**REPUBLIC OF SOUTH AFRICA** 

**FINANCIAL SECTOR LEVIES BILL, 2018** 

(<mark>DRAFT</mark>)

(Draft to be introduced in the National Assembly as a Money Bill)

(MINISTER OF FINANCE)

(<mark>B-2018</mark>)

#### BILL

To provide for the imposition and collection of levies for the funding of the Prudential Authority, the Financial Sector Conduct 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) In this Act, unless the context indicates otherwise—
"associated clearing house" means an associated clearing house as defined in section 1(1) of the Financial Markets Act;

"bank" means a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);

"central counterparty" means a central counterparty as defined in section 1(1) of the Financial Markets Act;

"central securities depository" means a central securities depository as defined in section 1(1) of the Financial Markets Act;

"**co-operative bank**" means a co-operative bank as defined in section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

"collective investment scheme in hedge funds" means a collective investment scheme declared in terms of section 63 of the Collective Investment Schemes Control Act;

"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;

"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;

"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;

"Collective Investment Schemes Control Act" means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

"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;

**"exchange"** means an exchange as defined in section 1(1) of the Financial Markets Act;

"Financial Advisory and Intermediary Services Act" means the Financial

Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"Financial Markets Act" means 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 Conduct Authority" means the authority established in terms of section 56 of the Financial Sector Regulation Act;

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

"Financial Sector Regulation Act" means the Financial Sector Regulation Act,

2017 (Act No. 9 of 2017);

"financial services provider" means a financial services provider as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, and a reference to a specific category of financial services 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:

**"independent clearing house"** means an independent clearing house as defined in section 1(1) of the Financial Markets Act;

"Insurance Act" means the Insurance Act, 2017 (Act No. 18 of 2017);

"insurer" means an insurer licensed to conduct insurance business under the Insurance Act;

"levy" means a levy imposed by this Act;

"levy period" means the period from 1 April to 31 March;

"**life insurer**" means an insurer licensed to conduct life insurance business under the Insurance Act;

"microinsurer" means an insurer licensed to conduct microinsurance business under the Insurance Act;

"Minister" means the Minister of Finance;

"mutual bank" means a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

"non-life insurer" means an insurer licensed to conduct non-life insurance

business under the Insurance Act;

**"occupational fund"** means a fund as defined in section 1(1) of the Pension Funds Act established by an employer for the benefit of its employees;

"Office of the Pension Funds Adjudicator" means the Office established in terms of section 30B of the Pension Funds Act;

**"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;

**"Ombud Council"** means the Ombud Council established in terms of section 175 of the Financial Sector Regulation Act;

**"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;

**"pension fund"** means a pension fund organisation as defined in section 1(1) of the Pension Funds Act;

"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;

"Pension Funds Act" means the Pension Funds Act, 1956 (Act No. 24 of 1956);

**"pension preservation fund"** means a pension preservation fund as defined in section 1(1) of the Pension Funds Act;

**"provident preservation fund"** means a provident preservation fund as defined in section 1(1) of the Pension Funds Act;

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

"reinsurer" means a reinsurer as defined in section 1(1) of the Insurance Act;

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

**"retirement annuity fund"** means a retirement annuity fund as defined in section 1(1) of the Pension Funds Act;

"supervised entity" means a financial institution that is licensed in terms of a

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financial sector law;

"this Act" means the Financial Sector Levies Act, 2018;

"trade repository" means a trade repository as defined in section 1(1) of the

Financial Markets Act; 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, on supervised entities for the funding of the financial sector bodies.

(2) A levy is payable by each supervised entity that is specified in the Schedules to this Act.

(3) The amount of levies that are payable by a supervised entity is in respect of a levy period and 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 theOffice of the Ombud for Financial Services Providers.

(4) Where a supervised entity is licensed after the commencement of a levy period, or if a supervised entity's licence is withdrawn during a levy period (at the request of the supervised entity, or resulting from regulatory action of a financial sector body), the levy payable by that supervised entity must be proportional to the remainder of the levy period during which it is licensed or no longer licensed.

#### Special implementation levy

4. (1) financial sector body may charge and collect a special implementation levy may be charged and collected from supervised entities that are liable to pay a levy in terms of section 3, in the first two levy periods following the commencement of this Act, in order 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 special implementation levy that is payable by a supervised entity may not be more than 15 per cent of the levy that is payable by that supervised entity in terms of section 3(3)*(a)* to *(d)*, in respect of each of the first two levy periods 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

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the Financial Sector Regulation Act, annually adjust any amount or percentage of the levy formulae, including the base or maximum amounts, that are set out in the relevant Schedule for a 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-collection 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 levy period, a financial sectorbody may impose a pro rata levy for the remainder of that levy period.

#### **Exemption from levy**

**6.** (1) A financial sector body may exempt from the payment of a levy or a part of a levy for a specific levy period—

- (a) on its own initiative, a type, kind or category of supervised entity; or
- (b) on application from a supervised entity, that supervised entity.

(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 type, kind or category of financial entity, or a supervised entity from the payment of a levy or a part of a levy, if the financial sector body is of the opinion that—

- (a) the imposition of the levy will cause the type, kind or category of financial entity, supervised entity or financial customers undue financial or other hardship or prejudice;
- (b) the exemption will not conflict with the public interest; or
- (c) it is necessary for developmental, financial inclusion and transformation objectives to facilitate progressive or incremental compliance with the Financial Sector Regulation Act or a financial sector law.

(4) A financial sector body, in respect of the first two levy periods following the commencement of this Act, may exempt a type, kind or category of financial entity, or a supervised entity referred to in the Schedules from the payment of a levy or a part of a levy for a specific levy period, if it is necessary to facilitate the affordability of the levy for the type of supervised entity.

(5) A financial sector body must publish each exemption.

#### Short title and commencement

**7.** (1) This Act is called the Financial Sector Levies Act, 2018, 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 sections, Schedules and items in the Schedules to this Act.

### **PRUDENTIAL AUTHORITY**

(Section 3(3)(a))

Type of supervise d entity	Levy Frequen cy	Base Amou nt	Variable Amount( s)	Description of variable	Formula	Maximu m
Bank	Annual	50 000	0.01062 % x A	A= total liabilities as at 30 June of the levy year as reported in the BA100, or liabilities as reported in the previous financial statements published in terms of IFRS (if first not available)	Levy= Base amount + Variable amount	45 000 000
Co- operative bank	Annual	1 000	0.005% x A	A= total liabilities as at 30 June of the levy year as reported in terms of section 22 of the Co-operative Banks Act, 2007, or previous financial statements (if first not available);	Levy= Base amount + Variable amount No levy is charged if A does not exceed 2 000 000	5 000
Mutual bank	Annual	2 000	0.005% x A	A= total liabilities as at 30 June of the levy year as reported in terms of section 53 of the Mutual Banks Act, 1993, or previous financial statements (if first not available);	Levy= Base amount + Variable Amount No levy is charged if A does not exceed 3 000 000	10 000
Non-life Insurer1	Annual	12 500	V1 = 0.155% x B V2= 0.047% x	B=Gross written premiums below 60 million C=Gross written premiums above R60 million	Levy= Base amount + V1 +V2	15 000 000

A reinsurer that is licensed under the Insurance Act to conduct both life insurance business and non-life insurance business must be levied separately for its life insurance business and non-life insurance business.

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Type of supervise d entity	Levy Frequen cy	Base Amou nt	Variable Amount( s)	Description of variable	Formula	Maximu m
			C	Gross written premiums as stated in the most recent audited annual Quantitative Return Template of the insurer preceding the levy period		
Life insurer2	Annual	50 000	0.0025% x D	D = gross best estimate liabilities or technical provisions as a whole, adjusted to an absolute value per line of business as reported in the most recent audited annual Quantitative Return Template of the insurer preceding the levy period	Levy= Base amount + Variable amount	30 000 000
Microinsur er (life insurance business only, non- life insurance business only, both life insurance business and non- life insurance business or reinsuranc e business)	Annual	5 000	0.1016% x E	E = Gross written premiums as stated in the most recent audited annual Quantitative Return Template of the insurer preceding the levy period	Levy= Base amount + Variable amount	1 000 000

<sup>&</sup>lt;sup>2</sup> A reinsurer that is licensed under the Insurance Act to conduct both life insurance business and non-life insurance business must be levied separately for its life insurance business and non-life insurance business.

Type of supervise d entity	Levy Frequen cy	Base Amou nt	Variable Amount( s)	Description of variable	Formula	Maximu m
Exchange	Quarterly	100 000	0.0001% x F	F = gross value of trades over the quarter preceding the levy run	Levy= Base amount + Variable amount	7 000 000
Central Securities Depository	Quarterly	100 000	0.00001 % x G	G = gross value of trades settled over the quarter preceding the levy run	Levy= Base amount + Variable amount	1 000 000
Independe nt Clearing House	Quarterly	100 000	0.00001 % x H	H= gross value of trades cleared over the quarter preceding the levy run	Levy= Base amount + Variable amount	3 000 000
Associated Clearing House	Quarterly	100 000	0.000006 %% x I	I = gross value of trades cleared over the quarter preceding the levy run	Levy= Base amount + Variable	1 250 000
Central Counterpa rty	Quarterly	100 000	0.00001 % x J	J= gross value of trades cleared over the quarter preceding the levy run	Levy= Base amount + Variable amount	3 000 000
Trade Repository	Annual	100 000	Not applicabl e		Levy= Base amount	Not applicabl e
Road Accident Fund	Annual	100 000	Not applicabl e		Levy= Base amount	Not applicabl e

# FINANCIAL SECTOR CONDUCT AUTHORITY

(Section 3(3)(b))

Type of supervised entity	Frequency		Amount(s)	Description of Variable	Formula	Maximum
Bank	Annual	50 000	0.00125% x A	liabilities as at 30 June of the levy year as	Levy = Base amount + Variable amount	15 000 000
Co-operative bank	Annual	1 000	0.00125% x A	liabilities as at 30 June of the levy year as reported in terms of section 22 of the Co-operative Banks Act, 2007, or previous	Base amount + Variable amount No levy is	5 000

Type of supervised entity	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
Mutual bank	Annual	2 000	0.00125% x A	liabilities as at 30 June of the levy year as reported in terms of section 53 of	No levy is	10 000
Non-life Insurer3	Annual	12 500	V1 = 0.155% x B	B= gross written premiums below R60 million		5 000 000
Life Insurer4	Annual	50.000	x C	C= gross written premiums above R60 million Gross written premiums as stated in the most recent audited annual Quantitative Return Template of the insurer preceding the levy period		10.000.000
Life Insurer4	Annual	50 000	0.0025% x D	D = gross best estimate liabilities or technical provisions as a whole, adjusted to an absolute value per line of business as reported in the most recent audited annual Quantitative	Levy= Base amount + Variable amount	10 000 000

<sup>&</sup>lt;sup>3</sup> A reinsurer that is licensed under the Insurance Act, 2017 to conduct both life insurance business and non-life insurance business must be levied separately for its life insurance business and non-life insurance business.

<sup>&</sup>lt;sup>4</sup> A reinsurer that is licensed under the Insurance Act to conduct both life insurance business and non-life insurance business must be levied separately for its life insurance business and non-life insurance business.

Type of	Levy	Base	Variable	Description of	Formula	Maximum
supervised entity	Frequency	Amount	Amount(s)	Variable		
				Return Template of the insurer preceding the levy period		
Microinsurer (life insurance business only, non-life insurance business only, both life insurance business and non-life insurance business or reinsurance business)	Annual	5 000	0.1016% x E	E =Gross written premiums as stated in the most recent	Levy= Base amount + Variable amount	1 000 000
Exchange	Quarterly	125 000	0.00011% x F	the quarter preceding the	Levy= Base amount + Variable amount	8 750 000
Central Securities Depository	Quarterly	125 000	0.000011% x G	over the quarter	Levy= Base amount + Variable amount	1 250 000
Independent Clearing House	Quarterly	125 000	0.00011% x H	H = gross value of trades cleared over the quarter preceding the		3 750 000
Associated Clearing House	Quarterly	125 000	хI	over the quarter preceding the levy run	Levy= Base amount + Variable	1 250 000
Central Counterparty	Quarterly	125 000	0.00011% x J	preceding the	Levy= Base amount + Variable amount	3 750 000
Trade Repository	Annual	500 000	Not applicable		Levy= Base amount	Not applicable
Over- the - Counter Derivative Provider	Annual	100 000	Not applicable		Levy= Base amount	Not applicable
Credit rating	Annual	3 500 000/	Not	K = number of	Levy=	Not

Type of supervised	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
entity Agency		К	applicable	registered credit rating agencies at start of levy Year	Base amount	applicable
Pension Fund - Occupational Fund	Annual	2 000	14.5 x L	L= number of members and every other person who receives regular periodic payments from such a fund (excluding any member or such person, whose benefit remained unclaimed and beneficiaries of members of pension funds) as reflected in the latest annual financial statements furnished to the registrar as at 28 February of the preceding levy period		2 750 000
Pension Fund – Pension Preservation Fund, Provident Preservation Fund and Retirement Annuity Fund	Annual	2 000	14.5 x L	L= number of members and every other person who receives regular periodic payments from such a fund (excluding any member or such person, whose benefit remained unclaimed and beneficiaries of members of pension funds) as reflected in the latest annual financial statements furnished to the registrar as at 28 February of the		Not applicable

Type of supervised entity	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
				preceding		
Pension Fund Administrator	Annual	7 500	V1= 870 x M	levy period M= number of pension funds under administration as at 28 February of the levy period	Levy = Base amount +V1 +V2	Not applicable
			V2= 1.05 x L	L= number of members and every other person who receives regular periodic payments from such a fund (excluding any member or such person, whose benefit remained unclaimed and beneficiaries of members of pension funds to the latest annual financial statements furnished to the registrar as at 28 February of the preceding levy		
Collective Investment Scheme in Securities	Quarterly	11 300	V1= 1 800 x N	period N= number of portfolios or funds at end of previous quarter	Levy= Base amount + V1 + V2	Not applicable
			V2= 0.000052% x O	O= total amount of assets managed at end of previous quarter		

Type of supervised entity	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
Collective Investment Scheme in Hedge funds	Quarterly	11 300	V1= 1 800 x P	P = number of portfolios, funds or sub- schemes, at end of previous quarter	Levy= Base amount + V1 +V2	Not applicable
			V2= 0.00465% x Q	Q = total amount of assets managed at end of previous quarter		
Foreign Collective Investment Scheme	Quarterly	11 300	V1= 7 150 x R	R = number of portfolios, funds or sub- funds at end of previous quarter	Levy= Base amount + V1 +V2	Not applicable
			V2= 0.000354% x S	S = total net amount of assets managed on behalf of South African investors at end of previous Quarter		
Collective Investment Scheme in Property	Quarterly	11 300	100 000 x T	T =number of portfolios	Levy= Base amount + Variable amount	Not applicable
Collective Investment Scheme in Participation Bonds	Quarterly, but paid annually	11 300	V1= 1800 x U		Levy= Base amount + V1 + V2	Not applicable
			V2= 0.000052% x V	V = aggregate amount owing by mortgagers at end of previous quarter		
Category I or IV financial services provider	Annual	4000	620 x W	W = Average total number of key individuals plus average total number of	Levy= Base amount + Variable amount	2 000 000

supervised	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
entity				representatives, calculated over the period 1 September to 31		
Category II, IIA or III financial services provider	Annual	8000	V1= 620 x W	total number of	Levy= Base amount + V1 +V2	2 000 000
			V2= 0.002% x X	X = 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 period: 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		
Category I and/or Category IV financial services provider in respect of only the financial products subcategories: Long-term	Annual	4000	280 x W	W = Average	Levy= Base amount + Variable amount	2 000 000

Type of supervised entity	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum
insurance subcategory A and/or Friendly Society Benefits	,					
Financial Services Provider (other)	Annual	8000	V1= 620 x W	W = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September to 31 August	Levy= Base amount + V1 +V2	2 000 000
			x X	X = 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 period: 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 Services Provider (authorised in multiple Categories)	Annual		liable for a s (1) = the mo	at is authorised fo ingle levy calculat st onerous of the the different cate thorised.	ted as follo base amou	ws: Int
			average tota different cate September t	erage total numbe Il number of repre egories, calculate o 31 August, prov nd representative	esentatives, d over the p vided that the	under the period 1 ne key

Type of supervised entity	Levy Frequency	Base Amount	Variable Amount(s)	Description of Variable	Formula	Maximum		
			appointed under multiple categories are counted once for purposes of the calculation.					
			(3) = the total value of investments managed or administered on behalf of clients under the different categories on 31 August of the levy period: 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.					
			(4) = the most onerous of the maximum amount applicable to the different categories for which the person is authorised.					

### TRIBUNAL

(Section 3(3)(c))

Type of supervised entity	Variable Amount	Description of Variable	Formula
All supervised entities that pay levies referred to in Schedules 1 and 2	2.5% x (Y1 + Z2)	Y1= amount of levy payable by the supervised entity in terms of Schedule 1 Z2= amount of levy payable by the supervised entity in terms of Schedule 2	Levy = Variable amount

# OMBUD COUNCIL

(Section 3(3)(d))

Type of supervised entity	Variable Amount	Description of Variable	Formula
All supervised entities that pay levies referred to in Schedule 2	2.5% x Z	Z= amount of levy payable by the supervised entity in terms of Schedule 2	Levy = Variable amount

# STATUTORY OMBUD SCHEMES

(Section 3(3)(e))

Statutory Ombud Scheme	<b>7</b>	Base Amount	Variable Amount(s)		Formula	Maximum
Office of the Pension Fund Adjudicator	Pension Fund	Not applicable		L= number of members and every other person who receives regular periodic payments from such a fund (excluding any member or such person, whose benefit remained unclaimed and beneficiaries of members of pension funds) as reflected in the latest annual financial statements	Variable Amount	Not applicable

Office of the Ombud for Financial Services Providers	Financial Services Provider	1100	AA x 690 AA = W – BB	W = 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	255 000
				BB = Average total number of key individuals that are also appointed as representatives.		