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REPUBLIC OF SOUTH AFRICA

**DRAFT
FINANCIAL SECTOR LEVIES BILL,
2016**

21 NOVEMBER 2016

*(As introduced in the National Assembly as a Money Bill.)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

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BILL

To provide for the imposition and collection of levies for the benefit of the Financial Sector Conduct Authority, the Prudential Authority, the Financial Services Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers; to provide for exemption from levies under certain circumstances; 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:—

Definitions

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

“**assistance business**” means the business of providing or undertaking to provide policy benefits under assistance policies as defined in section 1(1) of the Long-term Insurance Act by insurers registered to provide assistance policies only;

“**bank**” means—

- (a) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);
- (b) a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
- (c) a co-operative bank as defined in section 1(1) of the Cooperatives Banks Act, 2007 (Act No. 40 of 2007);

“**central counterparty**” means a central counterparty as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**central securities depository**” means a central securities depository as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**credit rating agency**” means a credit rating agency as defined in section 1(1) of the Credit Rating Services Act, 2012 (Act No. 24 of 2012) that is registered in terms of section 5 of that Act;

“**collective investment scheme in hedge funds**” means a collective investment scheme declared in terms of section 63 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**collective investment scheme in participation bonds**” means a collective investment scheme of a kind referred to in Part VI of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**collective investment scheme in property**” means a collective investment scheme of a kind referred to in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**collective investment scheme in securities**” means a collective investment scheme of a kind referred to in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**commercial umbrella fund**” means a fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956) established for the benefit of employees of various employers which are not subsidiaries of a single holding company;

“**clearing house**” means a clearing house as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**exchange**” means an exchange as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**external central counterparty**” means an external central counterparty as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**external trade repository**” means an external trade repository as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**financial sector body**” means each of the following:

- (a) The Prudential Authority;
- (b) the Financial Sector Conduct Authority;
- (c) the Tribunal;
- (d) the Ombud Council;
- (e) the Office of the Pension Funds Adjudicator; and
- (f) the Office of the Ombud for Financial Services Providers;

“**financial sector law**” means a financial sector law as defined in section 1(1) of the Financial Sector Regulation Act;

“**Financial Sector Conduct Authority**” means the authority established in terms of section 56 of the Financial Sector Regulation Act;

“**Financial Sector Regulation Act**” means the Financial Sector Regulation Act, 2016;

“**financial services provider**” means a financial services provider as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and a reference to a specific category of financial service provider means the category determined in terms of section 6A of that Act;

“**foreign collective investment scheme**” means a collective investment scheme of the type referred to in Part VIII of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**levy period**” means the period from 1 April to 31 March;

“**levy**” means a levy imposed by this Act;

“**long-term insurer**” means a long-term insurer as defined in section 1(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and after the effective date of the Insurance Act, 2017 means an insurer licensed to conduct life insurance business under that Act;

“**occupational fund**” means a fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956) established by an employer to provide pension benefits to employees;

“**Office of the Pension Funds Adjudicator**” means the Office established in terms of section 30B of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**Office of the Ombud for Financial Services Providers**” means the Office established in terms of section 20(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**over-the-counter derivative provider**” means an over-the-counter derivative provider declared by the Minister as a regulated person in terms of section 5(1)(b) of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**pension fund**” means a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**pension fund administrator**” means a person approved by the Financial Sector Conduct Authority as an administrator of a pension fund in terms of section 13B of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**Prudential Authority**” means the authority established in terms of section 32 of the Financial Sector Regulation Act;

“**representative**” means a representative as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**retirement annuity fund**” means a retirement annuity fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

“**short-term insurer**” means a short-term insurer and Lloyd’s underwriter, both as defined in section 1(1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998) and after the effective date of the Insurance Act, 2017 means an insurer licensed to conduct non-life insurance business under that Act;

“**trade repository**” means a trade repository as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012); and

“**Tribunal**” means the Financial Services Tribunal established in terms of section 219(1) of the Financial Sector Regulation Act.

(2) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.

Administration of Act

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

Levies

3. (1) A separate levy is charged, levied and collected, in accordance with this Act, for the benefit of each of the financial sector bodies.

(2) A levy is payable by each supervised entity that is licensed in terms of a financial sector law and specified in the Schedules to this Act.

(3) The amount of levies that are payable by a supervised entity in respect of a financial year is determined in accordance with the levy formulae set out in—

- (a) Schedule 1 in respect of the Prudential Authority;
- (b) Schedule 2 in respect of the Financial Sector Conduct Authority;
- (c) Schedule 3 in respect of the Tribunal;
- (d) Schedule 4 in respect of the Ombud Council; and
- (e) Schedule 5 in respect of the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers.

Implementation special levy

4. (1) An implementation special levy is payable by supervised entities that are liable to pay a levy in terms of section 3, in the first two levy years following the commencement of this Act, to provide for the initial costs associated with the establishment of the Prudential Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal and the Ombud Council.

- (2) The implementation special levy payable by a supervised entity is 15 per cent of the levy that is

payable by that supervised entity in terms of section 3(3)(a) to (d), in respect each of the first two levy years following the commencement of this Act.

Adjustment of amounts and levy formulae

5. (1) A financial sector body may, subject to sections 239 and 240 of the Financial Sector Regulation Act, annually adjust the variable components of the levy formulae set out in the relevant Schedule for the levy that is imposed for the benefit of that financial sector body.

(2) When preparing levy estimates and determining the levy for a levy period in accordance with section 239 of the Financial Sector Regulation Act, the financial sector body must –

- (a) specify the meaning of any terms referred to in the levy formulae set out in the Schedules; and
- (b) take into account any over- or under-collection of levies in the previous levy period in relation to the actual expenditure of the financial sector body during that levy period.

(3) If this Act commences during a financial year, a financial sector body may impose a pro rata levy for the remainder of that financial year.

Exemption from levy

6. (1) A financial sector body may on application from a supervised entity exempt that supervised entity from the payment of a levy or a part of a levy.

(2) An application referred to in subsection (1) must include the particulars determined by the financial sector body.

(3) A financial sector body may only exempt a supervised entity from the payment of a levy or a part of a levy on sound reasons.

Short title and commencement

7. (1) This Act is called the Financial Sector Levies Act, 2017, and comes into 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 effect of different—

- (i) provisions of this Act;
- (ii) Schedules to this Act; and
- (iii) items in the Schedules to this Act.

SCHEDULE 1
PRUDENTIAL AUTHORITY
(Section 3(3)(a))

Sector	Type of supervised entity	Base Amount	Variable Amount(s)	Description of variable	Formula	Maximum
Banking	Banks	100 000	0.005% x Q	Q= liabilities as at 30 June of the levy year or previous financial statements (if first not available)	Levy= Base amount + Variable amount	R50 000 000
Banking	Co-operative bank	1 000	0.005% x Q	Q= liabilities as at 30 June of the levy year or previous financial statements (if first not available); no levy is charged if Q does not exceed R2 000 000	Levy= Base amount + Variable amount	R5 000
Banking	Mutual banks	2 000	0.005% x Q	Q= liabilities as at 30 June of the levy year or previous financial statements (if first not available); no levy is charged if Q does not exceed R3 000 000	Levy= Base amount + Variable amount	R10 000
Insurance	Short-term Insurers	25 000	V1 = I x 0,1016% V2= J x 0,0234%	I=premiums below R60 million J=premiums above R60 million Premiums as at 30 June of the levy year or previous financial statements (if first not available)	Levy= Base amount + Variable amount	R25 000 000
Insurance	Long-term Insurers (assistance only)	10 000	0.005% x K	K = Liabilities as at firm's year end preceding levy year	Levy= Base amount + Variable amount	R20 000 000

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Sector	Type of supervised entity	Base Amount	Variable Amount(s)	Description of variable	Formula	Maximum
Insurance	Long-term (other)	100 000	0.005% x K	K = Liabilities as at 30 June of the levy year or previous financial statements (if first not available)	Levy= Base amount + Variable amount	R50 000 000
Capital Markets	Central Securities Depository (note: this levy is payable 4 times per year)	375 000	0.00001% x N	N = gross value of trade settled over the quarter preceding the levy run	Levy= Base amount + Variable amount	Not applicable
Capital Markets	Exchanges (note: this levy is payable 4 times per year)	375 000	0.00003% x M	M = gross value of trade over the quarter preceding the levy run	Levy= Base amount + Variable amount	Not applicable
Capital Markets	Trade Repositories	500 000	0	-	Levy= Base amount	Not applicable
Capital Markets	Central Clearing Counterparties	10 000 000	0	-	Levy= Base amount	Not applicable
Road Accident Fund	Financial Supervision of Road Accident Fund	100 000	0	-	Levy= Base amount	Not applicable

**SCHEDULE 2
FINANCIAL SECTOR CONDUCT AUTHORITY
(Section 3(3)(b))**

Sector	Type of supervised entity	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
Banking	Banks	100 000	0,0012% x Q	Q = liabilities as at 30 June of the levy year or previous financial statements (if first not available)	Levy = Base amount + Variable amount	15 000 000
Banking	Co-operative bank	1 000	0,0012% x Q	Q = liabilities as at 30 June of the levy year or previous financial statements (if first not available)	Levy = Base amount + Variable amount	5 000
Banking	Mutual banks	2 000	0,0012% x Q	Q = liabilities as at 30 June of the levy year or previous financial	Levy = Base amount + Variable amount	10 000

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				statements (if first not available)		
Pension Funds	Pension Fund-Occupational Funds	2 000	14 x L	L= number of members as at 30 June of the levy year or previous financial statements (if first not available)	Levy = Base amount + Variable amount	2 750 000
Pension Funds	Pension Fund-Retirement Annuity Funds and Commercial Umbrella Funds	2 000	14 x L	L= number of members as at 30 June of the levy year or previous financial statements (if first not available)	Levy = Base amount + Variable amount	Not applicable
Pension Funds	Pension Fund Administrators	7 500	V1= 840 x M V2= 1.01 x L	M= number of funds under administration as at 30 June of the levy year L= aggregate number of members of funds under administration as at 30 June of the levy year or previous financial statements (if first not available)	Levy = Base amount + V1 + V2	Not applicable
Insurance	Short-term Insurers	25 000	V1 = I x 0,1016% V2= J x 0,0234%	I=premiums below R60 million J=premiums above R60 million Premiums for the period from 1 April – 31 March	Levy = Base amount + V1 + V2	Not applicable
Insurance	Long-term Insurers (assistance business only)	10 000	K x 0,0048%	K = Liabilities as at firm's year end preceding levy year	Levy= Base amount + Variable amount	Not applicable
Insurance	Long-term (other)	100 000	K x 0,0048%	K = Liabilities as at firm year end preceding levy year	Levy= Base amount + Variable amount	Not applicable

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Capital Markets	Exchanges (note: this levy is payable 4 times per year)	375 000	$0,0003\% \times M$	M = gross value of trade over the quarter preceding levy run	Levy= Base amount + Variable amount	Not applicable
Capital Markets	Central Securities Depository (note: this levy is payable 4 times per year)	375 000	$0,00001\% \times N$	N = gross value of trade settled over the quarter preceding the levy run	Levy= Base amount + Variable amount	Not applicable
Capital Markets	Trade Repositories	500 000	Not applicable		Levy= Base amount	Not applicable
Capital Markets	Over- the - Counter Derivative Providers	100 000	Not applicable		Levy= Base amount	Not applicable
Credit Ratings	Credit rating Agencies	3 200 000 / P		P = number of rating agencies at start of levy year	Levy= Base amount	Not applicable
Collective Investment Schemes	Collective Investment Schemes in securities Collective Investment Schemes in Hedge funds (note: this levy is payable 4 times per year)	11 300	$V1 = 1\ 750 \times D$ $V2 = 0,00005\% \times E$	D = number of portfolios, funds or sub-schemes, at end of previous quarter E = total amount of assets managed at end of previous quarter The data of the previous quarter is used, i.e. the 30 June levy is based on 31 March data	Levy= Base amount + V1 + V2	Not applicable
Collective Investment Schemes	Foreign Collective Investment Schemes (note: this levy is payable 4 times per year)	11 200	$V1 = 6\ 900 \times D$ $V2 = 0,00035\% \times E$	D = number of portfolios, funds or sub-schemes, at end of previous quarter E = total net amount of assets managed on behalf of South African investors at end of previous quarter	Levy= Base amount + V1 + V2	Not applicable

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				The data of the previous quarter is used, i.e. the 30 June levy is based on 31 March data		
Collective Investment Schemes	Collective Investment Schemes in Property	11 300	$F \times 100\,000$	F = number of portfolios	Levy= Base amount + Variable amount	Not applicable
Collective Investment Schemes	Collective Investment Schemes in Participation Bonds	11 300	$V1 = 1750 \times D$ $V2 = 0.00005\% \times G$	D = number of portfolios, funds or sub-schemes, at end of previous quarter G = aggregate amount owing by mortgagers at end of previous quarter The data of the previous quarter is used, i.e. the 30 June levy is based on 31 March data	Levy= Base amount + $V1 + V2$	Not applicable
Financial Advisory and Intermediary Services	Category I or IV financial services providers	3 700	$A \times 600$	A = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September to 31 August	Levy= Base amount + Variable amount	2 000 000
Financial Advisory and Intermediary Services	Category II, IIA or III financial services providers	7 400	$V1 = A \times 600$ $V2 = B \times 0,0019\%$	A = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September to 31 August B = the total value of investments managed or administered on behalf of clients in terms of the authorisation	Levy= Base amount + $V1 + V2$	2 000 000

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				as a financial services provider on 31 August of the levy year: Provided that investments under management or administration held in foreign currency must be included at the exchange rate published in the press at that date		
Financial Advisory and Intermediary Services	Category I and/or Category IV financial service providers in respect of only the financial products subcategories: Long-term insurance subcategory A and/or Friendly Society Benefits	3 700	$A \times 270$	A = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September to 31 August	Levy= Base amount + Variable amount	2 000 000
Financial Advisory and Intermediary Services	Other categories of financial services providers	7 400	$V1 = A \times 600$ $V2 = B \times 0,0019\%$	A = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September to 31 August B = the total value of investments managed or administered on behalf of clients in terms of the authorisation as a financial services provider on 31 August of the levy year: Provided that investments under	Levy= Base amount + $V1 + V2$	2 000 000

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				management or administration held in foreign currency must be included at the exchange rate published in the press at that date		
Financial Advisory and Intermediary Services	Persons authorised in multiple categories			<p>A person that is authorised for multiple categories is liable for a single levy calculated as follows:</p> <p>(1) = the most onerous of the base amount applicable to the different categories for which the person is authorised.</p> <p>(2) = the average total number of key individuals plus average total number of representatives, under the different categories, calculated over the period 1 September to 31 August, provided that the key individuals and representatives who are approved or appointed under multiple categories are counted once for purposes of the calculation.</p> <p>(3) = the total value of investments managed or administered on behalf of clients under the different categories on 31 August of the levy year: Provided that investments under management or administration held in foreign currency must be included at the exchange rate published in the press at that date.</p> <p>(4) = the most onerous of the maximum amount applicable to the different categories for which the person is authorised.</p>		

**SCHEDULE 3
TRIBUNAL
(Section 3(3)(c))**

Type of supervised levies	Variable Amount	Description of Variable	Formula
All supervised entities that pay levies referred to in Schedules 1 and 2	$2.5\% \times (S1 + S2)$	<p>S1= amount of levy payable by the supervised entity in terms of Schedule 1</p> <p>S2= amount of levy payable by the supervised entity in terms of Schedule 2</p>	Levy = Variable amount

**SCHEDULE 4
OMBUD COUNCIL
(Section 3(3)(d))**

Type of supervised entity	Variable Amount	Description of Variable	Formula
	$2.5\% \times S2$	S2= amount of levy payable by the supervised	Levy = Variable amount

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All supervised entities that pay levies referred to in Schedule 2		entity in terms of Schedule 2	
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**SCHEDULE 5
STATUORY OMBUD SCHEMES
(Section 3(3)(e))**

Statutory Ombud Scheme	Type of supervised entity	Base Amount	Variable Amount(s)	Description of Variable	Formula
Office of the Pension Fund Adjudicator	Pension Funds		4.65 x L	L= number of members as at 30 June of the levy year or previous financial statements (if first not available)	Levy= Variable Amount
Office of the Ombud for Financial Services Providers	Financial Services Providers	885	B x 337 B=(D+E) -F	D= represents the number of key individuals of the financial services provider approved by the Financial Sector Conduct Authority; E= the number of representatives appointed by the financial services provider; and F= the key individuals that are also appointed as representatives, as at 31 August of the levy year	Levy = Base Amount + Variable Amount, up to a maximum of R255000