue of the proportion of the voting rights or the beneficial interest held.

(6) Despite any other law, any acquisition or holding referred to in this section that is not effected with the approval of a financial sector regulator, has no legal force.

(7) (a) Despite any other laws, no person may in respect of an interest in a financial institution or a related party of a financial institution issued to that person or registered in that person's name contrary to this Act –

- (i) either personally or by proxy granted to another person, cast a vote attached to that interest; or
- (ii) receive a dividend or any other money in respect of that interest.

(b) A resolution passed by a financial institution contrary to paragraph (a)(i) or a payment referred to in paragraph (a)(ii) is void.

CHAPTER 11

FRAMEWORK FOR SUPERVISION OF FINANCIAL CONGLOMERATES

Application of framework

121. (1) The framework for the supervision of financial conglomerates as set out in this Chapter applies to all financial conglomerates, subject to subsection (3) and section 122.

(2) (a) An eligible financial institution must, within 14 days of becoming part of a financial conglomerate, notify the Prudential Authority of that event.

(b) A notification in terms of paragraph (a) must be in the form determined by the Prudential Authority, completed in accordance with the instructions in the form, and be accompanied by any information that the Authority may determine.

(3)(a) The Prudential Authority, on application from an eligible financial institution that is part of a financial conglomerate, may exempt that financial conglomerate from the framework for the supervision of financial conglomerates or a part of the framework, on the conditions determined by the Prudential Authority.

(b) An application in terms of paragraph (a) must be in the form determined by the Prudential Authority, completed in accordance with the instructions in the form, and be accompanied by any information that the Authority may determine.

(c) An eligible financial institution that is exempted from the framework in terms of paragraph (a) is subject to any financial sector law to the extent that it applies to that eligible financial institution, and to the conditions imposed by the Prudential Authority in terms of paragraph (a).

Prudential Authority to determine scope of group supervision

122. (1)(a) The Prudential Authority, in respect of each financial conglomerate, must determine the scope of the financial conglomerate that is subject to the framework for the supervision of financial conglomerates and, in writing, inform the holding company of that financial conglomerate accordingly.

(b) The Prudential Authority must make a determination in terms of paragraph (a) within 120 days of receiving a notification in terms of section 121(2).

(c) The Prudential Authority, in determining the scope of a financial conglomerate that is subject to the framework –

- (i) may exclude certain persons from the scope of that financial conglomerate;
- (ii) must consult the Financial Sector Conduct Authority.

(2) The financial conglomerate as determined by the Prudential Authority in terms of subsection (1) is subject to the framework for the supervision of financial conglomerates.

(3) (a) The Prudential Authority may at any time, because of a change in the structure or risk profile of the financial conglomerate, by written notice to the controlling company, amend the scope of the financial conglomerate that is subject to the framework for the supervision of financial conglomerates.

(b) The scope of the financial conglomerate as amended in terms of paragraph (a) is subject to the framework for the supervision of financial conglomerates.

Incorporation of or conversion to controlling company

123. A holding company of a financial conglomerate referred to in section 122(1) that is not a controlling company, must, within six months of being informed of the scope of the financial conglomerate that is subject to the framework for the supervision of financial conglomerates, –

- (a) incorporate a controlling company or convert to a controlling company; and
- (b) inform the Prudential Authority of the prescribed details of that controlling company.

Responsibility of controlling company

124. (1) The board of a controlling company must, as soon as reasonably possible, inform the Prudential Authority of any change in the structure or risk profile of the financial conglomerate that may impact on the scope of the financial conglomerate determined in terms of section 122.

(2) The board of a controlling company is responsible for meeting the requirements imposed on a financial conglomerate in terms of this Chapter.

Significant owners of controlling company

125. Chapter 10, relating to significant owners applies, with the necessary changes to a controlling company.

Transparent group structure

126. (1)(a) The Prudential Authority may direct a controlling company to amend the structure of the financial conglomerate if the structure of a financial conglomerate impedes the –

- (i) safety and financial soundness of any eligible financial institution that is part of the financial conglomerate; or
- (ii) ability of the Prudential Authority to determine –
 - (aa) how the different types of business of the financial conglomerate are conducted;
 - (bb) the risks of the financial conglomerate and each person that is part of that financial conglomerate ; and
 - (cc) the manner in which the governance framework is organised and conducted for the financial conglomerate and each person that is part of that financial conglomerate.

(b) The Prudential Authority must consult the Financial Sector Conduct Authority prior to directing a controlling company in terms of this subsection.

(2) (a) A controlling company must, within three months after receiving a directive referred to in subsection (1), submit a restructuring plan to the Prudential Authority for approval to amend the structure of the group.

(b) The controlling company whose restructuring plan was approved in terms of paragraph (a) must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the restructuring plan.

(c) The Prudential Authority may restrict or prohibit certain activities or transactions until the restructuring plan is implemented.

(d) The Prudential Authority may take necessary and appropriate regulatory action if –

- (i) the Prudential Authority does not approve the restructuring plan; or

- (ii) the controlling company –
 - (aa) fails to submit a restructuring plan;
 - (bb) fails to report as provided for in terms of paragraph (b); or
 - (cc) fails to implement an approved restructuring plan.

Approval of or prior notification of acquisition or disposal

127. (1) A controlling company must –

- (a) prior to making a material acquisition or disposal, obtain the approval of the Prudential Authority; and
- (b) prior to making any other acquisition or disposal, notify the Prudential Authority of that acquisition.

(2) The Prudential Authority, in standards, may determine what constitutes a material acquisition or disposal for the purposes of subsection (1)(a).

(3) The Prudential Authority may refuse to approve a material acquisition or disposal or object to any other acquisition or disposal, if the acquisition or disposal will impede –

- (a) the financial soundness of an eligible financial institution that is part of the financial conglomerate; or
- (b) the ability of the Prudential Authority to determine –
 - (i) how the different types of business of the financial conglomerate are conducted;
 - (ii) the risks of the financial conglomerate and each person that is part of that financial conglomerate; and
 - (iii) the manner in which the governance framework is organised and conducted for the financial conglomerate and each person that is part of that financial conglomerate.

(4) Despite any other law, any acquisition or disposal effected in contravention of this section has no legal force.

Prudential standards for financial conglomerates

128. (1) The power of the Prudential Authority to make prudential standards extends to making standards in relation to financial conglomerates, controlling companies and the entities that are part of the financial conglomerates.

(2) For the purposes of subsection (1), in addition to the matters referred to in section 94, matters in respect of which prudential standards may be made include–

- (a) the extent of financial and other exposures of entities comprising a financial conglomerate to other entities in the group;
- (b) the organisational and managerial structure of the controlling company or financial conglomerate;
- (c) reporting of information about entities that are part of the financial conglomerate that are not financial institutions; and
- (d) reducing or managing contagion risk.

(3) The power of the Financial Sector Conduct Authority in terms of section 95 to make conduct standards extends to making standards in relation to financial conglomerates and the entities that are part of the financial conglomerates.

Powers in respect of financial conglomerates

129. The powers of the Prudential Authority and the Financial Sector Conduct Authority in terms of the financial sector laws may be exercised in respect of controlling companies and the entities that are part of financial conglomerates.

Cooperation with other regulatory authorities in respect of financial conglomerates

130. (1) The Prudential Authority, subject to section 197, must take reasonable measures to establish adequate coordination arrangements with other regulatory authorities in respect of financial conglomerates.

(2) The Prudential Authority in respect of financial conglomerates, must together with the regulatory authorities of any person that is part of a financial conglomerate—

- (a) agree which regulatory authority is the group supervisor;
- (b) agree the roles and responsibilities of the group supervisor and the other regulatory authorities;
- (c) participate in formal or informal structures for cooperation and coordination amongst relevant regulatory authorities responsible for and involved in the supervision of different components or parts of financial conglomerates⁵⁵; and
- (d) enter into cooperation agreements with relevant regulatory authorities, which agreements, among other matters, must include procedures for –
 - (i) the exchange of information on an on-going basis and in emergency situations;
 - (ii) communications with the controlling company of the financial conglomerate;
 - (iii) convening regular meetings between the group supervisor and relevant regulatory authorities, including supervisory colleges; and
 - (iv) conducting comprehensive assessments of the financial conglomerate.

(3) In circumstances where the Prudential Authority is the agreed group supervisor, the Prudential Authority must –

- (a) initiate suitable coordination arrangements between the relevant regulatory authorities which are proportionate to the nature, scale and complexity of the risks inherent in the business of the financial conglomerate and establish the key functions of these coordination arrangements;
- (b) act as the key coordinator, convener and chairperson of meetings and supervisory colleges;
- (c) take the lead in carrying out financial conglomerate supervision;
- (d) take into account assessments by relevant regulatory authorities in respect of any person that is part of a financial conglomerate ;
- (e) coordinate resolvability assessments and crisis management preparations; and
- (f) proactively share information on financial conglomerates.

⁵⁵ Such as supervisory colleges

CHAPTER 12

ENFORCEMENT POWERS

Part 1

Interpretation rulings

Interpretation rulings

131. (1) A financial sector regulator may issue an interpretation ruling on the interpretation of a financial sector law, to facilitate the consistent and uniform application of a financial sector law.

(2) A financial institution must adhere to an interpretation ruling, until such time as a court attaches a different interpretation to the subject matter of that interpretation ruling.

(3)(a) Before a financial sector regulator issues any interpretation ruling in terms of this section, the financial sector regulator must publish a draft of the proposed interpretation ruling on its official website, together with a notice calling for public comment in writing, within a period stated in the notice, of at least 30 days from the date of publication of the notice.

(b) If a financial sector regulator alters a proposed interpretation ruling because of any comment, the financial sector regulator is not required to publish the alteration before issuing the interpretation ruling.

Part 2

Regulators' directives

Regulator's directives – Prudential Authority's powers

132. (1) If a licenced financial institution that provides a financial product, a market infrastructure, or a payment system—

- (a) is conducting its affairs in an improper or a financially unsound way and, as a result, there is a risk that the institution will not be able to comply with its obligations in relation to that financial product, market infrastructure or payment system, or another financial product, market infrastructure or payment system;
- (b) has contravened or is likely to contravene a financial sector law or a prudential standard;
- (c) is or is likely to be involved in financial crime; or
- (d) is causing or contributing to instability in the financial system, or is likely to do so,

the Prudential Authority may, subject to subsection (3), issue to the institution a written regulator's directive about the way in which the affairs of the institution must be conducted, that will assist in—

- (i) reducing the risks referred to in paragraph (a);
- (ii) ensuring that the institution ceases to be involved in a contravention or a financial crime;
- (iii) remedying the effects of the contravention or financial crime;

(iv) ensuring that contraventions of that kind, and similar contraventions, do not occur again.

(2) Without limiting subsection (1), a regulator's directive may require a financial institution to do any of the following:

- (a) to implement specific practices, procedures or processes;
 - (b) to take specific actions or measures;
 - (c) to desist from undertaking specific practices, procedures, processes, actions or measures; or
 - (d) to cease certain practices, procedures, processes, actions or measures;
 - (e) to comply with the whole or a specified provision of a financial sector law;
 - (f) to cease to provide a financial product;
 - (g) to engage, cease engaging, or not to engage, in specified conduct;
 - (h) to modify a financial product or the terms on which it is provided;
 - (i) to appoint a specified person to a specified office, including the office of director, of the institution for a period specified in the directive;
 - (j) to ensure that a specified key person of the institution does not take part in the management or conduct of the licensed activity, except as permitted by the Authority;
 - (k) to remove a key person of the financial institution from office;
 - (l) not to borrow a specified amount, or any amount;
 - (m) not to pay a dividend or specified bonuses or performance payments;
 - (n) not to pay or transfer property or an amount to a person, or create an obligation, contingent or otherwise, to do so;
 - (o) not to undertake a financial obligation, contingent or otherwise, on behalf of another person.
- (3) The Prudential Authority may only issue a directive to a payment system operator or a participant in the payment system with the concurrence of the Reserve Bank.

Regulator's directives – Financial Sector Conduct Authority's powers

133. (1) If a licensed financial institution—

- (a) has contravened or is likely to contravene a financial sector law or a conduct standard; or
- (b) is or is likely to be involved in a contravention or a financial crime,

the Financial Sector Conduct Authority may issue to the institution a written regulator's directive about the way in which the affairs of the institution that will assist in—

- (i) remedying the effects of the contravention or financial crime;
- (ii) ensuring that contraventions of that kind, and similar contraventions, do not occur again; or
- (iii) ensuring that the institution ceases to be involved in financial crime.

(2) Without limiting subsection (1), a regulator's directive in terms of that subsection may require a financial institution to do any of the following:

- (a) to implement specific practices, procedures or processes;
- (b) to take specific actions or measures;
- (c) to desist from undertaking specific practices, procedures, processes, actions or measures; or
- (d) to cease certain practices, procedures, processes, actions or measures;

- (e) to comply with the whole or a specified provision of a financial sector law;
 - (f) to cease to provide the financial service or financial product;
 - (g) to cease to provide financial services or financial products of a specified kind;
 - (h) to engage, cease engaging, or not to engage, in specified conduct;
 - (i) to cease to provide financial services in respect of specified financial products, or to specified financial customers;
 - (j) to modify the service or the terms on which a specified financial product or financial service is provided;
 - (k) to ensure that a specified officer, key person, or employee of the institution does not take part in the management or conduct of the licensed activity, except as permitted by the Authority;
 - (l) to remove a key person of the financial institution from office;
 - (m) not to pay or transfer property or an amount to a person, or create an obligation, contingent or otherwise, to do so.
- (3) The Financial Sector Conduct Authority may only issue a directive to a payment system operator or a participant in the payment system with the concurrence of the Reserve Bank.

Regulator's directives – cease and desist orders

134. If a financial sector regulator is satisfied that a person is engaging, or is proposing to engage, in conduct that contravenes a financial sector law, the regulator may issue the person a written regulator's directive requiring the person to cease engaging, or not to engage, in the conduct.

Regulator's directives about key persons and financial institution representatives

135. (1) A financial sector regulator may, in order to ensure the implementation and administration of, compliance with, achieving of the objects of or prevention of a contravention of a financial sector law, issue a directive to a key person or a financial institution representative that will assist in—

- (a) remedying the effects of the contravention or financial crime;
- (b) ensuring that contraventions of that kind, and similar contraventions, do not occur again;
- (c) ensuring that the key person ceases to be involved in financial crime.

(2) Without limiting subsection (1), a regulator's directive in terms of that subsection may require a key person or a financial institution representative to do any of the following:

- (a) to implement specific practices, procedures or processes;
- (b) to take specific actions or measures;
- (c) to desist from undertaking specific practices, procedures, processes, actions or measures; or
- (d) to cease certain practices, procedures, processes, actions or measures.

(3) A financial sector regulator must not issue a regulator's directive to remove a key person of a financial institution from office unless the regulator is satisfied that—

- (a) both—
 - (i) the institution has contravened a financial sector law or been involved in a financial crime; and

- (ii) the key person was knowingly involved in the contravention or the financial crime; or
- (b) the key person has contravened a financial sector law, fit and proper requirements specified in terms of a financial sector law, or has been knowingly involved in a financial crime.

Period for compliance

136. A regulator's directive may specify the time by which, or period during which, it must be complied with.

Revoking regulator's directives

137. A regulator's directive may be revoked at any time by the financial sector regulator that issued it, by written notice to the financial institution or person to whom it was issued.

Consultation requirements

138. (1) Subject to subsection (2), a financial sector regulator must not issue a regulator's directive to a financial institution or a person unless—

- (a) a draft of the directive has been given to—
 - (i) the institution; and
 - (ii) if the directive is issued in terms of section 132(2)(j) or (k) or 133(2)(k) or (l), the key person concerned;⁵⁶
- (b) the persons referred to in paragraph (a) have had a reasonable period, of at least 14 days, to make submissions to the regulator about the matter; and
- (c) the regulator considered all submissions made to it in deciding whether to issue the directive.

(2) If the financial sector regulator considers on reasonable grounds that it is necessary to give the regulator's directive urgently, it may do so without having complied, or complied fully, with subsection (1).

Requirement to comply with regulator's directive

139. (1) A person who is issued with a regulator's directive must comply with the directive.

(2) Nothing in the memorandum of incorporation or regulations, or other governing rules, or any contract or arrangement to which a person is a party, prevents a person from complying with a directive.

(3) A person must not engage in conduct which hinders or prevents compliance with a regulator's directive.

Application of sections 136 to 139

140. Sections 136 to 139 also apply in relation to a directive in terms of a financial sector law that corresponds to, or is similar to, a regulator's directive.

⁵⁶ These sections relate to removing personnel from management of the financial institution, or from office.

Part 3

Declaration of certain practices as irregular or undesirable

Declaration of certain practices as irregular or undesirable

141. (1)(a) A financial sector regulator may declare a specific practice or method of conducting business an 'irregular or undesirable practice' or an 'undesirable method of conducting business' for a specific category or categories of regulated persons, or for all regulated persons.

(b) In determining whether or not a declaration contemplated in paragraph (a) should be made, the financial sector regulator must be guided by whether the practice concerned has or is likely to have the effect of—

- (i) harming the relations between financial institutions or any category of financial institutions, or any financial institution and financial customers or the general public;
- (ii) unreasonably prejudicing any financial customer;
- (iii) deceiving or misleading any financial customer; or
- (iv) unfairly affecting any financial customer,

and whether, if the practice is allowed to continue, one or more objects of a financial sector law will, or are likely to, be defeated.

(2) A financial sector regulator may not issue a declaration referred to in subsection (1), unless the financial sector regulator has invited interested persons to make written representations concerning the proposed declaration, and allowed a reasonable period, of at least 21 days, to provide comment on the proposed declaration, before issuing the declaration.

(3) A financial institution may not, on or after the date on which a declaration is issued in terms of subsection (1), and in accordance with subsection (2), carry on the relevant business practice or method of conducting business.

(4) A financial sector regulator may direct a financial institution which carries on the relevant business practice or method of conducting business on or after the date referred to in subsection (3), to rectify or repair to the satisfaction of the financial sector regulator anything which was caused by, or arose out of, that business practice or method of conducting business.

(5) A financial institution which is directed to rectify or repair anything in terms of subsection (4), must do so within 60 days after the financial institution is directed.

Part 4

Enforceable undertakings

Enforceable undertakings

142. (1) A financial sector regulator may accept a written enforceable undertaking by a person in relation to any conduct engaged in by the person in respect of which the financial sector regulator has a function in terms of a financial sector law.

(2) The person may, with the regulator's consent, withdraw or vary the undertaking at any time.

(3) If the financial sector regulator considers that the person who gave the undertaking has breached a term of the undertaking, the Financial Sector Regulator may:

- (a) impose an administrative penalty;
- (b) apply to a Court for an order directing that person to comply with the terms of the undertaking, or any other order the Court considers appropriate; or
- (c) in the case of a licensed financial institution, suspend or withdraw the licence of the financial institution.

(4) An enforceable undertaking must be made public by the financial sector regulator in a manner that the financial sector regulator determines is appropriate.

Part 5

Leniency Agreements

Leniency agreements

143. (1) A financial sector regulator may, in exchange for a person's cooperation in an investigation or in proceedings in relation to conduct that contravenes or may contravene a financial sector law, enter into a leniency agreement with the person, which may contain any of the following terms:

- (a) that a prosecution of the person for an offence in terms of a financial sector law in relation to the conduct will not be commenced or maintained;
- (b) that a penalty order will not be served on the person in terms of a financial sector law in respect of the conduct;
- (c) that an administrative fine will not be imposed on the person in respect of the conduct;
- (d) that specified enforcement action in terms of a financial sector law will not be taken against the person in respect of the conduct.⁵⁷

(2) A leniency agreement with a person may provide that the agreement applies to any of the following persons:

- (a) specified key persons and employees of the person;
- (b) specified financial institution representatives and agents of the person;
- (c) if the person is an incorporated body, specified officers of the incorporated body;
- (d) specified partners of the person.

(3) A leniency agreement must be on terms that the financial sector regulator considers appropriate.

(4) A financial sector regulator must not enter into a leniency agreement with a person unless it is satisfied that it is appropriate to do so in the circumstances, having regard, among other matters, to—

- (a) the nature and effect of the contravention concerned; and
- (b) the nature and effect of the person's co-operation.

⁵⁷ A decision whether to enter into a leniency agreement is not subject to appeal to the Tribunal, as it is a voluntary agreement.

(5) A leniency agreement must be published in the Register, unless the financial sector regulator that is a party to the agreement determines that publication would—

- (a) create an unjustifiable risk to the safety of a person; or
- (b) prejudice an investigation into a contravention of a financial sector law or an offence or possible offence in terms of any law.

(6) If a leniency agreement in respect of particular conduct applies to a person, a financial sector regulator must not take any action in relation to that person that is inconsistent with the agreement.

(7) A leniency agreement may not be terminated, except as provided in this section.

(8) The financial sector regulator that is a party to a leniency agreement with a person may terminate the agreement—

- (a) if the person agrees;
- (b) if the regulator has reasonable grounds to believe that the information on which it based its decision to enter into the agreement was materially incomplete, false or misleading;
- (c) if the person is convicted or found guilty of an offence in relation to an investigation in terms of a financial sector law;
- (d) if the person has failed to comply with the agreement; or
- (e) in circumstances specified in the agreement.⁵⁸

(9) A financial sector regulator may not terminate a leniency agreement with a person in terms of subsection (8)(b), (c) or (d) unless—

- (a) the person has been notified of the proposed termination and the reasons for it;
- (b) the regulator has given the person a reasonable period, of at least 30 days, to make submissions to it about the matter; and
- (c) in deciding whether to terminate the agreement, the regulator has considered any submissions made by or for the person.

(10) If a financial sector regulator terminates a leniency agreement with a person when it is not entitled to do so, it is not liable to pay damages or compensation to the person in respect of any loss to the person caused by the purported termination, but this subsection does not prevent the Tribunal or a Court from ordering the regulator to pay any costs of the person incurred in bringing proceedings for an order that the termination is of no legal force.

Part 6

Applications to court and court orders

Applications to court and publication by financial sector regulator

144. (1) A financial sector regulator may institute proceedings in the High Court having jurisdiction in order to—

- (a) discharge any duty or responsibility imposed on the financial sector regulator in terms of a financial sector law;
- (b) compel a financial institution to comply with a financial sector law;

⁵⁸ The person may appeal to the Tribunal against a decision to terminate a leniency agreement in terms of subsection (8)(b), (c), (d) or (e).

- (c) compel a financial institution to cease contravening a financial sector law;
- (d) compel a financial institution to comply with a lawful request, directive or instruction made, issued or given by the financial sector regulator in terms of a financial sector law;
- (e) obtain a declaratory order relating to any financial sector law or the business of a financial institution;
- (f) prevent the concealment, removal, dissipation or destruction of assets or evidence thereof by a financial institution;
- (g) seize and remove the assets of a financial institution for safe custody pending the exercising of any other legal remedy that may be available to the financial sector regulator.

(2) An order in terms of subsection (1)(c) compelling the institution to cease contravening a financial sector law may be granted whether or not –

- (a) it appears to the Court that the institution intends to engage again, or to continue to engage, in conduct contravening a financial sector law;
- (b) the institution has previously engaged in conduct contravening a financial sector law;
- (c) there is an imminent danger of substantial or irreparable damage, prejudice or harm to any person if the institution engages in conduct contravening a financial sector law; and
- (d) any other remedy may be available.

(3) An order in terms of subsection (1) may–

- (a) impose requirements, including limitations, conditions and restrictions, regarding the way the financial institution provides particular financial services; and
- (b) impose requirements–
 - (i) for the provision of corrective information or other information to the public, or to classes of persons, about relevant financial products or financial services; or
 - (ii) for the refunding of money paid by financial customers who acquired relevant financial products or financial services because of the conduct;
- (c) declare an agreement in relation to relevant financial products or financial services to be–
 - (i) void;
 - (ii) voidable at the election of the financial customer;
 - (iii) or to have been terminated with effect from a specified time; or
 - (iv) varied as specified by the Court.

(4) (a) If a Court grants an order against a financial institution in terms of this section, it may order the institution to pay an amount determined by the Court regarding the costs incurred by the applicant for the order relating to investigations into, and the conduct of the proceedings regarding, the contravention.

(b) For the purposes of this section, “costs” include fees, charges, disbursements, expenses and remuneration.

(5) (a) If a financial sector regulator has reason to believe that a person has contravened a law, or has failed to comply with a request, directive or instruction

made, issued or given by the financial sector regulator in terms of a law, the financial sector regulator may publish a statement to that effect, in the manner that the financial sector regulator considers appropriate.

(b) Before publishing a statement, the financial sector regulator must give the person concerned a notice warning it of the proposed publication of the statement, the reason for the publication of the statement, and the proposed date of publication of the statement.

(c) The person concerned may, before the proposed date of publication of the statement, make representations to the financial sector regulator concerning the proposed action.

(d) If the financial sector regulator, after having any representations made, decides to publish the statement, the regulator must, without delay, give the person concerned a notice which sets out the terms of the statement to be published.

Part 7

Debarment

Debarment

145. (1) If a financial sector regulator is satisfied that a person has—

- (a) contravened a financial sector law, a regulator’s directive, or an enforceable undertaking;
- (b) attempted, conspired with or aided, abetted, induced, incited, instigated, instructed or commanded, counselled or procured another person to contravene a financial sector law;
- (c) contravened or failed to comply with a law of a foreign country that corresponds to a financial sector law,

the regulator may make an order debaring the person for a specified period from

- (i) providing financial products or financial services, providing a specified category or sub-category of financial product or financial service; or providing a financial product or financial service to a specified category or sub-category of financial customer;
- (ii) acting as a key person or a financial institution representative of a financial institution;
- (iii) being involved in the management of a financial product provider or a financial services provider; or
- (iv) being involved in the provision of a specified financial product or a specified financial service.

(2) A licensed financial institution must within a period of five days after being informed by the regulator of the debarment of a person ensure that the debarred person does not perform or undertake any activity referred to in subsection (1) in respect of which that person is debarred.

(3) The regulator must publish a notice of the debarment and the reasons for the debarment, on the regulator’s official website, and in any other media, if appropriate.

Consultation requirements

146. A financial sector regulator must not make an order of debarment regarding an individual unless—

- (a) a draft of the order has been given to the individual, and to the other financial sector regulator; and
- (b) the individual and the other financial sector regulator has had a reasonable period, of at least 14 days, to make submissions to the regulator about the matter; and
- (c) the regulator considered all of the submissions made to it when deciding whether to make the order.

CHAPTER 13

ADMINISTRATIVE ACTIONS

Part 1

Taking administrative action

Procedures for administrative action taken by regulators

147. (a) The Promotion of Administrative Justice Act applies to any administrative action taken by a financial sector regulator in terms of this Act or a financial sector law, subject to paragraph (c).

(b) A financial sector regulator must put in place and maintain effective arrangements for taking administrative action that are consistent with this Act, the Promotion of Administrative Justice Act, and the requirements of the other financial sector laws, which arrangements must include the adoption of administrative action procedures, and may include the establishment of an administrative action committee and other measures.

(c) The procedures set out in section 3(2) and (3) of the Promotion of Administrative Justice Act do not apply to the extent that a financial sector regulator prescribes in terms of paragraph (b) different procedures for any specific administrative action provided that those procedures are fair, reasonable, and justifiable in the circumstances.

Correction of decisions

148. A financial sector regulator may correct any decision purportedly made in terms of a financial sector law, if –

- (a) the decision was procured by fraudulent, dishonest or any other illegal means;
- (b) the information on which the decision was based was so inaccurate that the financial sector regulator would not have taken the decision had the regulator been aware of the actual facts; or
- (c) the decision is, for another reason, invalid.

Part 2

Administrative action procedures

Administrative action procedures

149. (1) Arrangements referred to in section 147(b) must include the adoption by each financial sector regulator of written administrative action procedures regarding the administrative actions that it may take in terms of a financial sector law to promote a fair and consistent approach to administrative action taken in terms of the financial sector laws.

(2) A financial sector regulator must review any administrative action procedures prescribed in terms of section 147(b) at least once every three years.

(3) A financial sector regulator may not prescribe or amend an administrative action procedure unless the regulator—

- (a) has submitted a draft of the procedure to the Director-General and the other financial sector regulator;
- (b) has allowed a reasonable period for the submission of comments on the draft; and
- (c) before adopting the draft, has considered any comments made.

Part 3

Administrative action committees

Administrative action committees

150. (1) A financial sector regulator may establish an administrative action committee –

- (a) to consider and make recommendations to the regulator on administrative actions that are referred to it by the regulator, and
- (b) to impose, in terms of a delegation in terms of section 70(2) on behalf of the regulator, administrative penalties on persons for non-compliance with the financial sector laws.

(2) The members of an administrative action committee—

- (a) are appointed by the Oversight Committee and the Executive Committee;⁵⁹
- (b) may include persons who are not members of the Oversight Committee, the Executive Committee or members of staff of the regulator;
- (c) must include at least one advocate or attorney with at least 10 years' experience in practising law; and
- (d) may include a judge or a retired judge of a Court.

(3) A meeting of an administrative action committee must be chaired by a person referred to in subsection (2)(c) or (d).

(4) A disqualified person may not be appointed to, or remain a member of, an administrative action committee.

(5) A member of a financial sector regulator's administrative action committee who is not a member of the Oversight Committee, the Executive Committee or the staff of a financial sector regulator holds office for the period, and on the terms, including terms regarding remuneration, determined by the regulator.

(6) (a) Subject to paragraph (b), a member of an administrative action committee holds office for the period, of not more than three years, specified in the member's appointment documents, unless the member is removed from office.

(b) A member of an administrative action committee may be reappointed.

(7) Subject to any directions of the financial sector regulator that established the administrative action committee, the committee determines its procedures.

⁵⁹ This power cannot be delegated.

(8) The financial sector regulator that established the administrative action committee must—

- (a) ensure that written minutes of each meeting of the committee are made; and
- (b) retain those minutes for at least seven years.

CHAPTER 14

ADMINISTRATIVE PENALTIES AND RELATED ORDERS

Administrative penalties and related orders

151. (1) If a financial sector regulator is satisfied, on a balance of probabilities, that a person has contravened, or has failed to comply with a provision of a financial sector law, the regulator may impose an administrative penalty in respect of the contravention.

(2) When determining an appropriate administrative penalty, the financial sector regulator must have regard to the need for the penalty to have a deterrent effect, and in addition, may take the following factors into account:

- (a) the nature, duration, seriousness and extent of the contravention;
- (b) any loss or damage suffered by any person as a result of the contravention;
- (c) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the contravention;
- (d) whether the person has previously contravened a financial sector law;
- (e) the effect of the contravention on the relevant sector of the financial services industry, the financial system and financial stability;
- (f) the extent to which the contravention was deliberate or reckless;
- (g) the degree to which the person has co-operated with a regulator in relation to the contravention; and
- (h) any other factor including mitigating factors submitted by the person that the financial sector regulator considers to be relevant.

(3) (a) A financial sector regulator may, as part of an administrative penalty, make an order regarding costs that the regulator considers to be suitable and fair, including all expenses reasonably incurred by the financial sector regulator in investigating the alleged contravention and imposing the administrative penalty.

(b) if a financial sector regulator orders a party to pay a sum of money, the amount earns interest from the date of the order at the same rate as the rate prescribed from time to time in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(4) (a) The common law principles of vicarious liability apply to a contravention of a financial sector law.

(b) The common law principles of strict liability apply to those contraventions that are determined by a Financial Sector Regulator in a legislative instrument.

(c) This subsection does not apply to criminal liability in relation to offences.

(5) If a person fails to comply with the an order made by a financial sector regulator, the regulator may file with the registrar of a competent court a certified copy of the order, and the order then has the effect of a civil judgment, and may be enforced as if lawfully given in that court in favour of the applicant.

(6) An order made in terms of this section must be made public in a manner that the financial sector regulator determines.

Saving of rights

152. (1) Subject to subsection (2), no provision of this Act, whether it relates to civil or criminal matters, and no act performed in terms of any provision, limits any right of a person affected by the contravention to seek appropriate legal redress in terms of the common law or any other statutory law.

(2) When assessing the criminal sanction to impose on a person convicted of an offence in terms of a financial sector law, a Court must take into account any administrative penalty that has been imposed in respect of the same set of facts.

(3) When assessing an administrative penalty to impose on a person, a financial sector regulator must take into account any criminal sanction that has been imposed by a Court in respect of the same set of facts.

(4) An administrative penalty does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

CHAPTER 15

APPEALS OF ADMINISTRATIVE ACTIONS

Part 1

Establishment of Financial Services Tribunal

Establishment of Financial Services Tribunal

153. (1) A tribunal called the Financial Services Tribunal is established.

(2) The Tribunal—

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person;
- (c) is a tribunal of record; and
- (d) must exercise its functions in accordance with this Act and the other financial sector laws.

Function of Tribunal

154. The function of the Tribunal is to hear and decide appeals by persons aggrieved by a decision of a decision-maker in terms of a financial sector law.

Membership of Tribunal

155. (1) The Tribunal consists of as many members appointed by the Minister, as the Minister considers necessary, including—

- (a) at least two advocates or attorneys with a minimum of 10 years' experience, or retired judges; and
- (b) at least four persons who have experience and expert knowledge of financial products or financial services.

(2) All of the members of the Tribunal must be independent.

(3) A person may not be appointed as a member of the Tribunal if that person—

- (a) is a disqualified person;
- (b) is not a citizen of the Republic or is not ordinarily resident in the Republic.

(4) The Minister must appoint a retired judge, an advocate or attorney referred to in subsection (1)(a) as the Chair, and may appoint as many Deputy Chairs as the Minister considers necessary, from among the members of the Tribunal.

(5) The Minister may appoint a person in an acting capacity to the Tribunal.

(6) Anything done by or in relation to a person acting in terms of an appointment to the Tribunal is not invalid merely because—

- (a) there was a defect or irregularity in connection with the appointment; or
- (b) the appointment had terminated.

Terms and conditions of appointment

156. (1) A member of the Tribunal is entitled to be paid remuneration and allowances determined by the Minister from time to time.

(2)(a) A member of the Tribunal holds office on the terms and conditions, if any, determined by the Minister.

(b) The terms and conditions referred to in paragraph (a) may not be inconsistent with this Act.

Term of office

157. (1) A member of the Tribunal holds office for—

- (a) a period of three years from the date of the member's appointment; or
- (b) if a shorter period is specified in the member's appointment letter, that shorter period,

but a member may be reappointed at the expiry of that member's term of office.

(2) The Minister may, at the expiry of a term of office of a member of the Tribunal, extend the term of office for a further period of not more than three years at a time.

(3) A person may resign as a member of the Tribunal by giving written notice to the Minister.

(4) The Minister may terminate a person's appointment as a member of the Tribunal immediately, if—

- (a) the person becomes a disqualified person;
- (b) the performance of the member is unsatisfactory; or
- (c) the member is unable to perform the functions of office effectively.

Disclosure of interests

158. (1) Each member of the Tribunal must disclose in writing to the Chair all interests that the member has which may cause a conflict of interest with the proper performance of the member's functions as a member of the Tribunal.

(2) The Chair must disclose in writing to the Minister all interests that the Chair has that may cause a conflict of interest with the proper performance of the Chair's functions.

(3) A disclosure in terms of subsection (1) or (2) must be made as soon as practicable after the Chair or the member becomes aware of the interest.

(4) If, before or during a hearing in which a member of the Tribunal is participating, it becomes apparent that the member has an interest in a matter, the member must—

- (a) immediately and fully disclose this interest to the other members of the panel designated to hear the matter; and
- (b) withdraw from any further involvement in that hearing.

(5) Subsections (1), (2) and (4) apply, whether an interest is direct, indirect, pecuniary or non-pecuniary, and regardless of when the interest arose or was acquired.

(6) For the purposes of this section, if—

- (a) a related party of a member of the Tribunal or an assessor has an interest; and
- (b) the member or assessor has the interest, that may cause conflict of interest with the proper performance of the functions of the member or the assessor,

the member or the assessor is deemed to have the interest, and this section applies accordingly.

(7) The Chair must record, and maintain a register of, all disclosures made in terms of this section.

Secretarial support for the Tribunal

159. Secretarial support for the Tribunal must be provided by the Financial Sector Conduct Authority and the Prudential Authority.

Part 2

Proceedings before Financial Services Tribunal

Tribunal Rules

160. The Chair may make rules, not inconsistent with this Act or a financial sector law, regarding the manner in which an appeal must be lodged and the conduct of appeals by the Tribunal.

Applications for appeal

161. (1) A person who is aggrieved by a decision of a decision-maker may, subject to the provisions of another law, appeal against that decision to the Tribunal, in accordance with the provisions of this Act or the other law.

(2) An appeal must be lodged—

(a) within 30 days of the person becoming aware of, or when the person ought to have become aware of, a decision; and

(b) with the payment of the fees prescribed by the Minister from time to time.

(3) The decision-maker must, within 30 days after receipt of a notice of appeal in terms of subsection (2), furnish written reasons for the relevant decision against which an appeal is lodged.

(4) A person who is aggrieved by a decision must, within 30 days after receipt of the reasons referred to in subsection (3), deliver a notice of intention to proceed with the appeal, together with full particulars of the grounds of appeal.

(5) An appeal lodged in terms of this section does not suspend any decision pending the outcome of an appeal, unless the Chair or a Deputy Chair of the Tribunal, on application by a party, directs otherwise.

Panel of appeal

162. (1) The Chair or Deputy Chair of the Tribunal is responsible for managing the caseload of the Tribunal and must assign each appeal to a panel constituted as set out in this section.

(2) Any reference in this Act or any other law to the Tribunal includes a reference, where appropriate in the case of a particular appeal, to a panel to which an appeal is or was assigned.

(3) A panel consists of at least three members of the Tribunal, who are suitably qualified to decide on the particular appeal.

(4) Subject to subsection (5), the Chair or Deputy Chair appoints a chairperson for a panel and that chairperson has a casting vote in the event of an equality of votes.

(5) The chairperson of a panel must be an advocate, attorney or judge, as the case may be, referred to in section 155(1)(a).

(6) (a) When the chairperson of a panel designated to hear an appeal determines that it is necessary for the panel to be assisted by an assessor having expert knowledge or experience of a particular matter, the panel may co-opt a person to participate in the appeal as an assessor of the panel.

(b) An assessor does not have a right of participation in any decision of a panel.

(c) An assessor is entitled to be paid remuneration and allowances at the rate applicable to a member of the Tribunal.

(d) The provisions of section 157 and subsection (8) apply, with the necessary changes, to an assessor.

(7) If, as a result of the resignation, illness, death or withdrawal from a hearing, a member of the panel or an assessor is unable to complete a hearing, the Chair may—

(a) replace that member or assessor;

(b) direct that the hearing of that matter must proceed before the remaining members of the panel; or

(c) terminate the proceedings before that panel and constitute another panel, which may include any member or assessor of the original panel, and direct that panel to consider the appeal afresh.

Proceedings of Tribunal

163. (1) In an appeal before the Tribunal—

(a) the procedure of the Tribunal is, subject to this Act, any other financial sector law and the Tribunal rules, determined by the Tribunal;

(b) the proceedings of the Tribunal must be conducted with as little formality and technicality, and as expeditiously, as the requirements of this Act and any other relevant financial sector law, and a proper consideration of the matters before the Tribunal, permit;

(c) the Tribunal is not bound by the rules of evidence, but may inform itself on any matter in the manner that it determines to be appropriate; and

(d) any party may be represented by a legal representative.

(2) Without limiting subsection (1), the Chair may give directions to facilitate the process and conduct of an appeal.

(3) Subject to section 164, an appeal is decided on the written evidence, factual information and documentation submitted to the decision-maker before the decision which is the subject of the appeal, was taken.

(4) No oral or written evidence or factual information and documentation, other than what was submitted or made available to the decision-maker at the time of making the decision, may be submitted to the Tribunal by a party to the appeal.

(5) The Tribunal must conduct its hearings in public, unless the chairperson of the panel which conducts the hearing rules that specific persons or groups of persons are excluded from the hearing for a reason that would be justifiable in civil proceedings before a High Court.

(6) An appeal is heard on the date and at the time and place determined by the chairperson of the panel.

Giving evidence, summoning witnesses and requiring production of documents

164. (1) Despite the provisions of section 163(4), the chairperson of a panel may, on application by—

(a) the appellant, and on good cause shown, allow the submission of further oral and written evidence or factual information and documentation that was not made available to the decision-maker prior to the making of the decision against which the appeal is lodged; or

(b) the decision-maker, and on good cause shown, allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record on appeal.

(2) If further oral and written evidence or factual information and documentation is allowed into the record on appeal, the appeal must be considered inclusive of the information, provided that where further oral and written evidence or factual information and documentation was allowed in terms of subsection (1)(a) and the decision-maker is a financial sector regulator, the matter must revert to the decision-maker for reconsideration.

(3) If, after a financial sector regulator has made a final decision as contemplated in subsection (2), the appellant continues with the appeal by giving written notice thereof, the record on appeal must include—

(a) the further oral evidence, properly transcribed written evidence or factual information and documentation allowed; and

(b) further reasons or documentation submitted by a financial sector regulator.

(4) For purposes of allowing further oral evidence in terms of subsection (1), the panel may—

(a) summon any person to appear before it at a time and place specified in the summons, to be questioned or to produce any document and retain for examination any document so produced; and

(b) administer an oath to or accept an affirmation from any person called as a witness at an appeal;

(5) A person summoned to provide oral evidence is entitled to legal representation at his, her or its own expense.

(6) A person giving evidence or information, or producing documents, in relation to an appeal in the Tribunal has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

Power to dismiss frivolous or vexatious applications

165. The Tribunal may dismiss an appeal on the basis that it is frivolous or vexatious.

Orders Tribunal may make

166. (1) The Tribunal may make any of the following orders in an appeal against a decision of a decision-maker:

(a) an order confirming the decision and dismissing the appeal;

(b) an order remitting the decision to the decision-maker for reconsideration in accordance with the directions of the Tribunal;

(c) an order setting aside or varying the decision and substituting the decision of the Tribunal;

(d) any other incidental order.

(2) The Tribunal may, in exceptional circumstances, make an order that a party to the appeal pay some or all of the costs incurred by the other party.

(3) An order by the Tribunal has legal force, and may be enforced as if it were issued in civil proceedings in a division of the High Court within whose area of jurisdiction the Tribunal held its sitting.

(4) The decision of the Tribunal must be made public.

Right of review to High Court

167. The financial sector regulator or a party to an appeal may review the Tribunal's decision in the Division of the High Court within whose area of jurisdiction the Tribunal held its sitting.

CHAPTER 16

FINANCIAL SERVICES OMBUD SCHEMES

Part 1

Financial Services Ombud Schemes Council

Financial Services Ombud Schemes Council

168. (1) The Financial Services Ombud Schemes Council that was established in terms of section 2 of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), continues in existence.

(2) The Council is an independent body that has the powers and duties, and performs the functions, that are set out in this Act.

(3) The Council is directly accountable to the Minister.

Composition of Council

169. (1) The Council consists of a chairperson, a deputy chairperson and at least three, but not more than five, other members that are appointed by the Minister.

(2) (a) A member must be appointed with due regard to the person's knowledge, experience and expertise in respect of the matters for which the Council has been established.

(b) No member of the Council may be actually engaged in the—

- (i) business of a financial institution; or
- (ii) provision of a financial service or product of a financial institution to a financial customer.

(3) The Commissioner is a member of the Council by virtue of the office of the Commissioner, without voting power.

Term of office of members of Council

170. (1) Members of the Council hold office for three years or a shorter period that the Minister determines at the time of the member's appointment.

(2) A member whose term of office has expired is eligible for reappointment.

Vacating of office by members of Council

171. (1) A member of the Council must vacate office—

- (a) on resigning as a member;
- (b) if the member is discharged by the Minister on the grounds of misconduct or incapacity and the member is afforded a reasonable opportunity to be heard;
- (c) if the member becomes an unrehabilitated insolvent;

- (d) if the member has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty;
- (e) if the member has been absent for more than two consecutive meetings of the Council without leave of the chairperson presiding at the meeting; or
- (f) if the member becomes subject to a disqualification referred to in section 169 (2)(b).

(2) A member referred to in subsection (1)(f) must inform the Minister of the member's disqualification in terms of section 169 (2)(b), and the Minister must appoint, within a reasonable time, a person in terms of section 169(1) to act in the place of the member for the unexpired term of office.

Meetings and decisions of Council

172. (1) The Council must meet at least twice in any financial year, or a sufficient number of times in order to arrange for the performance of its functions, and must regulate its meetings in accordance with the rules and procedures established by the Council.

(2) (a) The chairperson or the deputy chairperson presides at meetings of the Council, but if both are absent from a meeting, the members present must elect another member to act as chairperson of that meeting.

(b) At least half the appointed members form a quorum.

(3) The decisions of the Council are valid if taken by a simple majority of members in office at the relevant time, and in the event of an equality of votes on any matter, the chairperson presiding at the meeting has a casting vote in addition to the chairperson's deliberative vote.

Remuneration of members of Council

173. A member of the Council who is not in the full-time employment of the State or the Financial Sector Conduct Authority, is paid the remuneration and allowances determined by the Minister as well as all reasonable expenditure incurred in the performance of the functions of the Council.

General Powers of Council

174. (1) The Council may—

- (a) impose a fee in respect of any service rendered by the Council to a scheme or participant.
- (b) lease suitable premises from where it may perform its executive functions;
- (c) purchase, lease or otherwise acquire furniture, equipment and utensils deemed necessary for its office, and dispose of that property;
- (d) employ persons to assist in the performance of the functions of the Council and determine their terms of appointment;
- (e) enter into a service contract with any person for the performance of any specific act, function or service;
- (f) delegate or assign to any of its employees or person referred to in subparagraph (e) any administrative function;

- (g) insure its office against any loss or damage to property, or arrange for fidelity cover or professional indemnity of Council members or staff;
 - (h) in general do anything which is necessary or expedient to perform its functions.
- (2) The Council must appoint a chief executive officer who is responsible for managing the functions and operations of the Council on a full time basis, in terms of delegations from the Council.

Application of the Public Finance Management Act

175. (1) The Council is a national public entity for purposes of the Public Finance Management Act, and must comply with the provisions of that Act applicable to public entities.

(2) The Council is the accounting authority for purposes of the Public Finance Management Act

Functions of Council

176. (1) The Council must–

- (a) consider and grant or refuse an application for the recognition of a scheme contemplated in paragraph (a) of the definition of “scheme” in section 1(1);
- (b) monitor compliance with this Act by a scheme;
- (c) promote and direct co-operation and co-ordination of the activities of the schemes to ensure an overarching and unified complaint resolution service for financial customers;
- (d) after consultation with the relevant ombud, develop and promote best practices for complaint resolution by the scheme in question;
- (e) ensure that the independence and impartiality of an ombud is not affected when the Council performs its functions;
- (f) put measures in place to enhance public awareness of schemes and to ensure easy access by financial customers to schemes;
- (g) facilitate the delineation of the jurisdictional boundaries between the various schemes and determine which scheme will exercise jurisdiction in respect of a complaint in the circumstances set out in section 190(3)(b);
- (h) exercise oversight of and perform the functions provided for in this Act in respect of the statutory schemes;
- (i) after consultation with the Commissioner, prescribe council standards, for recognised schemes regarding any matter in order to promote the better implementation and administration of the Act, a function or a power provided for in this Act, including matters relating to the–
 - (aa) submission and receipt of complaints;
 - (bb) rights of complainants;
 - (cc) rights and duties of participants in a scheme;
 - (dd) case fees;
 - (ee) effective enforcement of determinations;
 - (ff) appeal mechanisms;
 - (gg) timeframes for complaint resolution;

- (hh) liaison between the schemes, the Council and the Commissioner regarding the exchange of information, including reports on any identified trends, prevalent or significant in relation to disputes between financial customers and financial institutions;
- (ii) education of financial customers regarding the operations and functions of a scheme;
- (jj) publication of statistics or other information relating to complaints received, determinations and settlements;
- (kk) facilitation of access to a scheme by financial customers;
- (ll) procedures in accordance with which schemes must be carried on;
- (mm) jurisdictional monetary or other limits;
- (j) perform any other functions that the Minister may direct in order to achieve the objects of this Act; and
- (k) after consultation with the Commissioner, prescribe council standards for statutory schemes, including different rules for different categories of complaints, complainants or investigations, regarding –
 - (aa) any matter required or permitted to be prescribed in terms of this Act;
 - (bb) any matter that guides the jurisdiction, processes and procedures of the statutory schemes, including–
 - (A) the matters referred to in subparagraph (i) –
 - (B) the investigation of complaints;
 - (C) mediation, settlements and determinations;
 - (D) record keeping;
 - (E) legal representation; and
 - (F) reporting;
 - (cc) any other matter necessary for the effective and efficient functioning of the statutory schemes and the better implementation and administration of this Act or a function or power provided for in this Act;
- (2) The Council must –
 - (a) ensure that a council standard made in terms of this section does not impede the independence of an ombud, or interferes with the investigation or determination of a complaint;
 - (b) publish norms and standards and rules made in terms of this section in the *Gazette*.
- (3) The Council may–
 - (a) issue guidelines to inform financial customers of the jurisdiction of different ombuds and of the procedures for the submission of a complaint;
 - (b) in order to ensure the implementation and administration of and compliance with this Act, achieving the objects or to prevent a contravention of this Act, issue a directive, in accordance with the procedure followed for issuing regulator’s directives in terms of the Part 2 of Chapter 12, with the changes necessary relating to the context–

- (i) to implement specific practices, procedures or processes;
 - (ii) to take specific actions or measures;
 - (iii) to desist from undertaking specific practices, procedures, processes, actions or measures; or
 - (iv) prohibiting certain practices, procedures, processes, actions or measures.
- (c) cause an assessment on the compliance with this Act by any scheme, and may recover the cost from the scheme.
- (4) A directive referred to in subsection (3)(b) may apply generally or be limited in its application to a particular scheme.
- (5) The Council must, where a directive applies generally, publish the directive in the *Gazette*.
- (6) In the execution of its functions in terms of subsection (1), the Council may–
- (a) operate a centralised helpline for financial customers; and
 - (b) set up or participate in a centralised call center to serve financial customers and to provide for a singly entry-point for complaints.
- (7) The Council must, before 31 March of each year, submit to the Minister a report on its affairs and functions during the preceding year ended on 31 December, and provide a copy of the report to the Commissioner.

Part 2

Statutory Ombuds

Offices of Ombud for Financial Services Providers and Adjudicator

177. (1) There are offices called the–

- (a) Office of the Ombud for Financial Services Providers; and
 - (b) Office of the Adjudicator,
- respectively.

(2) The functions of the Offices are performed by the Ombud for Financial Services Providers and the Adjudicator, respectively.

Adjudicator and Ombud for Financial Services Provider

178. The Council exercises administrative and financial oversight of the Office of the Adjudicator and the office of the Ombud for Financial Services Providers.

Accountability of statutory schemes

179. (1) Subject to subsection (2), a statutory scheme is accountable to the Council for–

- (a) the governance and the proper functioning of its office, including the exercise of its general administrative powers; and
- (b) compliance with this Act.

(2) Nothing in subsection (1) detracts from the independence of the Ombuds of the statutory schemes in considering and disposing of complaints.

Main objective of Adjudicator and Ombud for Financial Services Providers

180. The objective of the Adjudicator and the Ombud for Financial Services Providers is to consider and dispose of complaints in their respective spheres in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to—

- (a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
- (b) the provisions of this Act, any other applicable law, conduct standard, codes of conduct, pension fund rules and rules of practice, as the case may be.

Appointment of Adjudicator and Ombud for Financial Services Providers

181. (1) The Council must appoint as the Adjudicator and as the Ombud for Financial Services Providers, respectively, a person qualified in law and who possesses adequate knowledge of pensions law and administration or the rendering of financial services, as the case may be, and may appoint any person with those attributes as Deputy Adjudicator, Acting Adjudicator, Deputy Ombud for Financial Services Providers or Acting Ombud for Financial Services Providers, as may be required by the circumstances.

(2) The remuneration and other terms of office of the Adjudicator, Deputy Adjudicator, Ombud for Financial Services Provider and Deputy Ombud for Financial Services Providers must be determined by the Council, and be aimed to ensure the independence and security of tenure of office of the appointee.

(3) Any appointee referred to in subsection (1) may be reappointed to the same or any other office referred to in that subsection, at the remuneration and on the terms agreed to by the Council and the appointee.

(4) A person appointed in terms of subsections (1), (2), and (3) holds office until—

- (a) the expiry of the term for which the person has been appointed;
- (b) the person resigns from office, having submitted a written resignation to the Council at least three calendar months prior to the date of vacation, unless the Council has accepted shorter notice; or
- (c) the person is removed from office by the Council, on good cause shown, on the grounds of a material breach of the terms of appointment, misbehaviour, incapacity or incompetence, provided that the person has been afforded a reasonable opportunity to be heard prior to being removed from office.

Financial record-keeping by Adjudicator and Ombud for Financial Services Providers

182. (1) The Adjudicator and the Ombud for Financial Services Providers are the accounting officers in respect of all funds received and all payments made to defray expenses incurred by their respective offices.

(2) As the accounting officer, the Adjudicator and the Ombud for Financial Services Providers must—

- (a) maintain on a continual basis, and bring up to date monthly, a full and correct record of all funds received and payments made, and of all assets, liabilities and financial transactions of their respective Offices;
- (b) at all reasonable times, allow the Council, or its nominee, to inspect accounting records, in order to ensure compliance with this section;

- (c) as soon as practicable, but not later than three months after the end of every financial year, prepare annual financial statements in conformity with generally accepted accounting practice, reflecting all funds received and payments made during, and all assets, liabilities and transactions at the end of, the relevant financial year;
- (d) ensure compliance by their respective Offices with the provisions of the Public Finance Management Act, and any other applicable law.

(3) The accounting records and financial statements mentioned in subsection (2) must be audited annually by the Auditor-General, who may bring any deficiencies to the attention of the Council.

General administrative powers of the Adjudicator and Ombud for Financial Services Providers

183. The Adjudicator and the Ombud for Financial Services Providers may, for the performance of the functions of their respective Offices—

- (a) lease suitable premises from where they may perform their functions;
- (b) purchase, lease or otherwise acquire furniture, equipment and utensils;
- (c) employ persons to assist in the performance of the functions of the office and determine their terms of appointment;
- (d) delegate or assign to any employee of the office any administrative function;
- (e) enter into a service contract with any person for the performance of any specific act, function or service;
- (f) obtain relevant professional advice as may reasonably be required;
- (g) insure the Office against any loss of or damage to property, and arrange for fidelity cover or professional indemnity;
- (h) in general, do anything deemed necessary or expedient for the achievement of the objectives of their respective offices; and
- (i) enter into or oppose any litigation resulting from the exercising of the above powers.

Disestablishment and liquidation of Offices of Adjudicator and Ombud for Financial Services Providers

184. (1) The Office of the Adjudicator and the Office of the Ombud for Financial Services Providers may not be disestablished or liquidated, except by an Act of Parliament.

(2) In the event of a disestablishment or liquidation referred to in subsection (1), the assets of the relevant Office, if any, accrue to the Council, which has the power to manage the disestablishment or liquidation, subject to the provisions of an Act of Parliament contemplated in subsection (1).

Investigations by Council, the Adjudicator and Ombud for Financial Services Providers

185. The Council, the Adjudicator and the Ombud for Financial Services Providers have powers to conduct investigations, and for the purposes of any investigation or determination by the Council, the Adjudicator and the Ombud for Financial Services Providers, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes.

Determinations by Ombuds of the Adjudicator and Ombud for Financial Services Providers

186. (1) The Adjudicator and Ombud for Financial Services Providers, respectively, must, in any case where a matter has not been settled by all parties concerned, make a final determination, which may include–

- (a) the dismissal of the complaint; or
- (b) the upholding of the complaint, wholly or partially, in which case–
 - (i) the complainant may be awarded an amount as fair compensation for material inconvenience, distress or any financial prejudice, loss or damage suffered, plus the reasonable costs of submitting the complaint;
 - (ii) a direction may be issued that the respondent against whom a determination was made take the steps in relation to the complaint that the Ombud determines;
 - (iii) the Ombud may order the party referred to in subparagraph (ii) to pay case fees to the Office;
 - (iv) the Ombud may make any other order which a Court may make.

(2) (a) A monetary award may provide for the amount payable to bear interest at a rate and from a date determined by the Ombud.

- (b) The Council may, by rule, determine–
 - (i) the maximum amounts for compensation contemplated in terms of subsection (1)(b)(i);
 - (ii) different maximum amounts for different categories of complaints;
 - (iii) the granting of costs against a complainant in favor of the Adjudicator or Ombud for Financial Services, as the case may be, or the respondent if–
 - (aa) the conduct of either party was improper or unreasonable; or
 - (bb) the party was responsible for an unreasonable delay in the finalisation of the relevant investigation:

(c) An amount payable in terms of a cost award referred to in paragraph (b)(iii) bears interest at a rate and from a date determined by the Ombud.

(3) Any award of interest by the Ombud in terms of subsection (2)(a) may not exceed the rate that a Court would have been entitled to award, had the matter been heard by a Court.

(4) The Adjudicator and the Ombud for Financial Services must, as soon as possible, reduce a determination to writing, including all the reasons for the determination, sign the determination, and send copies of the determination to the Commissioner and all of the parties concerned with the complaint.

- (5) A determination contemplated in subsection (4)–
 - (a) or a final decision of the Tribunal referred to in paragraph (b) may be executed as if it were a civil judgment of the High Court;
 - (b) is only appealable to the Tribunal–
 - (i) with the leave of the Ombud, after the Ombud has taken into consideration–
 - (aa) the complexity of the matter; or
 - (bb) the reasonable likelihood that the Tribunal may reach a different conclusion; or

- (ii) if the Ombud refuses leave to appeal, with the permission of the Chair of the Tribunal.

Part 3

Voluntary Ombud schemes

Requirements for recognition of voluntary scheme

187. (1) In order to qualify for recognition in terms of section 188, a scheme, other than a statutory scheme, must comply with the following requirements:

- (a) A majority of financial institutions, based on asset value, gross income or financial customer base (as the Council may determine in general, or in a particular instance), in a particular category of financial institutions must participate in the scheme;
- (b) a body on which the Council is represented as an observer and which consists of persons not engaged in the business of a participant of the scheme, and to which the scheme is accountable must–
 - (i) appoint the ombud of the scheme, and settle the remuneration and monitor the performance and independence of the ombud; and
 - (ii) monitor the continued compliance by the scheme with this Act, its constitution and the provisions of the scheme, and report any non-compliance to the Council;
- (c) the scheme must provide for minimum requirements relating to qualifications, competence, knowledge and experience, with which the ombud must comply;
- (d) the scheme must have sufficient human, financial and operational resources, funded by the participants in the scheme, to enable the ombud to function efficiently and timeously;
- (e) the proposed procedures of the scheme must enable the ombud–
 - (i) to resolve a complaint through mediation, conciliation, recommendation or determination;
 - (ii) to act independently in resolving a complaint or in making a determination;
 - (iii) to dispose of complaints in an accessible, procedurally fair informal, economical and expeditious manner, having regard to what is equitable in all circumstances, as well as–
 - (aa) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
 - (bb) the provisions of any applicable law, conduct standard, codes of conduct, pension fund rules and rules of practice;
 - (iv) to report to the Commissioner and to a body representative of the relevant category of financial institutions on matters which may be of interest to them;
- (f) provision must be made for the effective enforcement of determinations of the ombud;

- (g) provision must be made to ensure that the questions, concerns and complaints of financial customers are treated equitably, fairly and consistently in a timely, efficient and courteous manner;
- (h) the scheme must provide for ways in which it will co-operate with the Council's functions of promoting the education of financial customers and co-ordinating the activities contemplated in section 176(1)(c); and
- (i) any other requirements that may be prescribed and that are not in conflict with the objects of this Act.

(2) Nothing contained in subsection (1) precludes a scheme from providing that its participants are bound by other provisions set out in the scheme which are not in conflict with the provisions of this Act.

(3) Notwithstanding the provisions of subsection (1)(a), all financial institutions are required to participate in a recognised scheme appropriate to their business, unless the financial institution has been exempted in terms of section 195(4).

Application for recognition by scheme

188. (1) A scheme contemplated in section 187 must submit its application for recognition in the prescribed manner and form to the Council, together with the supporting documentation and information determined by the Council, and a non-refundable prescribed fee.

(2) A properly authorised representative of the body referred to in section 187(1)(b) or of the participants concerned may appear before the Council in order to submit the scheme's application for recognition and to present its case in support of the application.

(3) The Council must, after considering an application—

- (a) if the Council is satisfied that the scheme complies with the requirements of this Act, grant the application; or
- (b) if the Council is not satisfied, refuse to grant the application and furnish the scheme with the reasons for the refusal.

(4) At any time after a scheme has been recognised in terms of subsection (3)(a), and after affording the scheme an opportunity to be heard, the Council may impose on the scheme any requirement contemplated in section 187(1)(i) that is prescribed after the date of recognition of the scheme.

(5) No change to—

- (a) the constitution of a recognised scheme;
- (b) the provisions in terms of which a recognised scheme operates; and
- (c) the terms of reference of a recognised scheme's ombud,

is valid unless approved by the Council.

(6) If an application has been granted, the Council must issue a certificate of recognition in the prescribed manner to the relevant scheme, and the Commissioner must publish the recognition by notice in the *Gazette*.

Suspension, reinstatement or withdrawal of recognition

189. (1) The Council may, at any time, suspend or withdraw recognition—

- (a) on application by the scheme;
- (b) if the scheme has ceased to function; or
- (c) if the scheme no longer complies with any provision of this Act.

(2) The Council may reinstate the recognition of a suspended scheme, if the reason for the suspension no longer exists.

(3) The Council must in the prescribed manner publish a notice of suspension, reinstatement or withdrawal of recognition in the *Gazette* and any other appropriate media.

(4) A suspension or withdrawal of recognition for the reasons contemplated in subsection (1)(c) may only be made after the scheme in question has been afforded a reasonable opportunity to be heard.

(5) A suspension or withdrawal of recognition of a scheme may be appealed by the scheme in question to the Tribunal.

Part 4

Jurisdiction and operation of schemes

Jurisdiction

190. (1) The ombuds referred to in this Act have the following jurisdiction:

- (a) The Adjudicator and the Ombud for Financial Services Providers have jurisdiction as set out in the respective provisions of this Act;
- (b) an ombud of a recognised scheme has the jurisdiction provided by the terms which govern the operation of the scheme and the terms of reference of the ombud; and
- (c) the statutory ombud has jurisdiction in respect of matters as contemplated in section 191.

(2) (a) No ombud of a recognised scheme has jurisdiction to resolve a complaint or settle a matter in respect of which the Adjudicator or the Ombud for Financial Services Providers has jurisdiction, except if Adjudicator or the Ombud for Financial Services Providers has declined to deal with the matter.

(b) If an ombud of a recognised scheme, the Adjudicator or the Ombud for Financial Services Providers does not have jurisdiction in respect of a specific complaint, that ombud, Adjudicator or Ombud for Financial Services Providers must submit the complaint without undue delay to—

- (i) the ombud of a scheme which does have jurisdiction; or
- (ii) the Council, if the matter falls within the jurisdiction of the statutory ombud,

and must advise the financial customer accordingly.

(3) (a) If there is uncertainty as to whom the complaint should be referred, the relevant ombud, the Adjudicator or the Ombud for Financial Services Providers, who may be involved in the uncertainty, must consult in order to determine who should deal with the complaint.

(b) Failing agreement in terms of paragraph (a), the matter must be referred to the Council to determine who may exercise jurisdiction in respect of the complaint, and the Council must advise the financial customer and the ombud to whom the matter is referred accordingly.

(c) In determining an issue in terms of paragraph (b), the Council may decide that the complaint will not be determined, and the Council must advise the complainant accordingly.

(4) If two or more respondent parties are involved in one complaint, the relevant ombuds or the Council, as the case may be, may decide that the complaint will be heard by more than one ombud who is entitled to exercise jurisdiction.

Authority of statutory ombud to entertain certain complaints

191.(1) Subject to sections 190 and 196 and the circumstances contemplated in subsection (2), the Council must determine which ombud must act as the statutory ombud in dealing with a complaint .

(2) The statutory ombud must deal with a complaint against a financial institution if–

- (a) the financial institution does not participate in a recognised scheme;
- (b) the recognition of a scheme in which the financial institution participates is suspended or withdrawn in terms of section 189(1);
- (c) the financial institution participates in a recognised scheme, but the ombud concerned lacks jurisdiction in terms of the relevant scheme, while the statutory ombud has jurisdiction to entertain the complaint;
- (d) if paragraphs (a), (b) and (c) apply, and the complaint also falls outside the jurisdiction of the Offices referred to in section 177; or
- (e) the complaint has been referred to the statutory ombud in terms of section 190(3)(b).

Prescription and saving of rights

192. (1) Official receipt of a complaint by any of the ombud offices suspends any applicable time barring terms, whether in terms of an agreement or any law, or the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period from the receipt of the complaint, until the complaint has either been withdrawn by the complainant concerned, or determined by any ombud or the Tribunal, as the case may be.

(2) No provision of this Act affects any right of a financial customer or other affected person to seek appropriate legal redress by virtue of the common law or statutory law, before or after the consideration of a complaint by an ombud.

(3) A complaint already dealt with by an ombud may not subsequently be dealt with by any other ombud.

Report of ombud

193. (1) A scheme must–

- (a) within six months after the end of every financial year of the scheme, submit to the Council, in the form and with the content required by the Council, a report on the affairs and functions of the office of the ombud during the financial year in question;
- (b) at the request of the Council, at any time furnish the Council, within a reasonable time, with information or a report regarding the operation of the scheme and other matters relating to the scheme, that are necessary to ensure compliance by the scheme with the provisions of this Act.

(3) The Council must at the request of the Financial Sector Conduct Authority or the Minister, and may of its own accord, submit reports and information received from an ombud to the Financial Sector Conduct Authority or the Minister, as the case may be, with comment or recommendation that the Council determines are necessary.

Access to records of schemes

194. (1) The Commissioner has, for the purposes of the performance of the Commissioner's functions, access to a scheme's files and records, and may, without further proof, rely on a copy of any record of proceedings signed by the ombud concerned.

(2) Any interested person may, subject to applicable legislative requirements relating to confidentiality, obtain a copy of any record on payment of a fee determined by the Ombud.

Part 5

Prohibitions, exemptions and regulations

Prohibition and exemptions

195. (1) Notwithstanding any other law, no financial institution may—

- (a) participate in a scheme; or
- (b) require or invite any financial customer to submit a complaint in terms of any scheme,

unless the scheme is a recognised scheme or a statutory scheme or the financial institution is exempted from compliance in terms of subsection (4).

(2) Any participation, requirement or invitation in contravention of subsection (1) is null and void.

(3) Despite subsection (1), any scheme existing and in operation immediately before this section came into operation may continue in accordance with the provisions of that scheme until the expiry of a period of 18 months from the date on which this section came into operation.

(4) (a) The Minister may, after consultation with the Commissioner and the Council, exempt any financial institution or category of financial institutions by notice in the *Gazette* from any provision of this Act relating to the resolution of a complaint by an ombud, if—

- (i) the resolution of a complaint against the financial institution or category of financial institutions by an ombud is already partially or wholly regulated by any other law; or
- (ii) the granting of the exemption will not conflict with the public interest, prejudice the interests of financial customers or frustrate the achievement of the object of this Act.

(b) The Minister—

- (i) having regard to the factors mentioned in paragraph (a), may attach to any exemption granted reasonable requirements or impose reasonable conditions with which the financial institution or category of financial institutions must comply, either before or

after the effective date of the exemption, in the manner and during the period specified by the Minister; and

(ii) must determine the period for which the exemption will be valid.

(c) Subject to paragraph (d), a conditional exemption lapses whenever the financial institution or a financial institution in the category in question contravenes or fails to comply with any requirement or condition of the exemption.

(d) The Minister may on application condone any contravention or failure to comply with a requirement or condition of a conditional exemption, and determine reasonable requirements or conditions with which the financial institution must comply on or after resumption of the exemption, as if the requirements or conditions had been attached or imposed on the first granting of the exemption.

(5) (a) No financial institution may use a name or description in respect of any internal complaint resolution arrangement referred to in paragraph (a)(ii) of the definition of “scheme” in section 1(1), which represents or constitutes a “scheme” as so defined, unless the financial institution—

(i) has been authorised by the Council to do so; and

(ii) complies with the conditions determined by the Council.

(b) A financial institution that contravenes any provision of paragraph (a) is guilty of an offence and on conviction liable to a fine not exceeding the prescribed amount.

(c) Financial institutions not in compliance with this section, must be compliant within 18 months from the date fixed by the Minister in terms of section 243.

Regulations

196. The Minister may, after consultation with the Commissioner and the Council, make regulations regarding the limitations on the jurisdiction of the statutory ombud, having regard to—

(a) the factual or legal complexity of any complaint dealt with by the statutory ombud;

(b) the nature of the financial customer whose complaint is dealt with by the statutory ombud;

(c) the legal relationship between the financial customer whose complaint is to be dealt with and the financial institution.

CHAPTER 17
MISCELLANEOUS

Part 1

Information sharing, complaints and reporting

Information sharing arrangements

197. (1) (a) Information obtained in the performance of any power or function in terms of a financial sector law or sections 45 and 45B of the Financial Intelligence Centre Act, including personal information as defined in the Protection of Personal Information Act, may be utilised or disclosed by the financial sector regulators or the Reserve Bank only—

- (i) in the course of performing functions in terms of, or as enabled by the financial sector laws and the Financial Intelligence Centre Act;
- (ii) for the purposes of legal proceedings or other proceedings;
- (iii) when required to do so by a Court; or
- (iv) by the financial sector regulators or the Reserve Bank if disclosure is—
 - (aa) for the purposes of warning financial customers against conducting business with a financial institution or other person conducting activities in contravention of the financial sector laws and the Financial Intelligence Centre Act;
 - (bb) for the purposes of informing financial customers of actions taken against a financial institution in terms of the financial sector laws and the Financial Intelligence Centre Act;
 - (cc) for the purposes of alerting financial customers to activities carried out by one or more financial institutions which the financial sector regulators or the Reserve Bank believes to constitute a potential risk to financial customers and in respect of which financial customers should take care;
 - (dd) in the public interest;
 - (ee) to a designated authority, for the purposes of—
 - (A) ensuring that financial institutions conduct their business in a manner that is consistent with and promotes the objectives of financial customer and investor protection, the fair treatment of financial customers and investors, efficiency and integrity in financial markets and confidence in the financial system;
 - (B) ensuring the safety and soundness of financial institutions, in particular the ability of financial institutions to meet the financial commitments and obligations they incur in the course of carrying out their business;
 - (C) ensuring the stability of the financial system; or
 - (D) coordinating the regulation and supervision of financial institutions;
 - (ff) for the purposes of disclosing to a designated authority in accordance with a co-operation agreement referred to in subsection (2)(a)(v) or

otherwise, information relating to a particular financial or other institution or financial or other service or a particular individual who is or was involved in a particular financial institution or financial service, if that designated authority has a material interest in the information;

(gg) for the purposes of developing and implementing policies and activities to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial services; or

(hh) for the purposes of anti-money laundering and combating the financing of terrorism, and the performance of supervisory functions in accordance with the Financial Intelligence Centre Act.

(b) Information obtained in terms of the Financial Intelligence Centre Act, other than in terms of sections 45 and 45B of that Act, may only be utilised or disclosed in accordance with sections 40 and 41 of that Act.

(c) When information is used or disclosed for the purposes referred to in paragraphs (a) and (b), that utilisation or disclosure of information constitutes compliance with an obligation imposed by law for the purposes of sections 11(1)(c), 12(2)(d)(ii), 15(3)(c)(ii), and 18(4)(c)(ii) of the Protection of Personal Information Act.

(2)(a) The financial sector regulators or the Reserve Bank, in pursuing the purposes referred to in subsection (1)(a), may, –

- (i) liaise with any designated authority on matters of common interest;
- (ii) participate in the proceedings of any designated authority;
- (iii) advise or receive advice from any designated authority;
- (iv) prior to taking regulatory action which a financial sector regulator or the Reserve Bank considers material against a financial institution, inform any designated authority that the financial sector regulator or the Reserve Bank, considers to have a material interest in that financial institution of the pending regulatory action, or where this is not possible, inform the designated authority as soon as possible after taking the regulatory action; and
- (v) negotiate and enter into bilateral or multilateral co-operation agreements, including memoranda of understanding, with designated authorities, including designated authorities in whose countries a subsidiary or holding company of a financial institution is incorporated or a branch is situated, to, among other matters–
 - (aa) coordinate and harmonise the reporting and other obligations of financial institutions;
 - (bb) provide mechanisms for the exchange of information, including, but not limited to a provision that the financial sector regulators, the Reserve Bank, or a designated authority–
 - (A) be informed of adverse assessments of qualitative aspects of the operations of a financial institution; or
 - (B) may provide information regarding significant problems that are being experienced within a financial institution;
 - (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of financial institutions, on an on-going basis, including, but not limited to, a provision that the financial sector regulators or the Reserve Bank may conduct an on-site visit or an

investigation of a financial institution, on the request of a designated authority, and that the designated authority may assist the financial sector regulators or the Reserve Bank in an on-site visit or investigation;

- (dd) assist any designated authority in regulating and enforcing any laws that the designated authority is responsible for supervising and enforcing, that are similar to a financial sector law or which have an impact on the regulation of the financial sector and financial institutions.

(b) An agreement referred to in paragraph (a)(v), which complies with the requirements set out in subsection (3), constitutes an agreement that complies with the requirements of section 72(1) of the Protection of Personal Information Act.

(3)(a) Information may only be disclosed by the financial sector regulators or the Reserve Bank to a designated authority if, prior to providing information, it is established that the designated authority that will receive the information has appropriate safeguards in place to protect the information, which safeguards must be similar to those provided for in this section.

(b) The financial sector regulators or the Reserve Bank may only consent to information that is provided to a designated authority being made available to third parties, if satisfied that the third parties have appropriate safeguards in place to protect the information received, that are similar to those provided for in this section.

(c) Information may only be requested by the financial sector regulators or the Reserve Bank from a designated authority when performing the functions and exercising powers in terms of the laws referred to in subsection (1).

(d) Any information requested from or provided by a designated authority—

- (i) must only be used for the purpose for which it was requested;
- (ii) must not be made available to third parties without the consent of the designated authority that provided the information;
- (iii) if lawfully compelled to make information provided by a designated authority available —

(aa) inform that designated authority of the event and the circumstances in which the information will be made available; and

(bb) where possible, use all reasonable means to oppose the disclosure of or protect the information.

(4) For the purposes of this section, information does not include—

- (a) aggregate statistical data;
- (b) information and analysis about the financial condition or business conduct practices of a financial services sector or a part of a financial services sector.

Complaints

198. (1) A person may make a complaint to a financial sector regulator that a person has contravened, is contravening or is about to contravene a provision of a financial sector law.

(2) A complaint referred to in subsection (1) must be in writing or another form approved by or accepted by the regulator.

(3) A financial sector regulator must, if asked, assist a person to make a complaint.

(4) A financial sector regulator must act on and respond to a complaint made in terms of subsection (1), and must communicate with the person who made the complaint regarding the status of the complaint, and actions being taken regarding the complaint.

(5) Where a complaint relates to a dispute, and does not relate to a contravention or a financial crime, a financial sector regulator must refer the dispute to the relevant ombud in terms of Chapter 16.

Actuaries, Valuators and Auditors to report to financial sector regulators

199. (1) Despite any other law, the actuary, valuator or auditor of a financial institution or controlling company (if the appointment of an auditor is required under a financial sector law) must -

- (a) without delay, submit a detailed written report to the regulators and the governing body on any matter relating to the business of a financial institution or financial conglomerate, as the case may be, of which the actuary, valuator or auditor becomes aware in the performance of its functions and duties and which, in the opinion of the actuary, valuator or auditor, -
 - (i) causes the financial institution or financial conglomerate to be not financially sound or is likely to in future prejudice the ability of the financial institution or financial conglomerate to be financially sound;
 - (ii) constitutes a contravention or is likely to in future constitute a contravention of any financial sector law;
 - (iii) may be contrary to governance framework requirements set out in a prudential standard, conduct standard or a financial sector law or amounts to inadequate maintenance of internal controls; and
 - (iv) in the case of an auditor, may result in an audit not being completed or may result in a qualified or adverse opinion on the accounts; and
- (b) in the case of an auditor, submit any report or other document or particulars contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, 2005, also to the regulators.

(2) Despite any other law, the actuary, valuator or auditor of a controlling company of a financial conglomerate or any significant owner of a financial institution or controlling company must, without delay, submit a detailed written report to the regulators on any matter relating to an entity that is part of a financial conglomerate or a significant owner of a financial institution or controlling company of which the actuary, valuator or auditor becomes aware in the performance of their functions as auditor and which, in the opinion of the actuary, valuator, auditor, constitutes a contravention or will in future constitute a contravention of any section of this Act, a financial sector law, a prudential standard or a conduct standard.

(3) Any actuary, valuator or auditor of a financial institution or controlling company who resigns or whose appointment is terminated must submit to the regulator -

- (a) a written statement on the reasons for resignation or the reasons that the actuary, valuator or auditor believes are the reasons for the termination; and
- (b) in the case of an auditor, any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, 2005, the auditor would, but for the termination, have had reason to submit.

(4) (a) The furnishing, in good faith, by an actuary, valuator or auditor of a report or information under subsections (1), (2) or (3) may not be deemed to constitute a

contravention of a provision of a law or a breach of a provision of a code of professional conduct to which that actuary, valuator or auditor is subject.

(b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section does not confer upon any person a right of action against the actuary, valuator or auditor which, but for that failure, that person would not have had.

Protections for reports to financial sector regulators

200. A person who reports to a financial sector regulator—

- (a) financial difficulties or suspected financial difficulties in a financial institution;
- (b) a contravention or suspected contravention of a financial sector law in relation to a financial institution;
- (c) the involvement or the suspected involvement of a financial institution in financial crime,

whether or not the report is required by law, is not—

- (i) criminally liable for making the report; or
- (ii) liable to pay compensation or damages to any person in relation to a loss caused by the report,

unless it is established that the report was made in bad faith.

No victimisation

201. (1) A person must not subject another person to any prejudice in employment, or penalise another person in any way, on the ground that the other person—

- (a) made a report in terms of section 199; or
- (b) made a report referred to in section 200, even if the report was not required by law.

Protected disclosures

202. Sections 200 and 201 apply in addition to, and do not limit, any other law that provides protection for persons who properly report contraventions of the law.

Part 2

Offences and specified contraventions

Offences related to licensing

203.(1) A person who—

- (a) provides a financial product, financial service, market infrastructure or payment system in contravention of section 98(1), without being licensed, commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both;
- (b) is not licensed, and –
 - (i) describes or holds itself out as licensed in terms of a financial sector law;
 - (ii) describes or holds itself out as licensed in terms of a financial sector law to provide financial products, financial services, a market infrastructure or a payment system of a particular kind; or
 - (iii) permits another person to so describe it,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

(2) A licensee who fails to report to the financial sector regulator in accordance with section 105, commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

(3) A licensee whose licence has been suspended in accordance with section 108 and who engages in conduct that contravenes a condition imposed on a licensee by a financial sector regulator in terms of section 108(3), commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

Offences relating to on-site inspections

204. A regulated person who—

- (a) refuses to provide the financial sector regulator—
 - (i) reasonable access to its premises as contemplated in section 114(3)(a)(i);
 - (ii) with any information relevant to an on-site inspection when requested by the financial sector regulator;
- (b) fails to comply with a direction by the financial sector regulator prohibiting the removal or destruction of business documents as contemplated in section 114(3)(a)(iv)(aa);
- (c) fails to comply with an instruction of the financial sector regulator as contemplated in section 114(3)(b); or
- (d) wilfully hinders the financial sector regulator in the exercise of its powers or the performance of its duties in relation to an on-site examination,

commits an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and imprisonment.

Offences relating to investigations

205. A person who—

- (a) when requested by an investigator 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 investigator and relating to an investigation;
- (c) wilfully gives any false information to an investigator;
- (d) without lawful excuse refuses or fails to comply with any reasonable request by an investigator in the exercise of the investigator's powers or the performance of the investigator's duties;
- (e) wilfully hinders an investigator in the exercise of the investigator's powers or the performance of the investigator's duties;
- (f) has been duly summoned in terms of section 116(1) and who, without sufficient cause—
 - (i) fails to appear at the time and place specified in the summons;
 - (ii) fails to remain in attendance until excused by the investigator from further attendance;
 - (iii) fails to lodge or produce any document referred to in the summons with the investigator,

commits an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and imprisonment.

Offences applicable to significant owners

206. A person who—

- (a) becomes a significant owner of a financial institution; or
- (b) disposes of an interest in a financial institution or a related party of that financial institution in a manner that will result in that person no longer being a significant owner of that financial institution,

without approval of the Prudential Authority, commits an offence and is liable on conviction to a fine not exceeding R.....

Contravention by certain key persons

207. When a financial institution or regulated person has committed a contravention under a financial sector law, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the contravention, a person referred to in paragraphs (a) to (c), (d) or (e) of the definition of ‘key person’ of that financial institution or regulated person and who wilfully or in a negligent manner takes part in the commission of the contravention, or fails to prevent it, commits a contravention and is liable on conviction to a fine not exceeding R.....

Offences relating to non-compliance with a financial regulator’s directive

208. A person who—

- (a) fails or refuses to comply with or who contravenes a directive issued in terms of Part 2 of Chapter 12; or
- (b) hinders or prevents compliance with a regulator’s directive, or is reckless whether compliance with a regulator’s directive will be hindered or prevented,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

Offences relating to contravention of a debarment order

209. (1) A person debarred in terms of section 145 who—

- (a) engages in conduct that contravenes the order;
- (b) engages another person to engage in conduct that contravenes or would contravene the debarment order,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

(2) A person who engages a debarred person or engages in conduct that contravenes or would contravene the debarment order commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

Failure to comply with summons

210. Any person who has been duly summoned in terms of section 164(4)(a) and who, without sufficient cause—

- (a) fails to appear at the time and place specified in the summons;
- (b) fails to remain in attendance until excused by the board from further attendance;
- (c) refuses to take the oath or to make an affirmation as contemplated in section 164(4)(b);
- (d) fails to answer fully and satisfactorily any question lawfully put to him or her; or

(e) fails to furnish information or to produce a document specified in the summons, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding two years or to both a fine and imprisonment.

Offences related to ombud schemes

211. Any person who –

- (a) commits any act in relation to the Adjudicator or the Ombud for Financial Services which, if committed in respect of a court of law, would have constituted contempt of court, is guilty of an offence and liable on conviction to any penalty which may be imposed on a conviction of contempt of court; or
- (b)
 - (i) anticipates a determination of the Adjudicator or the Ombud for Financial Services in any manner calculated to influence the determination; or
 - (ii) wilfully interrupts any proceedings conducted by the Adjudicator or Ombud,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Offences relating to secrecy and sharing of information

212. Any person who contravenes requirements relating to the sharing of information section 197 commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

Offence by actuary or auditor

213. An actuary or auditor of a financial institution who contravenes or fails to comply with the provisions of section 199 commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding year, or both.

Other offences

214. (1) A person who makes a statement, whether orally, in writing, or in any other manner, to a financial sector regulator which statement is materially false or misleading; and the person knows or believes, or ought reasonably to have known that the statement is materially false or misleading, the person commits an offence and is liable on conviction to a fine not exceeding [insert].

(2) A person who is required in terms of a financial sector law to keep any accounts, accounting records or other records; and the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and who

- (a) knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate; or
- (b) intended to deceive or mislead the financial regulator or an investigator; or
- (c) intended to hinder or obstruct a financial sector regulator, and an investigator in performing duties in terms of a financial sector law,

commits an offence and is liable on conviction to a fine not exceeding [insert (to be higher than the penalty for the subsection (1) or (2) offence)].

(3) A person who applies to a company, body, business or undertaking a name or description that signifies or implies some connection between the company, body,

business or undertaking and a financial sector regulator, commits an offence and is liable on conviction to a fine not exceeding [insert].

Part 3

General matters

Regulations⁶⁰

215. (1) The Minister may make Regulations to facilitate the implementation of this Act, including Regulations—

- (a) that must or may be prescribed in terms of a provision of this Act;
- (b) to provide for other procedural or administrative matters that are necessary to implement the provisions of this Act.

(2) Regulations may apply differently in different circumstances.

(3) In Regulations designating a financial product in terms of section 2(2), or Regulations delegating a financial service in terms of section 3(2), the Minister must assign the responsibility for the oversight and regulation of the financial product or financial service to a financial regulator.

(4) Regulations made in terms of section 2(2) or 3(2) lapse after a period of one year from the effective date of the Regulations, unless ratified by an Act of Parliament, either through amendments to an existing financial sector law, or in new legislation.

Compensation for contraventions of financial sector laws

216. A person, including a financial sector regulator, who suffers loss because of a contravention of a financial sector law by another person may recover the amount of the loss by action in a court of competent jurisdiction against any of—

- (a) the other person; and
- (b) any person who was knowingly involved in the contravention.

Periods may be extended

217. (1) A financial sector regulator may extend any time period for compliance with, or a period prescribed by, a provision of a financial sector law in relation to a function of the regulator.

(2) An exemption may be granted by a financial sector regulator in terms of subsection (1) more than once, and an exemption may be granted either before or after the time period for compliance has passed or the period prescribed has ended.

Exemptions

218. (1) The Prudential Authority and the Financial Sector Conduct Authority may exempt any person or category of persons from any provision of a financial sector law, if—

- (a) practicalities impede the strict application of a specific provision of the financial sector law; and
- (b) the granting of the exemption will not—
 - (i) conflict with the public interest;

⁶⁰ Part 1 of Chapter 7 applies in relation to Regulations.

- (ii) prejudice the interests of and the achievement of the objectives of the other financial sector regulators; and
 - (iii) frustrate the achievement of the objects of the financial sector laws.
- (2) An exemption may be granted subject to any conditions specified by the regulator.
- (3) An exemption in respect of which a person has to comply with conditions, lapses whenever the person contravenes or fails to comply with any conditions.
- (4) The Prudential Authority must and the Financial Sector Conduct Authority must publish an exemption on the Authority's official web site.

Records and entries in books of account admissible in evidence

219. In any proceedings conducted in terms of this Act, the records and books of account of a financial institution, or a key person are admissible as prima facie evidence of the matters, transactions and accounts recorded therein, if supported by an affidavit by a person who alleges in that affidavit that—

- (a)(i) the person is a director, member, partner, official, employee or agent of the financial institution or key person; or
- (ii) the person is an investigator appointed in terms of section 115(1); and
- (b) the records or books of account are or have been the ordinary records and books of account of that financial institution or key person.

Verification of information

220. Before making a determination in accordance with a financial sector law as to whether or not a person is fit and proper to hold office or continue to hold office in a financial institution, the financial sector regulator may request for the verification of information or may verify information at the financial sector regulator's disposal by making enquiries to any state department, credit bureau or other source of relevant information concerning that person.

Immunities

221. The State, the Minister, the Reserve Bank, the Governor and Deputy Governors, a financial sector regulator, or an official of the State, the Reserve Bank or a financial sector authority is not liable for or in respect of any damage, loss or expenses suffered or incurred by any person arising from any decisions taken or actions performed in good faith in the exercise of a function, power or duty assigned or delegated to the Minister, the Reserve Bank, a financial sector regulator or an official in terms of this Act or a financial sector law.

Notices to licensees

222. (1) A notice in terms of or relating to a financial sector law to a person who is or was licensed in terms of a financial sector law may be served on or given to—

- (a) the person; or
- (b) if the person cannot be found after reasonable inquiry, some other person apparently involved in the management or control of a place where the person carries or carried on the licensed activities.

(2) For the purposes of a financial sector law, service in terms of subsection (1)(b) is effective service on the licensee or former licensee.

Part 4

Financial Sector Information Register

Establishment and operation of Financial Sector Information Register

223. (1) The National Treasury must establish and maintain the Financial Sector Information Register in accordance with this Part.

(2) Nothing in this Part precludes a financial sector regulator or any other person from making available information relating to financial sector laws and their implementation available to the public.

Purpose of Financial Sector Information Register

224. The purpose of the Financial Sector Information Register is to provide financial institutions, financial customers, and the public generally with reliable access to accurate and up to date information relating to financial sector laws, legislative instruments, and their implementation.

Content of Register

225. (1) The Register is a database of the documents listed in Schedule 3.

(2) The Register may include other documents, relevant to the regulation and supervision of the financial sector, that the Director-General determines may be included in the Register.

Keeping of Register

226. (1) The Register must be kept in electronic form, and information may also be made available in any other format.

(2) The Register must be kept in a manner that facilitates access and searching of the Register by members of the general public.

Determinations of requirements for documents

227. The Director-General may make a written determination—

- (a) specifying requirements for documents that must be included in the Register, including requiring persons lodging documents for registration to provide information about the document, to ensure that the Register is as useful as practicable as reasonably possible to persons wishing to use it;
- (b) specifying procedures for transmitting documents to the National Treasury for registration.

Rectifying Register

228. (1) If the Director-General—

- (a) becomes aware that the Register is erroneous because of a mistake or omission; and
- (b) is satisfied that:
 - (i) in relation to a law or legislative instrument, the error lies in the text, in electronic form, of the law or legislative instrument as it appears in the Register, and not in the original text of the law or legislative instrument;
 - (ii) in relation to a compilation of a law or legislative instrument, the error lies in the text, in electronic form, of the compilation as it appears in the Register, and the text does not represent the state of the law that it purports to represent,

the Director-General must arrange for the Register to be corrected to rectify the error as soon as possible, and annotate the Register as it is rectified, to explain the nature of the rectification, the date and time the rectification was made and the reason for the rectification.

Delegations

229. (1) The Director-General may, in writing, delegate any power or duty of the Director-General in relation to the Register, except this power of delegation, to a member of staff of the National Treasury, and the Director-General may, at any time, amend or revoke a delegation.

(2) A delegation may be to a specified person or to the person holding a specified position.

(3) A delegation is subject to the limitations and conditions specified in the delegation.

(4) A delegation does not divest the Director-General of responsibility in respect of the delegated power or duty.

(5) Anything done by a delegate in accordance with the delegation is deemed to be done by the Director-General.

Part 5

Repeals and amendments

Laws repealed or amended

230. The laws specified in column 2 of Schedule 4 are repealed or amended as set out in column 3 of the Schedule.

Part 6

Transitional provisions

Assignment of responsibility for financial sector laws and designation of responsibility for regulation of financial products and financial services

231. (1) The functions, and the associated powers and duties of the Prudential Authority in relation to collective investment schemes, pooled funds, pension funds as defined in section 1(1) of the Pension Funds Act, and friendly societies as defined in section 1(1) of the Friendly Societies Act, are assigned to the Financial Sector Conduct Authority for a period of three years from the effective date of this Part, unless a different period is prescribed by the Minister by Notice in the *Gazette*.

(2) The functions, and the associated powers and duties of the Prudential Authority in relation to medical schemes are assigned to the Council for Medical Schemes, unless the Minister, with the concurrence of the Minister of Health, prescribes otherwise by Notice in the *Gazette*.

(3) In relation to a financial product that is designated by the Minister in terms of section 2(2), or a financial service that is designated by the Minister in terms of section 3(2), the Minister must, in the Regulations designating the financial product or financial service, specify the financial regulator that is responsible for the oversight and regulation of the financial product or the financial service.

Transfer of assets and liabilities of Financial Services Board

232. (1) At the effective date for this Part, the assets and liabilities of the Financial Services Board cease to be assets and liabilities of Board and become assets and liabilities of Financial Sector Conduct Authority without any conveyance, transfer or assignment.

(2) At the effective date for this Part, the Financial Sector Conduct Authority becomes the Financial Services Board's successor in law and title in relation to those assets and liabilities.

Pending proceedings and matters arising prior to effective date

233. If any proceedings to which the Financial Services Board was a party were pending in any court or tribunal immediately before the effective date for this Part, the Financial Sector Conduct Authority is substituted for the Financial Services Board as a party to the proceedings.

Transitional Provisions relating to Enforcement Committee

234. (1) Any proceedings in respect of matters that are formally before the enforcement committee established in terms of section 97 of the Security Services Act, 2004 (Act No. 36 of 2004), and section 10A of the Financial Services Board Act, 1990 (Act No.97 of 1990), respectively, immediately before the commencement of this Act, must be continued and concluded by the Authority as if those laws had not been repealed, and for that purpose a reference in the provisions relating to the enforcement committee must be construed as a reference to a committee established by the Authority for that purpose.

(2) For purposes of subsection (1) proceedings are instituted if:

- (a) in the instance of the Enforcement Committee established in terms of section 97 of the Security Services Act, 2004 (Act No. 36 of 2004), when the pleadings envisaged in section 102(1) of that Act have been referred to the Enforcement Committee;
- (b) in the instance of the Enforcement Committee established in terms of section 10A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), when the pleadings envisaged section 6B(1) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) have been delivered in terms of section 6B(2)(a) of that Act.

(3) Any contravention that occurred before the commencement of this Act, and that is not the subject of any instituted proceedings as envisaged in subsection (2), must be dealt with in terms of the procedures under the relevant provisions of this Act, but the Authority may only impose administrative sanctions in terms of the legislation that was in force on the date of the contravention as if that legislation had not been repealed.

Transitional Provisions relating to Appeal Board

235. (1) Any proceedings in respect of an appeal that has been formally lodged with the appeal board established in terms of section 26A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), immediately before the commencement of this Act, must be continued and concluded by the Tribunal as if that law had not been repealed, and for that purpose a reference in the provisions relating to the appeal board must be construed as a reference to the Tribunal established in terms of this Act.

(2) For purposes of subsection (1), proceedings are instituted when a notice of appeal has been lodged in terms of section 26(2) of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

(3) Any appeal noted in respect of a decision that occurred before the commencement of this Act, must be dealt with in terms of the relevant appeal procedures prescribed in this Act.

Transitional Provisions relating to Investigations

236. (1) Any investigation or inspection that was initiated before the commencement of this Act must be continued and concluded as if this Act has not been passed.

(2) Any investigation initiated after the commencement of this Act in respect of any matter that occurred before the commencement of this Act must be investigated in terms of the relevant provisions of this Act.

References in certain instruments

237. (1) This section applies to an instrument if:

- (a) it is in operation immediately before the commencement day for this Part; and
- (b) it is an instrument:
 - (i) to which the Financial Services Board is a party; or
 - (ii) which was given to, or in favour of, the Financial Services Board; or
 - (iii) in which a reference is made to the Financial Services Board; or
 - (iv) in terms of which any right or liability accrues or may accrue to the Financial Services Board.

(2) The instrument continues to have effect after the commencement day for this Part as if each reference in the instrument to the Financial Services Board were a reference to the Financial Sector Conduct Authority.

(3) This section does not apply in relation to an instrument specified in Regulations made for this section.

Certificates in relation to assets

238. (1) This section applies if—

- (a) an asset vests in the Financial Sector Conduct Authority in terms of this Part; and
- (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister or a person authorised by the Minister;
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Financial Sector Conduct Authority in terms of this Part.

(2) The assets official must:

- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
- (b) make entries in the register that are necessary, having regard to the effect of this Division.

(3) For the purposes of this section, “assets official” means the person or authority who, in terms of a law of the Republic (including a law of a Province), in terms of a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

Transfer of staff

239. (1) At the effective date for this Part, each person appointed as an employee to assist the Financial Services Board in terms of section 13 of the Financial Service Board Act, 1990 (Act No. 97 of 1990) ceases to be so appointed and is deemed to have been engaged as an employee of either –

- (a) the Financial Sector Conduct Authority in terms of section 71(1)(a), or
- (b) the Reserve Bank, who is seconded to the Prudential Authority in terms of section 45(2)(a),

as specified in a letter of transfer.

(2) Each employee mentioned in subsection (1) is deemed to have–

- (a) been engaged by the Financial Sector Conduct Authority or the Reserve Bank, as specified in the letter of transfer, on the same terms and conditions as applied to the employee immediately before the effective date for this Part, as an employee of the Financial Sector Conduct Authority or the Reserve Bank; and
- (b) accrued an entitlement to benefits, in connection with that engagement by the Financial Sector Conduct Authority or the Reserve Bank, equivalent to the entitlement that the person had accrued in connection with the employee’s appointment to the Financial Services Board, immediately before the effective date for this Part.

(3) The service of each employee mentioned in subsection (1) as an employee of the Financial Sector Conduct Authority or the Reserve Bank is deemed, for all purposes, to be continuous with the employee’s service with the Financial Services Board.

(4) Except as provided in terms of this Part, an employee mentioned in subsection (1) is not entitled to receive any payment or other benefit merely because of the operation of this Part.

(5) This Part does not prevent the terms and conditions of employment of an employee mentioned in subsection (1) being varied, after the effective date for this Part in accordance with–

- (a) those terms and conditions; or
- (b) a law or agreement.

(6) An employee transferred fro

(6) For the purposes of this section, “vary”, in relation to terms and conditions, includes–

- (a) omitting any of the terms and conditions;
- (b) adding to the terms and conditions; and
- (c) substituting new terms or conditions for any of the terms and conditions.

Certificates taken to be authentic

240. Unless the contrary is established, a document that appears to be a certificate or other document made or issued in terms of this Part–

- (a) is deemed to be an authentic certificate or other document; and
- (b) is deemed to have been properly given.

Repeal of Financial Service Board Act, 1990 does not affect certain matters

241. (1) Despite the repeal of the Financial Service Board Act, 1990 (Act No. 97 of 1990), a levy imposed in terms of section 15A of that Act continues in force subject to this Act, until the end of the financial year in which that day falls.

(2) A levy referred to in subsection (1) is, from the commencement date for this Part, deemed to be a levy for the purposes of this Act.

(3) Despite the repeal of the Financial Service Board Act, 1990 (Act No. 97 of 1990), section 26 of that Act continues in effect, but any appeal lies to the Tribunal in accordance with Chapter 15.

(4) A reference in any Act to the Chief Actuary is, after the commencement day for this Part, to be read as a reference to the Chief Actuary in the Prudential Authority.

Instruments

242. (1) An instrument made or issued by—

- (a) the Financial Service Board;
- (b) the Reserve Bank; or
- (c) a Registrar or other official of the Financial Service Board or the Reserve Bank;

in terms of a financial sector law and in force immediately before the effective date for this Part continues in force, but may be amended or repealed in terms of the financial sector law or this Act.

Part 7

Short title and commencement

Short title and commencement

243. (1) This Act is called the Financial Sector Regulation Act, 2014, and takes effect on a date determined by the Minister by Notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into operation of—

- (a) different provisions of this Act;
- (b) the repeal or amendment of different provisions of a law that is repealed or amended by this Act.

SCHEDULE 1**FINANCIAL SECTOR LAWS**

Pension Funds Act, 1956 (Act No. 24 of 1956)
Friendly Societies Act, 1956 (Act No. 25 of 1956)
Banks Act, 1990 (Act No. 94 of 1990)
Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993)
Mutual Banks Act, 1993 (Act No. 124 of 1993)
Long-term Insurance Act (Act No. 52 of 1998)
Short-term Insurance Act (Act No. 53 of 1998)
Medical Schemes Act, 1998 (Act No. 131 of 1998)
Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)
Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)
Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)
National Credit Act, 2005 (Act No. 34 of 2005)
Co-operative Banks Act, 2007 (Act No. 40 of 2007)
Financial Markets Act, 2012 (Act No. 19 of 2012)
Credit Rating Services Act, 2012 (Act No. 24 of 2012)

SCHEDULE 2
DESIGNATION OF LICENSING AUTHORITY IN TERMS OF FINANCIAL
SECTOR LAWS
(Section 97(2))

Financial Sector Law	Designated Financial Sector Regulator
Pension Funds Act, 1956 (Act No. 24 of 1956)	Financial Sector Conduct Authority, subject to section 231
Friendly Societies Act, 1956 (Act No. 25 of 1956)	Financial Sector Conduct Authority
Banks Act, 1990 (Act No. 94 of 1990)	Prudential Authority
Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993)	Financial Sector Conduct Authority
Mutual Banks Act, 1993 (Act No. 124 of 1993)	Prudential Authority
Long-term Insurance Act (Act No. 52 of 1998)	Prudential Authority
Short-term Insurance Act (Act No. 53 of 1998)	Prudential Authority
Medical Schemes Act, 1998 (Act No. 131 of 1998)	Council for Medical Schemes, subject to section 231
Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)	Financial Sector Conduct Authority
Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)	Financial Sector Conduct Authority, subject to section 231
National Credit Act, 2005 (Act No. 34 of 2005)	National Credit Regulator
Co-operative Banks Act, 2007 (Act No. 40 of 2007)	Prudential Authority
Financial Markets Act, 2012 (Act No. 19 of 2012)	Financial Sector Conduct Authority
Credit Rating Services Act, 2012 (Act No. 24 of 2012)	Financial Sector Conduct Authority

SCHEDULE 3
DOCUMENTS TO BE PUBLISHED IN THE REGISTER

Laws

This Act

Financial sector laws, including those in force on the effective date for Part 4 of Chapter 17

Determinations in terms of section 227

Amendments to any of these

Legislative instruments

Legislative instruments made in terms of a financial sector law, including those in force on the effective date for Part 4 of Chapter 17

Prudential standards

Conduct standards

Joint standards in terms of section

Tribunal Rules

Amendments to any of these

Tribunal

Decisions of the Tribunal

SCHEDULE 4

LAWS REPEALED OR AMENDED

Number and year of Act	Short title	Extent of repeal or amendment
Act No. 24 of 1956	Pension Funds Act, 1956	
Act No. 90 of 1989	South African Reserve Bank Act, 1989	<p><i>Section 3</i></p> <p>Add at the end–</p> <p>(2) The Reserve Bank has the function, in addition to its primary objective in terms of section 224 of the Constitution, of maintaining, protecting and enhancing financial stability in South Africa and, where financial stability has been adversely affected, restoring it.</p> <p>(3) For subsection (2), there is said to be “financial stability” if–</p> <p>(a) payment systems, settlement systems, financial markets and financial institutions generally provide financial services without interruption and are capable of continuing to do so; and</p> <p>(b) there is general confidence in their ability to continue to do so.</p>
Act No. 94 of 1990	Banks Act	<p><i>Section 1(1), definition of “Registrar”</i></p> <p>Omit the definition.</p> <p><i>Section 1(1), definition of “board of review”</i></p> <p>Omit the definition.</p> <p><i>Section 1(1), after the definition of “external credit assessment”</i></p> <p>Insert–</p> <p>“Financial Sector (Regulation) Act” means the Financial Sector (Regulation) Act 2014;</p> <p><i>Section 1(1), definition of “the business of a bank”, paragraph (cc)–</i></p> <p>Substitute–</p> <p>(cc) any activity of a public sector, governmental or other institution, or of any person of category of persons, designated by the Prudential Authority, by notice in the Gazette, provided the activity is performed in accordance with the conditions that the Authority may determine in the relevant notice;</p>

Section 1(1), definition of “the business of a bank”, paragraph (dd)–

Omit “Minister” (wherever occurring”, substitute “Prudential Authority”.

After section 1(1)

Insert–

(1AA) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector (Regulation) Act.

After section 2

Insert—

Operation of this Act and the Financial Sector (Regulation) Act

2A. (1) Subject to this section, in relation to licences (as defined in the Financial Sector (Regulation) Act) (which includes renewals of licences)—

- (a) an application for a licence (including a renewal of a licence) in terms of this Act must be dealt with in accordance with the Financial Sector (Regulation) Act;
- (b) the Prudential Authority’s power to vary, suspend or cancel a licence is as set out in that Act.

(2) A power of the Prudential Authority in terms of this Act (for example, a power to issue a directive, or to conduct an inspection or investigation) must be exercised in accordance with the provisions of the Financial Sector (Regulation) Act.

(3) Despite subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector (Regulation) Act in relation to a particular matter (for example, by providing for additional criteria for revoking licences), the additional provision applies.

(4) For the purposes of the Financial Sector Regulation Act, the following are legislative instruments:

- (a) declaration under paragraph (e) of the definition of “business of a bank” in section 1(1);
- (b) a designation and determination under paragraph (cc) of the definition of “business of a bank” in section 1(1);
- (c) a designation under paragraph (dd)(i) of the definition of “business of a bank” in section 1(1);
- (d) a determination under paragraph (ff) of the definition of “business of a bank” in section 1(1);
- (e) a designation or determination under paragraph (gg) of the definition of “business of a bank” in section 1(1);
- (f) a designation for the purposes of section 2;
- (g) a guidance note in terms of section 6.
- (g) a declaration in terms of section 51(2).

Section 3

Repeal the section.

Section 4(1) and (2)

Omit the subsections.

Section 5

Repeal the section.

Section 6(1) and (2)

Omit the subsections.

Sections 8, 9 and 10

Repeal the sections.

Section 23(1)

Omit “and after consultation with the Minister”.

Section 23(2)

Omit “after consultation with the Minister and”.

Section 37(2)(a)(iii) and (iv)

Substitute—

- (iii) the said person has for a period of 12 months or such shorter period as the Prudential Authority may deem fit held 49 per cent of those shares or the voting rights in respect of the issued shares as contemplated in the said subsection (1) such person may, if the Prudential Authority has granted permission thereto in writing, acquire more than 49 per cent, but not exceeding 74 per cent, of those shares or the voting rights in respect of the issued shares as contemplated in the said subsection; and
- (iv) the said person has for a period of 12 months or such shorter period as the Prudential Authority may deem fit held 74 per cent of those shares or the voting rights in respect of the issued shares as contemplated in the said subsection (1) such person may, if the Prudential Authority has granted permission thereto in writing, acquire more than 74 per cent of those shares or the voting rights in respect of the issued shares, as contemplated in the said subsection.

Section 37(2)(b) and (c)

Substitute–

- (b) In considering granting permission in terms of paragraph (a), the Prudential Authority may consult with the Competition Commission established in terms of the Competition Act, 1998 (Act No. 89 of 1998).
- (c) Notwithstanding paragraph (a), the Prudential Authority may, if in a particular case the Registrar deems it fit to do so, grant permission for the acquisition of shares or the voting rights in respect of the issued shares as contemplated in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) without the applicant for such permission having held shares or the voting rights in respect of the issued shares for the period of 12 months or any shorter period as required in any of the said subparagraphs.

Section 37(4)

Omit “the Registrar or the Minister, as the case may be, is satisfied”, substitute “the Registrar is satisfied that the proposed acquisition”.

Section 37(5)

Omit all words to and including “or the Minister, as the case may be,”, substitute–

“(5) If, in the case of a shareholding contemplated in subsection (2)(a)(i), (ii), (iii) or (iv), the Prudential Authority is of the opinion that the retention of such shareholding or voting rights in respect of the issued shares in a bank or controlling company by a particular shareholder will be to the detriment of the bank or controlling company concerned, the Prudential Authority”.

Sections 84(5)

Omit the subsection.

Section 88

Repeal the section.

Section 90(c), (e) and (g)

Omit the subsections.

Sections 91(6) and following subsections of section 96

Omit the subsections.

Section 91A

Repeal the section.

References to “Registrar”

Omit “Registrar” (wherever occurring), substitute “Prudential Authority”.

“his or her”

Omit “his or her” wherever occurring (except in paragraph (c) of the definition of “the business of a bank” in section 1(1), section 1(1A)(b)(v), section 42(2), section 60A, section 61(6), 69(1)(c), (2)(b) and (3), 69A, 84, 87 and 88), substitute “the Prudential Authority’s”.

“he or she”

Omit “he or she” wherever occurring (except in section 61(6), 69A and 87), substitute “the Prudential Authority”.

Act No 97 of 1990	Financial Services Board Act , 1990	Repeal the Act
Act No. 124 of 1993	Mutual Banks Act, 1993	Consequentials to be included
Act No. 80 of 1998	Inspection of Financial Institutions Act, 1998	Repeal the Act
Act No. 28 of 2001	Financial Institutions (Protection of Funds) Act, 2001	Repeal sections 4A; 6, 6A-I, 7, 9, 9A.
Act No. 37 of 2004	Financial Services Ombud Schemes Act, 2004	Repeal the Act
Act No. 40 of 2007	Co-operative Banks Act, 2007	Consequentials to be included

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| Act No. 45 of 2002 | Collective Investment Schemes Control Act, 2002 | <p>Amendment of section 1</p> <p>1. Section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) (in this Part called the principal Act) is amended:</p> <p>(a) by omitting the definitions of “Board” and “registrar”;</p> <p>(b) by inserting after the definition of “authorised agent”–</p> <p style="padding-left: 40px;"><u>“Authority” means the authority of that name established by the Financial Sector Regulation Act;</u></p> <p>(c) by inserting after the definition of “exchange securities”–</p> <p style="padding-left: 40px;"><u>“Financial Sector Regulation Act” means the Financial Sector Regulation Act, 2014;”;</u></p> <p>(d) by substituting for the definition of “official web site”–</p> <p style="padding-left: 40px;"><u>““official web site” means [a] the Authority’s web site (as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)), [set up by the Board];”;</u></p> <p>(e) by inserting the following subsection, the existing provisions becoming subsection (1):</p> <p style="padding-left: 40px;"><u>“(2) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector Regulation Act, and if a term is defined in both this Act and the Financial Sector Regulation Act, the definition in this Act applies when interpreting this Act.”.</u></p> |
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Insertion of section 1A

2. The principal Act is amended by inserting the following section after section 1:

“Operation of this Act and Financial Sector Regulation Act

“Operation of this Act and Financial Sector Regulation Act

1A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector Regulation Act:

- (a) an application for a licence in terms of this Act must be dealt with in accordance with this Act;
- (b) the Authority’s power to vary,
-

suspend or withdraw a licence is as set out in this Act; and

- (c) sections 104, 105 and 116, 117, and 206 of the Financial Sector Regulation Act apply.

(2) Subject to subsections (1) and (3) and what may be specified in the Financial Sector Regulation Act regarding the exercise of a specific power, a power of the Authority in terms of this Act must be exercised in accordance with the provisions of the Financial Sector Regulation Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector Regulation Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to financial institutions and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector (Regulation) Act, the following are legislative instruments—

- (a) Regulations made under section 114(1) and (2);
- (b) any matter determined by the Authority in respect of which notice in the *Gazette* is specifically required by this Act ;

Repeal and substitution of section 7

3. Section 7 of the principal Act is repealed, and the following section is substituted:

“Exercise of powers and performance of duties by Authority

7. The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act, 2014.”

Repeal of section 14

4. Section 14 of the principal Act repealed.

Amendment of section 15

5. Section 15 of the principal Act is amended, by the substitution in subsection (1) for the words preceding paragraph (a) of the following:

“(1) If the **[registrar] authority**, after an on-site **[visit or] inspection or investigation [under section 14] in**

terms of Chapter 11 of the Financial Sector Regulation Act considers on reasonable grounds that the interests of the investors of a collective investment scheme or of members of the public so require, the **[registrar] Authority** may—”.

Amendment of section 24

6. Section 24 is amended by substituting for the section of the following section:

[Board of Appeal]Tribunal

24. A person aggrieved by a decision of the **[registrar under] Authority in terms of** a power conferred or a duty imposed upon **[him or her] the Authority** by or **[under]in terms of** this Act, may appeal to the **[board of appeal] Tribunal** referred to in section **[26]156** of the [Financial Services Board Act, 1990 (Act No. 97 of 1990)] Financial Sector Regulation Act, on the terms and conditions determined in that Act.

Amendment of section 52

7. Section 52 is amended by the substitution for the definition of “nominee company” with the following definition :

“nominee company” means a nominee **[company]** which has been approved in terms of the Financial Sector Regulation Act **[by the registrar and which -**

- (a) has as its principal object to act as nominee for or representative of any person in the holding of any property in trust for such person;**
 - (b) is precluded by its memorandum of association from incurring any liabilities except for those persons on whose behalf it holds property to the extent of their respective rights to and interests in such property;**
 - (c) has entered into an irrevocable agreement with the manager in terms of which such manager has undertaken to pay all the expenses of and incidental to its formation, operations, management and liquidation, and has appointed directors responsible for the management and control of the nominee company of whom more than 50 per cent are independent from the manager or its holding company or**
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subsidiary of such holding company or fellow subsidiary of such manager;]

Other amendments

7. The other provisions of the principal Act (except sections 69 and 70) are amended –

(a) by omitting “Registrar” (wherever occurring) and substituting “Authority”;

(b) by omitting “Board” (wherever occurring) and substituting “Authority”;

(c) by omitting “board of appeal” (wherever occurring) and substituting “Tribunal”.

Act No. 19 of 2012	Financial Markets Act, 2012	<p>Amendment of section 1</p> <p>8. Section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012) (in this Part called the principal Act) is amended–</p> <p>(a) by omitting from subsection (1) the definitions of “appeal board”, “board”, “director”, “enforcement committee”, “Financial Services Board Act”, “systemic risk” and “registrar”;</p> <p>(b) by inserting after the definition of “authorised user” in subsection (1)–</p> <p style="padding-left: 40px;">“Authority” means the Financial Sector Conduct Authority established in terms of the Financial Sector Regulation Act;”</p> <p>(c) by inserting after the definition of “bank”</p> <p style="padding-left: 40px;"><u>“central counterparty” means a clearing house, whether associated or independent, that-</u></p> <p style="padding-left: 80px;">(a) <u>interposes itself between counterparties to transactions in securities, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and</u></p> <p style="padding-left: 80px;">(b) <u>becomes a counterparty to trades with market participants through novation, an open offer system or through a legally binding agreement;</u></p> <p>(d) <u>by inserting after the definition of “external authorised user:</u></p> <p style="padding-left: 40px;"><u>“external central counterparty” means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a central counterparty as set out in this Act and who is subject to the laws of a country other than the Republic, which laws-</u></p> <p style="padding-left: 80px;">(a) <u>establish a regulatory framework equivalent to that established by this Act; and</u></p> <p style="padding-left: 80px;">(b) <u>are supervised by a supervisory authority;</u></p> <p>(e) by inserting after the definition of “Financial Institutions (Protection of Funds) Act” in subsection (1)–</p>
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“**Financial Sector Regulation Act**’ means the Financial Sector Regulation Act, 2014;”;

(f) by inserting after the definition of “Financial Sector Regulation Act” in subsection (1)–

“**joint standard** means a joint standard made in terms of the Financial Sector Regulation Act,

(g) by inserting after the definition of “juristic person”

“**licensed central counterparty**” means a central counterparty licensed under section 49;

(h) by substituting for the definition of “market infrastructure” in subsection (1)–

“**market infrastructure**” means each of the following–

(a) a licensed central securities depository;

(b) a licensed clearing house;

(c) a licensed exchange;

(d) a licensed trade repository;

(e) a licensed central counterparty;

(i) by substituting for the definition of “official website” in subsection (1)–

““**official website**’ means the website of the [board] Authority;”;

(j) by substituting for the definitions of “prescribed by the Minister” and “prescribed by the registrar” in subsection (1)–

““**prescribe**’ means prescribe by regulations, by a conduct standard, a joint standard prescribed by the Authority, as set out in this Act;”;

(k) by substituting for the definition of “regulated person” in subsection (1)–

“**regulated person**” means–

(a) a licensed central securities depository;

(b) a licensed clearing house;

(c) a licensed exchange;

(d) a licensed trade repository;

(dA) a licensed central counterparty;

(e) an authorised user;

(f) a clearing member;

(g) a nominee;

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- (h) a participant;
 - (i) except for purposes of section 3(6), sections 74 and 75, sections 89 to 92, and sections 100 to 103, an issuer; or
 - (j) any other person [**prescribed by the Minister in terms of section 5**] specified in the regulations;
- (l) by substituting in the definition of “settle” in subsection (1) for paragraph (e)–
- “(e) in respect of an unlisted derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument, unless otherwise [**prescribed by the registrar**] determined by the Authority.”;
- (n) by inserting after the definition of “transfer” in subsection (1)–
- “‘**Tribunal**’ means the Financial Sector Tribunal established by the Financial Sector (Regulation) Act;” and
- (o) by substituting for the definition of “this Act” in subsection (1)–
- “**this Act**” includes the Schedules to, and the legislative instruments made in terms of, this Act;
- (p) by inserting after subsection (1):
- “(1A) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector Regulation Act, and if a term is defined in both this Act and the Financial Sector Regulation Act, the definition in this Act applies when interpreting this Act.”;

Amendment of section 3

9. Section 3 of the principal Act is amended–

- (a) by substituting for subsection (3)–
- “(3) Despite any other law, [**other than the Financial Intelligence Centre Act,**] if there is an inconsistency between any provision of this Act and a provision of any other national legislation, except the Financial Intelligence Centre Act and the
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Financial Sector Regulation Act, this Act prevails.”;

(b) by substituting for subsection (5)–

“(5) Despite any other law, if other national legislation (except the Financial Sector Regulation Act) confers a power on or imposes a duty upon an organ of state in respect of a matter regulated under this Act, that power or duty must be exercised or performed in consultation with the [**registrar**] Authority, and any decision taken in accordance with that power or duty must be taken with the approval of the [**registrar**] Authority.”.

Insertion of section 3A

10. The principal Act is amended by inserting the following section after section 3:

“Operation of this Act and Financial Sector Regulation Act

3A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector Regulation Act:

- (a) an application for a licence, , in terms of this Act must be dealt with in accordance with this Act;
- (b) the Authority’s power to vary, suspend or withdraw a licence is as set out in this Act; and
- (c) sections 104, 105 and 116, 117, and 206 of the Financial Sector Regulation Act apply.

(2) Subject to subsections (1) and (3) and what may be specified in the Financial Sector Regulation Act regarding the exercise of a specific power, a power of the Authority in terms of this Act must be exercised in accordance with the provisions of the Financial Sector Regulation Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector Regulation Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to financial

institutions and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector (Regulation) Act, the following are legislative instruments–

- (a) Directives;
- (b) Guidelines;
- (c) Regulations;
- (d) Exchange Rules;
- (e) Depository Rules;
- (f) Clearing house Rules;
- (g) Exchange directives;
- (h) Depository directives;
- (i) Clearing house directives;
- (j) Listing requirements.

Amendment of section 4

11. Section 4 of the principal Act is amended–

(a) by substituting in subsection (1) for paragraph (f) of the following paragraph:

“(f) act as a nominee unless that person is approved under section 76 or under standards prescribed under the Financial Sector Regulation Act;”;

(b) by substituting the following subsection for subsection (2):

- “(2) A person who is not
- (a) licensed as an exchange, a central securities depository, a trade repository, **[or] a clearing house or central counterparty;**
 - (b) a participant;
 - (c) an authorised user;
 - (d) a clearing member;
 - (e) an approved nominee; or
 - (f) an issuer of listed securities,

may not purport to be an exchange, central securities depository, trade repository, clearing house, central counterparty; participant, authorised user, clearing member, approved nominee or issuer of listed securities, as the case may be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and an exchange, a central

securities depository, trade repository, clearing house, central counterparty; participant, authorised user or clearing member, as the case may be, where in fact no such connection exists.”

Amendment of section 6

12. Section 6 of the principal Act is amended—

(a) by repealing subsections (1) and (2), and by substituting the following for subsection (2):

“(2) The Authority must perform the functions assigned to it by or under this Act and must supervise and enforce compliance with this Act, unless otherwise provided for in terms of this Act or the Financial Sector Regulation Act.”

(b) by omitting the words at the commencement of subsection (3) “In performing those functions the registrar” and substituting “In performing its functions in terms of this Act, the Authority”;

(c) by inserting the following subsection after subsection (8):

“(9) In relation to the securities services that may be provided by, and the functions and duties that may be exercised by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external clearing member or external trade repository as the case may be, as prescribed by the Minister under section 5(1)(c), the Authority may prescribe criteria for the authorisation or recognition of those persons in the Republic.”

Insertion of sections 6A, 6B and 6C

13. The principal Act is amended by inserting the following sections after section 6:

“Criteria for recognition of external market infrastructures

6A. (1) The Financial Sector Conduct Authority and the Prudential Authority must develop joint standards for the recognition of external market infrastructures, taking into consideration the following factors:

- (a) international standards;
 - (b) the type of market infrastructure;
 - (c) the functions and duties or the securities services prescribed by the Minister in
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terms of section 5(1) (c);

(d) any other factor the regulators deem relevant.

(2) The Financial Sector Conduct Authority and the Prudential Authority may recognise an external market infrastructure that has applied for recognition to exercise those functions and duties or provide those securities services as prescribed by the Minister in terms of section 5(1) (c) , only after–

(e) recognising an overseas regulatory regime as equivalent in terms of section 88 of the Financial Sector Regulation Act;

(f) assessing the external MI against the joint standards referred to in subsection (1)(a) above; and

(g) supervisory cooperation arrangements have been entered into pursuant to section 6C .

(b) The Financial Sector Conduct Authority and the Prudential Authority must notify the external market infrastructure that has applied for recognition of their decision, within 6 months of receiving the application.

(c) In addition to the requirements in terms of section 6C, the Financial Sector Conduct Authority and the Prudential Authority may impose conditions on the recognised external market infrastructure that assist in the on-going supervision of the recognised external market infrastructure.

Withdrawal of recognition

6B. The Financial Sector Conduct Authority and the Prudential Authority may withdraw exemption of an external market infrastructure where the conditions set out in section 6A are no longer met.

Principles of cooperation

6C. (1) The Financial Sector Conduct Authority and the Prudential Authority must enter into supervisory co-operation arrangements with the relevant supervisory authorities of any external market infrastructure recognised in terms of section 6A.

(2) Supervisory co-operation arrangements referred to in subsection (1) must at least specify–

(a) the mechanism for the exchange of information between the registrar and the supervisory authorities of the foreign countries concerned, including access to

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- all information requested by the registrar regarding a recognised external MI;
- (b) the mechanism for prompt notification to the registrar where a foreign-country supervisory authority deems an external MI it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border on-site visits of a regulated entity;
- (d) the processes the parties should use if an authority subsequently determines that it needs to use requested supervisory information for law enforcement or disciplinary purposes, such as obtaining the consent of the requested authority and handling such information in accordance with the terms of existing MOUs for enforcement cooperation;
- (e) procedures for cooperation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or obtaining information from a regulated entity and its directors or senior management; and
- (f) the degree to which an authority may onward-share to a third party any non-public supervisory information received from another authority, and the processes for doing so (such as, for example, obtaining the consent of the requested party before onward-sharing any non-public supervisory information received). Where appropriate, authorities should consider whether abbreviated mechanisms for onward-sharing could be developed in appropriate circumstances, for example for third authorities (foreign or domestic) with a direct regulatory interest in the regulated entity.

(3) Authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must—

- (a) establish and maintain appropriate confidential safeguards to protect all non-public supervisory information
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- obtained from another authority;
 - (b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors;
 - (c) consult, cooperate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets;
 - (d) cooperate in the day-to-day and routine oversight of internationally-active regulated entities;
 - (e) provide advance notification and consult, where possible and otherwise as soon as practicable, regarding issues that may materially affect the respective regulatory or supervisory interests of another authority;
 - (f) design mechanisms for supervisory cooperation to provide information both for routine supervisory purposes and during periods of crisis; and
 - (g) undertake ongoing and ad hoc staff communications regarding globally-active regulated entities as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.”

Amendment of section 7

14. Section 7 of the principal Act is amended—

(a) by substituting for subsection (3)(c)(iv) and (v) the following:

“(iv) such information in respect of members of the controlling body of the applicant as may be **[prescribed by the registrar]** determined by the Authority;

(v) the application fee prescribed **[by the registrar]** in terms of the Financial Sector Regulation Act;” and

(b) by substituting for subsection (4)(b)(ii) and (iii) the following:

“(ii) **[where]** indicating that the proposed exchange rules and listing requirements **[may be inspected by]** are available on the official website for comments from members of the public; and

(iii) the period within, and the process by,

which objections to the application or rules and listing requirements may be lodged with the [registrar] Authority;” ; and

(c) by inserting the following paragraph after paragraph (b) of subsection (4):

“(c) The Authority must publish the proposed exchange rules and listing requirements referred to in paragraph (b)(ii), on the official website.”.

Amendment of section 8

15. (1) Section 8 of the principal Act is amended—

(a) by substituting for subsection (1)(a)—

“(a) subject to [the] requirements [prescribed by the Minister] of joint standards, if any, have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”;

(b) by substituting for subsection (1)(c)—

“(c) demonstrate that the fit and proper requirements prescribed by [the registrar] in the relevant joint standards are met by the applicant, or the licensed exchange, as the case may be, its directors and senior management;” and

(c) by inserting the following subsection after subsection (2):

“(3) The Authority may, with reference to the nature and size of an exchange, determine to what an extent an applicant must comply with the requirements referred to in subsection (1).”

(4) Despite subsection (1), requirements prescribed under section 8 of this Act and in force immediately before the commencement of this section continue to be in force, but may be amended or repealed by joint or conduct standards.”.

Amendment to section 10

16. Section 10 of the principal Act is amended by substituting for subsection (2)(f)–

“(f) must, as soon as it becomes aware thereof, inform the Authority of any matter that it reasonably believes may **[pose systemic risk to the financial markets]** give rise to, or increase systemic risk;”.

Amendment of section 25

17. Section 25 of the principal Act is amended by substituting for subsection (2)–

“(2) The **[registrar]** Authority may determine [,] in respect of **[a report]** reports referred to in subsection (1)**[, prescribe]** specifying -

- (a) the information required in respect of any transaction; and
- (b) the manner in and time within which reports are to be rendered.”.

Amendment of section 26

18. Section 26 of the principal Act is amended–

(a) by substituting for subsection (3)(a)–

“(a) be made in the manner and contain the information **[prescribed by the registrar]** determined by the Authority;

(b) by substituting for subsection (3)(c)(iii) and (iv)–

“(iii) such information in respect of members of the controlling body of the applicant as may be **[prescribed by the registrar]** determined by the Authority;

(iv) the application fee prescribed **[by the registrar]** in terms of the Financial Sector Regulation Act;”.

Amendment of section 27

19. Section 27 of the principal Act is amended by the

insertion after paragraph (b) of subsection (4) of the following paragraph:

“(c) The Authority must publish the proposed depository rules referred to in paragraph (b)(ii) on the official website.”

Amendment of section 28

20. (1) Section 28 of the principal Act is amended—

(a) by substituting for subsection (1)(a)—

“(a) subject to **[the]** requirements **[prescribed by the Minister]** of the joint standards, if any, have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”;

(b) by substituting for subsection (1)(c)—

“(c) demonstrate that the fit and proper requirements prescribed by **[the registrar]** in the relevant joint standards are met by the applicant, or the central securities depository, as the case may be, its directors and senior management;”;

(c) by inserting after subsection (2) the following subsections:

“(3) The Authority may, with reference to the nature and size of a central securities depository, determine to what an extent an applicant must comply with the requirements referred to in subsection (1).”

“(4) Despite subsection (1), requirements prescribed in terms of section 28 of this Act and in force immediately before the commencement of this section continue to be in force, but may be amended or repealed by joint or conduct standards.”

Amendment of section 30

21. Section 30 of the principal Act is amended by substituting in subsection (2) the following paragraph for paragraph (h):

“(h) must, as soon as it becomes aware thereof, inform the [registrar] Authority of any matter that it reasonably believes may [pose systemic risk to the financial markets] give rise to, or increase systemic risk;”.

Amendment of section 35

22. Section 35 of the principal Act is amended—

(a) by substituting in subsection (4) the following paragraph for paragraph (a):

“(4)(a) Subject to section 5(1) (c) and (2) and requirements [prescribed by the registrar] specified in conduct standards, the depository rules may provide for the approval of external participants to be participants of the central securities depository.”; and

(d) by inserting the following subsection after subsection (5):

“(6) Despite subsection (1), requirements prescribed in terms of section 35 of this Act and in force immediately before the commencement of this section continue to be in force, but may be amended or repealed by conduct standards.”.

Amendment of section 36

23. Section 36 of the principal Act is amended by omitting from subsection (1) “The registrar may direct” and substituting “The Authority may determine”.

Amendment of section 47

24. Section 47 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) Subject to the Regulations prescribed by the Minister, a central counterparty must be licensed under section 49.”;

(b) by substituting for subsection (3)(a)—

“(a) be made in the manner and contain the information [prescribed by the registrar] determined by the Authority;

(c) by substituting for subsection (3)(c)(ii) and

(iii)–

“(ii) such information in respect of members of the controlling body of the applicant as may be **[prescribed by the registrar]** determined by the Authority;

(iii) the application fee prescribed **[by the registrar]** in terms of the Financial Sector (Regulation) Act;” ;

(d) by substituting for subsection (4)(b)(ii) and (iii) the following:

“(ii) **[where]** indicating that the proposed clearing house rules **[may be inspected by]** are available on the official website for comments from members of the public; and

(iii) the period within, and the process by, which objections to the application or rules may be lodged with the **[registrar]** Authority

(e) by inserting in subsection (4) after paragraph (b) the following paragraph:

“ (c) The Authority must publish the proposed clearing house rules referred to in paragraph (b)(ii) on the official website.”

Amendment of section 48

25. (1) Section 48 of the principal Act is amended–

(a) by substituting for subsection (1)(a)–

“(a) subject to **[the]** requirements **[prescribed by the Minister]** of the joint standards, if any, have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”;

(b) by substituting for subsection (1)(c) and (d)–

“(c) demonstrate that the fit and proper requirements prescribed by **[the registrar]** the relevant joint standards are met by the applicant, or the central securities depository, as the case may be, its directors and senior management;”.

(d) comply with the requirements prescribed by **[the registrar]** the conduct standards for the clearing or settlement of transactions in securities, or both;”;

(c) by the insertion after subsection (1) of the following subsection:

“(1A) Subject to the Regulations prescribed by the Minister and subsection (1), a central counterparty must -

- (a) implement a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;
 - (b) collect and manage collateral held for the due performance of the obligations of clearing members or clients of clearing members;
 - (c) establish and maintain a default fund to mitigate the risk should there be a default by a clearing member and to ensure, where possible, that the obligations of that clearing member continue to be fulfilled;
 - (d) supply initial capital to the value of R100 million, including the appropriate buffer;
 - (e) have a clearly defined default waterfall where the obligations of the defaulting clearing member, other clearing members and the central counterparty are legally and clearly managed;
 - (f) provide for portability in the case of default of a clearing member; and
 - (g) provide the necessary infrastructure, resources and governance to facilitate its post trade management functions; and in the event of default of one or more of the clearing members-
 - (i) ensure sufficient risk policies, procedures and processes; and
 - (ii) have sound internal controls for robust
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transaction processing and management.”;

and

- (c) by the insertion after subsection (2) of the following subsections:

“(3) The Authority may, with reference to the nature and size of a clearing house, determine to what an extent an applicant must comply with the requirements referred to in subsection (1).

(4) Despite subsection (1), requirements prescribed in terms of section 48 of this Act and in force immediately before the commencement of this section continue in force, but may be amended or repealed by conduct standards.”.

Amendment to section 49

26. Section 49 of the principal Act is amended by inserting the following subsection after subsection (1):

“(1)(A) Subject to the Regulations prescribed by the Minister, the Authority may, after consideration of any objection received as a result of the notice referred to in section 47(4) and subject to the conditions which the Authority may consider appropriate, grant a central counterparty licence to perform the functions referred to in section 50, if-

- (a) the applicant complies with the relevant requirements of this Act; and
- (b) the objects of this Act referred to in section 2 will be furthered by the granting of a central counterparty licence.”.

Amendment of section 50

27. (1) Section 50 of the principal Act is amended—

- (a) by substituting in subsection (2) the following paragraph for paragraph (b)—

“(b) must, as soon as it becomes aware thereof, inform the [registrar] Authority of any matter that it reasonably believes may [pose systemic risk to the financial markets] give rise to, or increase systemic risk;”; and

- (b) by inserting the following subsection after subsection (3):

“(3A) A licensed central counterparty, in addition to the functions referred to in subsections (1), (2) and where applicable, (3), must—

- (a) interpose itself between counterparties to
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transactions in securities through the process of novation, legally binding agreement or open offer system;

- (b) manage and process the transactions between the execution and fulfilment of legal obligations between counterparties and clients;
- (c) facilitate its post-trade management functions.

Amendment of section 53

28. (1) Section 53 of the principal Act is amended—

- (a) by the insertion after subsection (1) of the following subsection:

“(1A) Despite subsection (1), requirements prescribed in terms of section 53 of this Act and in force immediately before the commencement of this section continue in force, but may be amended or repealed by conduct standards.”; and

- (b) by substituting in subsection (4) for paragraph (a) of the following paragraph:

“(4)(a) Subject to section 5(1)(c) and (2) and the requirements prescribed by **[the registrar;]** the conduct standards, **[the]** clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house.”.

Amendment of section 54

29. Section 54 of the principal Act is amended—

- (a) by substituting for subsection (1)—

“(1) **[Subject to the regulations prescribed by the Minister, a]** A trade repository must be licensed under section 56.”;

- (b) by substituting for subsection (3)(a)—

“(a) be made in the manner and contain the information **[prescribed by the registrar]** determined by the Authority;

- (c) by substituting for subsection (3)(c)(ii) and (iii)—

“(ii) such information in respect of members of the controlling body of the applicant as may be **[prescribed by the**

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- registrar]** determined by the Authority;
- (iii) the application fee prescribed **[by the registrar]** in terms of the Financial Sector Regulation Act;”.

Amendment of section 55

30. Section 55 of the principal Act is amended—

(a) by substituting for subsection (1)(a)—

“(a) subject to **[the]** requirements **[prescribed by the Minister]** of joint standards, if any, have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;”;

(b) by substituting for subsection (1)(c)—

“(c) demonstrate that the fit and proper requirements prescribed by **[the registrar]** the relevant joint standards are met by the applicant, or the central securities depository, as the case may be, its directors and senior management;” and

(c) by omitting subsections (2)(a) and (c).

Amendment of section 56

31. Section 56 of the principal Act is amended by omitting from subsection (1) “and regulations prescribed by the Minister”.

Amendment of section 57

32. Section 57 of the principal Act is amended—

(a) by substituting for subsection (2)(b)—

“(b) make **[the]** information **[prescribed by the registrar]** of the kind jointly determined by the Authority, the Prudential Authority, and the Reserve Bank available to the **[registrar]**

Authority, the Prudential Authority, or the Reserve Bank, other relevant supervisory authorities and other persons, subject to the requirements [prescribed by the [registrar] of the Authority, the Prudential Authority, or the Reserve Bank under section 58 regarding] of the joint standards as to the manner, form, and frequency of disclosure;” and

(b) by substituting for subsection (3)–

“(3) The [registrar] joint standards may prescribe additional duties to those referred to in subsection (2) [**in greater detail**].”.

Amendment of section 58

33. Section 58 of the principal Act is amended by omitting “Subject to regulations prescribed by the Minister, the registrar may prescribe” and substituting “Joint standards may prescribe”.

Substitution of section 59

34. Section 59 of the principal Act is repealed and the following substituted–

Annual assessment

“**59.** The [registrar] Authority must annually assess, and where applicable, consult the Prudential Authority, whether a licensed market infrastructure–

- (a) complies with this Act, joint standards, and conduct standards [and the rules of the market infrastructure];
 - (b) where applicable, complies with regulator’s directives, and with requests[, **conditions**] or requirements of the [registrar] Authority in terms of [**this Act**] a financial sector law; or
 - (c) where applicable, gives effect to decisions of the [**appeal board in terms of section 105**] Tribunal.”.
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Amendment of section 60

35. Section 60 of the principal Act is amended by substituting in subsection (1) the following paragraph for paragraph (b):

- “(b) after an **[inspection]** investigation in terms of [section 95] Chapter 11 of the Financial Sector Regulation Act of the affairs of the market infrastructure, the **[registrar]** Authority is satisfied on reasonable grounds that the manner in which it is operated is–
- (i) not in the best interests of clearing members of independent clearing houses, authorised users or participants, or users or members of the market infrastructure, as the case may be, and their clients; or
 - (ii) defeating the objects of this Act referred to in section 2;”.

Amendment of section 61

36. Section 61 of the principal Act is amended–

(a) by substituting for subsection (1)–

“(1) A market infrastructure may not conduct any additional business **[which may introduce]** if to do so would create or increase systemic risk.”;

(b) by substituting for subsection (3) and (4)–

“(3) The **[registrar]** Authority may, if **[the registrar is of the opinion]** it considers that **[the]** a business, function or service referred to in subsection [(1)] (2) may -

- (a) impact on the regulated obligations or functions of a market infrastructure; or
- (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be,

[prohibit or lay down requirements in respect of] after consultation with the Prudential Authority, make a determination specifying requirements in relation to the

market infrastructure carrying on of such business, function or service.

(3A) The Authority must not make a determination in terms of subsection (1) in respect of a particular market infrastructure unless–

(a) a draft of the determination has been given to the market infrastructure; and

(b) the market infrastructure has had a reasonable period (at least 14 days) to make submissions to the Authority about the matter; and

(c) the Authority had regard to all submissions made to it in deciding whether to make the determination.

(3B) However, if the Authority considers on reasonable grounds that it is necessary to make the determination urgently, it may do so without having complied, or complied fully, with subsection (3A).

(4) [Where the registrar has prohibited or laid down requirements in respect of such business, function or service as referred to in subsection (3), the registrar must give reasons for the prohibition or requirements to the market infrastructure in writing within 14 days of the prohibition or requirements being made.]The Authority must, within 14 days after making a determination in terms of subsection (1), give the market infrastructure a statement of its reasons for making a determination in terms of subsection (1), and a statement of the material facts on which the decision to make the determination was made.”

Amendment of section 62

37. Section 62 of the principal Act is amended by substituting for paragraph (b)–

“(b) an annual assessment[, **in the manner prescribed by the registrar,**] in accordance with any determinations of the Authority, of the arrangements referred to in subparagraph (a), the results of which

must be published.”.

Amendment of section 63

38. Section 62 of the principal Act is amended—

- (a) by omitting from subsection (1) “subject to the conditions that the registrar may prescribe” and substituting “subject to requirements determined by the Authority”; and
- (b) by omitting from subsection (2)(c) “from the date on which it was first licensed by the registrar in terms of this Act” and substituting “from the date on which it was first licensed in terms of this Act”.

Amendment of section 65

39. Section 65 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The members of the controlling body of a market infrastructure owe a fiduciary duty and a duty of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.”.

Amendment of section 66

40. Section 66 of the principal Act is amended—

- (a) by substituting for subsection (c)—
 - “(c) does not meet the fit and proper requirements prescribed by **[the registrar]** the relevant joint standards.”; and
- (b) by omitting subsections (8) and (9).

Amendment of section 67

41. Section 67 of the principal Act is amended—

- (a) by substituting for subsections (3) to (8)—
 - “(3) A person may not, without the prior approval of the **[registrar]** Authority, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the market infrastructure.
 - (4) A person may not, without the prior approval of the **[registrar]** Authority, acquire shares or any other interest in a market

infrastructure in excess of that approved under subsection (3)[, **but not exceeding 49 per cent**].

[(5) (a) A person may not, without the prior approval of the Minister, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in the per cent referred to in subsection (2) exceeding 49 per cent.

(b) Any request for approval referred to in paragraph (a) must be submitted through the registrar to the Minister.]

(6) **[The] An** approval referred to in subsection (3)[,] **or** (4) **[or (5)]**–

(a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the **[registrar] Authority**;

(b) may not be given if it will defeat the objects of this Act referred to in section 2; and

(c) may be refused if the person concerned, alone or with his or her associates, has not owned shares in the market infrastructure –

(i) of the aggregate nominal value; and

(ii) for a minimum period, not exceeding 12 months, that the **[registrar or the Minister, as the case may be,] Authority** may determine.

(7) If the **[registrar or the Minister, as the case may be,] Authority** is satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure, the **[registrar or the Minister, as the case may be,] Authority**

may apply to the court in whose area of jurisdiction the main office of the market infrastructure is situated, for an order -

(a) compelling that person to reduce, within a period determined by the court, the shareholding or other interests in the market infrastructure to a shareholding with a total nominal value not exceeding—

(i) in a case where subsection (3) applies – 15 per cent;
or

(ii) otherwise – 49 per cent[, **as the case may be,**]

of the total nominal value of all the issued shares of the market infrastructure; and

(b) limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his or her shareholding or other interest in the market infrastructure, to 15 or 49 per cent of the voting or other rights attached to the shares or other interests, as the case may be.

(8) An application referred to in subsections (3)[,] or (4) or (5) must be made in the manner and form [**prescribed by the registrar**] determined by the Authority.”.

Amendment of section 68

42. Section 68 of the principal Act is amended—

- (a) by omitting subsection (3); and
- (b) by omitting from subsection (4) “or the registrar, as the case may be”.

Amendment of section 69

43. Section 69 of the principal Act is amended by omitting “prescribed by the registrar” and substituting “prescribed by joint standards”.

Amendment of section 74

44. Section 74 of the principal Act is amended by

substituting for subsection (1)–

“(1) [**The registrar**] Conduct standards may **[in an appropriate consultative manner prescribe a code of conduct]** be prescribed for–

- (i) authorised users, participants or clearing members of independent clearing houses; or
- (ii) any other regulated person, where the required standard of conduct is not prescribed in another law or **[code of conduct]** conduct standard, and a code of conduct is necessary or expedient for the achievement of the objects of this Act.”.

Amendment of section 76

45. Section 76 of the principal Act is amended–

(a) by substituting for subsection (2) the following subsection:

“(2) The criteria for the approval of a nominee of an authorised user or a participant must be equivalent to that **[applied by the registrar when approving a nominee under subsection (3)]** prescribed by the Authority in conduct standards under the Financial Sector Regulation Act for nominees.”; and

(b) by substituting for subsection (3) the following subsection:

“(3) **[(a) The registrar may prescribe requirements for –**

- (i) the approval of a nominee that is not approved as a nominee in terms of subsection (1); and**
- (ii) approved nominees.]**

(b) The **[registrar]** Authority must maintain a list of all nominees approved under this section.”.

Amendment of section 82

46. Section 82 of the principal Act is amended by–

(a) omitting “Enforcement Committee” and substituting “Authority” wherever it occurs in the section; and

(b) substituting for subsection (4) the following

subsection:

“(4) Any amount recovered by the [board] Authority as a result of the proceedings contemplated in this section must be deposited by the [board] Authority directly into a specially designated trust account and -

- (a) the [board] Authority is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (5);
- (b) the balance, if any, must be distributed by the [claims officer] Authority to the claimants referred to in subsection (5) in accordance with subsection (6); and
- (c) any amount not paid out in terms of paragraph (b) accrues to the [board] Authority.”.

Sections 84 and 85

47. (1) Sections 84 and 85 of the principal Act are repealed and the following substituted—

Additional powers of the Authority

“84. In addition to its other powers, the Authority has the following powers—

- (a) to investigate any matter relating to an offence or contravention referred to in sections 78, 80 and 81, including insider trading in terms of the Insider Trading Act, 1998 (Act No. 135 of 1998) and the offences referred to in Chapter VIII of the Securities Services Act, 2004 (Act No. 36 of 2004) committed before the repeal of those Acts;
 - (b) at the request of a supervisory authority, investigate or assist that supervisory authority in an investigation into possible offences similar to those referred to in
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- paragraph (a) under laws of a country other than the Republic that the supervisory authority administers;
- (c) institute such proceedings as are contemplated in this Chapter;
 - (d) to prosecute an offence in any court competent to try an offence in terms of this Chapter, if the Director of Public Prosecutions declines to prosecute the offence, and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to the prosecution;
 - (e) by notice on the official website or by means of any other appropriate public media, publish—
 - (i) the status and outcome of an investigation conducted in terms of this Chapter; and
 - (ii) the details of an investigation if disclosure is in the public interest;
 - (f) after consultation with the relevant regulated markets in the Republic, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter; and
 - (g) to delegate the power to investigate an alleged contravention of this Chapter to any fit person, subject to conditions that the Authority may determine.”.

(2) A reference to the Insider Trading Directorate or the directorate in any law must, unless clearly inappropriate, be construed as a reference to the Financial Sector Conduct Authority.

Substitution of section 88

48. Section 88 of the principal Act is repealed and the following substituted—

Confidentiality and sharing of information

88. The [directorate] Authority may share

information concerning any matter dealt with in terms of this Chapter with the [**institutions which have nominated persons to the directorate, the**] Takeover Regulation Panel[,], established by section 196 of the Companies Act, the South African Reserve Bank, the Independent Regulatory Board for Auditors constituted in terms of the Auditing Profession Act, a market infrastructure, the Financial Intelligence Centre established by the Financial Intelligence Centre Act, the National Treasury, the Minister and the persons, inside the Republic or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses.

Amendment of section 90

49. Section 90 of the principal Act is amended by substituting for paragraphs (a) and (b)–

“(a) maintain on a continual basis the accounting records prescribed by [**the registrar**] joint standards and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be [prescribed by the registrar] specified in joint standards;

(b) cause such accounting records and annual financial statements to be audited by an auditor appointed under section 89, within a period prescribed by [**the registrar**] joint standards or such later date as the [**registrar**] Authority may allow on application by a regulated person; and”.

Amendment of section 91

50. Section 91 of the principal Act is amended by substituting for subsection (3)(b)–

“(b) on the matters prescribed by [**the**

registrar, including matters relating to the nominees of those regulated persons] conduct standards.”.

Amendment of section 94

51. Section 94 of the principal Act is amended—

- (a) by omitting from subsection (1) all words after and including “by directing that respondent” and substituting “in terms of the Financial Sector Regulation Act”; and
- (b) by substituting for subsection (2)—

(2) The power of the Authority to give a regulator’s directive in terms of the Financial Sector Regulation Act extends to giving such a directive in respect of **[Despite any contrary law, the registrar may, if]** an advertisement, brochure or other document relating to securities that is **[misleading or]** for any reason objectionable[, **direct that the advertisement, brochure or other document not be published or the publication thereof be stopped or that such amendments as the registrar considers necessary be effected**].

Repeal of section 95

52. Section 95 of the principal Act is repealed.

Amendment of section 96

53. Section 96 of the principal Act is amended—

- (a) by substituting for the heading the following:
Powers of [registrar] Authority after on-site [visit or] inspection or investigation
- (b) by substituting in subsection (1) for the words preceding paragraph (a) of the following:

“(1) After an on-site [visit or] inspection or investigation has been conducted **[under section 95] in terms of Chapter 11 of the Financial Sector Regulation Act**, the **[registrar] Authority** may, in order to achieve the objects of this Act referred to in section 2—”;

- (c) by substituting for paragraph (c) of the following paragraph:
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- (c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the on-site [visit or] inspection or investigation: **Provided that the registrar may not make an order contemplated in section 6D (2) (b) of the Financial Institutions (Protection of Funds) Act**].

Repeal of section 97

54. Section 97 of the principal Act is repealed.

Amendment of section 98

55. Section 98 of the principal Act is amended by adding the following subsection:

“(5) This section does not affect Part 7 of Chapter 14 of the Financial Sector Regulation Act.”.

Repeal of section 99

56. Section 99 of the principal Act is repealed.

Repeal of section 105

57. Section 105 of the principal Act is amended—

- (a) by omitting from subsection (1) “may appeal to the appeal board on the conditions determined by or under section 26 of the Financial Services Board Act and subject to this section” and substituting “may appeal to the Tribunal in terms of Part 2 of Chapter 16 of the Financial Sector Regulation Act”; and
- (b) by substituting for subsection (2)—

“(2) The Authority may appeal to the **[appeal board against] Tribunal in terms of Part 2 of Chapter 16 of the Financial Sector (Regulation) Act in respect of** a decision of a market infrastructure, if the market infrastructure fails to respond to a written request by the registrar to review the decision within a reasonable period.”.

Other amendments

58. The other provisions of the principal Act are amended—

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- (a) by omitting each of the following expressions (wherever occurring) and substituting “Authority”–
“board”
“he or she”
“registrar”; and
- (b) by omitting “his or her” (wherever occurring) and substituting “the Authority’s”.
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|-----------------------|-------------------------------------|--|
| Act No. 52
of 1998 | Long-term
Insurance
Act, 1998 | <p>Amendment of section 1</p> <p>59. Section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (in this Part called the principal Act) is amended—</p> <p>(a) by omitting from subsection (1) the definitions of “Board”, “Financial Services Board Act” and “Registrar”;</p> <p>(b) by inserting after the definition of “auditor” in subsection (1):</p> <p style="padding-left: 40px;"><u>“‘Authority’ means –</u></p> <p style="padding-left: 80px;">(a) in the case of sections 7, 9 – 17, 19 - 21, 23 – 35, 37 – 43, 56 and 59 – 62, the Prudential Authority established by the Financial Sector Regulation Act;</p> <p style="padding-left: 80px;">(b) in the case of sections 8 , 44 - 65, the Financial Sector Conduct Authority established by the Financial Sector (Regulation) Act; and</p> <p style="padding-left: 80px;">(c) in the case of sections 3, 4, 18, 22 and 36, either the Prudential Authority or the Financial Sector Conduct Authority”;</p> <p>(c) by inserting after the definition of “financial reporting standards” in subsection (1):</p> <p style="padding-left: 40px;"><u>“‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2014.”;</u></p> <p>(d) by replacing the definition of “official website” with:</p> <p style="padding-left: 40px;"><u>“‘official web site’ means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Authority.”;</u> and</p> <p>(e) by inserting after subsection (1):</p> <p style="padding-left: 40px;"><u>“(1A) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector Regulation Act, and if a term is defined in both this Act and the Financial Sector Regulation Act, the definition in this Act applies when interpreting this Act.”.</u></p> |
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Insertion of section 1A

60. The principal Act is amended by inserting after section 1:

“Operation of this Act and Financial Sector Regulation Act

1A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector Regulation Act:

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- (a) an application for a licence in terms of this Act must be dealt with in accordance with this Act;
 - (b) the Authority's power to vary, suspend or withdraw a licence is as set out in this Act; and
 - (c) sections 104, 105 and 116, 117, and 206 of the Financial Sector Regulation Act apply.

(2) Subject to subsections (1) and (3) and what may be specified in the Financial Sector Regulation Act regarding the exercise of a specific power, a power of the Authority in terms of this Act must be exercised in accordance with the provisions of the Financial Sector Regulation Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector Regulation Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to insurers and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector Regulation Act, the following are legislative instruments:

- (a) any matter prescribed by the Authority in respect of which notice in the *Gazette* is specifically required by this Act.

Repeal and substitution of section 2

61. Section 2 of the principal Act is repealed, and is substituted with the following section:

“Exercise of powers and performance of duties by Authority

2.(1) The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act, 2014.

(2) The Prudential Authority, in respect of sections 9, 15, 26 and Part V, must act with the concurrence of the Financial Sector Conduct Authority.

(3) The Prudential Authority or the Financial Sector Conduct Authority, in respect of section 22, must act with the concurrence of the other Authority.”

Amendment of section 3

62. Section 3 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the **[Registrar] Authority**, that person may appeal to the **[board of appeal] Tribunal** established by **[section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section] the Financial Sector Regulation Act**.”.

Amendment of section 4

63. Section 4 of the principal Act is amended:

(a) by substituting for the heading of the section the following heading:

**Special provisions concerning
[Registrar] Authority and [his or her] its
powers**

(b) by omitting subsections (2) to (4); and

(b) by omitting subsection (8).

Repeal of section 5

64. Section 5 of the principal Act is repealed.

Amendment of section 9

65. Section 9 of the principal Act is hereby amended—

(b) by the substitution for paragraph (b) of subsection (3) of the following subsection:

“(b) unless the applicant demonstrates to the satisfaction of the Authority that –

(i) it complies and has taken appropriate measures to continue to comply with the governance and risk management framework and financial soundness requirements of this Act;

(ii) its directors and managing executives meet the fit and proper requirements;

(iii) any persons that directly or indirectly controls or owns that applicant within the

meaning of section 25 of this Act, meet the fit and proper requirements.”; and

(c) by the insertion after paragraph (b) of the following paragraph:

“(cA) its registration will not be contrary to the interests of prospective policyholders or the public interest.”.

Amendment of section 10

66. Section 10 of the principal Act is hereby amended by the insertion of the following subsection after paragraph (f):

“(fA) relating to the business arrangements of the long-term insurer, including, but not limited to, the outsourcing arrangements that the long-term insurer may enter into;”.

Amendment of section 11

67. Section 11 of the principal Act is amended by the substitution for the section of the following section:

“Variation of registration conditions

11. (1) The [Registrar]Authority may by notice to the long-term insurer amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the long-term insurer is registered or deemed to be registered -

(a) upon application of a long-term insurer and having regard, with the necessary changes, to section 9(3)(b);

(aA) when in the public interest or the interests of the policyholders, or potential policyholders of the long-term insurer;

(b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 35(2)(a) in relation to a long-term insurer; or

(c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter[,by notice to the long-term insurer vary a condition, subject to which the long-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.

Amendment of section 22

68. Section 22 of the principal Act is amended by repealing subsection (3).

Amendment of section 26

69. Section 26 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the **[Registrar] Authority**, acquire or hold shares or any other financial interest in a long-term insurer or a related party of that long-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control within the meaning of section 2(2) of the Companies Act over that long-term insurer.”;

(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

“(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to **[25] 15** per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned;

(b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to **[25] 15** per cent or more of all the shares in a specific class of shares issued by the long-term insurer concerned.”;

(c) by the substitution for the introductory provision of subsection (3) of the following introductory provision:

“(3) The approval referred to in subsection (1) or (2) -”;

(d) by the insertion of paragraph (aA) after paragraph (a) of subsection (3):

“(aA) shall not be given if the person does not meet the fit and proper requirements;”;

(e) by the substitution for paragraph (a) of subsection (4) of the following subsection:

“(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] 15 per cent of –

(i) the total nominal value or number of all the issued shares of the long-term insurer; or
(ii) all the shares in a specific class of shares issued by the long-term insurer;” and

(f) by the deletion of subsections (5) and (6).

Amendment of section 36

70. Section 36 of the principal Act is amended by substituting, in subsection (2), for all words before paragraph (a):

“**[If the Registrar] The Authority, [is] if** satisfied that a return furnished **[to him or her]** in terms of subsection (1) is incomplete or incorrect, **[he or she]** may, by notice–”.

Amendment of section 43

71. Section 43 of the principal Act is amended by substituting for subsection (1)(a):

“(a) unless a copy thereof has been lodged with the **[Registrar] Authority** and **[he or she] the Authority** has, by notice to the long-term insurer, declared that satisfactory arrangements **[satisfactory to the Registrar]** have been made to meet all liabilities of the long-term insurer under long-term policies entered into by it prior to the winding-up; or”.

Amendment of section 62

72. Section 62 of the principal Act is amended–

(a) by omitting subsection (2)(f); and

(b) by omitting subsection (4)(a)(i).

Amendment of section 66

73. Section 66 of the principal Act is amended by omitting from subsection (1)(a) “4(3), (4),”.

Amendment of section 67

74. Section 67 of the principal Act is amended by omitting from subsection (1)(a) “4(2), (3) or (4),”.

Amendment of section 68

75. Section 68 of the principal Act is repealed.

Amendment of Schedule 1

76. Item 2(b) of Schedule 1 to the principal Act is amended–

(a) by substituting for subparagraph (i)–

“(i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty that complies with criteria **[for which the relevant criteria have been]** approved by the **[Registrar]** Authority and any **[subject to such]** conditions as **[he or she]** the Authority may determine;”
and

(b) by substituting for subparagraph (iii)–

“(iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the **[Registrar subject to such conditions as he or she may determine]** Authority (which approval may be subject to conditions determined by the Authority)”.

Other amendments

77. The other provisions of the principal Act (except sections 69 and 70) are amended by omitting “Registrar” (wherever occurring) and substituting “Authority”.

Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2002	<p>Amendment of section 1</p> <p>78. Section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (in this Part called the principal Act) is amended—</p> <p>(a) by omitting from subsection (1) the definitions of “Board”, “board of appeal”, “Financial Services Board Act” and “registrar”;</p> <p>(b) by inserting after the definition of “authorised financial services provider” in subsection (1)— <u>“‘Authority’ means the Financial Sector Conduct Authority established by the Financial Sector (Regulation) Act;</u></p> <p>(c) by the substitution for the definition of “complainant” of the following definition: <u>“‘complainant’ means[, subject to section 26(1)(a)(ii),] a specific client who submits a complaint to a financial services provider [the Ombud];</u></p> <p>(d) by the substitution for the definition of “complaint” of the following definition: <u>“‘complaint’ means[, subject to section 26(1)(a)(iii), a specific complaint] an expression of dissatisfaction submitted by a complainant, relating to a financial service offered or rendered by a financial services provider or representative to the complainant on or after the date of commencement of this Act, [and in which complaint it is alleged that the provider or representative] or to an agreement with the financial services provider or representative in respect of its services and indicating that—</u></p> <p>(a) <u>the provider or representative has contravened or failed to comply with a provision of this Act or an agreement [and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage];</u></p> <p>(b) <u>the provider’s or representative’s maladministration or wilful or negligent action or failure to act has caused the complainant harm, prejudice, distress or substantial inconvenience [has wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to</u></p>
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- the complainant or which is likely to result in such prejudice or damage]; or**
- (c) the provider or representative has treated the complainant unfairly;”;
- (e) by substituting for the definition of “exempt” in subsection (1)–
- ““**exempt**” means to exempt, on application by a person or on the **[registrar’s own] initiative of the Authority**, on any of the grounds mentioned in section 44(1)(a);”;
- (f) by inserting after the definition of “financial product” in subsection (1)–““**Financial Sector Regulation Act**” means the **Financial Sector Regulation Act, 2014**;”;
- (g) by substituting for the definition of “intermediary services” in subsection (1)–
- ““**intermediary service**” means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person **[for or on behalf of a client or product supplier]** -
- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product **[with a product supplier]**; or
- (b) with a view to -
- (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product **[purchased by a client from a product supplier or in which the client has invested]**;
- (ii) collecting or accounting for premiums or other moneys payable by the client **[to a product supplier]** in respect of a financial product; or
- (iii) receiving, submitting or processing the claims of a client in respect of a financial product **[against a product supplier]**;”;
- (c) by substituting for the definition of “official web site”–
- ““**official web site**” means **[a] the Authority’s web site** (as defined in
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section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002))], **set up by the Board];**”;

- (h) by the repeal of the definition of “Office”;
- (i) *by the substitution of the definition of “Ombud” of the following definition-*
“Ombud” means the Ombud for Financial Services Providers appointed in terms of section **[21(1)] 183(1) of the Financial Sector Regulation Act;** **[(b) for the purposes of sections 27, 28, 31 and 39, includes a deputy ombud];**
- (j) by inserting after subsection (1)–
“(1A) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector (Regulation) Act.”;
- (k) by the deletion of subparagraph (ii) of subsection (3) (b).

Insertion of section 1A

79. The principal Act is amended by inserting after section 1–

“Operation of this Act and the Financial Sector (Regulation) Act

1A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector (Regulation) Act,:

- (a) an application for a licence, in terms of this Act must be dealt with in accordance with this Act; and
- (b) the Authority’s power to vary, suspend or withdraw a licence is as set out in this Act.
- (c) sections 104, 105 and 116, of the Financial Sector Regulation Act apply.

(2) Subject to subsection (1), a power of the Authority in terms of this Act (for example, a power to issue a directive, or to conduct an inspection or investigation) must be exercised in accordance with the provisions of the Financial Sector (Regulation) Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector (Regulation) Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to financial institutions and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector (Regulation) Act, the following are legislative instruments—

- (a) a regulation;
- (b) a code of conduct;
- (c) a fit and proper requirement; and
- (d) criteria and guidelines for the approval of compliance officers.

Repeal of section 2

80. Section 2 of the principal Act is repealed.

Amendment of section 6

81. (1) Section 6 of the principal Act is amended by the substitution for the section of the following section:

“6. Delegations

(1) The Authority may, in writing, delegate to any person a power or duty conferred upon the Authority by or under this Act in respect of any matter relating to a standard referred to in section 6A(2)(a), (b) and (e).

(2) The Authority must, where the delegation is to a person other than a staff member of the Authority, be satisfied that the person has sufficient financial, management, human resources and experience necessary for performing the delegated power or duty.

(3) A delegation is subject to the limitations and conditions specified in the delegation.

(4) A delegation does not divest the Authority of responsibility in respect of the delegated power or duty and anything done by a delegate in accordance with the delegations is deemed to be done by the Authority.”

Amendment of section 13

82. Section 13 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) An authorised financial services provider must—

- (a) maintain a register of representatives, and key individuals of those representatives, which must be regularly updated and be available to the Authority for reference or inspection purposes; and
 - (b) within five days after being informed by the Authority of the debarment of a representative
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or key individual by the Authority, remove the names of that representative and key individuals from the register referred to in paragraph (a).”

Amendment of section 14

83. Section 14 of the principal Act is repealed, and the following section is substituted:

“Debarment of representatives

14. (1) An authorised financial services provider must debar a person who is or was, as the case may be, –

- (a) a representative of the provider, or
- (b) the key individual of such representative;

from rendering financial services if satisfied on the basis of available facts and information that the person–

- (i) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or
- (ii) has contravened or failed to comply with any provision of this Act in a material manner, and

the reasons for debarment occurred and became known to the provider whilst the person was a representative of the provider.

(2) Before effecting a debarment in terms of subsection (1), the provider must ensure that the debarment process is lawful, reasonable and procedurally fair by following the process set out in subsection (3).

(1) A provider must–

- (a) before debarring a person–
 - (i) give adequate notice in writing to the person of its intention to debar the person and the grounds and reasons therefor and any terms attached to the debarment, including, in relation to uncompleted business, any measures stipulated for the protection of the interests of clients;
 - (ii) provide the person with a copy of the provider’s written policy and procedure governing the debarment process; and
 - (iii) give the person a reasonable opportunity to make a submission in response;
 - (b) consider any response contemplated in paragraph (a)(iii), and may thereafter decide to debar or not to debar the person; and
 - (c) immediately notify the person in writing of–
 - (i) the provider’s decision;
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- (ii) the grounds and reasons for such decision;
 - (iii) any right of appeal to the Tribunal established in terms of the Financial Sector (Regulation) Act;
 - (iv) the period within which the appeal proceedings must be instituted;
 - (v) any other formal requirements in respect of the proceedings for appeal.

(2) Where the debarment has been effected as contemplated in subsection (1), the provider must—

- (a) immediately withdraw any authority which may still exist for the person to act on behalf of the provider;
- (b) where applicable, remove the name of the debarred person from the register referred to in section 13(3) (a);
- (c) immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to;
- (d) in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and
- (e) with the notification referred to in paragraph (d), provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require.

(3) A debarment in terms of subsection (1) proposed to be undertaken in respect of a person who no longer is a representative of the provider, must be commenced without undue delay from the date of the provider becoming aware of the reasons for debarment, and in any event, not longer than three months from that date.

(4) For the purposes of debarring a person as contemplated in subsection (1), the provider must have regard to information regarding the conduct of the person as furnished by the Authority, the Ombud or any other interested person.

(5) The Authority may, for the purposes of record keeping, require any information, including the information referred to in subsections (4)(d) and (e), to enable the registrar to maintain and continuously update a central register of all persons debarred in terms of subsection (1), and that register must be published on the official web site of the Authority, or by means of any other appropriate public media.

(6) A debarment effected in terms of this section will prevail and must be reacted upon by the Authority as contemplated by this section, unless the debarment is set aside in an appropriate review or an internal appeal in terms of subsection (3)(c)(iii), as the case may be.

(7) A person debarred in terms of subsection (1) may not render financial services or act as a representative or key individual of a representative of any financial services provider, unless the person has complied with the requirements referred to in section 13(1)(b)(ii) for the reappointment of a debarred person as a representative or key individual of a representative.

(8)(a) The Authority may, after the expiry of a period of five years from the date of the person's debarment, remove the debarred person's name from the register referred to in subsection (7).

(b) The removal contemplated in paragraph (a) of the debarred person's name from the register of debarred persons does not affect the person's debarment effected in terms of subsection (1), until the person has complied with the provisions of subsection (7)."

Repeal of section 14A

7. Section 14A of the principal Act is repealed.

Amendment of section 16

8. Section 16 of the principal Act is amended by the substitution for subsection 2(d) of the following:

“(d) proper safe-keeping, separation and protection of funds and transaction documentation of clients, including the criteria for the authorisation of a nominee and requirements for an approved nominee as defined in the Financial Sector Regulation Act;”

Repeal of sections 20 to 31

9. Sections 20 to 31 of the principal Act are repealed.

Amendment of section 38A

10. Section 36A of the principal Act is amended by substituting for paragraph (b) of subsection (1) the following paragraph:

“(b) This section does not apply if [another registrar] the Prudential Authority is authorised [**in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation,**] to apply to the court for the business rescue of a provider.”

Amendment of section 38B

11. Section 38B of the principal Act is amended—

- (a) by omitting from subsection (1) the words preceding paragraph (a), and substituting the following:

[Subject to subsection (3), if the registrar, after an on- site visit in terms of section 4(5) or an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998),] If the Authority considers that the interests of the clients of a financial services provider or of members of the public so require, the **[registrar]** **Authority** may apply to the court for the sequestration or liquidation of that provider, whether or not the provider is solvent, in accordance with—”; and

- (b) by substituting for subsection (3) the following subsection:

“(3) This section does not apply if **[another registrar] the Prudential Authority** is authorised **[in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation,]** to apply to the court for the sequestration or liquidation of that provider.”.

Repeal of sections 38C,

12. Section 38C of the principal Act is repealed.

Amendment of section 39

13. Section 39 of the principal Act is repealed and the following section is substituted:

“Right of appeal

39. Any person who feels aggrieved by—

- (a) any decision of the Authority in terms of this Act; or

- (b) a decision of a provider to debar that person in terms of section 14 of this Act,

which affects that person, may appeal to the Tribunal established in terms of the Financial Sector (Regulation) Act.”.

Amendment of section 45

14. Section 45 of the principal Act is amended by the

insertion of the following subsection after subsection (1):

- “(1A) (a) The provisions of this Act do not apply to the performing of the activities referred to in subparagraphs (ii) and (iii) of paragraph (b) of the definition of “intermediary service” by a product supplier—
- (i) who is authorised under a particular law to conduct business as a financial institution; and
 - (ii) where the rendering of such service is regulated by or under such law.
- (b) The exemption referred to in paragraph (a) does not apply to a person to whom the product supplier has delegated or outsourced the activity, or any part of the activity, contemplated in paragraph (a) and where the person is not an employee of the product supplier.

Other amendments

15. The other provisions of the principal Act are amended:

- (a) by omitting “registrar” and “Board” (wherever occurring”) and substituting “Authority”.
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| Act No. 24
of 1956 | Pension
Funds Act,
1956 | <p>Amendment of section 1</p> <p>16. Section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (in this Part called the principal Act) is amended–</p> <p>(a) by omitting from subsection (1) the definitions of “Adjudicator”, “Financial Services Board” and “registrar”;</p> <p>(b) by inserting after the definition of “audit-exempt fund” in subsection (1)–</p> <p style="padding-left: 40px;"><u>“‘Authority’ means the Financial Sector Conduct Authority established by the Financial Sector Regulation Act;</u></p> <p>(c) by inserting after the definition of “fair value” in subsection (1) –</p> <p style="padding-left: 40px;"><u>“‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2014;”;</u></p> <p>(d) by inserting after the definition of “Minister” in subsection (1) –</p> <p style="padding-left: 40px;"><u>“‘nominee company’ means a nominee as defined in the Financial Sector Regulation Act;</u></p> <p>(e) by substituting the definition of “official website” with:</p> <p style="padding-left: 40px;"><u>“‘official web site’ means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Authority; and</u></p> <p>(f) by inserting the following subsection:</p> <p style="padding-left: 40px;"><u>“(3) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector Regulation Act and if a term is defined in both this Act and the Financial Sector Regulation Act, the definition in this Act applies when interpreting this Act.”.</u></p> |
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Insertion of section 1A

17. The principal Act is amended by inserting after section 2:

“Operation of this Act and the Financial Sector (Regulation) Act

1A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector Regulation Act:

- (a) an application for a licence in terms of this Act must be dealt with in accordance with this Act;
- (b) the Authority’s power to vary, suspend or withdraw a licence is as
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set out in this Act; and

- (c) sections 104, 105 and 116, 117, and 206 of the Financial Sector Regulation Act apply.

(2) Subject to subsections (1) and (3) and what may be specified in the Financial Sector Regulation Act regarding the exercise of a specific power, a power of the Authority in terms of this Act must be exercised in accordance with the provisions of the Financial Sector Regulation Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector Regulation Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to financial institutions and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector Regulation Act, the following are legislative instruments:

- (a) Regulations made under section 36);
(b) any matter prescribed by the Authority in respect of which notice in the *Gazette* is specifically required by this Act

Repeal and substitution of section 3

18. Section 3 of the principal Act is repealed, and is substituted with the following section:

“Exercise of powers and performance of duties by Authority

3. The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act.”

Amendment of section 5

19. Section 5 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) For the purposes of this section, a nominee company is a company which has been approved under standards prescribed in terms of the Financial Sector Regulation Act. [-

(a)

(i) has as its principal object to act as representative of any person;

(ii) is precluded by its Memorandum of Incorporation from incurring any liabilities other than those to persons on whose behalf it holds property;

(iii) has entered into an irrevocable agreement with another person in terms of which such other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation; and

(iv) has been approved by the registrar, subject to such conditions as the registrar may impose, including any guarantee for the fulfilment of any obligation in respect of the holding of such property, the generality of the afore-going provisions not being restricted by the provisions of this paragraph;

(b) is incorporated under the Companies Act where the Memorandum of Incorporation contains a reference to paragraph (a)(i) and (ii) as a restrictive condition contemplated in section 15(2)(b) of the Companies Act.]

Amendment of section 13

20. Section 13B of the principal Act is amended by omitting subsections (6)(a) and (b).

Amendment of section 15

21. Section 15 of the principal Act is amended –

(a) by the substitution for subsection (1) of following subsection:

“(1) Subject to the provisions of subsection (4), every registered fund shall, within six months as from the expiration of every financial year, furnish to the [registrar] Authority [such] the statements in regard to its revenue, expenditure and financial position [as may be] that are prescribed by the

Authority, after having consulted with the Prudential Authority, duly audited and reported on by the auditor of the fund;”; and

- (b) by the substitution for subsection (4) of the following subsection:

“(4) If a fund has been exempted as contemplated in section 2(5) (a), the **[registrar]** Authority may authorise **[such]** the fund to furnish to [him or her] the Authority, instead of the statements referred to in subsection (1), the information prescribed by the Authority, after having consulted with the Prudential Authority.

Amendment of section 16

22. Section 16 of the principal Act is amended by the substitution for subsections (6) and (7) of following subsections:

- “(6)
- (a) If the rules of a fund provide that the benefits which may become payable to a category of members are subject to the discretion of the management of the fund, the **[registrar]** Authority, after having consulted the Prudential Authority shall, on the request of the fund, on good cause shown by any officer of the fund or on the initiative of the **[registrar]** Authority, determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and **[such]** the determination by the [registrar] Authority Licensing Regulator shall be binding upon the fund.
- (b) The fund shall bear any expenses incurred by the **[registrar]** Authority in respect of a matter contemplated in paragraph (a).

- (7) A report in terms of any of the preceding
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subsections shall include the particulars prescribed by the Authority, after having consulted the Prudential Authority.

Amendment of section 18

23. Section 18 of the principal Act is amended–

(a) by substituting the following for subsection (1)–

“(1) The [registrar] Authority, after having consulted with the Prudential Authority, may prescribe criteria for financial soundness of registered pension funds or a class of them.

(b) by inserting the following subsection after subsection (1):

(1AA) [and when any return under this Act indicates] If the Authority, after having consulted the Prudential Authority, determines that a registered fund is not in a sound financial condition, the [registrar] Authority, after having consulted the Prudential Authority may, save as provided in section 29, direct the fund to submit a scheme setting out the arrangements which have been made, or which it intends to make, to bring the fund into a financially sound condition within such period, and subject to such conditions, as may be determined by the [registrar] Authority, after having consulted the Prudential Authority.”; and

(c) by substituting in subsection (5) for paragraph (a) the following paragraph:

“(5)(a) The [registrar] Authority may at any time following an inspection carried out or investigation conducted [under section 25] in terms of Chapter 11 of the Financial Sector Regulation Act, or for any other reason which the [registrar] Authority may consider necessary in the interests of the members of a fund, direct that an investigation in terms of section 16 or an audit or both an audit and such investigation be conducted into the financial position of a fund generally or with reference to any financial aspect of the fund.”.

Repeal of section 25

24. Section 25 of the principal Act is repealed.

Amendment of section 26

25. Section 26 of the principal Act is amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) direct that the rules of the fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if the results of an inspection or **[on-site visit] investigation [under section 25]** in terms of Chapter 11 of the Financial Sector Regulation Act necessitates amendment of the rules of the fund or if the **[registrar] Authority** is of the opinion that the fund–

- (i) is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the fund;
- (ii) has failed to act in accordance with the provisions of section 18; or
- (iii) is not managed in accordance with this Act or the rules of the fund.”

Repeal of Chapter VA (sections 30A to 30Y)

26. Chapter VA, sections 30A to 30Y of the principal Act, is repealed.

Repeal of section 33A

27. Section 33A of the principal Act is repealed.

Amendment of section 37

28. Section 37 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) If the **[registrar] Authority**, after consideration of representations made, decides to impose an administrative penalty, **[he or she] the Authority** must by written notice inform the administrator, pension fund or third party that it may, within 30 days after the date of the notice, pay the penalty or lodge an appeal in accordance with

[section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990)] section 163 of the Financial Sector Regulation Act.

Other amendments

29. The other provisions of the principal Act are amended–

- (a) by omitting “registrar” (wherever occurring) and substituting “Authority”;
 - (b) by omitting “his or her” (wherever occurring) and substituting “the Authority’s”; and
 - (c) by omitting “he or she” (wherever occurring) and substituting “the Authority”.
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| Act No. 53
of 1998 | Short-term
Insurance
Act, 1998 | <p>Amendment of section 1</p> <p>30. Section 1 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (in this Part called the principal Act) is amended—</p> <p>(a) by omitting from subsection (1) the definitions of “Board”, “Financial Services Board Act” and “Registrar”;</p> <p>(b) by inserting after the definition of “auditor” in subsection (1):</p> <p style="padding-left: 40px;"><u>“‘Authority’ means –</u></p> <p style="padding-left: 80px;">(a) <u>in the case of sections 7, 9 – 17, 19 – 20, 22 – 34, 36 – 42, 56 and 59 – 62, the Prudential Authority established by the Financial Sector Regulation Act;</u></p> <p style="padding-left: 80px;">(b) <u>in the case of sections 8, 43 – 55, the Financial Sector Conduct Authority established by the Financial Sector Regulation Act; and</u></p> <p style="padding-left: 80px;">(c) <u>in the case of sections 3, 4, 18, 21, 35, 57, 58 and 63, either the Prudential Authority or the Financial Sector Conduct Authority”;</u></p> <p>(c) by inserting after the definition of “financial reporting standards” in subsection (1):</p> <p style="padding-left: 40px;"><u>“‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2014;”;</u></p> <p>(d) by replacing the definition of “official website” with:</p> <p style="padding-left: 40px;"><u>“‘official web site’ means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Authority;” and</u></p> <p>(e) by inserting after subsection (1):</p> <p style="padding-left: 40px;"><u>“(1A) Words and expressions not defined in subsection (1) have the meanings they have in the Financial Sector Regulation Act, and if a term is defined in both this Act and the Financial Sector Regulation Act, the definition in this Act applies when interpreting this Act.”.</u></p> |
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Insertion of section 1A

31. The principal Act is amended by inserting after section 1:

“Operation of this Act and Financial Sector

Regulation Act

1A. (1) Subject to this section, in relation to licences, as defined in the Financial Sector Regulation Act:

- (a) an application for a licence in terms of this Act must be dealt with in accordance with this Act;
- (b) the Authority's power to vary, suspend or withdraw a licence is as set out in this Act; and
- (c) sections 104, 105 and 116, 117, and 206 of the Financial Sector Regulation Act apply.

(2) Subject to subsections (1) and (3) and what may be specified in the Financial Sector Regulation Act regarding the exercise of a specific power, a power of the Authority in terms of this Act must be exercised in accordance with the provisions of the Financial Sector Regulation Act.

(3) Subject to subsections (1) and (2), if a provision of this Act makes provision additional to, and not inconsistent with, the Financial Sector Regulation Act in relation to a particular matter, the additional provision also applies.

(4) The financial sector regulators may issue standards in accordance with the Financial Sector Regulation Act in relation to insurers and matters regulated in terms of this Act.

(5) For the purposes of the Financial Sector Regulation Act, the following are legislative instruments:

- (a) any matter prescribed by the Authority in respect of which notice in the *Gazette* is specifically required by this Act.

Repeal and substitution of section 2

32. Section 2 of the principal Act is repealed, and is substituted with the following section:

“Exercise of powers and performance of duties by Authority

2.(1) The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act, 2014.

(2) The Prudential Authority, in respect of sections 9, 15, 26 and Part V, must act with the concurrence of the Financial Sector Conduct Authority.

(3) The Prudential Authority or the Financial Sector Conduct Authority, in respect of section 22, must act with the concurrence of the other Authority.”

Amendment of section 3

33. Section 3 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the [Registrar] Authority, that person may appeal to the [board of appeal] Tribunal established by [section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section] the Financial Sector Regulation Act.”.

Amendment of section 4

34. Section 4 of the principal Act is amended:

(c) by substituting for the heading of the section the following heading:

**Special provisions concerning
[Registrar] Authority and [his or her] its
powers**

(d) by omitting subsections (2) to (4); and

(b) by omitting subsection (8).

Repeal of section 5

35. Section 5 of the principal Act is repealed.

Amendment of section 9

36. Section 9 of the principal Act is hereby amended—

(b) by the substitution for paragraph (b) of subsection (3) of the following subsection:

“(b) unless the applicant demonstrates to the satisfaction of the Authority that –

(i) it complies and has taken appropriate measures to continue to comply with the governance and risk management framework and financial soundness requirements of this Act;

(ii) its directors and managing executives meet the fit and proper requirements;

(iii) any persons that directly or indirectly controls or owns that applicant within the meaning of section 25 of this Act, meet the fit and proper requirements.”; and

(c) by the insertion after paragraph (b) of the following paragraph:

“(cA) its registration will not be contrary to the interests of prospective policyholders or the public interest.”.

Amendment of section 10

37. Section 10 of the principal Act is hereby amended by the insertion of the following subsection after paragraph (f):

“(fA) relating to the business arrangements of the short-term insurer, including, but not limited to, the outsourcing arrangements that the short-term insurer may enter into;”.

Amendment of section 11

38. Section 11 of the principal Act is amended by the substitution for the section of the following section:

“Variation of registration conditions

11. (1) The Authority may by notice to the short-term insurer amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the short-term insurer is registered or deemed to be registered –

(a) upon application of a short-term insurer and having regard, with the necessary changes, to section 9(3)(b);

(aA) when in the public interest or the interests of the policyholders, or potential policyholders of the short-term insurer;

(b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 34(2)(a) in relation to a short-term insurer; or

(c) if a short-term insurer has ceased to enter into certain short-term policies determined by the Authority to an extent which no longer justifies its continued registration in respect of those policies, and the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter~~],~~**by**

notice to the short-term insurer vary a condition, subject to which the short-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.

Amendment of section 21

39. Section 21 of the principal Act is amended by repealing subsection (3).

Amendment of section 26

40. Section 26 of the principal Act, is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the **[Registrar]Authority**, acquire or hold shares or any other financial interest in a short-term insurer or a related party of that short-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control within the meaning of section 2(2) of the Companies Act over that long-term insurer.”;

(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

“(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to **[25] 15** per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned;

(b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to **[25] 15** per cent or more of all the shares in a specific class of shares issued by the short-term insurer concerned.”;

(c) by the substitution for the introductory provision of subsection (3) of the following introductory provision:

“(3) The approval referred to in subsection (1) or (2) -”;

(d) by the insertion of paragraph (aA) after paragraph (a) of subsection (3):

“(aA) shall not be given if the person does not meet the fit and proper requirements;”;

(e) by the substitution for paragraph (a) of subsection (4) of the following subsection:

“(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] 15 per cent of –

(i) the total nominal value or number of all the issued shares of the short-term insurer; or

(ii) all the shares in a specific class of shares issued by the short-term insurer;”;

(f) by the deletion of subsections (5) and (6).

Amendment of section 35

41. Section 35 of the principal Act is amended by substituting, in subsection (2), for all words before paragraph (a):

“[If the Registrar] The Authority, [is] if satisfied that a return furnished [to him or her] in terms of subsection (1) is incomplete or incorrect, [he or she] may, by notice–”.

Amendment of section 42

42. Section 42 of the principal Act is amended by substituting for subsection (1)(a):

“(a) unless a copy thereof has been lodged with the [Registrar] Authority and [he or she] the Authority has, by notice to the short-term insurer, declared that satisfactory arrangements [satisfactory to the Registrar] have been made to meet all liabilities of the short-term insurer under short-term policies entered into by it prior to the winding-up; or”.

Amendment of section 43

43. Section 43 of the principal Act is amended by substituting for subsection (5)(c):

“(c) A certificate by the [Registrar that he or she is satisfied that] Authority that the premiums concerned are reasonable, shall for the purposes of this subsection be sufficient proof of the reasonableness of such premiums.”.

Amendment of section 55

44. Section 55 of the principal Act is amended—
- (a) by omitting subsection (2)(f); and
 - (b) by omitting subsection (4)(a)(i).

Amendment of section 65

45. Section 65 of the principal Act is amended by omitting from subsection (1)(a) “4(2), (3) or (4),”.

Amendment of section 66

46. Section 66 of the principal Act is repealed.

Amendment of Schedule 1

47. Item 2(b) of Schedule 1 to the principal Act is amended—
- (a) by substituting for subparagraph (i)–

“(i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty that complies with criteria **[for which the relevant criteria have been]** approved by the **[Registrar Authority and any [subject to such] conditions as [he or she] the Authority may determine;**”
and

- (b) by substituting for subparagraph (iii)–

“(iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the **[Registrar subject to such conditions as he or she may determine]** Authority (which approval may be subject to conditions determined by the Authority)”.

Amendment of Schedule 3

48. Item 6(3) of Schedule 3 to the principal Act is amended by substituting for paragraph (c)–

- (c) subject to the conditions **[he or she]** that the Authority may determine.

Other amendments

49. The other provisions of the principal Act (except sections 67 and 68) are amended by omitting “Registrar” (wherever occurring) and substituting “Authority”
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MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SECTOR REGULATION BILL

1. BACKGROUND TO THE BILL

- 1.1. In December 2013, Cabinet approved the establishment of two regulators: a Prudential Authority (“PA”) within the South African Reserve Bank to supervise the safety and soundness of banks, insurance companies and other financial institutions; and the Financial Sector Conduct Authority (“FSCA”), to supervise how financial services firms conduct their business and treat customers. This followed earlier approval in July 2011 for a shift to a Twin Peaks approach to financial regulation, including the role of the Reserve Bank in overseeing financial stability.
- 1.2. The draft Financial Sector Regulation Bill (“the Bill”) was approved by Cabinet on 4 December, 2013 for publication for public comment. The Bill has been substantially revised from the version of the Bill that was published for public comment, after carefully considering comments received during the public comment process.
- 1.3. Twin Peaks is a comprehensive and complete system for regulating the financial sector, prioritising the customer and protecting their funds. It represents a decisive shift away from a fragmented regulatory approach.
- 1.4. The Twin Peaks model of financial regulation is designed to underpin a comprehensive regulatory system, with two aims: (1) to strengthen financial stability and the soundness of financial institutions by creating a dedicated Prudential Authority; and (2) to protect financial customers and ensure that they are treated fairly by financial institutions by creating a dedicated Financial Sector Conduct Authority.
- 1.5. In addition to the two regulators, the approach sets up a harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), an appeal mechanism (tribunal) and consumer education. This “single system” supports regulatory consistency, and reduces the scope for regulatory arbitrage or “forum shopping”. It also makes it easier for any customer experiencing a problem, as the customer is often confused about where to complain when experiencing unfair treatment from a financial institution.

- 1.6. Within this system, the Reserve Bank oversees financial stability within a policy framework agreed with the Minister of Finance.
- 1.7. The Bill aims to improve the structure of regulation of the financial services sector, by ensuring more consistent and complete regulation, including for market conduct. It will give the FSCA and the PA jurisdiction over all financial institutions, and will provide them with a range of supervisory tools to fulfil their mandates.
- 1.8. Given the scale of the transformation in regulating the financial sector, the Twin Peaks system is to be implemented in two stages. The first stage establishes the regulators and a uniform system and standards, with existing sub-sectoral (or activity-based) laws (for example on insurance and banking) remaining in place. In the second stage, the focus will be to streamline the current activity-based legislation (separate for banking, insurance, credit, pensions, etc.) into consolidated legislation, to reduce the scope for regulatory arbitrage.

2. OBJECT OF THE BILL

- 2.1. The object of the Bill is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes—
 - 2.1.1. financial stability;
 - 2.1.2. the safety and soundness of financial institutions;
 - 2.1.3. the fair treatment and protection of financial customers;
 - 2.1.4. the efficiency and integrity of the financial system;
 - 2.1.5. the prevention of financial crime;
 - 2.1.6. financial inclusion; and
 - 2.1.7. confidence in the financial system.
- 2.2. The following key matters are addressed in the Bill:
 - 2.2.1. *Financial stability and the management of systemic events*
 - 2.2.1.1. The Bill explicitly confers on the South African Reserve Bank (“the Reserve Bank”) the mandate to maintain, protect and enhance financial stability, and

if a systemic event has adversely affected financial stability, to restore and maintain financial stability. The Reserve Bank must monitor and take steps to mitigate risks to financial stability, and advise the Minister of Finance in the event that a systemic event is imminent. The Governor of the Reserve Bank is empowered to designate financial institutions as being systemically important, and the Reserve Bank, in consultation with the Prudential Authority, is empowered to impose additional prudential requirements on those institutions which have been designated as being systemically important.

- 2.2.1.2. The Governor is empowered to determine, after consultation with the Minister of Finance, that an event or circumstance, or a combination of events or circumstances, is a systemic event.
- 2.2.1.3. The Reserve Bank must take all practicable steps to prevent a systemic event from occurring, and if a systemic event has occurred or is imminent, to mitigate the adverse effects on financial stability.
- 2.2.1.4. A management committee, consisting of senior representatives of the Reserve Bank, the PA, the FSCA, and the National Credit Regulator (“the financial sector regulators”) and other organs of state, may be established by the Governor to assist with co-ordinating activities to manage a systemic event.
- 2.2.1.5. The Governor must ensure that the Minister of Finance is informed and kept abreast of steps being taken to address a systemic event, and the Minister must approve any actions taken that may have an impact on public finances. In addition, the Governor may issue directives to financial sector regulators, in order to prevent a systemic event from occurring, or to mitigate the adverse impacts of a systemic event.
- 2.2.1.6. The financial sector regulators must provide any information in their possession which is relevant to managing the effects of a systemic event to the Reserve Bank, and must consult the Governor before exercising powers that may impact upon measures taken to manage a systemic event. Other organs of state must not take actions that may be contrary to decisions of the Governor or actions taken by the Reserve Bank to manage systemic risk or a

systemic event.

- 2.2.1.7. The Financial Stability Oversight Committee (“the FSOC”) is established, which will to support the Reserve Bank in performing the Reserve Bank’s functions in relation to financial stability, and foster collaboration and co-ordination of action among and between the financial sector regulators in relation to matters relating to financial stability. The FSOC will—
- 2.2.1.7.1. provide a forum for the senior representatives of the Reserve Bank and the financial sector regulators to be informed, and to exchange views, about their activities which are relevant to financial stability;
 - 2.2.1.7.2. facilitate co-operation, collaboration and co-ordination of action among and between the Reserve Bank and the financial sector regulators in relation to matters relating to financial stability;
 - 2.2.1.7.3. advise the Governor on the designation of systemically important financial institutions, and to advise the Minister on matters relating to financial stability; and
 - 2.2.1.7.4. make recommendations to relevant organs of state as to actions appropriate for them to take to assist in managing risks to financial stability.
- 2.2.1.8. The FSOC will be assisted by the Financial Sector Contingency Forum, comprised of representatives from the relevant industry bodies, the financial sector regulators and other relevant organs of state.
- 2.2.1.9. A duty is placed on the financial sector regulators to assist the Reserve Bank to maintain and protect financial stability, and the financial sector regulators are mandated to enter into Memoranda of Understanding with the Reserve Bank specifying how they will comply with their duties to co-operate and collaborate with each other in relation to financial stability.
- 2.2.1.10. The Reserve Bank must, when acting in terms of its financial stability mandate, and when exercising its powers in terms of the Bill, take into consideration:

- 2.2.1.10.1. the views expressed and the information reported by the financial sector regulators;
- 2.2.1.10.2. the recommendations of the Financial Stability Oversight Committee;
- 2.2.1.10.3. the object of the Bill and the role, object, and functions of the financial sector regulators.

2.2.2. *Establishment of Financial Sector Regulators*

2.2.2.1. The Bill establishes two new financial sector regulators, the Prudential Authority (“PA”) and the Financial Sector Conduct Authority (“FSCA”).

2.2.2.2. The PA’s objective is to support the achievement of the object of the Bill, by promoting and enhancing the safety and soundness of financial institutions that provide financial products, market infrastructures and payment systems, to—

2.2.1.2.1 protect financial customers, including depositors and policyholders, against the risk that those financial institutions may fail to meet their obligations; and

2.2.1.2.2 assist in maintaining financial stability.

2.2.2.3. The Financial Services Board will be disestablished, and the new FSCA will be established, whose objective will be to protect financial customers and support the achievement of the object of the Bill, by –

2.2.2.3.1. ensuring that financial institutions treat financial customers fairly;

2.2.2.3.2. enhancing the efficiency and integrity of the financial system; and

2.2.2.3.3. providing financial customers with financial education programs and otherwise promoting financial literacy and financial capability.

2.2.3. *Co-ordination, co-operation, collaboration, consultation and consistency between the financial sector regulators*

The Bill provides mechanisms to ensure co-ordination, co-operation, collaboration, consultation and consistency between the financial sector

regulators. The financial sector regulators must enter into Memoranda of Understanding addressing how they will co-operate and collaborate in relation to matters such as making standards, licensing, inspections, investigations, enforcement actions, information sharing, and other regulatory and supervisory actions. They may provide for the delegation of powers between themselves, how they will implement their responsibilities in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and decide on how differences between them will be resolved.

A Financial Sector Inter-ministerial Council is established, to facilitate co-ordination, co-operation, collaboration, consultation and consistency, by providing a forum for the member Ministers to discuss and consider matters of common interest, including: strategic policy objectives and priorities; understanding and meeting international and domestic regulatory challenges; and the approach to regulation and the regulatory standards incorporated in the financial sector laws, other legislation impacting upon the financial sector; legislative instruments prescribed or made in terms of the financial sector laws and other legislation impacting upon the financial sector.

A Council of Financial Regulators is established, to facilitate consultation, cooperation and coordination amongst the regulators on matters of common interest, including strategic directions to be adopted, and understanding and meeting international and domestic regulatory challenges.

2.2.4. *Maintaining and Enhancing Prudential Regulation and Supervision*

The new approach to prudential regulation seeks to create an effective legal and regulatory environment that ensures that financial institutions are capable of complying with their undertakings to participate in the financial system, including the maintenance of a sound financial position. Enhanced monitoring and supervision powers will promote compliance with applicable financial sector laws, which is necessary for the proper identification and mitigation of systemic risks.

2.2.5. *Maintaining and Enhancing Market Conduct Regulation and Supervision*

The comprehensive and rigorous market conduct reporting and supervision

requirements created under the new regulatory framework will ensure that consumers of financial products and financial services are not vulnerable and exploited, by introducing measures for identification, detection and reporting of unfair treatment to customers, including financial awareness and financial literacy among South Africans. These measures will ensure that the efficiency and integrity of final markets is protected and enhanced, contribute to the maintenance of financial stability, promote financial inclusion, and assist in combating financial crime.

2.2.6. *Standards for financial products and services*

An important mechanism for enhancing both the prudential and market conduct regulation of financial products and services is the provision for the PA to issue prudential standards, the FSCA to issue market conduct standards, and for the PA and the FSCA to be able, where they deem appropriate, to issue joint standards, in accordance with a consistent, specified procedure. The PA and the FSCA may also issue joint standards with the Reserve Bank, in relation to matters that the PA and FSCA are empowered to make standards regarding. Going forward, the issuing of standards will largely replace the diversity of instruments that are currently issued in terms of financial sector laws, which will promote clarity and standardisation in relation to regulatory action.

2.2.7. *Supervision of financial conglomerates*

Another very important mechanism in the Bill that will enhance both prudential and market conduct regulation and supervision, is that a framework for the supervision for financial conglomerates is provided for.

2.2.8. *Operational Independence and Governance*

The Bill will provide an appropriate governance framework, that ensures operational independence, organizational effectiveness and adaptability of the new statutory structures and institutional frameworks, including accountability mechanisms to enhance transparency and fairness.

2.2.9. *Administrative actions, procedures, and enforcement mechanisms*

- 2.2.9.1. The Bill permits the financial sector regulators to adopt administrative action procedures, setting out how administrative actions will be taken in terms of financial sector laws. They may also each establish an administrative action committee, to consider and report to the regulator on administrative actions that are proposed to be taken by the regulator. Financial sector regulators are empowered to enter into leniency agreements with a person in exchange for that person's co-operation in an investigation or proceedings.
- 2.2.9.2. A procedure is specified which the financial sector regulators must adhere to when making legislative instruments. The financial sector regulators are empowered to utilise a variety of enforcement mechanisms, including applying to court to obtain various court orders, and making disbarment orders.
- 2.2.9.3. The regulators are empowered to issue directives in order to ensure compliance and to prevent or stop non-compliance with the financial sector laws. The regulators may also enter into enforceable undertakings with a licensed financial institution, in terms of which the financial institution voluntarily agrees to comply with the terms of the undertaking. The Financial sector regulators are also empowered to issue administrative penalties.
- 2.2.9.4. The Bill also contains detailed provisions enabling the regulators to gather information, and carry out inspections and investigations, which are vital tools for the supervision and enforcement of the financial sector laws by the financial sector regulators.
- 2.2.9.5. A Financial Services Tribunal is established, which is mandated to adjudicate on applications for appeals of the administrative decisions taken by the regulators. A person who is aggrieved by a decision of a decision maker, may appeal against that decision to the Tribunal, the decisions of the Tribunal are reviewable in the High Court.

3. SUMMARY OF THE BILL

- 3.1. Chapter 1 of the Bill deals with the Interpretation, Object, and Administration of the Act. Part 1 (clauses 1-5), sets out definitions and clarifies certain matters to assist with the interpretation of the Act. Part 2 (clauses 6-7) sets out the Object of the Act, specifies that the Minister of Finance is responsible for the administration of the Act.
- 3.2. Chapter 2 of the Bill addresses financial stability.
- 3.2.1. Part 1 (clauses 8 to 10) explicitly defines the Reserve Bank's role in relation to financial stability, its duty to monitor and mitigate risks to financial stability and to oversee market infrastructure and payment systems.
- 3.2.2. Part 2 (clause 11 - 16) addresses the critical concerns of managing systemic risks and systemic events. The Governor is empowered to identify, after consultation with the Minister of Finance, that an event or circumstance, or a combination of events or circumstances, is a systemic event. The Reserve Bank must take all practicable steps to prevent a systemic event from occurring, and if a systemic event has occurred or is imminent, to mitigate the adverse effects on financial stability. A management committee may be established by the Governor to assist with co-ordinating activities to manage a systemic event. The Governor must ensure that the Minister of Finance is informed and kept abreast of steps being taken to address a systemic event, and the Minister must approve of any actions taken that may have an impact upon public finances. The Governor may issue directives to financial sector regulators and the National Credit Regulator to prevent a systemic event from occurring, or to mitigate the adverse impacts of a systemic event. The financial sector regulators must provide relevant information to the Reserve Bank, and must consult the Governor before exercising powers that may impact upon measures to address a systemic event. Other organs of state must not take actions that may be contrary to decisions of the Governor or actions taken by the Reserve Bank to manage systemic risk or a systemic event.
- 3.2.3. Part 3 (clauses 17-22) provides for the establishment of the FSOC, its composition, membership and functioning.

- 3.2.4. Part 4 (clause 23), provides for the establishment of the Financial Sector Contingency Forum, to assist the FSOC in its function of monitoring and mitigation of risks to financial stability.
- 3.2.5. Part 5 (clauses 24 – 26) places duties on the financial sector regulators in relation to financial stability, and requires that Memoranda of Understanding between the financial sector regulators and the Reserve Bank address how they will comply with their duties to co-operate and collaborate with each other in relation to financial stability. A duty is also placed on the organs of state, whose functions may impact on financial stability, to provide assistance to the Reserve Bank in the maintenance of financial stability.
- 3.3. Chapter 3 provides for the establishment of the Prudential Authority. Part 1 (clauses 27 to 29), provides for the establishment of the Prudential Authority, and describes the Object and the functions of the Prudential Authority. In Part 2 (clauses 30 to 44), the governance of the Prudential Authority is then dealt with, including setting out the governance objectives of the Authority, establishing the post of the Chief Executive Officer and the Oversight Committee. In Part 3 (clauses 45 to 50), the staffing, resources, and financial management of the Prudential Authority are addressed.
- 3.4. Chapter 4 provides for the establishment of the Financial Sector Conduct Authority. Part 1 (clauses 51 to 54) describes the Objects and the functions of the Authority. In Part 2 (clauses 55 to 70), the governance of the Authority is then dealt with, including setting out the governance objectives of the Authority, establishing the posts of the Commissioner and Deputy Commissioners, and the Executive Committee. In Part 3 (clauses 71-72), the staffing, resources, and financial management of the Authority are addressed.
- 3.5. Chapter 5 deals with systemically important financial institutions. Part 1 (clause 73) deals with the designation of systemically important financial institutions, and the Governor is empowered to designate financial institutions as being systemically important. Part 2 (clauses 74-75) provides for powers in relation to systemically important financial institutions. The Reserve Bank is empowered to

impose additional prudential requirements on those institutions which have been designated as being systemically important. The winding-up, business rescue, amalgamations and mergers, and compromise arrangements of systemically important financial institutions are also briefly dealt with.

3.6. Chapter 6 addresses the vital need for co-ordination, co-operation, collaboration, consultation and consistency between the financial sector regulators, the Reserve Bank, and with other organs of state.

3.6.1. In Part 1 (clauses 76 to 78), a requirement is placed that the financial sector regulators and the Reserve Bank must enter into Memoranda of Understanding addressing how they will co-operate and collaborate in relation to areas such as making standards, licensing, inspections, investigations, enforcement actions, information sharing, and other regulatory and supervisory actions. They may also provide for the delegation of powers between them, and they must also provide for how they will implement their responsibilities in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and for the resolution of differences between the regulators.

3.6.2. Part 2 (clauses 79 to 83) provides for the establishment of the Council of Financial Regulators, and its functioning. The Council is established to facilitate coordination and cooperation amongst the constituent institutions of the Council, by enabling senior representatives of the institutions to discuss and inform themselves regarding strategic decisions to be adopted, and understanding and meeting international and domestic regulatory challenges.

3.6.3. Part 3 (clauses 84 - 86), provides for the establishment of the Financial Sector Inter-Ministerial Council to facilitate coordination, cooperation and consultation and consistency by providing a forum for the member Ministers to discuss and consider matters of common interest, including an approach to regulation and regulatory standards incorporated in the financial sector laws. Clause 86 addresses the application of the financial sector laws in relation to the Consumer Protection Act, and provides for a mechanism to promote consistency in the standard of protection provided to financial

customers provided by the financial sector laws, the Consumer Protection Act, and the National Credit Act. The Cabinet member responsible for trade and industry is empowered to request the Inter-Ministerial Committee to consider whether or not a provision in a financial sector law or legislative instrument, that is issued or being proposed to be issued in terms of a financial sector law, provides for standard of protection for customers that is of an equivalent or higher standard to the protection provided for financial customers in terms of the National Credit Act and the Consumer Protection Act. Following such consideration, the Inter-Ministerial Committee may then make a recommendations regarding how a provision in a financial sector law or a legislative instrument may be appropriately amended or implemented, in order to ensure that it provides for a standard of protection for financial customers that is equivalent to or higher than the standard of protection that is provided in terms of the National Credit Act or the Consumer Protection Act.

- 3.6.4. Part 4 (clause 87), places requirements on the financial sector regulators to put in place other consultation arrangements for consulting with representatives of financial institutions and financial customers, on amongst other things, legislative instruments that are proposed to be made by the financial sector regulators.
 - 3.6.5. Part 5 (clause 88) provides for the recognition of the equivalence of the regulatory frameworks of foreign jurisdictions, to promote consistency with foreign regulatory regimes. It also provides for the financial sector regulators to enter into memoranda of understanding and other agreements, and to share information with foreign regulators, to promote consistency with regulatory regimes in foreign jurisdictions and consistency with international regulatory standards.
- 3.7. Chapter 7 provides for making legislative instruments.
- 3.7.1. Part 1 (clauses 89-93) specifies requirements for making legislative instruments. Consultation requirements are set out, and a process is provided for legislative instruments to be made in situations of urgency. Reports on consultation processes are required. The consultation processes

stipulated do not preclude additional consultation processes being undertaken by the financial sector regulators.

- 3.7.2. Part 2 (clauses 94 to 96) deals with standards for Financial Products and Financial Services. The Prudential Authority is empowered to make prudential standards, and the Financial Sector Conduct Authority is empowered to make conduct standards in relation to financial products and financial services. The regulators may also make joint standards if they determine that it is appropriate. The Prudential Authority and the Financial Sector Conduct Authority are also empowered to make joint standards with the Reserve Bank, to address matters relating to financial stability. Financial institutions are required to comply with standards made.
- 3.8. Chapter 8 (clauses 97 to 110) deals with licensing. This Chapter applies in relation to the licensing provisions currently contained in the financial sector laws, and in relation to newly designated financial products and financial services in terms of the Bill. The Chapter addresses the application process, powers to require additional information, when an application for a licence would be considered to be refused, the imposition of conditions on and the varying of licences, reporting obligations of licensees, and the suspension and cancellation of licences. Concurrence requirements are specified in relation to the issue, variation, cancellation, suspension or withdrawal of a licence, whether in terms of the Bill, or in terms of a financial sector law. An obligation is placed on licensed financial institution to refer to the license held in all business documentation, advertisement and promotional material, and to provide the license to any person acting on authority of law and or for the purpose of entering into a business relationship with the licensed financial institution.
- 3.9. Chapter 9 deals with information gathering, inspections and investigations, and largely consolidates provisions currently contained in the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), and the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).
- 3.9.1. Part 1 (clauses 111) provides that the provisions of this Chapter are applicable to the Prudential Authority, Financial Sector Conduct Authority and the Council for Medical Schemes.

- 3.9.2. Part 2 (clauses 112-113) stipulates obligations to provide information to the financial sector regulators by regulated persons, and provides for the review by a financial sector regulator of compliance with financial sector law by a regulated person, including by directing audits of accounts, records or financial statements of the regulated person.
- 3.9.3. Part 3 (clauses 114) empowers the financial sector regulators and the Council for Medical Schemes to conduct on-site inspections, examine and make extracts of business documents and question persons who may have information relevant to the inspection. Provision is made for the removal of business documents and the issue of an instruction prohibiting their removal, if it appears to the financial sector regulator that there has been a contravention of a financial sector law or that a contravention is likely to occur.
- 3.9.4. Part 4 (clauses 115-118) provides for the appointment of investigators and the instruction of investigators to carry out investigations, in instances where a financial sector regulator reasonably believes that there has been a contravention of a financial sector law. This Part also provides for powers of investigators regarding examinations, searches and seizures of documents, as well as, the recovery of costs of investigations.
- 3.10. Chapter 10 (clauses 119-120) addresses “significant owners” of financial institutions. Criteria are specified for the designation and approval of certain persons as significant owners of financial institutions, and the designation of significant owners by the Prudential Authority or the Financial Sector Conduct Authority is provided for. The criteria for determination of persons to be designated as significant financial owners, includes, but is not limited to, the percentage of issued share capital, the securities held, the control exercised and the person’s ability to influence the strategy of a financial institution. Approval of a financial sector regulator is required to become a significant owner of a financial institution, or to dispose of an interest in a financial institution or a related party of a financial institution that will result in that person no longer being a significant owner of the financial institution. A

financial interest of a designated significant owner may be reduced by the Prudential Authority or the Financial Sector Conduct Authority, if the Authority deems the retention of that particular interest as prejudicial to the financial institution or its customers.

- 3.11. Chapter 11 (clauses 121-130), provides for a framework for the supervision of financial conglomerates, an important area which is not currently well addressed in the financial sector legislation. Clause 122 sets out the application of the framework. The Prudential Authority is empowered to determine the scope of supervision for a financial conglomerate. A holding company of a financial conglomerate must incorporate or convert to become a controlling company of the financial conglomerate within six months of being informed of the scope of the financial conglomerate by the Prudential Authority. The board of a controlling company must inform the Prudential Authority of any change in the structure or risk profile of the financial conglomerate that may impact on the scope of the financial conglomerate. Chapter 10 relating to significant owners also applies to a controlling company of a financial conglomerate. The Prudential Authority is empowered to direct a controlling company to amend the structure of the financial conglomerate, if the structure impedes the safety and soundness of any eligible financial institution that is part of the financial conglomerate, or the ability of the Prudential Authority to determine how the different types of business of the financial conglomerate are conducted, the risks of the financial conglomerate and each constituent of the financial conglomerate, and the manner in which the governance framework is organised and conducted for the conglomerate and each constituent of the conglomerate. Requirements are stipulated for the approval or prior notification of the Prudential Authority for acquisitions or disposals by a controlling company. The power of the Prudential Authority to make prudential standards is extended in relation to financial conglomerates. Coordination and cooperation between the Prudential Authority and other regulators in respect of financial conglomerates is also provided for.
- 3.12. Chapter 12 provides important enforcement powers to the financial sector regulators.

- 3.12.1. Part 1 (clause 131) provides for the issue of interpretation rulings by financial sector regulators on the interpretation of provisions of the financial sector laws.
- 3.12.2. Part 2 (clauses 132-140) empowers the financial sector regulators to issue regulator's directives. The Prudential Authority and the Financial Sector Conduct Authority are each empowered to issue directives in relation to specified matters. They are both also empowered to issue directives to key persons and financial institution representatives, and also cease and desist orders. The requirement to comply with a directive is specified, and the relationship of the provisions in this Part with provisions relating to directives in other financial sector laws is specified.
- 3.12.3. Part 3 (clause 141) provides for a declaration by a financial sector regulator of certain practises or methods of conducting a business as irregular or undesirable practices or as undesirable methods of conducting a business by the financial sector regulator, for a specific category or categories of financial institutions.
- 3.12.4. Part 4 (clause 142) provides for the acceptance by a financial sector regulator of an enforceable undertaking in relation to a conduct engaged in by person in respect of which the financial sector regulator has a function in terms of a financial sector law. Enforcement measures that the financial sector regulator may take in the event of a failure by the person who gave the enforceable undertaking to comply with undertaking include the imposition of an administrative penalty, the withdrawal or suspension of a license of a financial institution, and obtaining a court order directing compliance with the undertaking.
- 3.12.5. Part 5 (clause 143) empowers a financial sector regulator to enter into leniency agreements, in exchange for a person's cooperation in investigations or in proceedings relating to the contravention of a financial sector law.
- 3.12.6. Part 6 (clause 144) empowers the financial sector regulators to institute

proceedings in order to enforce compliance with a financial sector law. The financial sector regulator is also authorised to publish, subject to giving the person concerned a notice in respect thereof, the failure to comply with a request, directive or instruction issued by the financial sector regulator. The types of orders which a Court may grant are specified, including cost orders.

3.12.7. Part 7 (clauses 145 -146) empowers the financial sector regulators to make debarment orders in respect of a person for contraventions of financial sector laws, including contraventions of a law of a foreign country that corresponds to a financial sector law.

3.13. Chapter 13 addresses administrative actions.

3.13.1. Part 1 (clauses 147 -148) The Promotion of Administrative Justice Act applies to any administrative action taken by a financial sector regulator in terms of this Act or a financial sector law, provided that the procedures set out in section 3(2) and (3) of the Promotion of Administrative Justice Act do not apply to the extent that a financial sector regulator prescribes different procedures for any specific administrative action provided that those procedures are fair, reasonable, and justifiable in the circumstances.

3.13.2. The Bill also permits the correction by a financial sector regulator of a decision made in terms of a financial sector law, where: the decision was procured by fraudulent, dishonest or any other illegal means; the information on which the decision was based was so inaccurate that the financial sector regulator would not have taken the decision had the regulator been aware of the actual facts; or the decision is, for another reason, invalid.

3.13.3. Part 2 (clause 149) addresses administrative action procedures, and Part 3 (clause 150), provides for the establishment of administrative action committees.

3.14. Chapter 14 (clauses 151-152) provides for the imposition of administrative penalties by a financial sector regulator, establishes a criteria for the determination of penalties, and entrenches that the common law principles of vicarious liability apply to contraventions of financial sector laws, and the

common law principles of strict liability apply to those contraventions that are designated by a financial sector regulator in a legislative instrument. The financial sector regulators are empowered to issue an order regarding the costs incurred in relation to the investigation of the contravention. Orders made by the financial sector regulators may be filed with a Court, and then become enforceable as an order of Court.

- 3.15. Chapter 15 provides for appeals of administrative actions.
 - 3.15.1. Part 1 (clauses 153 – 159) provides for the establishment of the Financial Services Tribunal (“the Tribunal”) and sets out its membership, terms and conditions of appointment and disclosure of interests.
 - 3.15.2. Part 2 (clauses 160 -167) deals with appeals of administrative actions by the financial sector regulators, and addresses the rules of the Tribunal including the rules pertaining to appeals. Proceedings in the hearing of appeals such as the giving of evidence, summoning of witnesses and the requirement for production of documents are set out. Provision is made regarding orders that the Tribunal may make in relation to appeals and review and for review of the decision of the Tribunal by the High Court.
- 3.16. Chapter 16 provides for Financial Services Ombud Schemes. It expands and broadens upon what is currently provided in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004) (“the FSOS Act”), and incorporates ombud schemes as an important component of the financial sector regulatory framework established by the Bill.
 - 3.16.1. Part 1 (clauses 161 – 176) provides for the continued existence of the Financial Services Ombud Schemes Council (“the Council”), that was established in terms of section 2 of the FSOS Act. The Council is mandated to consider and grant or refuse an application for the recognition of an ombud scheme. The composition, powers and functions of the Financial Services Ombud are set out.
 - 3.16.2. Part 2 (clauses 177 - 186) incorporates the existing Office of the Ombud for

Financial Services Providers and the Office of the Pension Funds Adjudicator within the Ombud framework. The provisions relating to their establishment and functioning currently are in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) and the Pension Funds Act, 1956 (Act No. 24 of 1956), respectively. These statutory ombuds currently fall within the ambit of the Financial Services Board, but they will in the future fall within the ambit of the Council. Part 2 provides for the disposal of complaints by the office of the Ombud for Financial Services Providers and the Office of the Pension Funds Adjudicator in their respective spheres, and sets out the Offices' general administrative powers. The Ombud for Financial Services Providers and the Pension Funds Adjudicator are empowered to make final determinations of a matter in cases where a matter has not been settled by the parties.

- 3.16.3. Part 3 (clauses 187 - 189) sets out requirements for the recognition of a voluntary ombud scheme, and for the suspension, reinstatement or withdrawal of that recognition.
- 3.16.4. Part 4 (clauses 190 – 194) clarifies jurisdictional and operational matters relating to the Pension Funds Adjudicator and the Ombud for Financial Services Providers.
- 3.16.5. Part 5 (clauses 195 - 196) provides for the issue of an exemption by the Minister of Finance to any financial institution or category of financial institutions from any provision of the Bill relating to the resolution of a complaint by the Ombud for Financial Service Providers, in instances where, for example, the granting of an exemption will not conflict with the public interest, prejudice interests of clients, or frustrate the achievement of the object of the Bill. The Minister of Finance is empowered to make regulations regarding limitations on the jurisdiction of the offices of the Pension Funds Adjudicator and the Ombud for Financial Service Providers.
- 3.17. Chapter 17 deals with various miscellaneous matters.
 - 3.17.1. Part 1 (clauses 197-206) provides for the preservation of secrecy in relation to the specified protected information, and provides a framework for information sharing by the financial sector regulators. It mandates the

reporting by auditors or actuaries to the financial sector regulators, who in the performance of their duties, becomes aware of a matter that has or is likely to have adverse effects on the financial condition of a financial institution. Provision is made for complaints to be made to the financial sector regulators. Disclosures by persons who properly report contraventions of the financial sector laws are afforded legal protection.

- 3.17.2. Part 2 (clauses 207-214) contains certain offence provisions and penalties for certain specified contraventions, including but not limited to, offences relating to investigations and onsite inspections, offences applicable to significant owners, eligible financial institutions, contravening a debarment order and for non-compliance with a financial sector regulator's directive.
- 3.17.3. Part 3 (clauses 215-222) covers general matters such as the power of the Minister of Finance to make regulations in terms of the Bill. A financial sector regulator may extend timeframes specified in a financial sector law, and may issue exemptions to persons or a category of persons from compliance with a provision of a financial sector law, provided that specified requirements are met. There is also a provision providing for a limitation of liability for the State, the Minister of Finance, the Reserve Bank, the Governor and Deputy Governors, a financial sector regulator, or an official of the State, the Reserve Bank or a financial sector authority, in respect of actions taken in good faith in the exercise of a function, power or duty assigned in terms of the Bill.
- 3.17.4. Part 4 (clauses 223-229) provides for the establishment of the Financial Sector Information Register, that will be managed by the National Treasury, with a view to providing financial institutions, financial customers and the general public with reliable access to accurate and up to date information relating to financial sector laws, regulatory instruments and their implementation.
- 3.17.5. Part 5 (clause 230) provides for the repeal and amendment of the financial sector laws referred to in schedule 2 and 4 to the Bill.
- 3.17.6. Part 6 (clauses 231-242) provides for transitional matters such as, the

assignment of responsibility for financial sector laws, the responsibility for the regulation of designated financial products and financial services, the handling of various matters that arise prior to the Bill being enacted and coming into operation, and arrangements relating to the Financial Services Board.

3.17.7. Part 7 (clause 243) provides for the short title and commencement.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury worked with the Financial Services Board and the Reserve Bank preparing the Bill. A previous draft of the Bill was published for public comments in December 2013, and comments received on Bill from the relevant stakeholders and industry participants have been considered, and where appropriate, addressed in the current version of the Bill.

5. FINANCIAL IMPLICATIONS FOR THE STATE

There are no significant financial implications envisaged for the fiscus, as the financial sector regulators will be funded through fees and levies imposed on financial institutions.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it contains an area of concurrent National and Provincial legislative competency as set out in Schedule 4, Part A of the Constitution.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1) (a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.