

REPUBLIC OF SOUTH AFRICA

FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary
of Bill published in Government Gazette No. 35390 of 28 May 2012)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 29—2012]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and update the Pension Funds Act, 1956, the South African Reserve Bank Act, 1989, the Financial Services Board Act, 1990, the Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, the Inspection of Financial Institutions Act, 1998, the Financial Institutions (Protection of Funds) Act, 2001, the Financial Advisory and Intermediary Services Act, 2002, the Collective Investment Schemes Control Act, 2002, the Co-operative Banks Act, 2007, and the Financial Services Laws General Amendment Act, 2008, in order to close regulatory gaps, to effect improvements to certain provisions, to provide for increased supervisory capabilities, to rationalise and align the supervisory functions afforded to the Registrar; and to align the aforementioned Acts with the Companies Act, 2008; to amend the National Payment System Act, 1998, the Medical Schemes Act, 1998, and the Co-operatives Act, 2005, to the extent that those laws impact on the stability of the financial services sector and impede on a holistic regulatory approach and effective supervision; and to provide for matters connected therewith.

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

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SCHEDULE

Part 1**Amendment of Pension Funds Act, 1956**

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 20 of Act 54 of 1989, section 29 of Act 97 of 1990, section 14 of Act 83 of 1992, section 21 of Act 104 of 1993, section 1 of Act 22 of 1996, section 1 of Act 39 of 2001, section 1 of Act 65 of 2001, section 1 of Act 11 of 2007 and section 1 of Act 22 of 2008

1. Section 1 of the Pension Funds Act, 1956 (in this Part referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “actuarial surplus” of the following paragraph:

“(a) subject to actuarial valuation, means the difference between—

(i) the value, calculated in accordance with the prescribed basis, if any, that the valuator has placed on the assets of the fund, less any credit balances in the member and employer surplus accounts; and

(ii) the value that the valuator has placed on the liabilities of the fund in respect of pensionable service accrued by members prior to the valuation date **[together with the value of]** plus the amounts standing to the credit of those contingency reserve accounts which are established or which the board deems prudent to establish on the advice of the valuator, calculated in accordance with the prescribed basis, if any;”;

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “actuarial surplus” of the following words:

“**[exempt from actuarial]** valuation exempt, means the difference between—”;

(c) by the substitution in subsection (1) for the definition of “actuary” of the following definition:

“ ‘**actuary**’ means a natural person admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the **[Minister]** registrar by notice in the *Gazette*;”;

(d) by the deletion in subsection (1) of the definition of “advisory committee”; 35

(e) by the insertion in subsection (1) after the definition of “commencement date” of the following definition:

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

(f) by the substitution in subsection (1) for the definition of “complainant” of the following definition:

“ ‘**complainant**’ means—

(a) any person who is, or who claims to be—

(i) a member or former member, of a fund;

(ii) a beneficiary or former beneficiary of a fund; 45

(iii) an employer who participates in a fund;

(iv) a spouse or a former spouse of a member or former member, of a fund;

(b) any group of persons referred to in paragraph (a)(i), (ii), **[or]** (iii) or (iv); 50

(c) a board of a fund or member thereof; or

(d) any person who has an interest in a complaint;”;

(g) by the substitution in subsection (1) for the definition of “contingency reserve account” of the following definition:

“ ‘**contingency reserve account**’, in relation to a fund, means an account provided for in the rules of the fund, which has been amended in accordance with the requirements of the registrar, or which has not been disallowed by the registrar, and to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator where the fund is not **[exempt from actuarial valuations]** valuation exempt, in 55 60

order to provide for **[explicit contingencies]** a specific category of contingency;”;

- (h) by the substitution in subsection (1) for the definition of “defined contribution category of a fund” of the following definition:
- “**‘defined contribution category of a fund’** means a category of members **[in respect of whom the benefit on retirement]** whose interest in the fund has a value at least equal to [the value of]—
- (a) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate;
 - (b) less such reasonable expenses as the board determines **[should be deducted from the contributions paid]**;
 - (c) plus any amount credited to the member’s individual account upon the commencement of the member’s membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of his or her fund with any other fund, if any, other than amounts taken into account in terms of subparagraph (d);
 - (d) plus any other amounts lawfully permitted, credited to or debited from the member’s individual account, if any, as increased or decreased **[by]** with fund return: Provided that the board may elect to smooth the fund return;”;
- (i) by the insertion in subsection (1) after the definition of “dependant” of the following definition:
- “**‘disclosure’**, in addition to the meaning ascribed to ‘disclosure’ in section 1 of the Protected Disclosures Act, includes—
- (a) the disclosure of information regarding any conduct of a pension fund, an administrator or a board member, principal officer, deputy principal officer, valuator, officer or employee of a pension fund or administrator, made by a board member, principal officer, deputy principal officer or valuator, or other officer or employee, of a pension fund or administrator; and
 - (b) information relating to the affairs of the pension fund which may prejudice the fund or its members;”;
- (j) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “employer surplus account” of the following words:
- “**‘employer surplus account’**, in relation to a fund, means an account provided for in the rules of the fund to which shall be credited—”;
- (k) by the insertion in subsection (1) after the definition of “fair value” of the following definition:
- “**‘Financial Services Board’** means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);”;
- (l) by the addition in subsection (1) to the definition of “fund return” of the following proviso:
- “: Provided that the board may use a reasonable approximation, made in such manner as may be prescribed, to allocate a fund return if there are sound administrative reasons why an exact allocation cannot be effected”;
- (m) by the substitution in subsection (1) for the definition of “investment reserve account” of the following definition:
- “**‘investment reserve account’**, in relation to a fund which has a defined contribution category, means **[the difference between]** an account of which the balance is determined as follows:
- [(a)]** The excess of the value of the assets held in respect of the members’ individual accounts and for any smoothing of **[investment returns]** fund return to be credited to such accounts, with allowances for expenses; **and]** over
 - [(b)]** the value of the balances in the members’ individual accounts;”;
- (n) by the substitution in subsection (1) for the definition of “member” of the following definition:
- “**‘member’ [means]**, in relation to—

- (a) a fund referred to in paragraph (a) or (c) of the definition of ‘pension fund organisation’, means any member or former member of the association by which such fund has been established;
- (b) a fund referred to in paragraph (b) of that definition, means a person who belongs or belonged to a class of persons for whose benefit that fund has been established, 5
- but does not include any **[such member or former member or]** person who has received all the benefits which may be due to **[him]** that person from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund;” 10
- (o) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “member surplus account” of the following words:
“**‘member surplus account’**, in relation to a fund, means an account provided for in the rules of the fund to which shall be—”;
- (p) by the substitution in subsection (1) for the definition of “non-member spouse” of the following definition: 15
“**‘non-member spouse’**, in relation to a member of a fund, means a person who is no longer the spouse of that member **[due to the dissolution or confirmation of the dissolution of the relationship by court order and to whom the court ordering or confirming the dissolution of the relationship]** and who has been granted a share of the member’s pension interest in the fund due to the dissolution of the relationship;”;
- (q) by the insertion in subsection (1) after the definition of “officer” of the following definition: 25
“**‘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 Financial Services Board;”;
- (r) by the insertion in subsection (1) after the definition of “pension fund organisation” of the following definition: 30
“**‘pension preservation fund’** means a fund that is a—
(a) pension preservation fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or
(b) pension fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), doing the business of a pension preservation fund as prescribed by the Commissioner in terms of that Act;”;
- (s) by the substitution in subsection (1) for the definition of “prescribed” of the following definition: 35
“**‘prescribed’** means prescribed by the registrar by notice on the official web site, unless notice in the Gazette is specifically required by this Act;”;
- (t) by the insertion in subsection (1) after the definition of “principal officer” of the following definitions: 40
“**‘protected disclosure’**, in addition to the meaning ascribed to ‘protected disclosure’ in section 1 of the Protected Disclosures Act, includes disclosure of information to the registrar in terms of section 9B; **‘Protected Disclosures Act’** means the Protected Disclosures Act, 2000 (Act No. 26 of 2000);
‘provident preservation fund’ means a fund that is a—
(a) provident preservation fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or
(b) provident fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), doing the business of a provident preservation fund as prescribed by the Commissioner in terms of that Act; 50
‘publish’ means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of a person, or all or part of the public;”;
- (u) by the substitution in subsection (1) for the definition of “registrar” of the following definition: 60
“**‘registrar’** means the **[Registrar or the Deputy Registrar of Pension Funds]** person mentioned in section 3;”;

- (v) by the substitution in subsection (1) for the definition of “rules” of the following definition:
- “**‘rules’** means the rules of a fund[, and includes—
- (a) **the act, charter, deed of settlement, memorandum of association, or other document by which the fund is constituted;** 5
 - (b) **the articles of association or other rules for the conduct of the business of the fund; and**
 - (c) **the provisions relating to any rights, obligations or benefits which may be granted or imposed by and the contributions which may become payable to the fund, or provisions in accordance with which the rights, obligations and benefits will be calculated or determined]** registered in terms of this Act;” 10
- (w) by the substitution in subsection (1) for the definition of “this Act” of the following definition:
- “**‘this Act’** includes any matter required to be prescribed by the registrar by notice in the *Gazette* and any regulation;” 15
- (x) by the substitution in subsection (1) for the definition of “unclaimed benefit” of the following definition:
- “**‘unclaimed benefit’** means—
- (a) any benefit, other than a benefit referred to in paragraphs (aA), (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the fund, became legally due and payable; **[or]** 20
 - (aA) a death benefit payable to a beneficiary under section 37C not paid within 24 months from the date on which the fund became aware of the death of the member, or such longer period as may be reasonably justified by the board of the fund in writing; 25
 - (b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of— 30
 - (i) the expiry date of any guarantee period for pension payments provided for in the rules of the fund; or
 - (ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid; **[or]** 35
 - (c) in relation to a benefit payable to a former member who cannot be traced in accordance with section 15B(5)(e) **[of this Act]**, any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable; **[or]** 40
 - (d) any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid; or 45
 - (e) any amount that remained unclaimed or unpaid to a non-member spouse within 24 months from the date of the deduction contemplated in section 37D(4)(a)(ii), 50
- [excluding—**
- (aa) but does not include a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act; **[or]** 50
 - (bb) **a death benefit payable to a beneficiary in terms of section 37C of this Act not paid within 24 months from the date of the death of the member or such longer period as reasonably justifiable by the board of the fund;]**” 55
- (y) by the insertion in subsection (1) after the definition of “unclaimed benefit” of the following definition:
- “**‘unclaimed benefit fund’** means a fund that is established for the receipt of unclaimed benefits contemplated in the definitions of a pension preservation fund and a provident preservation fund in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);” 60

- (z) by the substitution in subsection (1) for the definition of “valuation exempt” of the following definition:
- “**‘valuation exempt’**, in relation to a fund, means a fund which has been exempted by the registrar under section 2(5)(a) from **[the requirement to submit a report on its statutory actuarial valuation]** sections 9A and 16;”; and
- (zA) by the substitution in subsection (1) for the definition of “valuator” of the following definition:
- “**‘valuator’** means an actuary **[or any other person]** who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of this Act.”.

Amendment of section 2 of Act 24 of 1956, as amended by section 10 of Act 94 of 1977, section 13 of Act 103 of 1979, section 36 of Act 9 of 1989, section 15 of Act 83 of 1992, section 22 of Act 104 of 1993, section 211 of Act 66 of 1995, section 2 of Act 11 of 2007 and by section 2 of Act 22 of 2008

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
- “(a) The registrar may, where practicalities impede the strict application of a specific provision of this Act, exempt any fund from, or in respect of, such provision on conditions determined by the **[registration] registrar.**”; and
- (b) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
- “(b) The registrar may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), at any time by notice **[in the Gazette]** on the official web site withdraw, wholly or in part and on any ground which he or she deems sufficient, any exemption granted under paragraph (a).”.

Substitution of section 3 of Act 24 of 1956, as substituted by section 9 of Act 41 of 1992

3. The following section is hereby substituted for section 3 of the principal Act:

“Registrar and Deputy Registrar of Pension Funds

- 3. (1)** The person appointed as executive officer in terms of section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the Registrar of Pension Funds and has the powers and duties provided for by or under this Act or any other law.
- (2)** The person appointed as deputy executive officer in terms of section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the Deputy Registrar of Pension Funds.
- (3)** The Deputy Registrar of Pension Funds exercises the powers and duties of the Registrar of Pension Funds to the extent that such powers have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and to such extent that the deputy registrar has been authorised under section 20 of the Financial Services Board Act, 1990, to perform such duties.”.

Repeal of section 3B of Act 24 of 1956

4. Section 3B of the principal Act is hereby repealed.

Amendment of section 4 of Act 24 of 1956, as amended by section 11 of Act 65 of 1968, section 14 of Act 86 of 1984, section 16 of Act 83 of 1992 and section 17 of Act 22 of 2008

5. Section 4 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 5
- “(1) Every pension fund **[shall]** must—
- (a) prior to commencing any pension fund business, notify the registrar in the prescribed form of its intention to establish a pension fund; and
- (b) within a period of two months from the date of commencing the business of a pension fund, apply to the registrar for registration under this Act.”; 10
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The registrar **[shall]** must, if the fund has complied with **[such requirements as he may have]** the prescribed requirements and **[he]** the registrar is satisfied that the registration of the fund is desirable in the public interest, register the fund provisionally and forward to the applicant a certificate of provisional registration, which provisional registration takes effect on the date determined by the fund or, if no such date has been determined by the fund, on the date of registration by the registrar.”; and 15 20
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) (a) If the registrar deems it necessary, the registrar may—
- (i) request a pension fund to furnish additional information in respect of its application under subsection (1); or
- (ii) require a pension fund to verify the information provided in its application under subsection (1). 25
- (b) If a pension fund fails to furnish or verify the information contemplated in paragraph (a) within 60 days from the date of the request, its application under subsection (1) lapses.”. 30

Amendment of section 5 of Act 24 of 1956, as amended by section 14 of Act 81 of 1957, section 9 of Act 64 of 1990 and section 3 of Act 11 of 2007

6. Section 5 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) for the following paragraph: 35
- “(a) **[a stockbroker]** an authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);”;
- (b) by the insertion in subsection (2) after paragraph (b) of the following paragraph:
- “(bA) a manager of a domestic or foreign collective investment scheme registered under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);”; 40
- (c) by the substitution in subsection (2) for paragraph (e) for the following paragraph:
- “(e) a person or investment vehicle approved by the registrar, **[or who is a member of a category of persons approved by the registrar]** subject to such conditions as the registrar may determine.”; and 45
- (d) by the substitution in subsection (3) for paragraphs (a) to (d) of the following paragraphs:
- “(a) (i) has as its principal object to act as representative of any person; 50
- [(b)]** (ii) is precluded by its **[memorandum of association]** Memorandum of Incorporation from incurring any liabilities other than those to persons on whose behalf it holds property;
- [(c)]** (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 55
- [(d)]** (iv) has been approved by the registrar, subject to conditions as **[he]** the registrar may impose, including any guarantee for the fulfillment of any obligation in respect of the holding of such 60

- property, the generality of the foregoing 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.”. 5

Amendment of section 6 of Act 24 of 1956

7. Section 6 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- “As soon as practicable after having received any proposals under subsection (1) 10 or after having prepared any proposals as provided in subsection (2), the registrar shall transmit a copy thereof to the principal officer of the fund and publish at the expense of the fund **[in the Gazette]** on the official web site and in **[at least one English and one Afrikaans]** a newspaper circulating in the district in which the head office of the undertaking is **[situate]** situated, a notice—” 15

Amendment of section 7A of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996

8. Section 7A of the principal Act is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
- “(1A) The composition of the board shall at all times comply with the requirements of the rules of the fund and any vacancy on such board shall be filled within such period as prescribed.”; and 20
- (b) by the addition of the following subsections:
- “(3) (a) A board member appointed or elected in accordance with subsection (1), must attain such levels of skills and training as may be prescribed by the registrar by notice in the *Gazette*, within six months from the date of the board member’s appointment. 25
- (b) A board member must retain the prescribed levels of skills and training referred to in paragraph (a), throughout that board member’s term of appointment. 30
- (4) A board member must—
- (a) within 21 days of removal as board member for reasons other than the expiration of that board member’s term of appointment or voluntary resignation, submit a written report to the registrar detailing the board member’s perceived reasons for the termination; 35
- (b) on becoming aware of any material matter relating to the affairs of the pension fund which, in the opinion of the board member, may seriously prejudice the financial viability of the fund or its members, inform the registrar thereof in writing.”.

Amendment of section 7C of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996 40

9. Section 7C of the principal Act is hereby amended by the addition to subsection (2) of the following paragraphs:
- “(e) act independently;
- (f) have fiduciary duties to members and beneficiaries in respect of accrued benefits or the amounts accrued to provide a benefit; and 45
- (g) comply with any other prescribed requirements.”.

Amendment of section 7D of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996 and amended by section 4 of Act 11 of 2007

10. Section 7D of the principal Act is hereby amended— 50
- (a) by the substitution for paragraph (c) of the following paragraph:
- “(c) ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed;”; 55

- (b) by the addition of the following paragraph:
 “(g) comply with any other prescribed requirements.”; and
- (c) by the addition of the following subsection, the existing section becoming subsection (1):
 “(2) (a) The board may, in writing and in accordance with a system of delegation set out in the rules, which system must maximise administrative and operational efficiency and must provide adequate checks and balances, delegate any of its functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine.
 (b) The board is not divested or relieved of a function delegated under paragraph (a) and may, if necessary, withdraw the delegation at any time on reasonable notice.”.

Insertion of section 7F in Act 24 of 1956

11. The following section is hereby inserted in the principal Act after section 7E: 15

“Liability of board member

- 7F.** (1) In any proceedings against a board member in terms of this Act, other than for wilful misconduct or wilful breach of trust, the court may relieve the board member from any liability, either wholly or partly, on terms that the court considers just, if it appears to the court that—
- (a) the board member has acted independently, honestly and reasonably;
 or
 (b) having regard to all the circumstances of the case, including those connected with the appointment of the board member, it would be fair to excuse the board member.”.

Amendment of section 8 of Act 24 of 1956, as amended by section 30 of Act 104 of 1993, section 6 of Act 22 of 1996 and section 4 of Act 22 of 2008

12. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“Principal officer and deputy principal officer”; and
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) (a) The principal officer of a registered fund shall be an individual who is resident in the Republic, and if [he] the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon [him] the principal officer by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person [within thirty days] to be its principal officer within such period as may be prescribed by the registrar, after the commencement of a continuing absence or inability to discharge any duty by the principal officer.
 (b) A registered fund may appoint a deputy principal officer.
 (c) The board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer’s functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the board must determine.
 (d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the board may, if necessary, withdraw the delegation at any time on reasonable notice.
 (e) If a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act, until the fund formally in the manner directed in its rules appoints a new principal officer.”.

Amendment of section 9 of Act 24 of 1956, as substituted by section 12 of Act 65 of 1968 and amended by section 10 of Act 64 of 1990, section 23 of Act 104 of 1993, section 5 of Act 11 of 2007 and section 5 of Act 22 of 2008

13. Section 9 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) [The provisions of section 8(5) apply] Section 8(4) and (5) applies *[mutatis mutandis]* with the necessary changes to the appointment of an auditor under this section.”.

Amendment of section 9A of Act 24 of 1956, as inserted by section 13 of Act 65 of 1968 and amended by section 6 of Act 22 of 2008

14. Section 9A of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The provisions of section 8(5), excluding the provisions of subsections (1) and (2), apply *[mutatis mutandis]* with the necessary changes to the appointment of a valuator under this section.”; and

(b) by the addition of the following subsection:

“(3) The valuator of a registered fund must be a natural person who is resident in the Republic, and if the valuator resigns or is unable for any reason to discharge any duty imposed upon a valuator by any provision of this Act, the fund shall appoint another person to be its valuator within such period as prescribed.”.

Insertion of section 9B in Act 24 of 1956

15. The following section is hereby inserted in the principal Act after section 9A:

“Protection of disclosures

9B. (1) The registrar must provide a process for the submission of disclosures by a board member, principal officer, deputy principal officer, valuator or other officer or employee of a fund or an administrator, which ensures appropriate confidentiality and provides appropriate measures for the protection of disclosures.

(2) In addition to what is provided in sections 8 and 9 of the Protected Disclosures Act, a disclosure by a board member, principal officer, deputy principal officer, valuator or other officer or employee of a fund or administrator to the registrar constitutes a protected disclosure.

(3) (a) A board member, principal officer, deputy principal officer, valuator or other officer or employee of a fund or an administrator who makes a protected disclosure in accordance with this section, may not suffer any occupational or other detriment.

(b) Any person referred to in paragraph (a) who suffers any detriment, including occupational detriment as defined in the Protected Disclosures Act, may—

(i) seek the remedies provided for in section 4 of the Protected Disclosures Act, where occupational detriment has been suffered;

(ii) approach any court having jurisdiction for appropriate relief; or

(iii) pursue any other process and seek any remedy provided for in law.”.

Amendment of section 12 of Act 24 of 1956, as amended by section 18 of Act 83 of 1992 and section 17 of Act 22 of 2008

16. Section 12 of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) A registered fund may at any time consolidate its rules, and in such event the principal officer shall forward to the registrar a copy of such consolidated rules and if the registrar is satisfied that the consolidated rules are not **[substantially]** different from the existing rules of the fund, **[he]** the registrar shall register such consolidated rules and return a copy thereof to the principal officer with the date of registration endorsed thereon, and such consolidated rules shall **[there-**

upon] take effect as from the date determined by the fund concerned or, if no date has been determined, as from the date of registration thereof.”; and

(b) by the addition of the following subsection:

“(6) (a) The registrar may request such additional information in respect of any alteration, rescission, addition or consolidation of the rules of a registered fund transmitted or forwarded to the registrar for approval as the registrar may deem necessary.

(b) If a registered fund fails to furnish the information requested by the registrar within 180 days from the date of that request, any submission for approval of an alteration, rescission, addition or consolidation of the rules of that fund lapses.”.

Amendment of section 13A of Act 24 of 1956, as substituted by section 1 of Act 94 of 1997 and amended by section 6 of Act 11 of 2007 and section 7 of Act 22 of 2008

17. Section 13A of the principal Act is hereby amended by the addition of the following subsections:

“(8) For the purposes of this section, the following persons shall be personally liable for compliance with this section and for the payment of any contributions referred to in subsection (1):

(a) If an employer is a company, every shareholder who controls the company and director who is regularly involved in the management of the company’s overall financial affairs;

(b) if an employer is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), every member who controls or is regularly involved in the management of the close corporation’s overall financial affairs; and

(c) in respect of any employer other than an employer referred to in paragraphs (a) and (b), every board member of a trust or partner in a partnership, in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer’s overall financial affairs.

(9) (a) A fund to which the provisions of subsection (8) apply, must ensure that the employer agrees in writing to notify it of the identity of any such person so personally liable in terms of subsection (8).

(b) In the event that an employer fails to comply with the requirements of this provision, all the directors (in respect of a company), all the members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons comprising the governing body of the employer, as the case may be, shall be personally liable in terms of subsection (8).”.

Amendment of section 13B of Act 24 of 1956, as inserted by section 20 of Act 83 of 1992 and amended by section 7 of Act 11 of 2007 and section 8 of Act 22 of 2008

18. Section 13B of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) No person shall administer on behalf of a pension fund the **[investments of such a pension fund,]** receipt of contributions or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto and the person complies with such conditions as the registrar may from time to time determine in the particular case or in general.”;

(b) by the insertion after subsection (1) of the following subsections:

“(1A) Any application for approval in terms of subsection (1) shall—

(a) be made in the prescribed manner;

(b) be accompanied by the prescribed fee; and

(c) contain such information as may be prescribed by the registrar in order to satisfy the registrar that the applicant complies with the requirements for a fit and proper administrator prescribed by notice in the *Gazette*, including information in respect of—

(i) personal character qualities of honesty and integrity;

(ii) the competence and operational ability of the applicant to fulfil the responsibilities imposed by this Act;

- (iii) the applicant's financial soundness; and
 - (iv) any other requirements that may be prescribed.
- (1B) The registrar may—
 - (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
 - (b) take into consideration any other information regarding the applicant, derived from any source, including any other regulatory or supervisory authority, if such information is disclosed to the applicant and the applicant is given reasonable opportunity to respond.”;
- (c) by the deletion of subsection (3);
- (d) by the substitution in subsection (5) for paragraph (f) of the following paragraph:
 - “(f) maintain **[adequate]** the prescribed financial resources to meet its commitments and to manage the risks to which the fund is exposed;”;
- (e) by the addition to subsection (5) of the following paragraph:
 - “(h) within a reasonable time provide a fund with information pertaining to the fund that the administrator has in its possession or under its control as requested by the fund in an electronic format capable of manipulation by the fund or in any other format if the information pertaining to the fund is not available in electronic format;”;
- (f) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 - “If the registrar **[after an inspection or investigation under section 25 considers]** has reasonable grounds to consider that the interests of the members of a fund or of the public so require, the registrar may—”;
- (g) by the substitution in subsection (6) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(a) direct the administrator to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs **[disclosed by the inspection or investigation]** that has come to the knowledge of the registrar: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
 - (b) direct—
 - (i) the administrator to withdraw from the administration of the fund, whereupon the board of the fund must in accordance with the registrar's directions, but subject to this Act and the rules of the fund, arrange for the administration of the fund to be taken over by another administrator or person; **[or]**
 - (ii) that the costs of the other administrator or person be defrayed from the financial resources maintained under subsection (5)(f); or”;
- (h) by the insertion after subsection (7) of the following subsection:
 - “(7A) (a) All records, documentation and information relating to the administration of a fund, its members and former members that are held by an administrator or is under an administrator's control, is the property of the fund, including information that the administrator, in the course and scope of its work as administrator or former administrator of the fund, created or came to possess or control.
 - (b) An administrator—
 - (i) may not destroy or otherwise dispose of any information referred to in paragraph (a) without the consent of the fund; and
 - (ii) must maintain information referred to in paragraph (a) in an orderly format.”; and
- (i) by the addition of the following subsection:
 - “(10) When an administrator becomes aware of any material matter relating to the affairs of a pension fund, which in the opinion of the administrator may prejudice the fund or its members, the administrator must inform the registrar of that matter in writing without undue delay.”.

Amendment of section 14 of Act 24 of 1956, as amended by section 15 of Act 81 of 1957, section 3 of Act 54 of 1991, section 21 of Act 83 of 1992, section 2 of Act 39 of 2001, section 8 of Act 11 of 2007 and section 9 of Act 22 of 2008

19. Section 14 of the principal Act is hereby amended—

- (a) by the addition to subsection (2) of the following paragraph: 5
“(c) Any assets transferred in accordance with paragraph (b) must be increased or decreased with fund return from the effective date of transfer until the date of final settlement.”;
- (b) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 10
“(a) the scheme or information provided in terms of subsection (1) was so inaccurate that [he] the registrar would not have granted such certificate had [he] the registrar been aware of the actual facts; [or]”;
- (c) by the insertion in subsection (6) of the word “or” at the end of paragraph (b) 15
 and the addition to that subsection of the following paragraph:
“(c) as a result of amendments to legislation, the implementation of the scheme in terms of subsection (1) would prejudice members.”;
- (d) by the substitution in subsection (7)(b) for the words preceding subparagraph 20
 (i) of the following words:
“No fees or commissions of any nature are payable, directly or indirectly, by any party or by any agent, [or] mandatory or representative of such party—”;
- (e) by the deletion in subsection (8) of the word “or” at the end of paragraph 25
 (aA), the insertion in that subsection of the word “or” at the end of paragraph (b) and the addition to that subsection of the following paragraph:
“(c) the transferor fund is valuation exempt and a transfer is made to a long-term insurer registered under the Long-term Insurance Act, 1998 (Act No. 52 of 1998),”; and
- (f) by the addition of the following subsection: 30
“(9) Notwithstanding subsections (1) and (8), the registrar may exempt a transaction contemplated in subsection (1) from the provisions of this section, subject to such requirements or conditions as may be prescribed.”.

Amendment of section 14A of Act 24 of 1956, as inserted by section 3 of Act 39 of 2001 and amended by section 9 of Act 11 of 2007 35

20. Section 14A of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

- “(d) **[on, or within six months from, the effective date of the first actuarial valuation following the commencement date, and]** at least once every three 40
 years, **[thereafter, the board shall grant]** a pension increase shall be granted
 to pensioners and deferred pensioners (other than pensioners referred to in section 14B(3)(c)) with effect from the valuation date on which the increase is
 based, which increase shall not be less than the minimum pension increase,
starting with the first actuarial valuation following the commencement date.”. 45

Amendment of section 14B of Act 24 of 1956, as substituted by section 10 of Act 11 of 2007

21. Section 14B of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following 50
 paragraph:
“(a) MC represents the contributions paid by the member;

EC represents the contributions paid by the employer in respect of
the member;

X represents such reasonable expenses as the board determines
[should be paid out of the contributions paid by and in respect 55
of the member];

IC represents the amount credited to the member's individual account upon the commencement of the member's membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of **[his or her]** the member's fund with any other fund, if any, other than amounts taken into account in terms of OC; and

OC represents any other amounts lawfully permitted, credited to or debited from the member's individual account, if any; and";

- (b) by the substitution in subsection (2)(a) for the words preceding the proviso to subparagraph (ii) of the following words:

"an amount equal to the value of the member's contributions, less such reasonable expenses as determined by the board **[deems appropriate to deduct from the contributions, augmented]** as from the date of payment of a contribution **[by fund return]** plus any amount payable in terms of the rules of the fund in excess of the member contributions, increased or decreased with fund return as from the date that the member joined the fund";

- (c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

"(i) aim to award a percentage of the consumer price index, or some other measure of **[price]** inflation which is deemed suitable by the board; and";

- (d) by the substitution in subsection (3)(c) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

"(i) pensioners on or after retirement in terms of the rules of a fund, **purchased]** and in line with the pension increase policy of the fund at the time of purchase, purchase a policy from a long-term insurer registered **[in terms of section 7 of]** under the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

(ii) pensioners on whose behalf a fund, on or after retirement in terms of the rules of the fund, **purchased]** and in line with the pension increase policy of the fund at the time of purchase, purchase a policy of insurance covering that fund's full liability in respect of those pensioners from a long-term insurer registered **[in terms of section 7 of]** under the Long-term Insurance Act, 1998 (Act No. 52 of 1998);"; and

- (e) by the substitution in subsection (4) for the proviso to paragraph (a) of the following proviso:

": Provided that if the application of the increase factor, P, causes a fund to become financially unsound, the board, after taking into account any balance in any contingency reserve account, may limit P to such amount as will not cause the fund to be in a financially unsound condition".

Amendment of section 15A of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001

22. Section 15A of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

"(2) Once actuarial surplus is apportioned to either the member surplus account, or the employer surplus account in terms of sections 15B and 15C, or directly for the benefit of members and former members subject to the uses specified in section 15D(1), members, former members and the employer acquire rights to such actuarial surplus as provided for in this section."; and

- (b) by the substitution for the proviso to subsection (3) of the following proviso:

": Provided that the employer may continue a contribution holiday, which the employer was already taking immediately prior to the commencement date, only if the value of any contribution holiday taken by the employer during any period between the commencement date and the surplus apportionment date, **[augmented by the gross investment return earned by the fund, nett of expenses]** as increased or decreased

with fund return, over the corresponding period is added to the actuarial surplus to be apportioned at the surplus apportionment date in terms of section 15B(5).”.

Amendment of section 15B of Act 24 of 1956, as substituted by section 11 of Act 11 of 2007

5

23. Section 15B of the principal Act is hereby amended—

- (a) by the substitution in subsection (5)(b) for the words preceding the proviso of the following words:
 - “former members shall have the benefits previously paid to them, or the amounts previously transferred on their behalf, increased to the minimum benefit determined in terms of section 14B(2) or 14B(6) as at the date when they left the fund, with such increase adjusted to the surplus apportionment date **[using the nett investment earnings of the fund]** with fund return over the corresponding period, and pensioners and deferred pensioners shall have their pensions increased to the minimum pension as determined in terms of section 14B(4), as a prior charge on the actuarial surplus to be apportioned”;
- (b) by the substitution in subsection (6) for paragraph (e) of the following paragraph:
 - “(e) Any surplus utilised improperly shall be increased or decreased **[by]** with fund return from the effective date of the use until the date of receipt thereof by the fund.”;
- (c) by the deletion of subsection (8);
- (d) by the substitution in subsection (9) for paragraph (a) of the following paragraph:
 - “(a) the scheme, the statutory actuarial valuation as at the surplus apportionment date of the fund, as well as a copy of any other actuarial or other statement taken into account for purposes of the scheme and the report by the person appointed in terms of subsection (3), has been submitted to the registrar **[and the registrar is satisfied that the statutory actuarial valuation has been prepared on actuarially sound and acceptable principles prescribed]**”;
- (e) by the substitution in subsection (9) for the proviso to paragraph (c) of the following proviso:
 - “: Provided that[—
 - (i) **the registrar shall require such report where there are complaints in respect of the apportionment of surplus which have not been resolved to the satisfaction of the complainants concerned; and**
 - (ii) the costs resulting from the appointment of such independent actuary shall be borne by the fund;”;
- (f) by the substitution in subsection (9) for paragraph (i) of the following paragraph:
 - “(i) the registrar has forwarded a certificate to the **[principal officer of the]** fund to the effect that **[all]** the scheme is approved and the requirements of this subsection have been fulfilled.”;
- (g) by the deletion of subsection (10); and
- (h) by the addition of the following subsection:
 - “(13) The registrar may, on application by the board of a fund and subject to such conditions as may be prescribed, withdraw the certificate issued in terms of subsection (9)(i), in which event the fund shall be deemed not to have submitted a scheme in terms of subsection (1).”.

Amendment of section 15C of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001

24. Section 15C of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account, **[and]** the employer surplus account or directly for the benefit of members and former members, subject to the uses specified in section 15D(1).”; and
- (b) by the substitution in subsection (2) for the words preceding the proviso of the following words:

“If the rules are silent on the apportionment of actuarial surplus arising after the surplus apportionment date, any apportionment between the member surplus account, the employer surplus account or directly for the benefit of members and former members, subject to the uses specified in section 15D(1), shall be determined by the board taking into account the interests of all the stakeholders in the fund”.

Amendment of section 15D of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001

25. Section 15D of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:

- “(a) improve benefits for **[existing]** members;
- (b) where reasonable and equitable, improve the benefits **[previously]** paid to, **[former members]** or the amounts **[previously]** transferred in respect of, former members who exited the fund subsequent to the surplus apportionment date;
- (c) reduce current contributions due from members; **[and]** or”.

Amendment of section 15E of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001 and amended by section 12 of Act 11 of 2007

26. Section 15E of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary in the rules, a participating employer may **[request]** require the board to use actuarial surplus allocated to the employer surplus account in terms of sections 15B, 15C and 15F for use by that employer for any of the following purposes, namely—”;
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (g), the insertion in that subsection of the word “or” at the end of paragraph (h) and the addition to that subsection of the following paragraph:

“(i) repaying part, or all, of surplus utilised improperly by the employer in terms of section 15B(6)”; and
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The registrar may approve the transfer of all, or a portion of, the employer surplus account from the fund to the employer surplus account in another fund, if the following conditions are satisfied, namely that—”.

Amendment of section 15F of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001 and amended by section 13 of Act 11 of 2007

27. Section 15F of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The registrar may approve such transfer if **[he or she]** the registrar is satisfied that—
- (a) the allocation of actuarial surplus to such account was negotiated between the stakeholders in a manner consistent with the principles underlying sections 15B and 15C; and

- (b) the allocation of actuarial surplus to the existing reserve account was reasonable and equitable.”.

Amendment of section 15K of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001 and amended by section 14 of Act 11 of 2007

28. Section 15K of the principal Act is hereby amended— 5
- (a) by the substitution for subsections (1), (2), (3), (4), (5) and (6) of the following subsections, respectively:
- “(1) **[(a) When the board fails to submit a scheme for the apportionment of an actuarial surplus in terms of section 15B within the prescribed period, the]** The registrar [shall] may appoint a special ad hoc tribunal to **[perform the functions of the board set out in section 15B]** make a determination, as set out in this section if— 10
- (a) a fund fails to submit a scheme for the apportionment of actuarial surplus or a nil return in terms of section 15B, within the prescribed period; or 15
- (b) **[The] the registrar [shall require the board to refer the scheme for the apportionment of an actuarial surplus in terms of section 15B to a special ad hoc tribunal to perform the functions of the board set out in section 15B, if]—**
- (i) **[the registrar]** is not satisfied that the scheme submitted by the board in terms of section 15B is reasonable and equitable; 20
- (ii) **[the registrar]** considers that unresolved complaints require investigation which may lead to a review of such scheme;
- (iii) **[the statutory actuarial valuation as at the surplus apportionment date of the fund for the purpose of determining the actuarial surplus in the fund is unacceptable to the registrar]** is not satisfied that section 15B(11) has been complied with; or 25
- (iv) does not agree with the result of the investigation contemplated in section 15B(6); 30
- (c) the board requests it; **[or**
- (v)](d)** the person appointed in terms of section 15B(3) requests it; or
- (e)** the board of the fund submits a nil return to the registrar in terms of section 15B(11) and the registrar is not satisfied that a nil return is justified. 35
- (2) The tribunal shall consist of at least three members who must all be independent of any stakeholder in the fund, and of whom—
- (a) at least one shall be a lawyer **[selected by the board from a panel approved by the registrar];**
- (b) at least one shall be an actuary **[selected by the board from a panel approved by the registrar];** and 40
- (c) at least two **[must]** have experience in retirement fund financing: Provided that the **[registrar may select the members of the tribunal, if the board fails to make their selection within three months of the request being made by the]** registrar— 45
- (i) may allow a fund a reasonable opportunity to propose members for the tribunal; and
- (ii) must appoint a replacement within a reasonable period of time where a member of a tribunal dies, becomes incapacitated, resigns or the registrar is of the opinion that the member is no longer suitable to hold such position. 50
- (3) The tribunal shall make its determination in relation to the apportionment of actuarial surplus within such period as may be determined by the registrar: Provided that—
- (a) where the tribunal estimates that the cost contemplated in subsection (12) exceeds the actuarial surplus, the tribunal may resign and the fund must submit a scheme under section 15B(1); or 55
- (b) where the tribunal determines that the fund is not required to submit a scheme in terms of section 15B(1), the tribunal must request the registrar to terminate its appointment and the fund must submit a nil return under section 15B(11). 60

(4) **[Three]** At least two-thirds of the members of the tribunal shall constitute a quorum.

(5) The tribunal shall elect a chairperson from amongst its members, and inform the registrar of its election, and such chairperson shall have a deliberative vote but no casting vote.

(6) At least two-thirds of the members of the tribunal must agree to any decision or step taken [in the exercise of the powers contemplated in section 15B(10)] by the tribunal under this section.”;

(b) by the insertion after subsection (6) of the following subsections:

“(6A) The board must submit to the tribunal—

(a) the report on the statutory actuarial valuation of the fund as at the surplus apportionment date;

(b) any other actuarial or other statement that should be taken into account for purposes of the determination; and

(c) any report by the person appointed in terms of section 15B(3), where the report or statement referred to in paragraph (a) or (b) was secured by the board of the fund prior to the appointment of the tribunal: Provided that the registrar must agree with the actuarial surplus quantified by the valuator in the report referred to in paragraph (a) before submission in terms of this subsection.

(6B) (a) Section 15B, excluding subsections (1), (7), (9) and (11), applies with the changes required by the context to the tribunal and any determination by the tribunal.

(b) For the purposes of paragraph (a), any reference to the board and a scheme in section 15B must be construed as a reference to the tribunal and a determination, respectively.

(6C) The tribunal—

(a) must take reasonable measures to inform stakeholders of its determination in relation to the apportionment of actuarial surplus and must resolve any objections in respect of the determination;

(b) may not duplicate any of the functions in respect of the apportionment of actuarial surplus or the submission of a nil return in terms of section 15B, performed by the board prior to the appointment of the tribunal, unless the tribunal can demonstrate that it was necessary to do so in order to comply with this Act;

(c) may request an additional report from an independent actuary on matters associated with the apportionment of the actuarial surplus if the tribunal deems it necessary; and

(d) must be satisfied that its determination is reasonable and equitable and accords full recognition to the rights and reasonable benefit expectations of members and former members in respect of service prior to the surplus apportionment date.”;

(c) by the substitution for the proviso to subsection (10) of the following proviso: “: Provided that such record shall be passed to the [registrar] fund and made available to the registrar on request, once the tribunal has completed its determination”;

(d) by the substitution for subsections (11) and (12) of the following subsections, respectively:

“(11) **[After the tribunal has completed an investigation, it shall send a statement containing its determination and the reasons therefor, signed by the members of the tribunal, to all parties concerned as well as to the registrar]** The tribunal must submit its determination to the registrar and to the fund.

(12) (a) Any reasonable costs arising from the work or the performance of the functions of the tribunal, including periodical allowances or compensation for personal expenses of the members of the tribunal, shall be recovered from the fund [out of the surplus being apportioned if the tribunal satisfies the registrar that such costs were reasonably incurred in the performance of the required functions].

(b) Despite the provisions of paragraph (a), the costs must be recovered from the actuarial surplus if the tribunal determines an apportionment of actuarial surplus.”; and

- (e) by the substitution for subsection (15) of the following subsection:

“(15) The registrar must accept **[such]** a determination in relation to the apportionment of actuarial surplus as satisfying the requirements of section 15B**[(9)]** and forward a certificate to the fund to the effect that section 15B has been complied with, unless the registrar is of the opinion that the tribunal failed to exercise its discretion properly and in good faith.”.

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Amendment of section 16 of Act 24 of 1956, as amended by section 16 of Act 86 of 1984, section 9 of Act 50 of 1986, section 4 of Act 54 of 1991, section 23 of Act 83 of 1992 and section 6 of Act 22 of 1996

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29. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) **[Save as provided in section 17, a]** A registered fund shall, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and shall deposit a copy of such a report with the registrar, and shall send a copy of such report or a summary thereof, prepared by the valuator in a form prescribed and signed by **[him]** the valuator, to every employer participating in the fund.”;

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- (b) by the substitution in subsection (5) for the words preceding the proviso of the following words:

“Notwithstanding anything contained in the preceding subsections, the registrar may, **[with the consent of the Minister, and]** after not less than one month’s notice in writing to any registered fund, require that fund to cause such an investigation to be made in respect of the position as at the expiration of any financial year, if the registrar is of the opinion that an investigation would show that the fund is not in a sound financial condition”;

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- (c) by the substitution for subsection (6) of the following subsection:

“(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 board or management of the fund, the registrar shall, on request of the fund, **[and subject to payment by the fund of such expenses as the registrar may incur in the matter]** on good cause shown by any officer of the fund or on the initiative of the registrar, determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and such determination by the registrar shall be binding upon the fund.

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(b) The fund shall bear any expenses incurred by the registrar in respect of a matter contemplated in paragraph (a).”; and

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- (d) by the substitution for subsection (9) of the following subsection:

“(9) The provisions of **[subsection (3) of]** section 15(3) in connection with a document relating to the financial position or the revenue or expenditure of a fund referred to therein, shall apply **[mutatis mutandis]** with the necessary changes in respect of a copy of a report deposited with the registrar in terms of subsection (1) of this section and which in the opinion of the registrar—

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(a) other than in respect of a report on the valuation of a fund as at its surplus apportionment date, does not correctly reflect its financial condition referred to in the said subsection (1); or

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(b) in respect of a report on the valuation of a fund as at its surplus apportionment date, does not correctly reflect its financial condition in subsection (1) or does not fairly take into consideration the interests of one or more of the stakeholders that may be entitled to participate in a scheme in terms of section 15B(1) based on the result of such report.”.

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Repeal of section 17 of Act 24 of 1956

30. Section 17 of principal Act is hereby repealed.

Amendment of section 18 of Act 24 of 1956, as amended by section 10 of Act 50 of 1986 and section 15 of Act 11 of 2007

31. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[When]** The registrar may prescribe criteria for financial soundness, and when any return under this Act indicates **[, in the opinion of the registrar,]** that a registered fund is not in a sound financial condition, the registrar **[shall]** may, save as provided in section **[twenty-nine]** 29, direct the fund to submit a scheme setting out the arrangements which have been made, or which it **[is intended]** intends to make, to bring the fund into a financially sound condition within **[a reasonable]** such period, and **[the fund shall deposit such scheme with the registrar within three months from the date of receipt of the said direction, together with a report thereon by a valuator or, in the case of a fund to which the provisions of section seventeen apply, by the auditor of the fund]** subject to such conditions, as determined by the registrar.”.

Insertion of section 18A in Act 24 of 1956

32. The following section is hereby inserted in the principal Act after section 18:

“Business rescue

18A. (1) Notwithstanding the provisions of the Companies Act or any other law under which a pension fund or an administrator is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a pension fund or an administrator, whether or not it is a company.

(2) The registrar may make an application under section 131 of the Companies Act in respect of a pension fund or an administrator if the registrar is satisfied, whether in accordance with section 26 of this Act or otherwise, that it is in the interests of the members of the pension fund concerned or the members for whose benefit the administrator concerned is administering the pension fund, to do so.

(3) The following acts are subject to the approval of the Registrar:

- (a) The resolution of a pension fund or administrator to begin business rescue proceedings;
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act.

(4) In the application of Chapter 6 of the Companies Act—

- (a) a reference to the Commission shall be construed as a reference also to the registrar;
- (b) the reference to creditors shall be construed as a reference also to the members of the pension fund concerned or the members for whose benefit the administrator concerned is administering the pension fund; and
- (c) in addition to any question relating to the business of a pension fund or an administrator, there shall be considered also the question whether any proposed action is in the interests of the members of the pension fund concerned or the members for whose benefit the administrator concerned is administering the pension fund.

(5) If an application to a court for an order relating to the business rescue of a pension fund or an administrator is made by an affected person other than the registrar—

- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the registrar before the application is set down for hearing; and
 - (b) the registrar may, if satisfied that the application is not in the interests of the members of the pension fund concerned or the members on whose behalf the administrator concerned is administering the pension fund, join in the application as a party and file affidavits and other documents in opposition to the application.
- (6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a pension fund or an administrator shall not provide new benefits, unless the practitioner has been granted permission to do so by a court.”.

Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959, section 9 of Act 58 of 1966, section 1 of Act 80 of 1996, section 2 of Act 23 of 1970, section 7 of Act 91 of 1972, section 23 of Act 101 of 1976, section 11 of Act 94 of 1977, section 11 of Act 80 of 1978, section 14 of Act 103 of 1979, section 39 of Act 99 of 1980, section 14 of Act 82 of 1982, section 20 of Act 46 of 1984, section 17 of Act 86 of 1984, section 11 of Act 50 of 1986, section 5 of Act 51 of 1988, section 8 of Act 53 of 1989, section 11 of Act 64 of 1990, section 2 of Act 1994 of 1997, section 2 of Act 65 of 2001 and section 17 of Act 22 of 2008

33. Section 19 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4)(b) for subparagraph (aa) of the following subparagraph:
 - “(aa) a [**‘subsidiary company’ or**] ‘subsidiary’ as defined in section 1[(1)] of the Companies Act[,1973 (Act No 61 of 1973)];”;
- (b) by the substitution in subsection (5B)(b) for subparagraph (ii) of the following subparagraph:
 - “(ii) a subsidiary [**company or a controlled company**] (as defined in the Companies Act[, 1973 (Act No. 61 of 1973)]) of such a first-mentioned company.”; and
- (c) by the insertion after subsection (5C) of the following subsection:
 - “(5D) (a) Subject to this subsection, a fund shall not without the prior approval of the registrar, directly or indirectly, acquire or hold—
 - (i) an ownership interest exceeding 49 per cent in another entity; or
 - (ii) shares or any other financial interest in another entity which results in the fund exercising control over that entity.
 - (b) The approval referred to in paragraph (a) may be given subject to such conditions as the registrar may determine.
 - (c) For the purposes of paragraph (a)(ii), a fund shall be deemed to exercise control over another entity if the fund—
 - (i) is directly or indirectly able to exercise or control the exercise of more than 35 per cent of the voting rights associated with the shares of that entity, whether pursuant to a shareholder agreement or otherwise; or
 - (ii) has the right to appoint or elect, or control the appointment or election of, directors of that entity who control more than 35 per cent of the votes at a meeting of the board of that entity.”.

Substitution of section 24 of Act 24 of 1956

34. The following section is hereby substituted for section 24 of the principal Act:

“Enquiries

24. The registrar may address enquiries to any registered fund, approved administrator or third party in relation to any matter connected with [its] the business or transactions of a fund or approved administrator, and it shall be the duty of the fund, approved administrator or third party to reply in writing thereto within a period of [thirty] 30 days as from the date upon which the registrar addressed the enquiry to it or within such further period as the registrar may allow.”.

Substitution of section 25 of Act 24 of 1956, as substituted by section 16 of Act 11 of 2007

35. The following section is hereby substituted for section 25 of the principal Act:

“Inspections and on-site visits

25. (1) (a) The registrar may— 5
- (i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person to conduct an on-site visit of the business and affairs of a fund or administrator; or
 - (ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). 10
- (b) A person conducting an on-site visit in terms of paragraph (a)(i) may—
- (i) at any time during business hours—
 - (aa) enter the premises of the fund or administrator and the fund or administrator must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit; 15
 - (bb) search the premises of the fund or administrator for any document;
 - (cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document; and 20
 - (dd) against the issue of a receipt, seize any document which may furnish proof of any failure to comply with the provisions of this Act;
 - (ii) require the fund or administrator to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the fund or administrator; and 25
 - (iii) require any person on the premises that is holding or is accountable for any document, to provide information and explanations of that information. 30
- (c) For the purposes of this section—
- (i) ‘document’ includes any recorded information regardless of form or medium; and
 - (ii) the power to search includes the power to use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to— 35
 - (aa) search any data contained in or available to that computer system;
 - (bb) reproduce any record from that data; and
 - (cc) seize any output from that computer for examination and copying. 40
- (2) After an on-site visit or inspection has been carried out in terms of subsection (1), the registrar may direct the fund or person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001). 45
- (3) The registrar may make known by notice on the official web site or by means of any other appropriate public media, if disclosure is in the public interest— 50
- (a) the outcome and details of an on-site visit;
 - (b) the status and outcome of an inspection;
 - (c) the details of an inspection.” 55

Amendment of section 26 of Act 24 of 1956, as substituted by section 17 of Act 11 of 2007

36. Section 26 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 5
 “Where a fund has no properly constituted board contemplated in section 7A and has failed to constitute a board after 90 days written notice by the registrar, or where a fund cannot constitute a board properly or where a board fails to comply with any requirements prescribed by the registrar in terms of section 7A(3), the registrar may, notwithstanding the rules of the fund, at the cost of the fund—”; 10
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) appoint so many persons as may be **[necessary]** appropriate to the board of the fund or appoint so many persons as may be necessary to make up the full complement or quorum of the board; and”; 15
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) If the registrar has reason to believe that a board member is not or is no longer fit and proper to hold office, the registrar may, after giving the board member a reasonable opportunity to be heard[,]— 20
 (a) direct the board member to vacate office; and
 (b) replace that board member with another person for the period and subject to the conditions that the registrar may determine.”.

Amendment of section 28 of Act 24 of 1956, as amended by section 15 of Act 103 of 1979, section 25 of Act 83 of 1992, section 6 of Act 22 of 1996, section 3 of Act 94 of 1997, section 18 of Act 11 of 2007 and section 17 of Act 22 of 2008 25

37. Section 28 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 “(a) The liquidator shall as soon as may be possible, deposit for approval with the registrar the preliminary accounts prescribed, signed and certified as correct by the liquidator and showing the assets and liabilities of the fund as at the commencement of the liquidation as well as the manner in which it is proposed to realise the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members, or, in the case of the partial termination of the fund, the assets and liabilities of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination.”; 30
- (b) by the addition to subsection (4)(b) of the following subparagraph: 40
 “(iii) the payment of minimum benefits referred to in section 14A.”; 35
- (c) by the substitution for subsection (7) of the following subsection:
 “(7) (a) The registrar shall direct the liquidator to publish a notice, at the cost of such a fund, in the *Gazette* and in **[one]** a newspaper **[in the English language and one in the Afrikaans language, or, if deemed necessary in the circumstances, in any other official language,** 45
 circulating in the district in which the registered office of the fund is **[situate]** situated and in which is stated the period during which and the places at which the preliminary accounts and report (if any) shall lie open for inspection by interested persons. 50
 (b) The notice shall call upon any interested persons who have any objection to the preliminary accounts and report (if any) to lodge their objections in writing with the registrar within the period stated in the notice, which period shall not be shorter than **[fourteen]** 14 days, calculated as from the last day on which those documents lie open for inspection.”; 55
- (d) the substitution for subsection (12A) of the following subsection:
 “(12A) Notwithstanding any provision to the contrary in this section, the registrar, on good cause shown, may authorise the liquidator, subject

to any conditions that the registrar may impose and prior to the submission of the final accounts and report (if any)—

(a) to make payment of any amounts to the members and beneficiaries of a fund **[before submission of the final accounts and report (if any), subject to the conditions that may be prescribed from time to time];** or 5

(b) where the liquidator is satisfied that benefits are and will remain unclaimed benefits, to transfer such benefits to an unclaimed benefit fund.”; and

(e) by the substitution for subsection (13) of the following subsection: 10

“(13) The provisions of the Companies Act[, 1973 (Act No. 61 of 1973,)] shall apply **[mutatis mutandis]** with the necessary changes to the dissolution of a fund in terms of this section, in so far as the said provisions relate to a voluntary winding-up in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provisions of this Act.”. 15

Amendment of section 28A of Act 24 of 1956, as inserted by section 4 of Act 94 of 1997

38. Section 28A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The registrar by notice **[in the Gazette]** on the official web site shall determine the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services.”.

Amendment of section 29 of Act 24 of 1956, as amended by section 16 of Act 103 of 1979 and section 26 of Act 83 of 1992 25

39. Section 29 of the principal Act is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) The provisions of the Companies Act[, 1973 (Act No. 61 of 1973),] shall apply **[mutatis mutandis]** with the necessary changes to a winding-up under this section, in so far as the said provisions refer to a winding-up by the court in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any directions issued by the court under this section. 30

(5) The court may direct that the aforementioned provisions of the Companies Act[,1973] may, for the purposes of the winding-up be suitably modified in any particular case if, **[the court is satisfied that]** having regard to the circumstances of the fund concerned, it would be impracticable or unnecessarily onerous to comply with the said provisions in every particular case, and that in spite of such modification, the interests of the creditors of the fund will be sufficiently safeguarded.”. 35 40

Insertion of section 29A in Act 24 of 1956

40. The following section is hereby inserted in the principal Act after section 29:

“Winding-up of unregistered pension fund

29A. (1) If a person carries on the business of a pension fund which is not registered under this Act, the registrar may apply to the court for the sequestration or liquidation of that person and the unregistered fund, whether or not the person or fund is solvent, in accordance with— 45

(a) the Insolvency Act, 1936 (Act No. 24 of 1936);

(b) the Companies Act;

(c) the Close Corporations Act, 1984 (Act No. 68 of 1984); or

(d) the law under which that person is incorporated. 50

(2) In deciding an application contemplated in subsection (1), the court—

- (a) may take into account whether the sequestration or liquidation of the person or fund concerned is reasonably necessary—
 - (i) in order to protect the interests of the members concerned; and
 - (ii) for the integrity and stability of the financial sector;
- (b) may make an order concerning the manner in which claims may be proved by the members;
- (c) shall appoint as trustee or liquidator a person nominated, and with the powers proposed, by the registrar.”.

Amendment of section 30 of Act 24 of 1956, as amended by section 17 of Act 103 of 1979, section 25 of Act 104 of 1993 and section 5 of Act 29 of 2001

41. Section 30 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In applying the provisions of the Companies Act[1973 (Act No. 61 of 1973),] in terms of section [twenty-eight or twenty-nine] 28 or 29—”.

Substitution of section 30T of Act 24 of 1956, as inserted by section 3 of Act 22 of 1996

42. The following section is hereby substituted for section 30T of the principal Act:

“Accountability

30T. (1) Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the accounting authority of the office of the Adjudicator.

(2) The accounting authority must comply with the Public Finance Management Act, 1999.”.

Amendment of section 30V of Act 24 of 1956, as inserted by section 3 of Act 22 of 1996

43. Section 30V of the principal Act is hereby amended by the substitution for the words following paragraph (d) of the following words:

“shall be guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding [three months] one year, or to both such fine and such imprisonment.”.

Amendment of section 31 of Act 24 of 1956, as amended by section 14 of Act 80 of 1959

44. Section 31 of the principal Act is hereby amended—

- (a) by the repeal in subsection (1) of paragraph (a); and
- (b) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs, respectively:
 - “(b) carry on the business of a pension fund [established after such commencement], unless that fund has [been duly] complied with the requirements in section 4 to be registered under [section four] this Act; [or]
 - (c) carry on the business of a pension fund for [a] such period [of more than twelve months] and subject to such conditions as may be prescribed after the date on which the person who applied for registration of the fund is advised by the registrar that the application for registration has been [refused] rejected; or
 - (d) [after the expiration of a period of twelve months from the commencement of this Act,] apply to [his] that person’s business a name which includes the words ‘pension fund’ or any other name which is calculated to indicate that [he] that person carries on the business of a pension fund, unless such business is registered as a pension fund under this Act, except with the consent of the registrar.”.

Amendment of section 32 of Act 24 of 1956, as amended by section 11 of Act 68 of 1962

45. Section 32 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If such person fails to comply, to the satisfaction of the registrar, with the requirements of the registrar **[to his satisfaction]**, the registrar may **[, with the consent of the Minister,]** investigate the affairs or any part of the affairs of the said person, or appoint an inspector to hold such an investigation and to report the result of his investigation to the registrar, and the provisions of section **[twenty-five]** shall **[mutatis mutandis]** with the necessary changes apply to every such investigation, and the registrar shall be entitled to recover from the person concerned all expenses necessarily incurred in connection with the investigation, unless such investigation shows that such person is not carrying on the business of a pension fund.”.

Substitution of section 32A of Act 24 of 1956, as amended by section 13 of Act 22 of 2008

46. The following section is hereby substituted for section 32A of the principal Act:

“Power of registrar in respect of communications

32A. (1) The registrar may prescribe the information and the intervals at which such information must be communicated to stakeholders by a fund or administrator.

(2) If any advertisement, brochure or similar communication which relates to the business of a pension fund is being, or is to be, published by any person, and any such communication is misleading, confusing or contains any incorrect statement of fact, the registrar may, after giving the person a reasonable opportunity to be heard, direct that person not to publish it, to cease publishing it or to effect changes thereto.”.

Amendment of section 33A of Act 24 of 1956, as inserted by section 24 of Act 11 of 2007

47. Section 33A of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The registrar **[may]** must, where a directive is issued to ensure the protection of the members and the public in general, publish the directive **[in the Gazette]** on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”.

Substitution of section 34 of Act 24 of 1956, as substituted by section 26 of Act 104 of 1993

48. The following section is hereby substituted for section 34 of the principal Act:

“[Annual report] Report by registrar

34. The registrar shall **[annually]** submit to the Minister a report on **[his]** the registrar’s activities under this Act, either annually or at such intervals as agreed to with the Minister.”.

Amendment of section 37 of Act 24 of 1956, as substituted by section 26 of Act 11 of 2007 and amended by section 14 of Act 22 of 2008

49. Section 37 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Penalties”; and

(b) by the insertion before subsection (2) of the following subsection:

- “(1) Any person who—
- (a) contravenes or fails to comply with section 4, 10, 13A, 13B or 31;
 - (b) induces or attempts to induce any person to become a member of, or to contribute to, a fund not registered under this Act; or
 - (c) in any application in terms of this Act deliberately makes a misleading, false or deceptive statement or conceals any material fact,
- is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”.

Amendment of section 37A of Act 24 of 1956, as substituted by section 12 of Act 94 of 1977 and amended by section 40 of Act 99 of 1980, section 37 of Act 104 of 1993, section 4 of Act 22 of 1996 and section 45 of Act 99 of 1998

50. Section 37A of the principal Act is hereby amended by the addition of the following subsection:

- “(4) (a) Despite the provisions of this section, a fund may direct that a member’s or beneficiary’s benefit may be paid to a third party if that member or beneficiary provides sufficient proof that he or she is not able to open a bank account.
- (b) Any such payment must be regarded as being a payment to that member or beneficiary.”.

Amendment of section 37C of Act 24 of 1956, as substituted by section 41 of Act 99 of 1980 and amended by section 6 of Act 51 of 1988, section 21 of Act 54 of 1989, section 29 of Act 83 of 1992, section 28 of Act 104 of 1993, section 5 of Act 22 of 1996, section 27 of Act 11 of 2007 and section 15 of Act 22 of 2008

51. Section 37C of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of the rules) payable by such a fund upon the death of a member or any benefits that remained unpaid by the fund on the date on which the fund became aware of the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the **[board]** fund, to one of such dependants or in proportions to some of or all such dependants.”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian’s Fund or unclaimed benefit fund.”; and

- (d) by the substitution for subsection (5) of the following subsection:

“(5) The provisions of subsections (3) and (4) do not apply to a beneficiary fund, and any remaining assets held for the benefit of a deceased beneficiary in a beneficiary fund must be paid into the estate of such beneficiary or, if no inventory in respect of the beneficiary has been received by the Master of the High Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian’s Fund or unclaimed benefit fund.”.

Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001, section 28 of Act 11 of 2007, section 4 of Act 35 of 2007, section 16 of Act 22 of 2008 and section 3 of Act 60 of 2008

52. Section 37D of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(d) for the words preceding subparagraph (i) of the following words: 15
 “deduct from a member’s benefit, **[or] member’s interest or minimum individual reserve, as the case may be—**”;
- (b) by the deletion in subsection (1)(d) of subparagraph (ii);
- (c) by the addition to subsection (1) of the following paragraph: 20
 “(e) deduct from a member’s benefit, member’s interest or minimum individual reserve, as the case may be, employees’ tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of a deduction referred to in this subsection.”;
- (d) by the substitution in subsection (3) for the words preceding the proviso to paragraph (a) of the following words: 25
 “Any amount that may be deducted in terms of subsection (1)(d) or (6) may only be deducted after the amount of **[pension interest] member’s benefit or minimum individual reserve** available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not”;
- (e) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph: 35
 “(ii) must be deducted on the date on which an election is made or, if no election is made within the period referred to in paragraph (b)**[(i)](ii)**, the date on which that period expires; and”;
- (f) by the substitution in subsection (4)(c) for subparagraph (ii) of the following subparagraph: 40
 “(ii) is entitled to the accrual of fund return **[on the amount referred to in paragraph (a) at fund return from the expiry of the period referred to in paragraph (b)(ii)]** from the date of the deduction contemplated in paragraph (a)(ii) until payment or transfer thereof, but not to any other interest or growth.”; and 45
- (g) by the substitution for subsection (6) of the following subsection: 50
 “(6) Despite paragraph (b) of the definition of ‘pension interest’ in section 1(1) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest of a member of a pension preservation fund or provident preservation fund **[(as defined in the Income Tax Act, 1962)]**, that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.”.

Part 2

Amendment of South African Reserve Bank Act, 1989

Amendment of section 13 of Act 90 of 1989

53. Section 13 of the South African Reserve Bank Act, 1989, is hereby amended by the deletion of paragraph (c).

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Part 3

Amendment of Financial Services Board Act, 1990

Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992, section 67 of Act 104 of 1993, section 5 of Act 22 of 1997, section 1 of Act 12 of 2000, section 45 of Act 37 of 2002, section 117 of Act 45 of 2002, section 117 of Act 36 of 2004 and section 19 of Act 22 of 2008

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54. Section 1 of the Financial Services Board Act, 1990 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the substitution in paragraph (a) of the definition of “financial institution” for subparagraph (viii) of the following subparagraph:
 - “(viii) any ‘independent intermediary’ or **[representative as defined in—**
 - (aa) section 1(1) of]** ‘representative’ contemplated in the Short-term Insurance Act, 1998[;
 - (bb) regulation 3.1 of the Regulations under]** (Act No. 53 of 1998), and the Long-term Insurance Act, 1998 (Act No. 52 of 1998);”;
- (b) by the substitution in paragraph (b) of the definition of “financial institution” for subparagraph (ii) of the following subparagraph:
 - “(ii) any other person who or which deals with trust property as a regular feature of his, her or its business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, **[1973 (Act No. 61 of 1973)]** 2008 (Act No. 71 of 2008), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988);”;
- (c) by the addition to the definition of “financial institution” of the following paragraph:
 - “(c) any person that performs an activity regulated under a law referred to in paragraph (a) or (b);”;
- (d) by the insertion after the definition of “financial institution” of the following definition:
 - “**‘Financial Services Board legislation’** means any law referred to in paragraph (a) of the definition of ‘financial institution’;”;
- (e) by the insertion after the definition of “Minister” of the following definition:
 - “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”.

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Amendment of section 2 of Act 97 of 1990

55. Section 2 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

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“(2) The Financial Services Board is subject to the Public Finance Management Act.”.

Substitution of section 3 of Act 97 of 1990, as substituted by section 2 of Act 12 of 2000 and amended by section 20 of Act 22 of 2008

56. The following section is hereby substituted for section 3 of the principal Act:

“Functions of board

3. (1) The functions of the board are to— 5
- (a) **[to]** supervise and enforce compliance with laws regulating financial institutions and the provision of financial services;
 - (b) **[to]** advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and 10
 - (c) **[to promote programmes and initiatives by financial institutions and bodies representing the financial services industry to inform and educate users and potential users of]** provide, promote or otherwise support financial education, awareness and confidence regarding financial products, institutions and services. 15
- (2) The Minister may prescribe a code of engagement, consultation and communication for the board.”.

Amendment of section 6 of Act 97 of 1990, as amended by section 5 of Act 12 of 2000

57. Section 6 of the principal Act is hereby amended by the addition of the following subsection: 20

“(3) The Minister, on terminating the membership of any member or alternate member of the board in accordance with subsection (2), must publish the reasons for the termination in appropriate media.”.

Amendment of section 10 of Act 97 of 1990, as substituted by section 22 of Act 22 of 2008 25

58. Section 10 of the principal Act is hereby amended by the addition of the following subsection:

“(8) Despite subsection (7), the board may not rescind or amend a decision of the enforcement committee.”.

Amendment of section 12 of Act 97 of 1990 30

59. Section 12 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) borrow money **[by the issue of stock or in any other manner to a maximum amount approved by the Minister]** subject to the Public Finance Management Act;”. 35

Amendment of section 13 of Act 97 of 1990, as amended by section 3 of Act 41 of 1992 and section 9 of Act 12 of 2000

60. Section 13 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) The executive officer shall, subject to supervision by the board, perform the functions entrusted to **[him]** the executive officer by or in terms of this or any other Act. 40

(b) A deputy executive officer or the chief actuary must perform the functions delegated to the deputy executive officer or chief actuary under this Act and is accountable to the executive officer for the performance of those functions.”. 45

Amendment of section 16 of Act 97 of 1990, as amended by section 4 of Act 41 of 1992 and section 3 of Act 84 of 1992

61. Section 16 of the principal Act is hereby amended by the deletion of subsections (4) and (5).

Repeal of section 17 of Act 97 of 1990

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62. Section 17 of the principal Act is hereby repealed.

Substitution of section 18 of Act 97 of 1990, as substituted by section 13 of Act 12 of 2000

63. The following section is hereby substituted for section 18 of the principal Act:

“Consultation with Minister and Financial Sector Registrars

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18. (1) (a) Section 18(2) and (3) of the Competition Act, 1998 (Act No. 89 of 1998), applies with the changes required by the context to a merger which requires the approval of the Minister or the relevant Registrar referred to in Financial Services Board legislation.

(b) For the purposes of paragraph (a), ‘merger’ means a merger as defined in section 12 of the Competition Act, 1998 (Act No. 89 of 1998).

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(c) Section 116(4) and (9) of the Companies Act, 2008 (Act No. 71 of 2008), applies with the changes required by the context to an amalgamation or a merger which requires the approval of the Minister or the relevant Registrar referred to in Financial Services Board legislation.

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(d) For the purposes of paragraph (c), ‘amalgamation’ or ‘merger’ means an amalgamation or merger as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008).

(2) The board and members of the executive contemplated in section 9(4)—

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(a) must consult with the Minister on any matter relating to the exercise of such of their powers and the performance of such of their duties under this Act or any other law as the Minister may determine; and

(b) may consult with the Minister on any other matter which the board or any such member wishes to bring to the attention of the Minister.”

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Amendment of section 20 of Act 97 of 1990, as amended by section 6 of Act 41 of 1992 and section 25 of Act 22 of 2008

64. Section 20 of the principal Act is hereby amended—

(a) by the insertion after subsection (3) of the following subsection:

“(3A) A deputy executive officer may—

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(a) delegate to an officer or employee of the board any power delegated to the deputy executive officer under this Act or any other law; or

(b) authorise such officer or employee to perform any duty assigned to the deputy executive officer under this Act or any other law.”;

(b) by the substitution for subsections (4) and (5) of the following subsections, respectively:

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“(4) Any delegation under subsection (1), (2)(a) **[or]**, (3)(a) or (3A)(a) does not prohibit the exercise of the power in question by the Minister, board **[or]**, executive officer or deputy executive officer, as the case may be.

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(5) Anything done or omitted to be done by an officer or employee of the board, or a deputy executive officer, in the exercise of any power or the performance of any duty delegated or assigned **[to him]** under subsection (3) **[, or by the deputy executive officers under any other law,]** or subsection (3A) shall be deemed to have been done or omitted by the **[executive officer]** person that delegated or assigned the power or duty.”; and

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(c) by the addition of the following subsection:

“(6) The board, the executive officer and the deputy executive officers must develop an appropriate system of delegation that will maximise administrative and operational efficiency and provide adequate checks and balances in the performance of their functions.”.

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Substitution of section 21 of Act 97 of 1990, as amended by section 69 of Act 104 of 1993 and section 14 of Act 12 of 2000

65. The following section is hereby substituted for section 21 of the principal Act:

“Annual report

21. The annual report of the board must include a list of all directives and exemptions issued under Financial Services Board legislation during the reporting period and must indicate that the directives and exemptions are available on the official web site.”.

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Amendment of section 22 of Act 97 of 1990, as amended by section 7 of Act 41 of 1992, section 15 of Act 12 of 2000 and section 26 of Act 22 of 2008

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66. Section 22 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) Subject to paragraph (b) and subsection (2), no information obtained in the performance of any function under this Act, Financial Services Board legislation, the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), or the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), may be disclosed to any person, other than to the Minister, the National Treasury and any other organ of state designated by the Minister by notice in the *Gazette*, by—

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- (i) a member or alternate member, or former member or former alternate member, of the board;
- (ii) a member or former member of a committee of the board;
- (iii) a member or former member of the appeal board; or
- (iv) a person referred to in section 13 (including any employee or contractor or consultant of or person acting on behalf of the board), while appointed or after such appointment has terminated.”.

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Substitution of section 23 of Act 97 of 1990, as substituted by section 27 of Act 22 of 2008

67. The following section is hereby substituted for section 23 of the principal Act:

“Limitation of liability

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23. No person shall be liable for any loss sustained by, or damage caused to, any other person as a result of anything done or omitted by that person in the *bona fide* [but not grossly negligent,] exercise of any power or the carrying out of any duty or the performance of any function under or in terms of this Act, the Acts referred to in the definition of ‘financial institution’, the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), or the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”.

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Substitution of section 28 of Act 97 of 1990, as substituted by section 19 of Act 12 of 2000

68. The following section is hereby substituted for section 28 of the principal Act:

“Application of Act and Financial Services Board legislation in relation to other legislation

28. (1) The provisions of this Act shall not affect the operation of any bank or mutual bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993), respectively, in respect of any bank or mutual bank business carried on by such a bank or mutual bank in accordance with the provisions of the said Acts.

(2) (a) Subject to subsections (1) and (4), the provisions of Financial Services Board legislation prevail over any provision of other legislation that conflicts with or is inconsistent with a provision of Financial Services Board legislation.

(b) Without derogating from the generality of paragraph (a), the Consumer Protection Act, 2008 (Act No. 68 of 2008), does not apply to—

(i) any person, function, act, transaction, goods or services that is or are subject to Financial Services Board legislation; or

(ii) the board or a registrar referred to in Financial Services Board legislation.

(3) Despite any other law, but subject to subsection (4)—

(a) if any conduct regulated by Financial Services Board legislation is, partially or fully, also regulated by any other legislation—

(i) the Financial Services Board legislation and that other legislation may not be construed as establishing concurrent regulatory jurisdictions in respect of such conduct;

(ii) the registrar referred to in the Financial Services Board legislation must be regarded as the lead authority regulating that conduct; and

(iii) any action taken by that registrar in terms of the Financial Services Board legislation overrides any conflicting action taken by the organ of state administering that other legislation;

(b) if any other national legislation confers a power on or imposes a duty upon an organ of state in respect of a matter regulated by Financial Services Board legislation, that power or duty must be exercised or performed in consultation with the registrar referred to in the Financial Services Board legislation, and any decision taken in accordance with that power or duty must be taken with the approval of that registrar.

(4) Subsections (2) and (3) do not apply to—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) legislation relating to the access to information, the protection of information or the administration of justice administered by the Minister of Justice and Constitutional Development; and

(c) regulators established in terms of the legislation referred to in paragraphs (a) and (b).”.

Part 4

Amendment of Long-term Insurance Act, 1998

Amendment of section 1 of Act 52 of 1998, as amended by section 2 of Act 17 of 2003 and section 1 of Act 27 of 2008

69. Section 1 of the Long-term Insurance Act, 1998 (in this Part referred to as the principal Act), is hereby amended—

(a) by the deletion in subsection (1) of the definition of “Advisory Committee”;

(b) by the substitution in subsection (1) for the definition of “Companies Act” of the following definition:

“ ‘**Companies Act**’ means the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;

- (c) by the substitution in subsection (1) for the definitions of “financial reporting standards” and “financial statements” of the following definitions, respectively:
- “**‘financial reporting standards’** has the meaning assigned to it section 1[(1)] of the Companies Act; 5
- “**‘financial statements’** has the meaning assigned to it in section 1[(1)] of the Companies Act;”;
- (d) by the insertion in subsection (1) after the definition of “Financial Services Board Act” of the following definition:
- “**‘fit and proper requirements’** includes such qualities of competence, integrity and financial standing as may be prescribed by the Registrar by notice in the *Gazette*;”;
- (e) by the insertion in subsection (1) after the definition of “Minister” of the following definition:
- “**‘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 Board;”;
- (f) by the substitution in subsection (1) for the definition of “prescribe” of the following definition:
- “**‘prescribe’** means to determine from time to time by notice on the official web site, unless notice in the *Gazette* is specifically required by this Act;”;
- (g) by the substitution in subsection (1) for the definition of “public company” of the following definition:
- “**‘public company’** means a public company **[with a share capital which is a public company under section 19]** as defined in section 1 of the Companies Act, and includes a state-owned company as defined in section 1 of that Act;”;
- (h) by the insertion in subsection (1) after the definition of “public company” of the following definition:
- “**‘publish’** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;”;
- (i) by the substitution in subsection (1) for the definition of “Registrar” of the following definition:
- “**‘Registrar’** means the **[Registrar or the Deputy Registrar of Long-term Insurance]** person referred to in section 2;”;
- (j) by the substitution in subsection (1) for the definition of “subsidiary” of the following definition:
- “**‘subsidiary’** has the meaning determined in accordance with section 3 of the Companies Act;”;
- (k) by the deletion in subsection (1) of the definition of “widely-held company”.

Substitution of section 2 of Act 52 of 1998, as substituted by section 2 of Act 27 of 2008

70. The following section is hereby substituted for section 2 of the principal Act:

“Registrar and Deputy Registrar of Long-term Insurance

2. (1) The person appointed as executive officer in terms of section 13 of the Financial Services Board Act is the Registrar of Long-term Insurance and has the powers and duties provided for by or under this Act or any other law. 50
- (2) The person appointed as deputy executive officer in terms of section 13 of the Financial Services Board Act is the Deputy Registrar of Long-term Insurance. 55
- (3) The Deputy Registrar of Long-term Insurance exercises or carries out the powers and duties of the Registrar of Long-term Insurance to the extent that such powers have been delegated to the Deputy Registrar under section 20 of the Financial Services Board Act and to such extent that the Deputy

Registrar has been authorised under section 20 of the Financial Services Board Act to perform such duties.”.

Amendment of section 3 of Act 52 of 1998

71. Section 3 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, **[after consultation with the Advisory Committee,]** which are held by the Registrar under this Act in relation to a long-term insurer or obtain a copy of or extract from any such document.”.

Amendment of section 4 of Act 52 of 1998, as amended by section 3 of Act 17 of 2003 and section 3 of Act 27 of 2008

72. Section 4 of the principal Act is hereby amended—

(a) by the deletion of subsection (3);

(b) by the substitution for paragraph (f) of subsection (4) of the following paragraph:

“(f) The Registrar **[may]** must, where a directive is issued to ensure the protection of the public in general, publish the directive **[in the Gazette]** on the official web site and any other media that the Registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”;

(c) by the deletion of subsection (6); and

(d) by the addition of the following subsection:

“(8) (a) The Registrar may—

(i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person to conduct an on-site visit of the business and affairs of a long-term insurer or an independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business; or

(ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).

(b) A person conducting an on-site visit in terms of paragraph (a)(i) may—

(i) at any time during business hours—

(aa) enter the premises of the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business, and the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;

(bb) search the premises of the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business for any document;

(cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;

(dd) against the issue of a receipt seize any document which may furnish proof of any failure to comply with the provisions of this Act;

(ii) require the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the long-term insurer, independent intermediary,

representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business;

- (iii) require any person that is holding or is accountable for any document to provide information and an explanation of that information.

(9) After an on-site visit or inspection has been carried out in terms of subsection (8), the Registrar may direct the long-term insurer, independent intermediary, representative, person to whom the long-term insurer has outsourced a part of its long-term insurance business or any other person concerned to take any steps, or to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

(10) The Registrar may, if disclosure is in the public interest, make known by notice on the official web site or by means of any other appropriate public media—

- (a) the outcome and details of an on-site visit;
- (b) the status and outcome of an inspection;
- (c) the details of an inspection.”.

Repeal of section 6 of Act 52 of 1998

73. Section 6 of the principal Act is hereby repealed.

Amendment of section 8 of Act 52 of 1998, as amended by section 4 of Act 17 of 2003

74. Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) subject to section 8(1)(a) of the Short-term Insurance Act, 1998, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word ‘insure’, ‘assure’ or ‘underwrite’ or any derivative thereof, unless **[he, she or it]** such person is a long-term insurer; **[or]**”; and

- (b) by the addition to subsection (1) of the following paragraphs:

“(c) publish any advertisement, brochure or similar communication which relates to the business of a long-term insurer, or to a long-term policy, and which is misleading or contrary to the public interest or contains an incorrect statement of fact; or

(d) publish any advertisement, brochure or similar communication which relates to a long-term policy that does not prominently include the name of the long-term insurer underwriting the long-term policy.”.

Amendment of section 10 of Act 52 of 1998, as amended by section 5 of Act 17 of 2003 and section 5 of Act 27 of 2008

75. Section 10 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) requiring that the provisions of the **[memorandum and articles of association]** Memorandum of Incorporation, or equivalent constitution, of the long-term insurer must be suitable to enable it to carry on long-term insurance business; or”.

Amendment of section 12 of Act 52 of 1998

76. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) [(i)] has made a material misrepresentation to members of the public in connection with the long-term insurance business carried on by it;
 [(ii) **has failed to comply with a material condition subject to which it is registered or deemed to be registered as a long-term insurer;**
 (iii) **has contravened or failed to comply with a material provision of this Act, and has thereafter, within a period determined by the Registrar, failed to remedy such conduct to the satisfaction of the Registrar; or]**”;
- (b) by the insertion in subsection (1) after paragraph (b) of the following paragraphs:
- “(bA) no longer meets the conditions under which it was registered;
 (bB) has failed to comply with any other condition imposed under this Act;
 (bC) has failed to comply with any directive issued under this Act;
 (bD) is in the opinion of the Registrar not managed in accordance with sound corporate governance principles, or is owned or managed by persons who are not fit and proper;
 (bE) has contravened or failed to comply with a provision of this Act;
or”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3)[(b)(i), (iii) or (iv)].”;
- (d) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) **[if it is appropriate and if the Minister has authorised the Registrar in writing to do so,]** prohibit the long-term insurer from carrying on such long-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.”.

Amendment of section 13 of Act 52 of 1998

77. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words following paragraph (c) of the following words:
- “by notice direct the long-term insurer concerned, with effect from a date specified in the notice, not to enter into any more long-term policies and require it to make arrangements satisfactory to the Registrar to discharge its obligations under all long-term policies entered into before the specified date and, when the Registrar is satisfied that the long-term insurer concerned no longer has any obligations under any such policy, shall, by notice to the long-term insurer and **[in the Gazette]** on the official web site, cancel its registration.”; and
- (b) by the substitution in subsection (3) for the words following paragraph (b) of the following words:
- “the Registrar shall by notice **[in the Gazette]** on the official web site cancel its registration.”.

Substitution of section 14 of Act 52 of 1998

78. The following section is hereby substituted for section 14 of the principal Act:

“Deregistration of long-term insurers as companies

14. For the purposes of section [73(5)] 82(3) of the Companies Act in relation to a long-term insurer, the reference to the **[Registrar of Companies]** Commission in that section shall be construed as a reference

to the **[Registrar of Companies]** Commission acting in concurrence with the Registrar.”.

Amendment of section 15 of Act 52 of 1998

- 79.** Section 15 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice **[in the Gazette]** on the official web site—”; and
 - (b) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:

“(ii) long-term insurers generally, **[in the Gazette]** on the official web site; and”.

Amendment of section 19 of Act 52 of 1998, as amended by section 6 of Act 27 of 2008

- 80.** Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A long-term insurer shall at all times have one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a **[widely-held]** public company.”.

Amendment of section 21 of Act 52 of 1998

- 81.** Section 21 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) an auditor in terms of section 19(1), the Registrar may, notwithstanding **[sections 269(4) and 271(1)]** section 90(1) and (2)(c) of the Companies Act, but subject to section 19 of this Act, appoint an auditor for that long-term insurer;”.

Amendment of section 23 of Act 52 of 1998, as amended by section 8 of Act 27 of 2008

- 82.** Section 23 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

“(1) **[The]** Despite section 94(2) of the Companies Act, the board of directors of a long-term insurer shall appoint an audit committee **[of at least three members of whom at least two shall be independent non-executive directors within the meaning of section 269A(4)(b) and (c) of the Companies Act]**.”; and
 - (b) by the substitution of subsection (3) for the words preceding paragraph (a) of the following words:

“The functions of the audit committee, in addition to the functions referred to in section **[270A(1)]** 94(7) of the Companies Act, are—”.

Substitution of section 24 of Act 52 of 1998, as amended by section 8 of Act 17 of 2003 and section 9 of Act 27 of 2008

- 83.** The following section is hereby substituted for section 24 of the principal Act:

“Preference shares, debentures, share capital and share warrants

- 24.** (1) Notwithstanding the provisions of the Companies Act, a long-term insurer shall not without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—
- (a) issue any securities or change the capital structure of the company;
 - (b) reduce its share capital;

- (c) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 48 of the Companies Act; or
 - (d) conclude a transaction contemplated in section 44 of the Companies Act.
- (2) The conditions referred to in subsection (1) may include a new or varied registration condition contemplated in section 10 or 11.” 5

Amendment of section 25 of Act 52 of 1998, as amended by section 10 of Act 27 of 2008

84. Section 25 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph: 10
- “(b) to or in the name of **[an executor, administrator, trustee, curator, guardian or liquidator in the circumstances contemplated in section 103(3) of the Companies Act]** an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestered or an administrator, curator or guardian of a shareholder who is otherwise under disability;” 15

Amendment of section 26 of Act 52 of 1998, as amended by section 9 of Act 17 of 2003

85. Section 26 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively: 20
 - “(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the Registrar, 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 over that long-term insurer. 25
 - (2) No person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares in a long-term insurer or a related party of that long-term insurer if— 30
 - (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 [his, her or its] related parties, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned[, without first having obtained the approval of the Registrar]; 35
 - (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 per cent or more of all the shares in a specific class of shares issued by the long-term insurer concerned.”; 40
 - (b) by the insertion after subsection (2) of the following subsection: 45

“(2A) A long-term insurer must inform the Registrar if a person, directly or indirectly, acquires shares or any other financial interest referred to in subsection (1) or (2) in that long-term insurer.”;
 - (c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph: 50

“(i) subject to the aggregate nominal value of the shares or total number of shares in a specific class of shares or aggregate number of all the shares owned by the person concerned and his, her or its related party not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;” 55
 - (d) by the substitution in subsection (3)(c) for subparagraph (i) the following subparagraph:

“(i) of the aggregate nominal value or number of a specific class; and”;

- (e) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
- “(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding **[with a total nominal value]** to a shareholding not exceeding 25 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
 - (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to **[25] 15** per cent of the voting rights attached to all the issued shares of the long-term insurer.”;
- (f) by the substitution in subsection (5)(a) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:
- “(i) **[his or her]** a person who is recognised in law or the tenets of a religion as the spouse, life partner or civil union partner of that person;
 - (ii) **[his or her]** a child[, parent] of that person, including a stepchild **[or stepparent and any spouse of any such person]**, adopted child and a child born out of wedlock;”;
- (g) by the insertion in subsection (5)(a) after subparagraph (ii) of the following subparagraphs:
- “(iiA) a parent or stepparent of that person;
 - (iiB) a person in respect of whom that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the regular care needs of the first-mentioned person;
 - (iiC) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii), (iiA) and (iiB);
 - (iiD) a person who is in a commercial partnership with that person;”;
- (h) by the substitution in subsection (5)(b) for subparagraph (i) of the following subparagraph:
- “(i) which is a company, means **[its]** any subsidiary **[and its]** or holding company **[and]** of that company, any other subsidiary **[or]** of that holding company **[thereof]** and any other company of which that holding company is a subsidiary;”;
- (i) by the substitution in subsection (6) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
- “(a) holds shares in the long-term insurer of which—
 - (i) the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;
 - (ii) the total number of shares represents 25 per cent or more of all the shares in a specific class of shares issued by that long-term insurer;
 - (b) **[holds shares which entitle such person to exercise more than 25 per cent of the voting rights attached to the issued shares of that long-term insurer]** is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
 - (c) has the **[power to determine the appointment of 25 per cent or more of the directors of that long-term insurer, including the power—**
 - (i) **to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or**
 - (ii) **to prevent a person from being appointed as a director without another person’s consent]** right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board.”.

Amendment of section 28 of Act 52 of 1998

86. Section 28 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “No person shall, despite any other law—”; 5
- (b) by the substitution in subsection (1) for the words following paragraph (b) of the following words:
 “a share in a long-term insurer or a related party of that long-term insurer allotted or issued to such first-mentioned person or registered in such person’s name contrary to this Act.”; and 10
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) The validity of a resolution passed by a long-term insurer or a related party of that long-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).”. 15

Amendment of section 32 of Act 52 of 1998

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87. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) For the purposes of subsection (2) ‘policy holder fund’ means a fund referred to in paragraph (a), (b) or (c) of section 29A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

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Amendment of section 37 of Act 52 of 1998

88. Section 37 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 “**[Court] Registrar approval required for compromise, arrangement, amalgamation, demutualisation or transfer**”; and 25
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) No transaction to which a long-term insurer is a party and which constitutes an agreement by which all or any part of the business of a long-term insurer is transferred to another person, or by which a fundamental transaction or compromise~~[, arrangement or amalgamation]~~ contemplated in Part A of Chapter [XII] 5 and section 155 of the Companies Act is effected, or by which a long-term insurer which is not a company having a share capital is to be converted into a public company having a share capital, shall have legal force without the approval of the **[Court] Registrar**.”. 30
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Amendment of section 38 of Act 52 of 1998

89. Section 38 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 “**Application to [Court] Registrar**”; 40
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “When application is made to the [Court] Registrar for the approval of a transaction referred to in section 37—”; 45
- (c) by the substitution in subsection (1)(a) for subparagraphs (i), (ii) and (iii) of the following subparagraphs, respectively: 45
 - “(i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction, which particulars must be provided in the form as may be required by the Registrar;
 - (ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the *Gazette* and in such other **[newspapers] media** as the Registrar may determine; 50
 - (iii) **[before lodging the application, serve upon the Registrar a copy of the notice of motion, and of all accompanying affidavits and other documents relating thereto and to be filed in support of** 55

- the application]** upon making the application, provide the Registrar with the application and all other documents relating thereto and supporting the application;”;
- (d) by the deletion in subsection (1)(c) of the word “and” at the end of subparagraph (i); 5
- (e) by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph: 10
- “(ii) by notice, direct any party to the transaction to provide the Registrar or that person with all information and documents relating to the transaction which **[he or she]** the Registrar may require; and”;
- (f) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 15
- “(d) **[the Registrar and]** any policyholder, shareholder or creditor of the long-term insurer concerned may, within the period referred to in paragraph (b), file affidavits and other documents relating thereto and may appear before the Registrar and be heard **[at the hearing of the application]** in connection therewith.”;
- (g) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
- “If a long-term insurer which is not a company having a share capital applies to the **[Court] Registrar** for approval of a transaction or combination of transactions in terms of a scheme which proposes or is in connection with its demutualisation, such scheme may include, and the **[Court] Registrar** may approve the following matters, namely—”; and
- (h) by the substitution in subsection (3) for paragraph (c) of the following paragraph: 25
- “(c) the date on which such scheme takes effect, which date may be a date before or after the date of approval by the **[Court] Registrar**.”.

Amendment of section 39 of Act 52 of 1998, as amended by section 16 of Act 17 of 2003 30

- 90.** Section 39 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
- “Notwithstanding the provisions of the Companies Act, the approval of the **[Court] Registrar** of a transaction referred to in section 37(1) may be granted subject to such conditions as the Registrar may determine and shall not be granted—”. 35

Amendment of section 40 of Act 52 of 1998

- 91.** Section 40 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively: 40
- “(1) A transaction referred to in section 37(1) which is approved by the **[Court] Registrar** shall be binding on all persons and shall have effect as **[ordered]** directed by the **[Court] Registrar** notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto. 45
- (2) Notice of the passing of a special resolution (if any) by the members of a long-term insurer confirming a transaction referred to in section 37 (1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public officer of the long-term insurer **[to be]** as a true and correct copy shall be furnished to the Registrar by the long-term insurer concerned, within 60 days of the passing of the resolution, **and certified copy of the order of Court as soon as practicable**.”; 50
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 55
- “(a) The officer in charge of a deeds registry or other office in which is registered any bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 37(1) or 70 shall, upon production by the long-term insurer concerned of the

relevant bond, title deed or registration certificate and a certified copy of the **[order of Court concerned]** approval of the Registrar, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to effect the transfer concerned.”; and 5

(c) by the substitution for subsection (4) of the following subsection:

“(4) A long-term insurer which is converted into a public company in accordance with this Part shall continue its corporate existence in the form of a public company incorporated under the Companies Act, and the **[Registrar of Companies shall register its memorandum and articles of association in accordance with section 36]** Commission shall endorse its Memorandum of Incorporation in accordance with section 14 of the Companies Act.” 10

Substitution of heading of Part VI of Act 52 of 1998

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92. The following heading is hereby substituted for the heading of Part VI of the principal Act:

“**[Judicial management] Business rescue and winding-up of long-term insurers**”.

Substitution of section 41 of Act 52 of 1998

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93. The following section is hereby substituted for section 41 of the principal Act:

“Business rescue

41. (1) The Registrar may make an application under section 131 of the Companies Act in respect of a long-term insurer if the Registrar is satisfied, whether in accordance with section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of the long-term insurer to do so. 25

(2) The following acts are subject to the approval of the Registrar:

- (a) The resolution of a long-term insurer to begin business rescue proceedings; 30
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act.

(3) In the application of Chapter 6 of the Companies Act—

- (a) a reference to the Commission shall be construed as a reference also to the Registrar; 35
- (b) the reference to creditors shall be construed as a reference also to the policyholders of the long-term insurer;
- (c) a reference relating to the inability of a long-term insurer to pay all its debts, shall be construed as relating also to its inability to comply with section 29(1) of this Act; 40
- (d) in addition to any question relating to the business of a long-term insurer, there shall be considered also the question whether any proposed action is in the interests of the policyholders.

(4) If an application to a Court for an order relating to the business rescue of a long-term insurer is made by an affected person other than the Registrar— 45

- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the Registrar at least 60 days before the application is set down for hearing; 50
- (b) the Registrar may, if satisfied that the application is not in the interests of policyholders of the long-term insurer, join in the application as a party and file affidavits and other documents in opposition to the application. 55

(5) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a long-term insurer shall not

enter into any new long-term policies, unless the practitioner has been granted permission to do so by the Registrar.”.

Amendment of section 42 of Act 52 of 1998

94. Section 42 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
“Winding-up [by Court]”;
 - (b) by the substitution for subsections (1) and (2) of the following subsections, respectively:
 - “(1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, **[Chapter XIV of]** sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a long-term insurer, and in such application the Registrar shall be deemed to be a person authorised **[by section 346 of]** under the Companies Act to make an application to the Court for the winding-up thereof. 10 15
 - (2) The Registrar may**[, with the written approval of the Minister,]** make an application under **[section 346 of]** the Companies Act for the winding-up of a long-term insurer if **[he or she]** the Registrar is satisfied, whether as contemplated in section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of that long-term insurer to do so.”; 20
 - (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 25
“In the application of [Chapter XIV of] sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act as provided by subsection (1)—”;
 and
 - (d) by the substitution in subsection (3) for paragraphs (c), (d) and (e) of the following paragraphs, respectively: 30
 - “(c) notwithstanding any other provision of [that Chapter] sections 79 to 81 and item 9 of Schedule 5, there shall be considered whether a person is acting in contravention of section 7(1)(a) of this Act; 30**
 - (d) [in the following sections of the Companies Act, namely—**
 - (i) sections 392, 394(5) and 400,] the [reference] references to the Master, Registrar of Companies, Panel and Commission shall be construed as a reference also to the Registrar; 35**
 - [(ii) sections 375(5)(a) and 419(1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar; and**
 - (iii) section 400, the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act;] and 40**
 - (e) [section 346(3) of the Companies Act] the requirement to give security shall not apply where the Registrar makes the application to Court.”. 45**

Amendment of section 43 of Act 52 of 1998

95. Section 43 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words: 50
“No special resolution relating to the winding-up of a long-term insurer as contemplated in [section 349 of] sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall be filed or registered [in terms of section 200 of] under that Act, and no special resolution to that effect in terms of the constitution of a long-term insurer which is not a company shall have legal force—”; and 55
 - (b) by the addition of the following subsection, the existing section becoming subsection (1):
 - “(2) Subject to item 9 of Schedule 5 to the Companies Act, the reference to a long-term insurer in this section shall for the purposes of**

the application of sections 79, 80 and 81 of the Companies Act be construed as a reference to a financially sound long-term insurer.”.

Substitution of section 45 of Act 52 of 1998

96. The following section is hereby substituted for section 45 of the principal Act:

“Prohibition on inducements

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45. [No] Unless done in accordance with the rules made under section 62, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a long-term policy, other than a reinsurance policy.”.

Substitution of section 49 of Act 52 of 1998, as amended by section 17 of Act 27 of 2008

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97. The following section is hereby substituted for section 49 of the principal Act:

“Limitation of remuneration [to intermediaries]

49. No consideration shall be offered or provided by or on behalf of a long-term insurer, a policyholder or [a] any other person [on behalf of the long-term insurer], or accepted by any independent intermediary or any other person, for rendering services **[as intermediary as]** referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.”.

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Repeal of section 50 of Act 52 of 1998

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98. Section 50 of the principal Act is hereby repealed.

Amendment of section 51 of Act 52 of 1998

99. Section 51 of the principal Act is hereby amended by the substitution for the words following paragraph (b) of the following words:

“or until arrangements to its satisfaction have been made for the provision of the premium by debit order, stop order, credit card or other instrument approved by the Registrar generally by notice **[in the Gazette]** on the official web site.”.

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Amendment of section 53 of Act 52 of 1998

100. Section 53 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 30

“(1) Despite the terms of an assistance policy entered into before 1 June 2009, the policyholder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money must be equal in value to the **[cost the long-term insurer]** policy benefit expressed otherwise than as a sum of money that would have [incurred] been provided had the policy benefit been provided otherwise than as a sum of money.”; and

35

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 40

“(b) state the amount of the policy benefit that is to be provided as a sum of money, which amount must be equal to the value of the policy benefit expressed otherwise than as a sum of money.”.

Amendment of section 60 of Act 52 of 1998

101. Section 60 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If a person has entered into a long-term policy with a long-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the long-term policy, or with another person who is not a long-term insurer but who has in terms of a long-term policy undertaken an obligation as insurer, that person, by notice in writing to such long-term insurer or other person, or the Registrar by notice to such long-term insurer or other person and **[in the Gazette]** on the official web site, may cancel the long-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such long-term insurer or other person as if the policy had been cancelled by that person on account of a breach of contract by such long-term insurer or other person.”.

Substitution of section 62 of Act 52 of 1998

102. The following section is hereby substituted for section 62 of the principal Act:

“Protection of policyholders

62. (1) The Registrar, by notice in the *Gazette*, may—

(a) make rules aiming to ensure that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;

(b) vary or rescind any such rule; and

(c) determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette*.

(2) Without derogating from the generality of subsection (1)(a), rules may provide—

(a) that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;

(b) that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;

(c) that a policyholder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does so;

(d) for norms and standards with which a policy, a long-term insurer or a type of long-term insurance business must comply;

(e) for standardised wording, definitions or provisions that must be included in a policy; and

(f) that in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 66(1)(c) or 67(1)(c) shall apply.

(3) Rules referred to in subsection (2) may—

(a) apply generally; or

(b) be limited in application to a particular kind or type of policy, long-term insurer or long-term insurance business.

(4) (a) Before the Registrar prescribes any rule under this section, the Registrar must—

(i) publish notice of the release of the proposed rule in the *Gazette*, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and

(ii) submit the draft rules to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.

(b) If the Registrar alters a draft rule because of any comment, the Registrar need not publish the alteration before making the rule.

(c) After consideration of any comments received in response to the publication and tabling of the draft proposed rule in terms of paragraph (a), the Registrar may publish the final rule in the *Gazette*.

- (5) The Registrar may, if circumstances necessitate the immediate publication of a rule, publish that rule without complying with subsection (4)(a), but the notice of publication of that rule must—
- (a) set out the reason why circumstances necessitated publication of the rule without giving notice in accordance with subsection (4)(a); and
 - (b) invite any person who is aggrieved by the rule to make representations to the Registrar within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.
- (6) If the Registrar publishes a rule in terms of subsection (5), the notice referred to in subsection (5) must be tabled in Parliament, and the National Assembly may instruct the Registrar to repeal or amend the rule.
- (7) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2012, must be regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.”.

Amendment of section 63 of Act 52 of 1998

103. Section 63 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to subsections (2), (3) and ~~[(3)]~~ (4), the policy benefits provided or to be provided to a person under one or more assistance, life, disability or health policies in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy—”;
- (b) by the substitution for subsection (2) of the following subsection:

“(2) The protection contemplated in subsection (1) shall apply to policy benefits and assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided.”; and
- (c) by the addition of the following subsection:

“(4) Policy benefits are protected as provided for in subsection (1)(a) and (b), unless it can be shown that the policy in question was taken out with the intention to defraud creditors.”.

Amendment of section 66 of Act 52 of 1998, as amended by section 20 of Act 27 of 2008

104. Section 66 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) where a rule contemplated in section 62(2)~~[(e)]~~(f) so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 62(5),]** to the extent so provided; or”;
- (b) by the substitution in subsection (1) for the words following paragraph (d) of the following words:

“shall be guilty of an offence and liable on conviction to a fine not exceeding **[R100 000]** R5 million or to imprisonment for a period not exceeding **[one year]** five years, or to both such fine and such imprisonment.”; and
- (c) by the substitution for subsection (2) of the following subsection:

“(2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a), 8(3), 20(5)(b)~~[L]~~ or 26(1) or (2) **[or 50(4) or (6)]**, shall be guilty of an offence and liable on conviction to a fine not exceeding **[R1 000 000]** R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”.

Amendment of section 67 of Act 52 of 1998, as amended by section 21 of Act 27 of 2008

105. Section 67 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
 “(c) where a rule contemplated in section 62(2)(e)(f) so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 62(5),]** to the extent so provided;”;
- (b) by the substitution in subsection (1) for the words following paragraph (c) of the following words: 10
 “shall be guilty of an offence and liable on conviction to a fine not exceeding **[R100 000]** R5 million.”; and
- (c) by the substitution for subsection (2) of the following subsection: 15
 “(2) A long-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1) or (2), 19(1) or (3), 20(1), (3) or (4), 24, 26(1) or (2), 29(1), 30, 31(1), 34[, or 46 **[or 50(4) or (6)]**, shall be guilty of an offence and liable on conviction to a fine not exceeding **[R1 000 000]** R10 million.”.

Amendment of section 68 of Act 52 of 1998

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106. Section 68 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding **[R1 000]** R5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof. 25
- (b) The amount referred to in paragraph (a) must be adjusted by the Registrar annually in order to reflect the Consumer Price Index, as published by Statistics South Africa.” 30

Amendment of section 71 of Act 52 of 1998, as amended by section 22 of Act 27 of 2008

107. Section 71 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 35
 “(1) Notwithstanding anything to the contrary in any law contained, a long-term insurer which is not a public company, shall be subject to section **[36]** 20 of the Companies Act with the necessary changes, as if it were a public company having a share capital.”; and
- (b) by the substitution for subsection (3) of the following subsection: 40
 “(3) The financial statements of a long-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with financial reporting standards applicable to a **[widely-held]** public company having a share capital.”.

Amendment of Schedule 1 to Act 52 of 1998, as amended by section 21 of Act 17 of 2003 and section 24 of Act 27 of 2008

45

108. Schedule 1 to the principal Act is hereby amended by the substitution for the expression “in the *Gazette*”, wherever it occurs, of the expression “on the official web site”.

Amendment of Schedule 3 to Act 52 of 1998, as substituted by section 23 of Act 17 of 2003 and amended by section 25 of Act 27 of 2008

109. Schedule 3 to the principal Act is hereby amended by the substitution in item 7 for subitem (1) of the following subitem:

- “(1) The liabilities of a long-term insurer, other than its contingent liabilities under long-term policies, shall be determined in accordance with financial reporting standards applicable to **[widely-held]** public companies.”. 5

Amendment of Arrangement of Sections of Act 52 of 1998, as amended by section 1 of Act 17 of 2003 and section 27 of Act 27 of 2008

110. The Arrangement of Sections of the principal Act is hereby amended— 10
- (a) by the substitution for item 2 of the following item:
 - “2. Registrar and Deputy Registrar of Long-term Insurance”;
 - (b) by the deletion of item 6;
 - (c) by the substitution for item 37 of the following item:
 - “37. Registrar approval required for compromise, arrangement, amalgamation, demutualisation or transfer”;
 - (d) by the substitution for item 38 of the following item:
 - “38. Application to Registrar”;
 - (e) by the substitution for the heading of Part VI of the following heading:
 - “**Business rescue and winding-up of long-term insurers**”;
 - (f) by the substitution for items 41 and 42 of the following items, respectively:
 - “41. Business rescue
 - 42. Winding-up”;
 - (g) by the substitution for item 49 of the following item:
 - “49. Limitation of remuneration”;
 - (h) by the deletion of item 50. 25

Part 5

Amendment of Short-term Insurance Act

Amendment of section 1 of Act 53 of 1998, as amended by section 25 of Act 17 of 2003 and section 27 of Act 27 of 2008 30

111. Section 1 of the Short-term Insurance Act, 1998 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definition of “Advisory Committee”;
- (b) by the substitution in subsection (1) for the definition of “Companies Act” of the following definition:
 - “**‘Companies Act’** means the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;
- (c) by the substitution in subsection (1) for the definitions of “financial reporting standards” and “financial statements” of the following definitions, respectively:
 - “**‘financial reporting standards’** has the meaning assigned to it section 1[(1)] of the Companies Act;
 - ‘financial statements’** has the meaning assigned to it in section 1[(1)] of the Companies Act;”;
- (d) by the insertion in subsection (1) after the definition of “Financial Services Board Act” of the following definition:
 - “**‘fit and proper requirements’** includes such qualities of competence, integrity and financial standing as may be prescribed by the Registrar by notice in the *Gazette*;”;
- (e) by the deletion in subsection (1) of the definition of “independent intermediary”;
- (f) by the insertion in subsection (1) after the definition of “motor policy” of the following definition:
 - “**‘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 Board;”;

- (g) by the substitution in subsection (1) for the definition of “prescribe” of the following definition:
 “**‘prescribe’** means to determine from time to time by notice on the official web site, unless notice in the Gazette is specifically required under a provision of this Act;”;
- (h) by the substitution in subsection (1) for the definition of “public company” of the following definition:
 “**‘public company’** means a public company **[with a share capital which is a public company under section 19]** as defined in section 1 of the Companies Act, and includes a state-owned company as defined in section 1 of that Act;”;
- (i) by the insertion in subsection (1) after the definition of “public company” of the following definition:
 “**‘publish’** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;”;
- (j) by the substitution in subsection (1) for the definition of “Registrar” of the following definition:
 “**‘Registrar’** means the **[Registrar or the Deputy Registrar of Short-term Insurance]** person referred to in section 2;”;
- (k) by the deletion in subsection (1) of the definition of “representative”;
- (l) by the deletion in subsection (1) of the definition of “services as intermediary”;
- (m) by the substitution in subsection (1) for the definition of “subsidiary” of the following definition:
 “**‘subsidiary’** has the meaning determined in accordance with section 3 of the Companies Act;”;
- (n) by the deletion in subsection (1) of the definition of “widely-held company”.

Substitution of section 2 of Act 53 of 1998, as substituted by section 28 of Act 27 of 2008

112. The following section is hereby substituted for section 2 of the principal Act:

“Registrar and Deputy Registrar of Short-term Insurance

2. (1) The person appointed as executive officer in terms of section 13 of the Financial Services Board Act is the Registrar of Short-term Insurance and has the powers and duties provided for by or under this Act or any other law.
- (2) The person appointed as deputy executive officer in terms of section 13 of the Financial Services Board Act is the Deputy Registrar of Short-term Insurance.
- (3) The Deputy Registrar of Short-term Insurance exercises or carries out the powers and duties of the Registrar of Short-term Insurance to the extent that such powers have been delegated to the Deputy Registrar under section 20 of the Financial Services Board Act and to such extent that the Deputy Registrar has been authorised under section 20 of the Financial Services Board Act to perform such duties.”.

Amendment of section 3 of Act 53 of 1998

113. Section 3 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, **[after consultation with the Advisory Committee,]** which are held by the Registrar under this Act in relation to a short-term insurer, Lloyd’s underwriter or an intermediary, or obtain a copy of or extract from any such document.”.

Amendment of section 4 of Act 53 of 1998, as amended by section 26 of Act 17 of 2003 and section 29 of Act 27 of 2008

114. Section 4 of the principal Act is hereby amended—

- (a) by the deletion of subsection (3);
- (b) by the substitution in subsection (4) for paragraph (f) of the following paragraph: 5

“(f) The Registrar **[may]** **must**, where a directive is issued to ensure the protection of the public in general, publish the directive **[in the Gazette]** on the official web site and any other media that the Registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”; 10
- (c) by the deletion of subsection (6); and
- (d) by the addition of the following subsections:

“(8) (a) The Registrar may—

 - (i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person to conduct an on-site visit of the business and affairs of a short-term insurer or an independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business; or 15
 - (ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). 20

(b) A person conducting an on-site visit in terms of paragraph (a)(i) may—

 - (i) at any time during business hours— 25
 - (aa) enter the premises of the short-term insurer, independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business, and the short-term insurer, independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business, must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit; 30
 - (bb) search the premises of the short-term insurer, independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business for any document; 35
 - (cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document; 40
 - (dd) against the issue of a receipt, seize any document which may furnish proof of any failure to comply with the provisions of this Act; 45
 - (ii) require the short-term insurer, independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the short-term insurer, independent intermediary, representative or any person to whom the short-term insurer has outsourced a part of its short-term insurance business; 50
 - (iii) require any person that is holding or is accountable for any document to provide information and an explanation of that information. 55

(9) After an on-site visit or inspection has been carried out in terms of subsection (8), the Registrar may direct the short-term insurer, independent intermediary, representative, person to whom the short-term insurer has outsourced a part of its short-term insurance business or any other person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that 60

the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

(10) The Registrar may, if disclosure is in the public interest, make known by notice on the official web site or by means of any other appropriate public media—

- (a) the outcome and details of an on-site visit;
- (b) the status and outcome of an inspection;
- (c) the details of an inspection.”.

Repeal of section 6 of Act 53 of 1998

115. Section 6 of the principal Act is hereby repealed.

Amendment of section 8 of Act 53 of 1998, as amended by section 27 of Act 17 of 2003

116. Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) subject to section 8(1)(a) of the Long-term Insurance Act, 1998, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word ‘insure’, ‘assure’ or ‘underwrite’ or any derivative thereof, unless **[he, she or it]** such person is a short-term insurer or a Lloyd’s underwriter ; **[or]**”;

- (b) by the addition to subsection (1) of the following paragraphs:

“(c) publish any advertisement, brochure or similar communication which relates to the business of a short-term insurer or a Lloyd’s underwriter, or to a short-term policy, and which is misleading or contrary to the public interest or contains an incorrect statement of fact; or

(d) publish any advertisement, brochure or similar communication which relates to a short-term policy that does not prominently include the name of the short-term insurer or Lloyd’s underwriter underwriting the short-term policy.”;

- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Registrar may from time to time by notice **[in the Gazette]** on the official web site or, in the case of any particular person, by notice to such person, subject to such conditions as the Registrar determines—”; and

- (d) by the deletion of subsection (5).

Amendment of section 10 of Act 53 of 1998, as amended by section 31 of Act 27 of 2008

117. Section 10 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

- “(g) requiring that the provisions of the **[memorandum and articles of association]** Memorandum of Incorporation, or equivalent constitution, of the short-term insurer must be suitable to enable it to carry on short-term insurance business; or”.

Amendment of section 12 of Act 53 of 1998

118. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b)**[(i)]** has made a material misrepresentation to members of the public in connection with the short-term insurance business carried on by it;

- [(ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a short-term insurer; or
(iii) has contravened or failed to comply with a material provision of this Act,
and has thereafter, within a period determined by the Registrar, failed to remedy such conduct to the satisfaction of the Registrar; or]”;
- (b) by the insertion in subsection (1) after paragraph (b) of the following paragraphs:
- “(bA) no longer meets the conditions under which it was registered;
(bB) has failed to comply with any other condition imposed under this Act;
(bC) has failed to comply with any directive issued under this Act;
(bD) is in the opinion of the Registrar not managed in accordance with sound corporate governance principles, or is owned or managed by persons who are not fit and proper;
(bE) has contravened or failed to comply with a provision of this Act; or”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3)[(b)(i), (iii) or (iv)].”;
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “When the Registrar has given notice to a short-term insurer in accordance with subsection (1), and has allowed that insurer **[at least 30 days]** a reasonable period in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to the short-term insurer—”; and
- (e) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) **[if it is appropriate and if the Minister has authorised the Registrar in writing to do so,]** prohibit the short-term insurer from carrying on such short-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.”.

Amendment of section 13 of Act 53 of 1998

- 119.** Section 13 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for the words following paragraph (c) of the following words:
- “by notice direct the short-term insurer concerned, with effect from a date specified in the notice, not to enter into any more short-term policies and require it to make arrangements satisfactory to the Registrar to discharge its obligations under all short-term policies entered into before the specified date and, when the Registrar is satisfied that the short-term insurer concerned no longer has any obligations under any such policy, shall, by notice to the short-term insurer and **[in the Gazette]** on the official web site, cancel its registration.”; and
- (b) by the substitution in subsection (3) for the words following paragraph (b) of the following words:
- “the Registrar shall by notice **[in the Gazette]** on the official web site cancel its registration.”.

Substitution of section 14 of Act 53 of 1998

120. The following section is hereby substituted for section 14 of the principal Act:

“Deregistration of short-term insurers as companies

14. For the purposes of section [73(5)] 82(3) of the Companies Act in relation to a short-term insurer, the reference to the **[Registrar of Companies]** Commission in that section shall be construed as a reference to the **[Registrar of Companies]** Commission acting in concurrence with the Registrar.”.

Amendment of section 15 of Act 53 of 1998

121. Section 15 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice **[in the Gazette]** on the official web site—”; and

- (b) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:

“(ii) short-term insurers generally, **[in the Gazette]** on the official web site; and”.

Amendment of section 19 of Act 53 of 1998, as amended by section 32 of Act 27 of 2008

122. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A short-term insurer shall at all times have[,] one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a **[widely-held]** public company.”.

Amendment of section 20 of Act 53 of 1998, as substituted by section 34 of Act 27 of 2008

123. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a short-term insurer for any reason fails to appoint an auditor or statutory actuary, the Registrar may, notwithstanding **[sections 269(4) and 271(1)]** section 90(1) and (2)(c) of the Companies Act, but subject to section 19 or 19A of this Act, appoint an auditor or statutory actuary for that short-term insurer.”.

Amendment of section 22 of Act 53 of 1998, as amended by section 36 of Act 27 of 2008

124. Section 22 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) **[The]** Despite section 94(2) of the Companies Act, the board of directors of a short-term insurer shall appoint an audit committee **[of at least three members of whom at least two shall be independent non-executive directors within the meaning of section 269A(4)(b) and (c) of the Companies Act]**.”; and

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The functions of the audit committee, in addition to the functions referred to in section **[270A(1)]** 94(7) of the Companies Act, **[shall be]** are—”.

Substitution of section 23 of Act 53 of 1998, as amended by section 31 of Act 17 of 2003 and section 37 of Act 27 of 2008

125. The following section is hereby substituted for section 23 of the principal Act:

“Preference shares, debentures, share capital and share warrants

23. (1) Notwithstanding the provisions of the Companies Act, a short-term insurer shall not without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—

- (a) issue any securities or change the capital structure of the company;
- (b) reduce its share capital;
- (c) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 48 of the Companies Act; or
- (d) conclude a transaction contemplated in section 44 of the Companies Act.

(2) The conditions referred to in subsection (1) may include a new or varied registration condition contemplated in section 10 or 11.”.

Amendment of section 24 of Act 53 of 1998, as amended by section 38 of Act 27 of 2008

126. Section 24 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) to or in the name of **[an executor, administrator, trustee, curator, guardian or liquidator in the circumstances contemplated in section 103(3) of the Companies Act]** an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestrated or an administrator, curator or guardian of a shareholder who is otherwise under disability.”.

Amendment of section 25 of Act 53 of 1998, as amended by section 32 of Act 17 of 2003

127. Section 25 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Subject to this section, no person shall, directly or indirectly, and without the prior approval of the Registrar, 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 over that short-term insurer.

(2) No person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares in a short-term insurer or a related party of that short-term insurer if—

- (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 [his, her or its] related parties, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned[, without first having obtained the approval of the Registrar];

- (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 per cent or more of all the shares in a specific class of shares issued by the short-term insurer concerned.”;

- (b) by the insertion after subsection (2) of the following subsection:
 “(2A) A short-term insurer must inform the Registrar if any person, directly or indirectly, acquires shares or any other financial interests referred to in subsection (1) or (2) in that short-term insurer.”;
- (c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph: 5
 “(i) subject to the aggregate nominal value of the shares or total number of shares in a specific class of shares or aggregate number of all the shares owned by the person concerned and his, her or its related parties not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;”;
- (d) by the substitution in subsection (3)(c) for subparagraph (i) of the following subparagraph:
 “(i) of the aggregate nominal value or number of a specific class; and”;
- (e) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively: 15
 “(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding **[with a total nominal value]** to a shareholding not exceeding 25 per cent of—
 (i) the total nominal value or number of all the issued shares of the short-term insurer; or 20
 (ii) all the shares in a specific class of shares issued by the short-term insurer; and
 (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to **[25]** 15 per cent of the voting rights attached to all the issued shares of the short-term insurer.”;
- (f) by the substitution in subsection (5)(a) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:
 “(i) **[his or her]** a person who is recognised in law or the tenets of a religion as the spouse, permanent life partner or civil union partner of that person; 30
 (ii) **[his or her]** a child[, **parent**] of that person, including a stepchild [or stepparent and any spouse of any such person], an adopted child and a child born out of wedlock;”;
- (g) by the insertion in subsection (5)(a) after subparagraph (ii) of the following subparagraphs: 35
 “(iiA) a parent or stepparent of that person;
 (iiB) a person in respect of whom that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the regular care needs of the first-mentioned person; 40
 (iiC) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii), (iiA) and (iiB);
 (iiD) a person who is in a commercial partnership with that person;”;
- (h) by the substitution in subsection (5)(b) for subparagraph (i) of the following subparagraph:
 “(i) which is a company, means **[its]** any subsidiary **[and its]** or holding company **[and]** of that company, any other subsidiary **[or]** of that holding company [thereof] and any other company of which that holding company is a subsidiary;”;
- (i) by the substitution in subsection (6) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
 “(a) holds shares in the short-term insurer of which— 55
 (i) the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;
 (ii) the total number of shares represents 25 per cent or more of all the shares in a specific class of shares issued by that short-term insurer; 60
 (b) **[holds shares which entitle such person to exercise 25 per cent or more of the voting rights attached to the issued shares of that short-term insurer]** is directly or indirectly able to exercise or

- control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
- (c) has the **[power to determine the appointment of 25 per cent or more of the directors of that short-term insurer, including the power—**
- (i) **to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or**
 - (ii) **to prevent a person from being appointed as a director without another person's consent]** right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board.”.

Amendment of section 27 of Act 53 of 1998

- 128.** Section 27 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“No person shall, despite any other law—”;
 - (b) by the substitution in subsection (1) for the words following paragraph (b) of the following words:
“a share in a short-term insurer or a related party of that short-term insurer allotted or issued to such first-mentioned person or registered in such person's name contrary to this Act.”; and
 - (c) by the substitution for subsection (2) of the following subsection:
“(2) The validity of a resolution passed by a short-term insurer or a related party of that short-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).”.

Amendment of section 36 of Act 53 of 1998

- 129.** Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) No transaction to which a short-term insurer is a party and which constitutes an agreement by which all or any part of the business of a short-term insurer is transferred to another person, or by which a fundamental transaction or compromise[, arrangement or amalgamation] contemplated in Part A of Chapter [XII] 5 and section 155 of the Companies Act is effected, or by which a short-term insurer which is not a company having a share capital is to be converted into a public company having a share capital, shall have legal force without the approval of the Registrar.”.

Amendment of section 37 of Act 53 of 1998

- 130.** Section 37 of the principal Act is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:
 - “(i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction, which particulars must be provided in such form as the Registrar may require;
 - (ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the *Gazette* and in such other **[newspapers] media** as the Registrar may determine;”;
 - (b) by the deletion in paragraph (c) of the word “and” at the end of subparagraph (i); and
 - (c) by the substitution in paragraph (c) for subparagraph (ii) of the following subparagraph:
 - “(ii) by notice, direct any party to the transaction to provide the Registrar or that person with all information and documents relating to the transaction which **[he or she]** the Registrar may require; and”.

Amendment of section 38 of Act 53 of 1998

131. Section 38 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 36(1) may be granted subject to such conditions as the Registrar may determine and shall not be granted—”.

Substitution of heading of Part VI of Act 53 of 1998

132. The following heading is hereby substituted for the heading of Part VI of the principal Act:

“**[Judicial management] Business rescue and winding-up of short-term insurers**”.

Substitution of section 40 of Act 53 of 1998

133. The following section is hereby substituted for section 40 of the principal Act:

“Business rescue

40. (1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a short-term insurer, whether or not it is a company.

(2) The Registrar may make an application under section 131 of the Companies Act in respect of a short-term insurer if the Registrar is satisfied, whether in accordance with section 12(2) or 34(2) of this Act or otherwise, that it is in the interests of the policyholders of the short-term insurer to do so.

(3) The following acts are subject to the approval of the Registrar:

- (a) The resolution of a short-term insurer to begin business rescue proceedings;
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act.

(4) In the application of Chapter 6 of the Companies Act—

- (a) a reference to the Commission shall be construed as a reference also to the Registrar;
- (b) the reference to creditors shall be construed as a reference also to the policyholders of the short-term insurer;
- (c) a reference relating to the inability of a short-term insurer to pay all its debts, shall be construed as relating also to its inability to comply with section 28(1) of this Act;
- (d) in addition to any question relating to the business of a short-term insurer, there shall be considered also the question whether any proposed action is in the interests of the policyholders.

(5) If an application to a Court for an order relating to the business rescue of a short-term insurer is made by an affected person other than the Registrar—

- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the Registrar at least 60 days before the application is set down for hearing; and
- (b) the Registrar may, if satisfied that the application is not in the interests of the policyholders of the short-term insurer, join in the application as a party and file affidavits and other documents in opposition to the application.

(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a short-term insurer shall not enter into any new short-term policies, unless the practitioner has been granted permission to do so by the Registrar.”.

Amendment of section 41 of Act 53 of 1998

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134. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Winding-up [by Court]”;
- (b) by the substitution for subsections (1) and (2) of the following subsections, respectively:
 - “(1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, **[Chapter XIV of]** sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a short-term insurer, and in such application the Registrar shall be deemed to be a person authorised **[by section 346 of]** under the Companies Act to make an application to the Court for the winding-up thereof.
 - (2) The Registrar may**[, with the written approval of the Minister,]** make an application under **[section 346 of]** the Companies Act for the winding-up of a short-term insurer if **[he or she]** the Registrar is satisfied, whether as contemplated in section 12(3) or 34(2) of this Act, or otherwise, that it is in the interests of the policyholders of that short-term insurer to do so.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
“In the application of **[Chapter XIV of] sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act as provided by subsection (1)—”;**
 and
- (d) by the substitution in subsection (3) for paragraphs (c), (d) and (e) of the following paragraphs, respectively:
 - “(c) notwithstanding any other provision of **[that Chapter]** sections 79 to 81 and item 9 of Schedule 5, there shall be considered whether a person is acting in contravention of section 7(1)(a) of this Act;
 - (d) **[in the following sections of the Companies Act, namely—**
 - (i) **sections 392, 394(5) and 400,]** the **[reference]** references to the Master, Registrar of Companies, Panel and Commission shall be construed as a reference also to the Registrar; **[**
 - (ii) **sections 375(5)(a) and 419(1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar; and**
 - (iii) **section 400, the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act;]** and
 - (e) **[section 346(3) of the Companies Act]** the requirement to give security shall not apply where the Registrar makes the application to Court.”.

Amendment of section 42 of Act 53 of 1998

135. Section 42 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:
“No special resolution relating to the winding-up of a short-term insurer as contemplated in **[section 349 of] sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall be filed or registered **[in terms of section 200 of]** under that Act, and no special resolution to that effect in terms of the constitution of a short-term insurer which is not a company shall have legal force—”;** and

- (b) by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Subject to item 9 of schedule 5 to the Companies Act, the reference to a short-term insurer in this section shall for the purposes of the application of sections 79, 80 and 81 of the Companies Act be construed as a reference to a financially sound short-term insurer.”

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Substitution of section 44 of Act 53 of 1998

136. The following section is hereby substituted for section 44 of the principal Act:

“Prohibition on inducements

44. [No] Unless done in accordance with the rules made under section 55, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a short-term policy, other than a reinsurance policy.”

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Substitution of section 48 of Act 53 of 1998, as substituted by section 45 of Act 27 of 2008

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137. The following section is hereby substituted for section 48 of the principal Act:

“Limitation of remuneration

48. No consideration shall be offered or provided by or on behalf of a short-term insurer, a Lloyd’s broker, a policyholder or any other person, or accepted by any independent intermediary or any other person, for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.”

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Repeal of section 49 of Act 53 of 1998

138. Section 49 of the principal Act is hereby repealed.

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Amendment of section 54 of Act 53 of 1998

139. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If a person has entered into a short-term policy with a short-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the short-term policy, or with another person who is not a short-term insurer but who has in terms of a short-term policy undertaken an obligation as insurer, that person, by notice in writing to such short-term insurer or other person, or the Registrar by notice to such short-term insurer or other person and **[in the Gazette]** on the official web site, may cancel the short-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such short-term insurer or other person as if the policy had been cancelled by that person on account of a breach of contract by such short-term insurer or other person.”

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Substitution of section 55 of Act 53 of 1998

140. The following section is hereby substituted for section 55 of the principal Act:

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“Protection of policyholders

55. (1) The Registrar, by notice in the *Gazette*, may—

- (a) make rules aiming to ensure that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;
- (b) vary or rescind any such rule; and

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- (c) determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette*.
- (2) Without derogating from the generality of subsection (1)(a), rules may provide—
- (a) that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear; 5
 - (b) that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;
 - (c) that a policyholder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does so; 10
 - (d) for norms and standards with which a policy, a short-term insurer or a type of short-term insurance business must comply;
 - (e) for standardised wording, definitions or provisions that must be included in a policy; and 15
 - (f) that in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 64(1)(c) or 65(1)(c) shall apply.
- (3) Rules referred to in subsection (2) may—
- (a) apply generally; or 20
 - (b) be limited in application to a particular kind or type of policy, short-term insurer or short-term insurance business.
- (4) (a) Before the Registrar prescribes any rule under this section, the Registrar must—
- (i) publish notice of the release of the proposed rule in the *Gazette*, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and 25
 - (ii) submit the draft rules to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation. 30
- (b) If the Registrar alters a proposed rule because of any comment, the Registrar need not publish the alteration before making the rule.
- (c) After consideration of any comments received in response to the publication and tabling of the proposed rule in terms of paragraph (a), the Registrar may publish the final rule in the *Gazette*. 35
- (5) The Registrar may, if circumstances necessitate the immediate publication of a rule, publish that rule without complying with subsection (4)(a), but the notice of publication of that rule must—
- (a) set out the reason why circumstances necessitated publication of the rule without giving notice in accordance with subsection (4)(a); and 40
 - (b) invite any person who is aggrieved by the rule to make representations to the Registrar within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.
- (6) If the Registrar publishes a rule in terms of subsection (5), the notice referred to in subsection (5) must be tabled in Parliament, and the National Assembly may instruct the Registrar to repeal or amend the rule. 45
- (7) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2012, must be regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.”. 50

Amendment of section 64 of Act 53 of 1998, as amended by section 49 of Act 27 of 2008

141. Section 64 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 55

“(c) where a rule contemplated in section 55(2)(e)(f) so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 55(5),]** to the extent so provided; or”;

- (b) by the substitution in subsection (1) for the words following paragraph (c) of the following words:
 “shall be guilty of an offence and liable on conviction to a fine not exceeding **[R100 000]** R5 million or to imprisonment for a period not exceeding **[one year]** five years, or to both such fine and such imprisonment.”; and 5
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) A person, other than a short-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a) or (b), 8(2), 19A(5)(b)[,] or 25(1) or (2) **[or 49(4) or (6)]**, shall be guilty of an offence and liable on conviction to a fine not exceeding **[R1 000 000]** R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”. 10

Amendment of section 65 of Act 53 of 1998, as amended by section 50 of Act 27 of 2008 15

142. Section 65 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs, respectively:
 “(b) contravenes or fails to comply with a provision of section 16(1), 17, 18, **[19A(5)(b),]** 22(1) or (2), 24(1), 35(1), 43(1), 44, 45, 46, 47, 48 or 48A; or 20
 (c) where a rule contemplated in section 55(2)(e)(f) so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 55(5),]** to the extent so provided.”;
- (b) by the substitution in subsection (1) for the words following paragraph (c) of the following words: 25
 “shall be guilty of an offence and liable on conviction to a fine not exceeding **[R100 000]** R5 million.”; and
- (c) by the substitution for subsection (2) of the following subsection: 30
 “(2) A short-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1), (2), (4) or (5), 19(1) or (3), 23, 25(1) or (2), 28(1), (3) or (4)[,] or 33 **[or 49(4) or (6)]**, shall be guilty of an offence and liable on conviction to a fine not exceeding **[R1 000 000]** R10 million.”. 35

Amendment of section 66 of Act 53 of 1998

143. Section 66 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding **[R1 000]** R5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof. 40
- (b) The amount referred to in paragraph (a) must be adjusted by the Registrar annually in order to reflect the Consumer Price Index, as published by Statistics South Africa.” 45

Amendment of section 69 of Act 53 of 1998, as amended by section 51 of Act 27 of 2008

144. Section 69 of the principal Act is hereby amended— 50

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) Notwithstanding anything to the contrary in any law contained, a short-term insurer which is not a public company shall be subject to section **[36]** 20 of the Companies Act with the necessary changes as if it were a public company having a share capital.”; and 55

(b) by the substitution for subsection (3) of the following subsection:

“(3) The financial statements of a short-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with financial reporting standards applicable to a **[widely-held]** public company having a share capital.”.

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Amendment of Schedule 1 to Act 53 of 1998, as amended by section 36 of Act 17 of 2003 and section 53 of Act 27 of 2008

145. Schedule 1 to the principal Act is hereby amended by the substitution for the expression “in the *Gazette*”, wherever it occurs, of the expression “on the official web site”.

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Amendment of Schedule 2 to Act 53 of 1998, as amended by section 37 of Act 17 of 2003 and section 27 of Act 27 of 2008

146. Schedule 2 to the principal Act is hereby amended by the substitution in paragraph 7 for subparagraph (1) of the following subparagraph:

“(1) For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those prescribed by the Registrar and referred to in paragraph 2, shall be determined in accordance with financial reporting standards applicable to **[widely-held]** public companies.”.

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Amendment of Arrangement of Sections of Act 53 of 1998, as amended by section 24 of Act 17 of 2003 and section 56 of Act 27 of 2008

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147. The Arrangement of Sections of the principal Act is hereby amended—

(a) by the substitution for item 2 of the following item:

“2. Registrar and Deputy Registrar of Short-term Insurance”;

(b) by the deletion of item 6;

(c) by the substitution for the heading of Part VI of the following heading:

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“**Business rescue and winding-up of short-term insurers**”;

(d) by the substitution for items 40 and 41 of the following items, respectively:

“40. Business rescue

41. Winding-up”;

(e) by the deletion of item 49.

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Part 6

Amendment of Inspection of Financial Institutions Act, 1998

Amendment of section 1 of Act 80 of 1998, as amended by section 21 of Act 12 of 2000

148. Section 1 of the Inspection of Financial Institutions Act, 1998 (in this Part referred to as the principal Act), is hereby amended by the substitution for the definition of “registrar” of the following definition:

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“‘**registrar**’ means the executive officer defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), but in relation to a medical scheme registered in terms of the Medical Schemes Act, **[1967]** 1998 (Act No. 131 of 1998), means the registrar of medical schemes appointed under **[section 13]** section 18 of **[that Act]** the Medical Schemes Act, 1998;”.

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Amendment of section 2 of Act 80 of 1998

149. Section 2 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

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“(2) **[The registrar must furnish every]** An inspector appointed under subsection (1) must, upon appointment, be issued with a certificate of appointment signed by the registrar.

(3) **[An]** When an inspector **[must, before commencement of an inspection or the examination of any person,]** exercises any power or performs any duty in terms of this Act, the inspector must be in possession of a certificate of appointment

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issued under subsection (2), and must produce **[his or her]** the certificate of appointment at the request of any person having a material interest in the matter concerned.”.

Substitution of section 3A of Act 80 of 1998, as inserted by section 21 of Act 12 of 2000

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150. The following section is hereby substituted for section 3A of the principal Act:

“Inspections for purposes of agreements, *communiqués* and memoranda of understanding

3A. The registrar may at any time instruct an inspector to carry out an inspection in accordance with the provisions of sections 4 and 5, pursuant to and for the purposes of implementation of any agreement, *communiqué* or memorandum of understanding contemplated in section 22(2)(b) of the Financial Services Board Act, 1990 (Act No. 97 of 1990), of the affairs or part of the affairs of any person referred to in, or identified by the requesting authority acting in terms of, any such agreement, *communiqué* or memorandum **[and who is present or resident in the Republic]**.”.

Amendment of section 4 of Act 80 of 1998

151. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“In carrying out an inspection of the affairs of an institution under section 3 or 3A an inspector may—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) (i) summon any person who is or was a director, employee, partner, member, trustee or shareholder of the institution and whom the inspector reasonably believes is in possession of or has under his or her control, any document relating to the affairs of the institution, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine or, against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings; 25
 - (ii) administer an oath or affirmation or otherwise examine any person who is or formerly was a director, **[servant,]** employee, partner, member or shareholder of the institution;”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) **[open]** cause to be opened any strongroom, safe or other container in which he or she reasonably suspects any document of the institution is kept;”;
- (d) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) against the issue of a receipt, seize any document of the institution **[which in his or her opinion may afford evidence of an offence or irregularity]** if the inspector is of the opinion that the document contains information relevant to the inspection;”;
- (e) by the substitution for subsection (2) of the following subsection:

“(2) An institution or its authorised representative may, during normal office hours, examine, copy and make extracts from any document seized or retained from the institution under subsection (1)(a) or (e), under the supervision of the registrar or an inspector.”.

Amendment of section 5 of Act 80 of 1998

152. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In order to carry out an inspection of the affairs of an institution under section 3 or 3A an inspector may—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) (i) summon any person, if the inspector has reason to believe that such person may be able to provide information relating to the affairs of the institution or whom the inspector reasonably believes is in possession of, or has under control, any document relating to the affairs of the institution, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine, or against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;

(ii) administer an oath or affirmation or otherwise examine any person **[, if he or she has reason to believe that such person may be able to provide information relating to the affairs of the institution]** referred to in subparagraph (i);”;
- (c) by the substitution in subsection (1)(b) for subparagraph (v) of the following subparagraph:

“(v) against the issue of a receipt, seize any document of the institution relating to the affairs of the institution **[, which, in his or her opinion may afford evidence of an offence or irregularity]** if the inspector is of the opinion that the item contains information relevant to the inspection;”;
- (d) by the substitution for subsection (3) of the following subsection:

“(3) Any person whose document has been removed or retained, or from whom a document has been seized, under subsection [(1)(b)(v)] (1)(a) or (b) or his or her authorised representative, may examine and copy such document and make extracts therefrom under the supervision of the registrar or an inspector during normal office hours.”.

Insertion of section 6A in Act 80 of 1998

153. The following section is hereby inserted in the principal Act after section 6:

“Search and seizure

- 6A.** (1) Any entry upon or search of any premises in terms of section 4 or 5 must be conducted with strict regard to decency and good order, including—
- (a) a person’s right to, respect for and the protection of dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to personal privacy.
- (2) An inspector may be accompanied and assisted by a police officer during the entry and search of any premises under section 4 of 5.
- (3) Any entry and search under section 4 or 5 must be executed by day, unless the execution thereof by night is justifiable and necessary.”.

Amendment of section 7 of Act 80 of 1998

154. Section 7 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- “(2) (a) Any person examined under section 4 or 5 may be required to answer any question put to him or her at the examination, notwithstanding that the answer might tend to incriminate him or her.

- (b) An incriminating answer directly obtained, or incriminating evidence directly derived, from an examination under paragraph (a) shall not be admissible as evidence in criminal proceedings in a court against the person concerned, or against the institution of which the person is or was a director, employee, partner, member or shareholder, except in criminal proceedings where the person or institution is charged with an offence relating to—
- (i) the administering of an oath or the making of an affirmation;
 - (ii) the giving of false evidence;
 - (iii) the making of a false statement; or
 - (iv) a failure to answer questions fully or satisfactorily.”.

Repeal of section 10 of Act 80 of 1998

155. Section 10 of the principal Act is hereby repealed.

Amendment of section 11 of Act 80 of 1998

156. Section 11 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) the institution being inspected, or a director, employee, partner, member or shareholder of such institution, if the registrar so decides, after having considered the results of the inspection.”.

Amendment of section 12 of Act 80 of 1998

157. Section 12 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (f) of the following paragraph:

“(f) contravenes section 8; or”; and
 - (b) by the addition of the following paragraph:

“(g) has been duly summoned under section 4(1)(a) or 5(1)(a) 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 inspector from further attendance;
 - (iii) fails to lodge or produce any document referred to in the summons with the inspector,”.

Part 7

Amendment of Financial Institutions (Protection of Funds) Act, 2001

Amendment of section 1 of Act 28 of 2001, as amended by section 41 of Act 22 of 2008

158. Section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (in this Part referred to as the principal Act), is hereby amended—
- (a) by the insertion before the definition of “company” of the following definition:

“**‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;
 - (b) by the insertion in the definition of “law” after paragraph (a) of the following paragraph:

“(aA) section 5A, means the Financial Intelligence Centre Act, 2001, (Act No. 38 of 2001), and the Acts referred to in paragraph (a), including any subordinate legislation, enactment or measure made under those Acts;”;
 - (c) by the substitution in paragraph (b) of the definition of “law” for the words preceding subparagraph (i) of the following subparagraph:

“sections 6A to 6I, means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and the Acts referred to in paragraph (a)—”;
 - (d) by the substitution for paragraphs (a), (b) and (c) of the definition of “nominee company” of the following paragraphs, respectively:

“(a) is incorporated under the provisions of the Companies Act, 1973 (Act No. 61 of 1973);

- (b) has as **[its principal object]** a special condition contemplated in section 15(2) of the Companies Act the requirement to act as nominee for, or representative of, any person in the holding of any property in trust for such person or persons;
- (c) is precluded **[by its memorandum of association]** as a special condition in its Memorandum of Incorporation from incurring any liabilities other than **[those]** to the persons on whose behalf it holds assets, to the extent of their respective rights to, and interest in, such assets; and”; and
- (e) by the insertion after the definition of “nominee company” in subsection (1) of the following definition:
“‘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 board;”.

Amendment of section 2 of Act 28 of 2001

159. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:
“A financial institution or nominee company, or director, member, partner, official, employee or agent of [a] the financial institution or [of a] nominee company, who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property—”; and
- (b) by the substitution for paragraph (c) of the following paragraph:
“(c) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for [himself or herself or for any other] any person to the prejudice of the financial institution or principal concerned.”.

Amendment of section 3 of Act 28 of 2001

160. Section 3 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph:

- “(c) acquiring a financial interest in an agreement or other matter in which the financial institution or nominee company has a material interest.”.

Amendment of section 4 of Act 28 of 2001

161. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) A financial institution or nominee company, or director, member, partner, official, employee or agent of a financial institution or nominee company which administers trust property under any instrument or agreement may not cause such trust property to be invested otherwise than in a manner directed in, or required by, such instrument or agreement.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“In the absence of a direction or requirement referred to in subsection (1), a financial institution or nominee company, or director, member, partner, official, employee or agent of the financial institution or nominee company, may not cause any trust property to be invested otherwise than in the name of—”; and
- (c) by the substitution in subsection (3)(a)(i) for the words preceding item (aa) of the following words:
“where the [articles of association prohibit] Memorandum of Incorporation of a company has as a special condition under section 15(2) of the Companies Act which prohibits the registration of its shares or debentures in the name of—”.

Amendment of section 5 of Act 28 of 2001

162. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The registrar may, on **[good cause shown]** an ex parte basis, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) on good cause shown, provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution on such conditions and for such a period as the court deems fit; and”;
- (c) by the substitution for subsection (3) of the following subsection:

“(3) On application by the registrar or the institution the court may anticipate the return day if not less than 48 hours’ notice of such application has been given to the **[registrar]** other party.”;
- (d) by the substitution for subsection (5) of the following subsection:

“(5) The court may, for the purposes of a provisional appointment in terms of subsection (2)(a) or a final appointment in terms of subsection (4), make an order with regard to—

 - (a) the suspension of legal or foreclosure proceedings against the institution for the duration of the curatorship;
 - (aA) the authority of the curator to investigate the affairs of the institution or any associated entity;
 - (b) the powers and duties of the curator;
 - (c) the remuneration of **[a]** the curator **[appointed provisionally under subsection (2)(a) or finally under subsection (4)]**;
 - (d) the costs relating to any application made by the registrar **[under subsection (1)]**;
 - (e) the costs incurred by the registrar in respect of an inspection of the affairs of the institution concerned in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998); **[or]**
 - (eA) the method of service or publication of the order; or
 - (f) any other matter which the court deems necessary.”;
- (e) by the substitution for subsection (7) of the following subsection:

“(7) The curator must furnish the registrar **[of the institution]** concerned with such reports or information concerning the affairs of **[that]** the institution as the registrar may require.”;
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of such application to the registrar or the curator, as the case may be, and **[such]** the registrar or curator is entitled to be heard at such application.”;
- (g) by the addition of the following subsections:

“(10) Despite subsections (1) to (9), the registrar may on good cause, by agreement with an institution and without the intervention of the court, appoint a curator for the purpose set out in subsection (1).

(11) The terms of the appointment contemplated in subsection (10) must be set out in a letter of appointment issued by the registrar to the curator and—

 - (a) must include—
 - (i) the powers and duties of the curator; and
 - (ii) the remuneration of the curator; and
 - (b) may include any other matter agreed upon between the registrar and the institution.

(12) The rights of any creditor or client of the institution are not affected by the appointment of a curator in terms of subsection (10).

(13) Subsections (6) and (7) apply to an appointment in terms of subsection (10).

- (14) An appointment in terms of subsection (10) lapses—
- (a) if the registrar after consultation with the curator withdraws the letter of appointment; or
 - (b) by order obtained at the instance of the institution in terms of subsection (9).”.

5

Insertion of section 5A in Act 28 of 2001

163. The following section is hereby inserted in the principal Act after section 5:

“Statutory management

- 5A.** (1) (a) Despite any other law, the High Court may on application approve the appointment of a statutory manager for a financial institution. 10
- (b) The application may only be made by the registrar or by the financial institution with the registrar’s consent.
- (c) The registrar must approve the person appointed as statutory manager.
- (2) The High Court may approve the appointment of the person 15 contemplated in subsection (1)(c) if it appears that—
- (a) the financial institution—
 - (i) has in a material respect failed to comply with a law;
 - (ii) is likely to be in an unsound financial position; or
 - (iii) is maladministered; and 20
 - (b) the High Court considers it in the interests of the clients or other beneficiaries of the institution or the financial system to make the appointment.
- (3) The registrar may at the request of a financial institution approve the appointment of a person to be the statutory manager of that institution if it 25 appears to the registrar that the institution—
- (a) has in a material respect failed to comply with a law;
 - (b) is likely to be in an unsound financial position; or
 - (c) is maladministered,
- and that it is advisable to appoint a statutory manager urgently in order to 30 protect—
- (i) the interests of the clients of the institution;
 - (ii) the safety and soundness of financial institutions in general; or
 - (iii) the stability, fairness, efficiency and orderliness of the financial 35 system.
- (4) An appointment under subsection (3) takes effect immediately, but the registrar must, as soon as practicable after the appointment and in any event within 30 days after the appointment, apply to the court for an order confirming the appointment.
- (5) On hearing the application in terms of subsection (4), the court must 40 confirm the appointment, unless satisfied that the grounds for making the appointment no longer exist.
- (6) The statutory manager of a financial institution—
- (a) must be allowed full access to the accounting records, financial statements and other information relating to the affairs of the 45 institution;
 - (b) must control the management of the affairs of the institution to the exclusion of its executive directors or managers; and
 - (c) is entitled to receive such remuneration from the institution as the 50 court may order.
- (7) (a) The statutory manager of an institution must manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, report to the registrar and indicate what steps should be taken to ensure that the institution—
- (i) complies with the law; 55
 - (ii) becomes financially sound; and
 - (iii) is properly administered.

- (b) If the statutory manager considers that it is not practicable to take steps in terms of paragraph (a), he or she must report to the registrar and must indicate—
- (i) whether steps should be taken to transfer the business of the institution to an appropriate person and, if so, on what terms; or
 - (ii) whether the institution should be wound up or placed under curatorship.
- (8) The statutory manager of a financial institution must comply with directives issued by the registrar from time to time in relation to the statutory manager's functions and report to the registrar should the statutory manager be hindered in giving effect to any such directives.
- (9) The statutory manager of a financial institution may, after giving notice to the registrar, at any time apply to the court for directions.
- (10) The registrar may at any time apply to the court to remove a statutory manager from office and, subject to subsection (4), to confirm the appointment of a replacement.
- (11) The statutory manager of a financial institution is not liable for loss suffered by the institution unless it is established that the loss was caused by the statutory manager's fraud, dishonesty or wilful failure to comply with the law.
- (12) The provisions of this section must not to be construed as limiting any of the powers of the registrar under section 5.”.

Amendment of section 6 of Act 28 of 2001, as amended by section 42 of Act 22 of 2008

- 164.** Section 6 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs, respectively:
 - “(b) compel any institution or other person to comply with any law or to cease contravening a law;
 - (c) compel any institution or other person to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law; **[or]**
 - (d) obtain a declaratory order **[on any point of law]** relating to any law or the business of an institution~~[.]~~ or other person.”;
 - (b) by the addition to subsection (1) of the following paragraphs:
 - “(e) prevent the concealment, removal, dissipation or destruction of assets or evidence thereof by any institution or other person;
 - (f) seize and remove the assets of an institution or other person for safe custody pending the exercising of such other legal remedy as may be available to the registrar.”;
 - (c) by the substitution for subsection (2) of the following subsection:
 - “(2) For the purpose of ensuring compliance with a law, or if the registrar has reason to believe that an institution or other person is contravening or failing to comply with, or has contravened or failed to comply with, any provision of a law, the registrar may—
 - (a) by notice direct that institution or other person to—
 - (i) furnish the registrar within a specified period with any specified information or documents in the possession or under the control of that institution or person and which relate to the matter of such contravention or failure;
 - (ii) appear before the registrar at a specified time and place for questioning by the registrar in connection with such matter; **[or]**
 - (iii) make arrangements to the satisfaction of the registrar for the discharge of all or any part of that institution's or person's obligations in terms of such law; or
 - (b) if it appears that prejudice has occurred or might occur as a result of such contravention or failure to comply, **[apply to a court having jurisdiction for an order restraining]** by notice prohibit such institution or person from continuing business or dealing with trust property pending an application to court by the registrar as

- contemplated in section 5, or pending the exercising of such other legal remedy as may be available to the registrar.”;
- (d) by the insertion after subsection (3) of the following subsection:
- “(4) (a) The registrar may accept an undertaking by a person to do something or to refrain from doing something in connection with a matter regarding which the registrar has a function or power. 5
- (b) The person may withdraw or vary the undertaking at any time, but only with the registrar’s consent.
- (c) If the registrar considers that the person who gave the undertaking has breached a term of the undertaking, the registrar may apply to the High Court for an order under paragraph (d). 10
- (d) If the court is satisfied that the person has breached a term of the undertaking, the court may make—
- (i) an order directing that person to comply with that term of the undertaking; or 15
- (ii) any other order the court considers appropriate.”; and
- (e) by the addition of the following subsection:
- “(6) (a) The notification of anything done by the registrar may be by notice on the official web site.
- (b) Notification under paragraph (a) does not affect any obligation of the registrar to publish by notice in the *Gazette*.” 20

Amendment of section 6A of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008

165. Section 6A of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 25
- “(a) Despite any provision in a law, if a registrar is of the opinion that a person **[is contravening]** has contravened a provision of a law in respect of which the registrar is not authorised to impose **[an administrative sanction]** a penalty or a fine, the registrar may refer the alleged contravention to the enforcement committee. 30
- (b) (i) A registrar authorised to impose sanctions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), may impose any sanction under that Act, other than a financial penalty referred to in section 45C(3)(e) of that Act.
- (ii) If the registrar, in determining an appropriate administrative sanction under that Act, is of the opinion that a financial penalty referred to in section 45C(3)(e) of that Act may be an appropriate administrative sanction, the registrar must refer **[an alleged]** the contravention **[under the Financial Intelligence Centre Act, 2001,]** to the enforcement committee for a determination under section 6D of that Act. 35 40
- (iii) A referral to the enforcement committee under subparagraph (ii) does not detract from the registrar’s power to impose any other administrative sanction referred to in section 45C(3) of that Act, in addition to any financial penalty that the enforcement committee may impose.”.

Amendment of section 6B of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008 45

166. Section 6B of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 50
- “(a) a notice setting out the details and nature of the alleged contravention **[and the administrative sanction that, in the opinion of the applicant, should be imposed];** and”; and
- (b) by the addition of the following subsection:
- “(8) (a) The chairperson of the panel designated by the enforcement committee to hear a matter contemplated in subsection (2) may, on the written request of a party and on good cause shown, extend the time period to file such affidavit. 55

(b) A written request contemplated in paragraph (a) must be filed with the chairperson on or before the expiry date within which to file the relevant affidavit.

(c) A party seeking an extension of time must first approach the other party and the written request must indicate whether the parties have agreed to an extension.". 5

Amendment of section 6C of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008

167. Section 6C of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

"(1) The enforcement committee must **[within 30 days of the expiry of the time periods for the filing of affidavits referred to in section 6B(2), (3), (4) and (5)]** inform the applicant and respondent of the date, time and place of the hearing, which must not be less than 30 days after the expiry of the time periods for the filing of the affidavit referred to in section 6B(2), or 6B(4) if applicable."; and 15

(b) by the substitution for subsection (3) of the following subsection:

"(3) Where a matter cannot properly be decided on affidavit, in exceptional circumstances and when it is necessary to come to a just decision, the enforcement committee may order any person to appear 20 before the panel to be examined and cross-examined as a witness and to produce a document specified in the summons."

Amendment of section 6D of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008

168. Section 6D of the principal Act is hereby amended— 25

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"If the enforcement committee is satisfied on a balance of probabilities that there was a contravention as contemplated in subsection (1) the enforcement committee may, despite the provisions of any law, impose 30 any one or more of the following administrative sanctions:"; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) The enforcement committee may as part of a determination make such order as to—

(a) costs as it may deem suitable and fair, including the cost of 35 constituting the enforcement committee panel and all expenses reasonably incurred by the applicant in investigating the alleged non-compliance and referring the matter to the enforcement committee; and

(b) the payment of interest on any amount contemplated in subsections (2) and (5)(a) at the rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975)." 40

Amendment of section 6E of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008

169. Section 6E of the principal Act is hereby amended by the substitution in 45 subsection (1) for paragraph (a) of the following paragraph:

"(a) cause a copy of the determination to be delivered to the applicant and the respondent at the address stated in **[section 6B(4)]** section 6B(2)(a) or any other address elected by the respondent—

(i) by hand delivery; 50

(ii) by facsimile transmission or electronic means to a number or electronic address furnished by the respondent: Provided that a confirmatory copy of the determination is sent by ordinary mail or by other suitable method within one day of such facsimile or electronic transmission; or

(iii) by prepaid registered post; and" 55

Substitution of section 6F of Act 28 of 2001, as inserted by section 43 of Act 22 of 2008

170. The following section is hereby substituted for section 6F of the principal Act:

“Appeal against dismissal

6F. (1) Subject to [the appeal proceedings under the Financial Intelligence Centre Act, 2001, and] subsection (2), a determination of the enforcement committee may be taken on appeal to the High Court as if the determination were a decision of a magistrate in a civil matter. 5

(2) The launching of appeal proceedings [does not suspend] suspends the operation or execution of a determination, unless the chairperson of the enforcement committee which dealt with the matter directs otherwise.”. 10

Amendment of section 7 of Act 28 of 2001, as amended by section 44 of Act 22 of 2008

171. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) (a) The registrar may, by notice in the *Gazette*, 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 financial institutions, or for all such institutions.

(b) In determining whether or not a declaration contemplated in subsection (1) should be made, the registrar must be guided by whether the practice concerned has or is likely to have the effect of— 20

(i) harming the relations between financial institutions or any category of financial institutions, or any financial institution and clients or the general public; 25

(ii) unreasonably prejudicing any client;

(iii) deceiving or misleading any client; or

(iv) unfairly affecting any client,

and whether, if the practice is allowed to continue, one of more objects of the law in question will, or are likely to, be defeated.”. 30

Repeal of section 8 of Act 28 of 2001

172. Section 8 of the principal Act is hereby repealed.

Insertion of section 9A in Act 28 of 2001

173. The following section is hereby inserted in the principal Act after section 9:

“Verification of information 35

9A. Before making a determination in accordance with any 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 registrar may request for the verification of information or may verify information at the registrar’s disposal by making enquiries to any state department, credit bureau or other source of relevant information concerning that person.”. 40

Amendment of section 10 of Act 28 of 2001

174. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person who contravenes or fails to comply with any provision of [this Act] Chapter 1 is guilty of an offence and on conviction liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding [15] 10 years, or to both such fine and such imprisonment.”. 45

Part 8**Amendment of Financial Advisory and Intermediary Services Act, 2002****Amendment of section 1 of Act 37 of 2002, as amended by section 45 of Act 22 of 2008**

175. Section 1 of the Financial Advisory and Intermediary Services Act, 2002 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definition of “Advisory Committee”;
- (b) by the insertion in subsection (1) after the definition of “collective investment scheme” of the following definition:

“**‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;
- (c) by the insertion in subsection (1) after the definition of “compliance officer” of the following definition:

“**‘continuous professional development’** means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act;”;
- (d) by the substitution in subsection (1) for subparagraph (v) of paragraph (a) of the definition of “financial product” of the following subparagraph:

“(v) any ‘securities’ as defined in section 1 of the Securities Services Act, [2002] 2004 (Act No. 36 of 2004);”;
- (e) by the substitution in subsection (1) for paragraph (h) of the definition of “financial product” of the following paragraph:

“(h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, **after consultation with the Advisory Committee,** by notice in the Gazette to be a financial product for the purposes of this Act;”;
- (f) by the insertion in subsection (1) after the definition of “financial services provider” of the following definition:

“**‘fit and proper requirements’** means the requirements published under section 6A;”;
- (g) by the insertion in subsection (1) after the definition of “Office” of the following definition:

“**‘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 Board;”;
- (h) by the substitution in subsection (1) for the definition of “product supplier” of the following definition:

“**‘product supplier’** means any person who issues a financial product **[by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 61 of 1973)]**”;
- (i) by the insertion in subsection (1) after the definition of “product supplier” of the following definition:

“**‘publish’** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public;”;
- (j) by the substitution in subsection (1) for the definition of “registrar” of the following definition:

“**‘registrar’** means the **[registrar or deputy registrar of financial services providers]** person referred to in section 2;”;
- (k) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this Act a financial product does not include any financial product exempted from the provisions of this Act by the registrar, **after consultation with the Advisory Committee,** by notice in the Gazette, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law.”;

- (l) by the substitution in subsection (3)(a) for subparagraph (iv) of the following subparagraph:
 “(iv) any other advisory activity exempted from the provisions of this Act by the registrar[, **after consultation with the Advisory Committee,**] by notice in the *Gazette*;
- (m) by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph:
 “(iii) any other service exempted from the provisions of this Act by the registrar[, **after consultation with the Advisory Committee,**] by notice in the *Gazette*.”; and
- (n) by the substitution for subsection (4) of the following subsection:
 “(4) The [**provisions of this Act only apply to the**] rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of ‘financial product’ in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), [**to the extent that such application**] is regulated by this Act in the code of conduct contemplated in section 15(2)(b).”.

Substitution of section 2 of Act 37 of 2002

176. The following section is hereby substituted for section 2 of the principal Act:

“Registrar and deputy registrar of financial services providers

2. (1) The executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the registrar of financial services providers and has the powers and duties provided for by or under this Act and any other law.
- (2) The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of financial services providers.
- (3) The deputy registrar of financial service providers exercises the powers and duties of the registrar of financial services providers to the extent that such powers and duties have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).”.

Amendment of section 4 of Act 37 of 2002, as amended by section 46 of Act 22 of 2008

177. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) The registrar may by notice direct an authorised financial services provider [**or**], representative or compliance officer to furnish the registrar, within a specified period, with specified information or documents required by the registrar for the purposes of this Act.”;
- (b) by the substitution in subsection (5)(a) for subparagraph (i) of the following subparagraph:
 “(i) authorise any suitable person in the employ of the Board or any other suitable person to conduct an on-site visit of the business and affairs of a provider [**or**], representative or compliance officer [**to determine compliance with this Act**]; or”;
- (c) by the substitution in subsection (5)(b)(i) for items (aa) and (bb) of the following items, respectively:
 “(aa) enter the premises of the provider [**or**], representative or compliance officer and the provider [**or**], representative or compliance officer must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;
- (bb) search the premises of the provider [**or**], representative or compliance officer for any document;”;

- (d) by the substitution in subsection (5)(b)(i) for item (dd) of the following item:
 “(dd) against the issue of a receipt seize any document **[against the issue of a receipt,]** which may furnish proof of any failure to comply with the provisions of this Act;”;
- (e) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph: 5
 “(ii) require the provider **[or]**, representative or compliance officer to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the provider **[or]**, representative or compliance officer;”;
- (f) by the substitution for subsection (6) of the following subsection: 10
 “(6) After an on-site visit or inspection has been carried out in terms of subsection (5), the registrar may direct the provider, representative, compliance officer or person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or 15
 remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”; and
- (g) by the substitution in subsection (7) for paragraph (c) of the following paragraph: 20
 “(c) the outcome and details of an on-site visit if disclosure is in the public interest, by notice **[in the Gazette]** on the official web site or by means of any other appropriate public media.”.

Repeal of section 5 of Act 37 of 2002 25

178. Section 5 of the principal Act is hereby repealed.

Amendment of section 6 of Act 37 of 2002

179. Section 6 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 30
 “(a) Any body of persons which represents a group of persons falling within the ambit of this Act, may apply to the registrar for recognition by the Board by notice **[in the Gazette]** on the official web site as a representative body for the purpose of performing the functions determined by the registrar**[, after consultation with the Advisory 35
 Committee and the Board].**”; and
- (b) the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:
 “(i) must be made in the manner determined by the registrar by notice **[in the Gazette]** on the official web site;”. 40

Insertion of section 6A in Act 37 of 2002

180. The following section is hereby inserted in the principal Act after section 6:

“Fit and proper requirements

- 6A.** (1) The registrar, for purposes of this Act, by notice in the *Gazette*—
- (a) must— 45
- (i) classify financial services providers into different categories;
 - (ii) determine fit and proper requirements for each category of providers; and
 - (iii) in each category of providers determine fit and proper requirements for— 50
 - (aa) key individuals of providers;
 - (bb) representatives of providers;
 - (cc) key individuals of representatives of providers; and
 - (dd) compliance officers; and

- (b) may determine fit and proper requirements for providers, key individuals, representatives, key individuals of representatives and compliance officers in general.
- (2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to—
 - (a) personal character qualities of honesty and integrity;
 - (b) competence, including—
 - (i) experience;
 - (ii) qualifications; and
 - (iii) knowledge tested through examinations determined by the registrar;
 - (c) operational ability;
 - (d) financial soundness; and
 - (e) continuous professional development.
- (3) Different fit and proper requirements may be determined for providers, representatives and compliance officers that are natural persons and for those that are partnerships, trusts or corporate or unincorporated bodies.
- (4) The registrar may, by notice in the *Gazette*, amend the fit and proper requirements from time to time, and a provider, key individual, representative, key individual of a representative and compliance officer must comply therewith within such period as determined by the registrar.”.

Amendment of section 7 of Act 37 of 2002, as amended by section 47 of Act 22 of 2008

181. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) With effect from a date determined by the Minister by notice in the *Gazette*, a person may not act or offer to act as a—
 - (a) financial services provider, unless such person has been issued with a licence under section 8; or
 - (b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13.”.

Amendment of section 8 of Act 37 of 2002, as amended by section 48 of Act 22 of 2008

182. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar in the form and manner determined by the registrar by notice [in the *Gazette*] on the official web site, and be accompanied by information to satisfy the registrar that the applicant complies with the fit and proper requirements determined for **[fit and proper]** financial services providers or categories of providers, determined by the registrar by notice in the *Gazette*, **[after consultation with the Advisory Committee,]** in respect of—
 - (a) personal character qualities of honesty and integrity;
 - (b) **[the] competence [and operational ability of the applicant to fulfil the responsibilities imposed by this Act]; [and]**
 - (bA) operational ability; and
 - (c) **[the applicant’s] financial soundness[**
 - Provided that where the applicant is a partnership, a trust or a corporate or unincorporated body, the applicant must, in addition, so satisfy the registrar that any key individual in respect of the applicant complies with the said requirements in respect of—**
 - (i) personal character qualities of honesty and integrity; and**
 - (ii) competence and operational ability,**
 - to the extent required in order for such key individual to fulfil the responsibilities imposed on the key individual by this Act].”;**

- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) If the applicant is a partnership, trust or corporate or unincorporated body, the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the registrar that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, in respect of—
- (a) personal character qualities of honesty and integrity;
- (b) competence; and
- (c) operational ability,
- to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.”;
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) take into consideration any other information regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.”;
- (d) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:
- “(a) **[if]** grant the application if the registrar—
- (i) is satisfied that **[an]** the applicant **[complies]** and its key individual or key individuals comply with the requirements of this Act~~], grant the application]; and~~
- (ii) approves the key individual or key individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or
- (b) **[if not so satisfied,]** refuse the application if the registrar—
- (i) is not satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; or
- (ii) does not approve the key individual or key individuals of the applicant in the case of a partnership, trust or corporate or unincorporated body.”;
- (e) by the substitution in subsection 4(a) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:
- “(iii) the category of financial services providers in which the applicant **[will be]** is classified **[in relation to the fit and proper requirements mentioned in subsection (1)]** for the purposes of this Act; and
- (iv) **[any guidelines provided to the registrar by the Advisory Committee or the Board]** the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.”;
- (f) by the substitution in subsection (4)(b) for subparagraph (iii) of the following subparagraph:
- “(iii) any change occurs in the personal circumstances of a key individual which **[affects the fit and proper requirements mentioned in subsection (1) and]** renders or may render such person to be no longer **[a fit and proper person]** compliant with the fit and proper requirements for key individuals,”;
- (g) by the substitution in subsection (4)(b) for the words following subparagraph (iii) of the following words:
- “no such person may be permitted to take part in the conduct **[or]**, management or oversight of the licensee’s business in relation to the rendering of financial services, unless such person has on application been approved by the registrar as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined~~], after consultation with the Advisory Committee,~~ by the registrar by notice **[in the Gazette]** on the official web site.”;

- (h) by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:
 “Where an application for authorisation is granted, the registrar must issue to the applicant—”;
- (i) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph: 5
 “(ii) pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4)(b), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished 10
 the licensee with reasons,”;
- (j) by the substitution in subsection (7) for paragraphs (a) and (b) of the following paragraphs, respectively:
 “(a) Despite **[the provisions]** any other provision of [subsections (1), (2) and (3)] this section, a person granted accreditation under section 15
 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5).
 (b) The registrar must be satisfied that a person to be granted authority 20
 under paragraph (a), and any key individual of such person, comply with the **[applicable]** fit and proper requirements **[determined under subsection (1)]**.”;
- (k) by the insertion in subsection (8) of the word “and” at the end of paragraph (b); 25
- (l) by the substitution for subsection (9) of the following subsection:
 “(9) **[A]** No person may [not in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed or has been withdrawn or, subject to section 9(2), during any time when the licensee is under provisional or final suspension contemplated in section 9]— 30
 (a) in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed, has been withdrawn or provisionally withdrawn or during any time when the licensee is under provisional or final suspension; 35
 (b) perform any act which indicates that the person renders or is authorised to render financial services or is appointed as a representative to render financial services, unless the person is so authorised or appointed; and
 (c) perform any act, make or publish any statement, advertisement, brochure or similar communication which— 40
 (i) relates to the rendering of a financial service, the business of a provider or a financial product; and
 (ii) the person knows, or ought reasonably to know, is misleading, false, deceptive, contrary to the public interest or contains an incorrect statement of fact.”; 45
- (m) by the substitution in subsection (10)(a) for subparagraph (i) of the following subparagraph:
 “(i) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider’s 50
 business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of **[section 8(1)]** subsection (1A); and”;
- (n) by the substitution in subsection (10) for paragraph (b) of the following paragraph: 55
 “(b) If the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of **[section 8(1)]** subsection (1A), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9.”. 60

Insertion of section 8A in Act 37 of 2002

183. The following section is hereby inserted in the principal Act after section 8:

“Compliance with fit and proper requirements after authorisation

8A. An authorised financial services provider, key individual, representative of the provider and key individual of the representative must—
 (a) continue to comply with the fit and proper requirements; and
 (b) comply with the fit and proper requirements relating to continuous professional development.”

Amendment of section 9 of Act 37 of 2002, as substituted by section 49 of Act 22 of 2008

184. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) **[no longer meets the requirements contemplated in section 8]** does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;”;
- (b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) has failed to comply with any other provision of this Act; **[or]**
 (d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), **[an amount or penalty under section 33(2),]** a penalty under section 41(2) and (3) or an administrative sanction under section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, **[amount]** ~~penalty~~ or administrative sanction and any interest in respect thereof[.]”;
- (c) by the addition to subsection (1) of the following paragraphs:

“(e) does not have an approved key individual;
 (f) has failed to comply with any directive issued under this Act; or
 (g) has failed to comply with any condition or restriction imposed under this Act.”;
- (d) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

“Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of—”;
- (e) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:

“(ii) any terms to be attached to the suspension or withdrawal, including—
 (aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and
 (bb) terms designed to facilitate the lifting of the suspension.”;
- (f) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice **[in the Gazette]** on the official web site and may make known such information by means of any other appropriate public media.”;

- (g) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 “(b) make known such provisional suspension or withdrawal by notice **[in the Gazette]** on the official web site and, if necessary, by means of any other appropriate public media.”; 5
- (h) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
 “(ii) render the provisional suspension or withdrawal final,”; and
- (i) by the substitution in subsection (4) for paragraph (b) of the following paragraph: 10
 “(b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice **[in the Gazette]** on the official web site and, if necessary, in any other appropriate public media.”.

Amendment of section 11 of Act 37 of 2002, as amended by section 51 of Act 22 of 2008 15

185. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons therefor and the registrar may make known any such lapsing of a licence by notice **[in the Gazette]** on the official web site and, if necessary by means of any other appropriate public media announcement.”. 20

Amendment of section 13 of Act 37 of 2002, as amended by section 52 of Act 22 of 2008 25

186. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(b)(i) for the words preceding item (aa) of the following words:
 “**[is able to provide]** prior to rendering a financial service, provides confirmation, certified by the provider, to clients—”; 30
- (b) by the insertion in subsection (1)(b) after subparagraph (i) of the following subparagraph:
 “(iA) meets the fit and proper requirements; and”; 35
- (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 35
 “(ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar **[, after consultation with the Advisory Committee,]** by notice in the *Gazette*, for the reappointment of a debarred person as a representative.”; 40
- (d) by the deletion in subsection (1) of the word “or” at the end of paragraph (a), the addition of the word “or” at the end of paragraph (b) and the addition of the following paragraph:
 “(c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.”; and 45
- (e) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) at all times be satisfied that the provider’s representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with— 50
 (i) the fit and proper requirements **[contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable]; and**
 (ii) any other requirements contemplated in subsection (1)(b)(ii);”. 55

Amendment of section 14 of Act 37 of 2002, as amended by section 53 of Act 22 of 2008

187. Section 14 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) The registrar may make known any such debarment and the reasons therefor by notice **[in the Gazette]** on the official web site or by means of any other appropriate public media.”. 5

Amendment of section 14A of Act 37 of 2002, as amended by section 54 of Act 22 of 2008

188. Section 14A of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 10

“(4) The registrar may make known any such debarment and the reasons therefor, or the lifting thereof, by notice **[in the Gazette]** on the official web site or by means of any other appropriate public media.”.

Amendment of section 15 of Act 37 of 2002, as amended by section 55 of Act 22 of 2008 15

189. Section 15 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) The registrar must, after consultation **[with the Advisory Committee and]** with representative bodies of the financial services industry and client and customer bodies **[determined by the Advisory Committee]**, draft a code of conduct for authorised financial services providers.”. 20

Amendment of section 17 of Act 37 of 2002, as amended by section 57 of Act 22 of 2008

190. Section 17 of the principal Act is hereby amended— 25

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c) and subsections (1)(b) and (2)(a)(i), appoint one or more compliance officers to oversee the provider’s compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar. 30

(b) Such person **[may be any person with suitable qualifications and experience determined by the registrar by notice in the Gazette, after consultation with the Advisory Committee]** must comply with the fit and proper requirements.”; 35

(b) by the insertion in subsection (1) after paragraph (b) of the following paragraph: 40

“(bA) The provisions of section 8A apply with the necessary changes to a compliance officer.”;

(c) by the substitution for subsection (2) of the following subsection: 45

“(2) (a) (i) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar**[, after consultation with the Advisory Committee]**. 50

(ii) The registrar may amend such criteria and guidelines, and an approved compliance officer must comply with the amended criteria and guidelines within such period as may be determined by the registrar. 50

(b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer—

(i) has contravened or failed to comply with any provision of this Act; **[or]**

(ii) does not meet or no longer meets the fit and proper requirements; or 55

(iii) does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a) [of this subsection].

(c) The provisions of section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b) **[of this subsection]**. 5

(d) The registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice **[in the Gazette]** on the official web site or by means of any other appropriate public media.”; 10
and

(d) by the substitution for subsection (4) of the following subsection:

“(4) (a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the registrar by notice **[in the Gazette]** on the official web site for different categories of compliance officers, **after consultation with the Advisory Committee**]. 15

(b) A failure by a compliance officer to submit reports to the registrar as contemplated in paragraph (a), is deemed to be a failure by the provider.”. 20

Amendment of section 19 of Act 37 of 2002, as amended by section 58 of Act 22 of 2008

191. Section 19 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 25

“The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice **[in the Gazette]** on the official web site for different categories of financial services providers—”; and 30

(b) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 35

“(b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the **[Registrar of Companies of established under the Companies Act, 1973 (Act No. 61 of 1973)] Companies and Intellectual Property Commission**, regulating the financial soundness of the provider.”. 40

Amendment of section 21 of Act 37 of 2002

192. Section 21 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 45

“The Board **[, after consultation with the Advisory Committee]**—”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) The Board may on good cause shown **[, after consultation with the Advisory Committee,]** remove the Ombud or deputy ombud from office on the ground of misbehaviour, incapacity or incompetence, after affording the person concerned a reasonable opportunity to be heard.”. 50

Amendment of section 23 of Act 37 of 2002

193. Section 23 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 55

“(1) **[The Ombud]** Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined

in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the accounting [officer in respect of all funds received and all payments made in respect of expenses incurred by] authority of the Office.

(2) The [Ombud as] accounting [officer] authority must[—

- (a) keep a full and correct record of all funds received and payments made, and of all assets, liabilities and financial transactions of the Office; 5
- (b) as soon as is practicable, but not later than three months after the end of every financial year, prepare annual financial statements reflecting, with appropriate particulars, all funds received and payments made during, and all such assets, liabilities and transactions at the end of, the relevant financial year] comply with the Public Finance Management Act.”. 10

Amendment of section 26 of Act 37 of 2002

194. Section 26 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Board may[, after consultation with the Advisory Committee,] make rules, including different rules in respect of different categories of complaints or investigations by the Ombud, regarding—”.

Repeal of section 33 of Act 37 of 2002

195. Section 33 of the principal Act is hereby repealed.

Amendment of section 34 of Act 37 of 2002, as amended by section 60 of Act 22 of 2008 20

196. Section 34 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Subject to subsections (2) and (3), the registrar may[, after consultation with the Advisory Committee,] by notice in the *Gazette* declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider.”; and 25
- (b) by the substitution for subsection (4) of the following subsection:
 - “(4) [The] An authorised financial services provider [concerned] or representative may not, on or after the date of the publication of a notice referred to in subsection (1), carry on the business practice concerned.”. 30

Amendment of section 35 of Act 37 of 2002

197. Section 35 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may by notice in the *Gazette*, after consultation with the registrar [and the Advisory Committee], make regulations relating to—”.

Amendment of section 36 of Act 37 of 2002, as amended by section 61 of Act 22 of 2008

198. Section 36 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (d) of the following paragraph:
 - “(d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another [such first-mentioned] representative.”; and 40
- (b) by the substitution for the words following paragraph (d) of the following words:
 - “is guilty of an offence and is on conviction liable to a fine not exceeding [R1 000 000] R10 million or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment.”. 50

Repeal of section 37 of Act 37 of 2002

199. Section 37 of the principal Act is hereby repealed.

Amendment of section 38 of Act 37 of 2002

200. Section 38 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) special resolution relating to the winding-up[, as contemplated in section 349 of] in terms of the Companies Act[, 1973 (Act No. 61 of 1973)], and registered in terms of that Act, of;”.

Insertion of sections 38A, 38B and 38C in Act 37 of 2002

201. The following sections are hereby inserted in the principal Act after section 38: 10

“Business rescue

38A. (1) (a) Notwithstanding the provisions of the Companies Act or any other law under which a provider is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a provider, whether or not it is a company. 15

(b) This section does not apply if another registrar 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 make an application for the business rescue of a provider. 20

(2) The registrar may make an application under section 131 of the Companies Act in respect of a provider if the registrar is satisfied that it is in the interests of the clients of the provider or the financial services industry. 25

(3) The following acts are subject to the approval of the registrar:

- (a) The resolution of a provider to begin business rescue proceedings;
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act. 30

(4) In the application of Chapter 6 of the Companies Act—

- (a) any reference to the Commission shall be construed as a reference also to the registrar;
- (b) the reference to creditors shall be construed as a reference also to clients of the provider;
- (c) any reference relating to the ability of a provider to pay all debts, shall be construed as relating also to the provider’s inability to comply with the financial soundness requirement under section 8(1)(c) of this Act;
- (d) there shall be considered, in addition to any question relating to the business of a provider, also the question whether any cause of action is in the interests of the clients. 40

(5) If an application to a Court for an order relating to the business rescue of a provider is made by an affected person other than the registrar—

- (a) the application shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the registrar, before the application is set down for hearing;
- (b) the registrar may, if satisfied that the application is not in the interests of the clients of the provider, join the application as a party and file affidavits and other documents in opposition to the application. 50

(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted permission to do so by a court. 55

Application by registrar for sequestration or liquidation

- 38B.** (1) 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), considers that the interests of the clients of a financial services provider or of members of the public so require, the registrar may apply to the court for the sequestration or liquidation of that provider, whether or not the provider is solvent, in accordance with— 5
- (a) the Insolvency Act, 1936 (Act No. 24 of 1936);
 - (b) the Companies Act; 10
 - (c) the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (d) the law under which that provider is incorporated.
- (2) In deciding an application contemplated in subsection (1), the court—
- (a) may take into account whether sequestration or liquidation of the financial services provider concerned is reasonably necessary— 15
 - (i) in order to protect the interests of the clients of the provider; and
 - (ii) for the integrity and stability of the financial sector;
 - (b) may make an order concerning the manner in which claims may be proved by clients of the financial services provider concerned; and 20
 - (c) shall appoint as trustee or liquidator a person nominated by the registrar.
- (3) This section does not apply if another registrar 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. 25

Directives

- 38C.** (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply. 30
- (2) A directive issued in terms of subsection (1) may—
- (a) apply generally; or
 - (b) be limited in its application to a particular person or category of persons. 35
- (3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.
- (4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure. 40
- (5) The registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”. 45

Substitution of section 40 of Act 37 of 2002

202. The following section is hereby substituted for section 40 of the principal Act:

“Saving of rights

40. No provision of this Act, and no act performed under or in terms of any such provision, may be construed as affecting any right of a client, or other affected person, to seek appropriate legal redress in terms of this Act, the common law or any other statutory law, and whether relating to civil or criminal matters, in respect of the rendering of any financial service by an authorised financial services provider, or representative of such provider, or any act of a person who is not an authorised financial services provider or a representative of such a provider.”. 50 55

Amendment of section 41 of Act 37 of 2002

203. Section 41 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice **[in the Gazette]** on the official web site.”.

Amendment of section 44 of Act 37 of 2002

204. Section 44 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) The registrar may in any case not provided for in this Act, on reasonable grounds, on application or on the registrar’s own initiative by notice **[in the Gazette]** on the official web site, exempt any person or category of persons from any provision of this Act.”.

Amendment of section 45 of Act 37 of 2002

205. Section 45 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) the liquidator of a company in liquidation, **[judicial manager]** business rescue practitioner of a company [under judicial management] subject to business rescue proceedings, or a person acting on behalf of such liquidator or **[judicial manager]** business rescue practitioner;”.

Amendment of Arrangement of Sections of Act 37 of 2002

206. The Arrangement of Sections of the principal Act is hereby amended—

- (a) by the insertion after item 6 of the following item:
“6A. Fit and proper requirements”;
- (b) by the insertion after item 8 of the following item:
“8A. Compliance with fit and proper requirements after authorisation”;
- (c) by the deletion of item 33;
- (d) by the deletion of item 37; and
- (e) by the insertion after item 38 of the following items:
“38A. Business rescue
38B. Application by registrar for sequestration or liquidation
38C. Directives”.

Part 9

Amendment of Collective Investment Schemes Control Act, 2002

Amendment of section 1 of Act 45 of 2002

207. Section 1 of the Collective Investment Schemes Control Act, 2002 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “advisory committee”;
- (b) by the substitution for the definition of “authorised agent” of the following definition:
“ ‘**authorised agent**’ means a person authorised by a manager to solicit investments in a portfolio from members of the public or to perform a function contemplated in the definition of ‘administration’, and includes any person to whom a function has been delegated in terms of section 4(5);”;
- (c) by the insertion after the definition of “collective investment scheme” of the following definition:
“ ‘**Companies Act**’ means the Companies Act, 2008 (Act No. 71 of 2008);”;
- (d) by the substitution for the definition of “company” of the following definition:
“ ‘**company**’ means a company **[incorporated or registered under]** as defined in the Companies Act, 1973 (Act No. 61 of 1973);”;

- (e) by the substitution for the definition of “deed” of the following definition:
- “**‘deed’** means the agreement between a manager and a trustee or custodian, or the document of incorporation whereby a collective investment scheme is established and in terms of which it is administered and includes—
- (i) the deed of a management company which immediately prior to the commencement of this Act was a management company in terms of any law repealed by this Act; and
- (ii) a supplemental deed entered into in terms of a deed.”;
- (f) by the insertion after the definition of “Minister” of the following definition:
- “**‘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 Board;”;
- (g) by the insertion after the definition of “prescribed “ of the following definition:
- “**‘publish’** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public;”;
- (h) by the substitution for the definition of “registrar” of the following definition:
- “**‘registrar’** means the [registrar or the deputy registrar of collective investment schemes] person referred to in section 7;”.

Amendment of section 4 of Act 45 of 2002

208. Section 4 of the principal Act is hereby amended by the addition of the following subsection:

- “(5) (a) A manager may, with the approval of the registrar and in writing, delegate any function listed in the definition of ‘administration’ to any person (in this section referred to as the ‘delegated person’).
- (b) Anything done or omitted to be done by the delegated person in the performance of a function so delegated, must be regarded as having been done or omitted by the manager.
- (c) The registrar has, in respect of a delegated person, all the powers and duties conferred or imposed upon the registrar in respect of a manager.
- (d) If a manager delegated any function listed in the definition of ‘administration’ to any person without the prior approval of the registrar before the commencement of section 208 of the Financial Services Laws General Amendment Act, 2012, that delegation must be regarded as having been made in terms of paragraph (a) for a period of six months, reckoned from the date on of such commencement, and after the expiration of that six-month period, the delegation continues in effect as if the registrar has approved the delegation in accordance with paragraph (a).”.

Amendment of section 5 of Act 45 of 2002

209. Section 5 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) is exempted from the provisions of this Act by the registrar by notice [in the Gazette] on the official web site.”.

Substitution of section 7 of Act 45 of 2002

210. The following section is hereby substituted for section 7 of the principal Act:

“Registrar and deputy registrar of collective investment schemes

7. (1) The executive officer [and a deputy executive officer] referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), [are] is the registrar [and the deputy registrar] of collective investment schemes[, respectively] and has the powers and duties provided for by or under this Act or any other law.

(2) The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of collective investment schemes.

(3) The deputy registrar of collective investment schemes exercises the functions of the registrar of collective investment schemes to the extent that such functions have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).”

Repeal of sections 8, 9, 10, 11, 12 and 13 of Act 45 of 2002

211. Sections 8, 9, 10, 11, 12 and 13 of the principal Act are hereby repealed.

Substitution of section 14 of Act 45 of 2002

212. The following section is hereby substituted for section 14 of the principal Act:

“Inspections and on-site visits

14. (1) (a) The registrar may—

- (i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person; or
- (ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998),

to conduct an on-site visit or inspection of the business and affairs of a person, whether registered or authorised in terms of this Act or not, who is involved in the administration of a collective investment scheme or the soliciting of investment in a collective investment scheme (in this section referred to as ‘the investigated person’).

(b) A person conducting an on-site visit in terms of paragraph (a)(i) may—

- (i) at any time during business hours—
 - (aa) enter the premises of the investigated person and the investigated person must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;
 - (bb) search the premises of the investigated person for any document;
 - (cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;
 - (dd) against the issue of a receipt, seize any document which may furnish proof of any failure to comply with the provisions of this Act;
- (ii) require the investigated person to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the investigated person;
- (iii) require any person on the premises that is holding or is accountable for any document to provide information and an explanation of that information.

(2) After an on-site visit or inspection has been carried out in terms of subsection (1), the registrar may direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

(3) The registrar may make known by notice on the official web site or by means of any other appropriate public media—

- (a) the outcome and details of an on-site visit if disclosure is in the public interest;
- (b) the status and outcome of an inspection; or
- (c) the details of an inspection if disclosure is in the public interest.”

Amendment of section 15 of Act 45 of 2002, as amended by section 63 of Act 22 of 2008

213. Section 15 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5

“If the registrar, after an **[investigation]** on-site visit or inspection under section 14, considers on reasonable grounds that the interests of the investors of a collective investment scheme or of members of the public so require, **[he or she]** the registrar may—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 10

“(a) apply to the court under **[section 346 of]** the Companies Act**[, 1973 (Act No. 61 of 1973),]** for the winding-up of a manager or of a collective investment scheme **[as if he or she were a creditor thereof];**”;
- (c) by the deletion in subsection (1) of paragraph (b);
- (d) by the deletion in subsection (1) of the word “or” at the end of paragraph (g) and the addition to that subsection of the following paragraphs:
 - “(i) instruct a manager to wind up a portfolio or amalgamate a portfolio with another portfolio; 20
 - (j) if a manager fails to comply with a written request, direction or directive by the registrar under this Act, do or cause to be done all that a manager was required to do in terms of the request, direction or directive of the registrar.”;
- (e) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 25

“The registrar may oppose any application in terms of the Companies Act**[, 1973 (Act No. 61 of 1973),]** for—”;
- (f) by the insertion in subsection (2) of the word “or” at the end of paragraph (a) and the deletion in that subsection of paragraph (b); and 30
- (g) by substitution for subsection (4) of the following subsection:

“(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (d), (e), (f) or (g) of subsection (1) is guilty of an offence and on conviction liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding **[one year]** 10 years, or to both **[a]** such fine and such imprisonment.”. 35

Insertion of sections 15A and 15B in Act 45 of 2002

214. The following sections are hereby inserted in the principal Act after section 15:

“Powers of registrar in respect of financial soundness requirement

- 15A.** (1) If the registrar is satisfied that a manager, trustee or custodian is failing, or is likely to fail within a reasonable period, to comply with an applicable financial soundness requirement under this Act, the registrar may by notice direct the manager, trustee or custodian to furnish the registrar, within a specified period, with— 40
- (a) specified information relating to the nature and cause of the failure; 45
 - and
 - (b) proposals as to the course of action that the manager, trustee or custodian must adopt to ensure compliance with the financial soundness requirement under this Act.
- (2) When the registrar has received the information and proposals referred to in subsection (1), the registrar may, without derogating from the registrar’s powers under any other provision of this Act— 50
- (a) by notice authorise the manager, trustee or custodian concerned to adopt a course of action which the registrar is satisfied will reasonably ensure that the manager, trustee or custodian complies with the financial soundness requirements under this Act; 55

- (b) at that time or at any time thereafter, by notice authorise the adjustment of that course of action to the extent that the registrar deems appropriate in the circumstances; or
 - (c) if deemed reasonably necessary in the interests of investors, at that time or at any time thereafter, and notwithstanding any steps already taken by the registrar in accordance with paragraph (a) or (b) or any other provision of this Act, act in accordance with section 15.
- (3) For the purposes of this section, ‘financial soundness requirement’ means any requirement or limitation referred to in sections 85 to 89, inclusive, sections 91 to 96, inclusive, and section 105 and includes any other financial requirements imposed under this Act.

Directives

- 15B.** (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person to whom the provisions of this Act apply.
- (2) A directive issued in terms of subsection (1) may—
- (a) apply generally; or
 - (b) be limited in its application to a particular person or to a category of persons.
- (3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.
- (4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.
- (5) The registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”.

Repeal of section 21 of Act 45 of 2002 30

215. Section 21 of the principal Act is hereby repealed.

Amendment of section 34 of Act 45 of 2002

- 216.** Section 34 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (1), the provisions of the Companies Act[**1973 (Act No. 61 of 1973),**] relating to the voluntary winding-up of companies apply with the necessary changes to the voluntary dissolution of an association.”; and
 - (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) forward to the registrar a copy of every notice or account which, in terms of the Companies Act[**1973**], he or she is required to furnish to the Master of the High Court.”.

Amendment of section 35 of Act 45 of 2002

- 217.** Section 35 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) the business rescue practitioner of the association; or”; and
 - (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) (a) Subject to the provisions of subsection (1), the provisions of the Companies Act[**1973 (Act No. 61 of 1973),**] relating to the winding-up of companies by the court apply with the necessary changes to an association.

(b) In the application of the provisions of that Act[—

- (i) section 346(3) of that Act is construed as if after the words ‘except an application by’ there were inserted the words ‘the registrar defined in section 1 of the Collective Investment Schemes Control Act, 2002, or’;
 - (ii) section 346(4)(a) of that Act is construed as if after the words ‘lodged with the Master’ there were inserted the words ‘and registrar defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)’;
 - (iii) section 346(4)(b) of that Act is construed as if after the word ‘Master’ there were inserted the words ‘or registrar defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)’; and
 - (iv) section 357 of that Act is construed as if the registrar were included among the persons to whom notice is required to be given under subsection (1)(b) of that section] the reference to the Commission in section 81 of the Companies Act must be construed as being a reference also to the registrar.
- (3) An order for the winding-up of an association by the court may only be made if the court is satisfied that [it] a business rescue of the association is undesirable [that an association be placed under judicial management].”.

Substitution of section 36 of Act 45 of 2002

218. The following section is hereby substituted for section 36 of the principal Act:

“Business rescue of association

36. Section 111A applies with the changes required by the context to the business rescue of an association.”.

Substitution of section 37 of Act 45 of 2002

219. The following section is hereby substituted for section 37 of the principal Act:

“Appointment of [judicial manager or] liquidator

37. Despite the provisions of the Companies Act, [1973 (Act No. 61 of 1973),] a [judicial manager or] liquidator in respect of an association must be appointed by the Master of the High Court in consultation with the registrar.”.

Amendment of section 41 of Act 45 of 2002

220. Section 41 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) is a company under the Companies Act[, 1973 (Act No. 61 of 1973)]; and”; and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding [five] 10 years, or to both [a] such fine and such imprisonment.”.

Amendment of section 42 of Act 45 of 2002

221. Section 42 of the principal Act is hereby amended by the addition of the following subsection:

“(5) The registrar may, after the registration of a company as a manager, on application by the manager or on the registrar’s own initiative, withdraw or amend any condition or restriction in respect of the registration if the registrar is satisfied

that any such withdrawal or amendment is justified and will not prejudice the interests of investors.”.

Substitution of section 46 of Act 45 of 2002

222. The following section is hereby substituted for section 46 of the principal Act:

“Limitation on investment in portfolio

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46. (1) The registrar may[, **after consultation with the advisory committee,**] determine the manner in which and the limits and conditions subject to which securities or classes of securities may be included in a portfolio of a collective investment scheme in securities.

(2) The registrar may[, **after consultation with the advisory committee,**] determine different manners, limits and conditions for different securities or classes of securities or different portfolios of a collective investment scheme in securities.”.

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Amendment of section 47 of Act 45 of 2002

223. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “property shares” of the following paragraph: 15

“(b) a holding company which has no subsidiaries other than fixed property companies which are wholly owned subsidiaries as referred to in section **[1(5)] 3(1)(b)** of the Companies Act[, **1973 (Act No. 61 of 1973)**]; and”. 20

Amendment of section 48 of Act 45 of 2002

224. Section 48 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) is registered as a company under the Companies Act[, **1973 (Act No. 61 of 1973)**]; and”; and 25

(b) by the substitution for subsection (3) of the following subsection:

“(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding **[five]** 10 years, or to both **[a]** such fine and such imprisonment.”. 30

Amendment of section 50 of Act 45 of 2002

225. Section 50 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[Chapter V]** Part D of Chapter 2 of the Companies Act[, **1973 (Act No. 61 of 1973),**] applies to the repurchase of a participatory interest by a collective investment scheme in property and for the purposes of this subsection, ‘shares’ as referred to in that **[Chapter are regarded as including]** Part includes participatory interests in a collective investment scheme in property.”. 35

Amendment of section 53 of Act 45 of 2002

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226. Section 53 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding **[five]** 10 years, or to both **[a]** such fine and such imprisonment.”. 45

Amendment of section 65 of Act 45 of 2002

227. Section 65 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A person who solicits investments in a foreign collective investment scheme which is not approved in terms of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding [five] 10 years, or to both **[a] such** fine and such imprisonment.”.

Amendment of section 69 of Act 45 of 2002

228. Section 69 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) a public company under the Companies Act[, 1973 (Act No. 61 of 1973)];”;

(b) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

“(i) the company or institution is not, in relation to the manager, either a holding company or a subsidiary **[or fellow subsidiary company]** within the meaning of those terms as defined in the Companies Act[, 1973 (Act No. 61 of 1973)]; and”.

Amendment of section 70 of Act 45 of 2002

229. Section 70 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A trustee or custodian must report to the manager any irregularity or undesirable practice[, **whether declared in terms of section 21 or not,**] concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it must as soon as possible report such irregularity or undesirable practice to the registrar.”.

Substitution of section 81 of Act 45 of 2002

230. The following section is hereby substituted for section 81 of the principal Act:

“Registration of [memorandum and articles of association by registrar of companies] Memorandum of Incorporation by Companies and Intellectual Property Commission

81. (1) If a collective investment scheme is not a company incorporated in terms of the Companies Act, [1973 (Act No. 61 of 1973),] and is converted into a collective investment scheme in the format of a company, it must be incorporated as a company in terms of the Companies Act[, 1973,] with its **[memorandum and articles of association]** Memorandum of Incorporation complying with that Act: Provided that, subject to the requirements of the Companies Act[, 1973,] and any requirement of the registrar or any other authority, the conversion must be regarded as having taken place upon the **[registration of the memorandum and articles of association]** endorsement of the Memorandum of Incorporation under that Act.

(2) The **[Registrar of Companies]** Companies and Intellectual Property Commission may not **[register the memorandum and articles of association]** endorse the Memorandum of Incorporation of a company contemplated in this section unless the application is accompanied by a certificate issued in terms of section 82(1).

(3) For the purposes of the **[registration of the memorandum and articles of association]** endorsement of the Memorandum of Incorporation of any such company in terms of the Companies Act, [1973 (Act No. 61 of 1973),] the persons referred to in section 78(2)(e) must, if they accept their

appointment as the first directors of the company, sign **[the memorandum and articles of association]** the Memorandum of Incorporation as if they were the **[subscribers of such company as]** persons contemplated in section **[54(2)] 13(1)** of the Companies Act[, 1973].”.

Amendment of section 84 of Act 45 of 2002

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231. Section 84 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions of the Companies Act, **[1973 (Act No. 61 of 1973),]** with respect to the issue of a prospectus or an offer of shares, do not apply to an offer referred to in subsection (1).”.

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Amendment of section 90 of Act 45 of 2002

232. Section 90 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) a copy of every return or notice which the manager is required to furnish to the **[Registrar of Companies]** Companies and Intellectual Property Commission under **[section 216(2)]** sections 70(6) and 85 of the Companies Act[, 1973 (Act No. 61 of 1973)].”.

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Amendment of section 97 of Act 45 of 2002

233. Section 97 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) (a) The registrar, if a provision of a deed is not in the best interests of investors or does not afford sufficient protection to investors, may by notice in the Gazette suspend a provision of any deed and—

- (i) determine the matters to be complied with; or **[suspend such a provision and]**
- (ii) determine the matters in respect of and the period within which any deed must be amended.

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(b) Where the registrar, under paragraph (a)(ii), has determined matters in respect of and the period within which a deed must be amended, and the deed is not amended to the satisfaction of the registrar or within the determined period, the registrar may amend the deed.

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(c) If the registrar has amended a deed under paragraph (b), the deed must be regarded as having been amended in accordance with the requirements of this Act, despite all parties to that deed not having agreed to or signed the deed.”.

Amendment of section 111 of Act 45 of 2002

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234. Section 111 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) Except where this Act expressly provides otherwise, the application of the Companies Act **[, 1973 (Act No. 61 of 1977),]** to a manager is not affected by this Act.

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(2) (a) **[Sections 85 to 89 of the Companies Act, 1973, do]** Despite section 5 of the Companies Act, section 48 of the said Act does not apply to an open-ended investment company.

(b) **[Chapter VI of the Companies Act, 1973,]** Despite section 5 of the Companies Act, Chapter 4 of the said Act does not apply to any offer of participatory interests to members of the public or to investors by an open-ended investment company or a foreign collective investment scheme approved in terms of section 65.

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(3) In the application of section **[357] 82** of the Companies Act[, 1973 (Act No. 61 of 1973),] to a manager, the **[registrar is regarded as having been included amongst the persons to whom notice is required to be given under]** Master must also file promptly with the registrar a copy of the documentation referred to in subsection (1)(b) of that section.”;

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- (b) by the deletion of subsection (4); and
 (c) by the substitution for subsection (5) of the following subsection:

“(5) The registrar may, in respect of any manager being wound up or **[judicially managed]** being subject to business rescue proceedings, in writing direct the liquidator or the **[judicial manager]** business rescue practitioner, as the case may be, to furnish him or her with a copy of any particular account, return statements or other document which the liquidator or the **[judicial manager]** business rescue practitioner is required under any provision of the Companies Act~~[,1973]~~ to furnish to the **[Registrar of Companies]** Companies and Intellectual Property Commission or the Master, or to furnish him or her from time to time with copies of all or any of such accounts, returns, statements or documents as and when they are furnished to the said **[Registrar]** Commission or to the Master.”.

Insertion of section 111A in Act 45 of 2002

235. The following section is hereby inserted in the principal Act after section 111:

“Business rescue of manager

- 111A.** (1) Despite the provisions of the Companies Act or any other law under which a manager is incorporated, Chapter 6 of the Companies Act applies subject to this section and with the changes required by the context, in relation to the business rescue of a manager whether or not it is a company.
- (2) The registrar may make an application under section 131 of the Companies Act in respect of a manager if the registrar is satisfied, whether as contemplated in section 88 or 89 of this Act, or otherwise, that it is in interests of investors.
- (3) The resolution of a manager to begin business rescue proceedings, the appointment of a business rescue practitioner, the adoption of a business rescue plan and the exercise of a power by the business rescue practitioner under the Companies Act, are subject to the approval of the registrar.
- (4) In the application of Chapter 6 of the Companies Act—
- (a) a reference to the Commission, shall be construed as a reference also to the registrar;
 - (b) a reference to creditors, shall be construed as a reference also to investors;
 - (c) a reference relating to the ability of a manager to pay all its debts, shall be construed as relating also to its inability to comply with sections 88 and 89 of this Act; and
 - (d) there shall, in addition to any question relating to the business of a manager, be considered also the question whether any cause of action is in the interests of investors.
- (5) If an application to a Court for an order relating to the business rescue of a manager is made by an affected person other than the registrar—
- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the registrar before the application is set down for hearing;
 - (b) the registrar may, if satisfied that the application is not in the interests of the investors of the manager concerned, join the application as a party and file affidavits and other documents in opposition to the application.
- (6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a manager shall not issue any fresh participatory interests, unless the practitioner has been granted permission to do so by a court.”.

Amendment of section 114 of Act 45 of 2002

236. Section 114 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Any matter which the registrar may or must determine in terms of this Act must be determined by notice on the official web site, unless notice in the Gazette is specifically required.”.

Substitution of section 116 of Act 45 of 2002

237. The following section is hereby substituted for section 116 of the principal Act:

“Penalties

116. Subject to the provisions of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), regarding minimum sentences for serious offences, any person who is, in terms of any provision of this Act, guilty of an offence in respect of which no penalty is specifically provided, is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding **[five]** 10 years or to both **[a]** such fine and such imprisonment.”.

Amendment of Arrangement of Sections of Act 45 of 2002

238. The Arrangement of Sections of the principal Act is hereby amended—

- (a) by the substitution for item 14 of the following item:
“14. Investigations and inspections”;
- (b) by the insertion after item 15 of the following items: 20
“15A. Powers of registrar in respect of financial soundness requirement
15B. Directives”;
- (c) by the deletion of item 21;
- (d) by the substitution for items 36 and 37 of the following items: 25
“36. Business rescue of association
37. Appointment of liquidator”;
- (e) by the substitution for item 81 of the following item:
“81. Registration of Memorandum of Incorporation by Companies and Intellectual Property Commission”; and 30
- (f) by the insertion after item 111 of the following item:
“111A. Business rescue of manager”.

Part 10

Amendment of Co-operative Banks Act, 2007

Amendment of section 1 of Act 40 of 2007 35

239. Section 1 of the Co-operative Banks Act, 2007 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “co-operative bank” of the following paragraphs, respectively:
 - “(a) **[are of similar occupation or profession or who]** are employed by a common employer or who are employed within the same business district; or 40
 - (b) have common membership in an association or organisation, including a **[business,]** religious, social, co-operative, labour or educational group;”;
- (b) by the insertion in subsection (1) after the definition of “co-operative bank” of the following definition: 45
“‘co-operative financial institution’ means a co-operative that chooses to identify itself by use of the name Financial Co-operative, Financial Services Co-operative, Credit Union or Savings and Credit Co-operative;”; 50

- (c) by the substitution in subsection (1) for the definition of “representative body” of the following definition:
 “**‘representative body’** means a secondary co-operative, irrespective of whether it is also a secondary co-operative bank, or other association of co-operative financial institutions and co-operative banks registered under section 33 that represents **[more than one co-operative bank or]** at least two co-operative banks or co-operative financial institutions in interactions with organs of state, the private sector and stakeholders;”;
- (d) by the substitution in subsection (1) for paragraph (b) of the definition of “rule” of the following paragraph:
 “(b) the Agency, means a rule prescribed by the **[supervisor]** Agency under section 57;”;
- (e) by the substitution in subsection (1) for the definition of “support organisation” of the following definition:
 “**‘support organisation’** means a **[representative body]** support organisation accredited under section 38 that **[support]** supports more than one co-operative financial institution or co-operative bank as contemplated in section 37;”.

Amendment of section 23 of Act 40 of 2007

240. Section 23 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

- “(1) A co-operative bank may not without the approval of the supervisor—
- (a) make an investment with any one person or grant a loan to any one member, which investment or loan, alone or together with all **[previous]** existing investments or loans made or granted to that person or member, will exceed such percentage of its total investments or loans as may be prescribed by the Minister; or
- (b) hold a deposit from any one member or related person, which deposit, alone or together with all existing deposits received from that member or related person will exceed such percentage of its total deposits as may be prescribed by the Minister.
- (2) The supervisor may, when approving a deposit, loan or investment referred to in subsection (1), impose prudential requirements on the co-operative bank in addition to those referred to in section 20.”.

Amendment of section 31 of Act 40 of 2007

241. Section 31 is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) The **[supervisor]** Agency may require a representative body to furnish **[him or her]** the Agency with additional information or documents.”.

Amendment of section 32 of Act 40 of 2007

242. Section 32 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) represents **[two or more]** more than one co-operative financial institution or co-operative [banks] bank in interactions with organs of state, the private sector and stakeholders; **[and]**”.

Amendment of section 36 of Act 40 of 2007

243. Section 36 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “The **[supervisor]** Agency may require a support organisation to furnish **[him or her]** the Agency with—”; and

- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) a report by an auditor or by any other knowledgeable person, approved by the [supervisor] Agency, on aspects relating to the application.”.

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Amendment of section 37 of Act 40 of 2007

244. Section 37 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (a); and
(b) by the substitution in paragraph (b) for the words preceding subparagraph (i) of the following words:

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“support agreements have been entered into with at least two co-operative banks or co-operative financial institutions, which support agreements may provide for—”.

Amendment of section 41 of Act 40 of 2007

245. Section 41 of the principal Act is hereby amended by—

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- (a) by the substitution for the heading of the following heading:

“[Supervisors] Supervisor of co-operative banks”;

- (b) by the substitution for subsection (1) of the following subsection:

“(1) The South African Reserve Bank must, subject to the approval of the Minister, appoint a suitable employee in its service as the supervisor of co-operative banks with the authority to exercise the powers and perform the functions conferred on the supervisor by or in terms of this Act [in respect of—

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- (a) primary co-operative banks that hold deposits in excess of 20 million Rand;

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- (b) secondary co-operative banks; and

- (c) tertiary co-operative banks].”; and

- (c) by the deletion of subsections (2), (3) and (4).

Repeal of section 42 of Act 40 of 2007

246. Section 42 of the principal Act is hereby repealed.

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Substitution of section 43 of Act 40 of 2007

247. The following section is hereby substituted for section 43 of the principal Act:

“Deputy co-operative bank supervisors [and designated employees]

43. The South African Reserve Bank [and Agency] may, subject to the approval of the Minister[—

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- (a)] appoint not more than four employees in its service as deputy co-operative banks supervisors, to assist the supervisor in the performance of his or her duties[; and

- (b) from time to time designate such other employees of the Agency as may be necessary to assist the supervisor].”.

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Amendment of section 47 of Act 40 of 2007

248. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) The supervisor has for the purposes of subsection (2) the powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, [1988 (Act No. 80 of 1988)] 1998 (Act No. 80 of 1998), and any reference in that Act to ‘registrar’ must be construed as a reference to ‘supervisor’ and any reference to ‘financial institution’ must be construed as a reference to ‘co-operative bank’, provided that no warrant is required for search and seizure activities aimed at establishing regulatory compliance.”.

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Amendment of section 48 of Act 40 of 2007

249. Section 48 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A directive issued in terms of subsection (1) takes effect on the date determined by the **[Reserve Bank]** supervisor in the directive, and may take effect immediately.”. 5

Amendment of section 55 of Act 40 of 2007

250. Section 55 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (b);
(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 10

“(f) provide, in consultation with the supervisor, financial support to co-operative banks through loans or grants;”;

(c) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 15

“(h) assist, in consultation with the supervisor, co-operative banks with liquidity management;”;

(d) by the deletion in subsection (1) of the word “and” at the end of paragraph (k), the addition to that subsection of the word “and” to paragraph (l) and the addition to that subsection of the following paragraph: 20

“(m) perform any other function consistent with this Act, which the Minister may determine by notice in the Gazette.”.

Amendment of section 57 of Act 40 of 2007

251. Section 57 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 25

“(a) the matters referred to in section 55(1)(d) **[to (h)]** and (e);”;

(b) by the insertion in subsection (1) after paragraph (a) of the following paragraph: 30

“(aA) the matters referred to in section 55(1)(f) to (h), in consultation with the supervisor;”;

(c) by the insertion in subsection (3) after paragraph (a) of the following paragraph: 35

“(aA) Before the Agency secures the written approval of the Minister in terms of paragraph (a)(i), in respect of any Rule that applies to a co-operative bank, the Agency must obtain written approval of the supervisor.”.

Amendment of section 58 of Act 40 of 2007

252. Section 58 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) The board of the Agency consists of the Managing Director and not less than six but not more than 10 non-executive members appointed by the Minister.”.

Amendment of section 61 of Act 40 of 2007

253. Section 61 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45

“(b) The chairperson and deputy chairperson each hold office for a period of **[two]** three years from the date of their appointment.”.

Substitution of section 83 of Act 40 of 2007

254. The following section is hereby substituted for section 83 of the principal Act:

“Certification of documents

83. Any document that must be submitted to the supervisor by a co-operative bank in terms of this Act must be certified as correct by the managing director **[and, in the case of financial information, also by the auditor of the co-operative bank].”** 5

Amendment of Arrangement of Sections of Act 40 of 2007

255. The Arrangement of Sections of the principal Act is hereby amended—

- (a) by the substitution for item 41 of the following item: 10
“41. [Supervisors] Supervisor of co-operative banks”; and
- (b) by the deletion of item 42.

Part 11***Amendment of Financial Services Laws General Amendment Act, 2008*****Amendment of section 78 of Act 22 of 2008** 15

256. Section 78 of the Financial Services Laws General Amendment Act, 2008, is hereby amended by the substitution for subsections (2) to (10) of the following subsections, respectively:

“(2) Anything done or omitted by the board of appeal referred to in the Financial Services Board Act, 1990, or by any member thereof, prior to the date of coming into operation of this Act, is deemed, unless clearly inappropriate, to have been done or omitted by the appeal board established by virtue of section **[10] 29** of this Act, or by a corresponding member thereof, as the case may be. 20

(3) A reference in any law—

- (a) to the board of appeal referred to in Financial Services Board Act, 1990, as constituted immediately prior to the coming into operation of this Act, is, unless clearly inappropriate, construed as a reference to the appeal board established by virtue of section 26A inserted in terms of section **[28] 29** of this Act; and 25
- (b) to section 26 of the Financial Service Board Act, 1990, as it existed prior to the date of coming into operation of this Act, is construed, unless clearly inappropriate, as a reference to section 26 of that Act as substituted by sections 26A and 26B, as inserted in the Financial Services Board Act, 1990, by section **[28] 29** of this Act. 30

(4) The deletion, by virtue of section **[33] 66** of this Act, of the definition of ‘enforcement committee’ in section 1 of the Securities Services Act, 2004, and the repeal of sections 94(e), 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 111(b) and (3) of the Act by sections **[67, 68 and 69] 71(b)**, 72 and 73 of this Act, do not affect any proceeding **[of, investigation]** instituted or to be instituted, fine to be imposed or the payment of a compensatory amount to be required, by the enforcement committee referred to in that Act **[and which is pending at the date of coming into operation of this Act]**, and any such proceeding, **[investigation,]** fine or payment of a compensatory amount may be instituted, continued, **instituted]** or enforced as if this Act had not been passed. 35 40

(5) The definition of ‘representative’ in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section **[44(c)] 45(d)** of this Act, only applies with effect from a date 12 months after the date contemplated in section **[76] 79** to persons employed or mandated as representatives prior to that date. 45

(6) The provisions of section 8(10) of the Financial Advisory and Intermediary Services Act, 2002, as inserted by section **[47] 48** of this Act, only applies with effect from a date 12 months after the date contemplated in section **[76] 79** to persons employed or mandated as representatives prior to that date. 50

(7) An agreement concluded between a provider and a representative as contemplated in the Financial Advisory and Intermediary Services Act, 2002, before the date contemplated in section [76] 79 and which qualified as a mandatory agreement contemplated in section 13(1)(b)(i) of the first-mentioned Act, before that date, is deemed with effect from the date contemplated in section [76] 79 to constitute a mandate contemplated in section 13(1)(b)(i) of the first-mentioned Act, as replaced by section [50] 52(a) of this Act. 5

(8) The provisions of section 13(2)(a) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section [50] 52(b) of this Act, only applies with effect from 12 months after the date contemplated in section [76] 79 to persons who are with effect from that date or any later date appointed as representatives or their key individuals, as contemplated in the Financial Advisory and Intermediary Services Act, 2002. 10

(9) Section 17(1)(b) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section [55] 57(a) of this Act, only applies with effect from a date 18 months after the date contemplated in section [76] 79 to directors, members, auditors, trustees, principal officers, public officers or company secretaries appointed as compliance officers prior to that date. 15

(10) Section [56(c)] 58(b) of this Act comes into operation on a date six months after the date contemplated in section [76] 79.”. 20

Part 12

Consequential and Related Amendments to Certain Laws, Exemptions, Saving and Short Title and Commencement

Consequential and related amendments to certain laws

257. The laws referred to in the Schedule are hereby amended to the extent specified in the third column thereof. 25

Exemptions and saving

258. (1) The Minister may by notice in the *Gazette*, where practicalities impede the strict application of a specific provision of this Act, exempt any financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), from, or in respect of, such provision for a period and on conditions determined in the notice. 30

(2) An exemption under subsection (1) may—

- (a) apply to financial institutions generally; or
- (b) be limited in its application to a particular— 35
 - (i) financial institution;
 - (ii) kind of financial institution, which may, for the purposes of this section, be defined either in relation to a category or type of financial institution or in any other manner.

(3) Anything done under a provision of a law amended by this Act prior to the amendment of that provision by this Act, must be regarded as having been done under the provision of that law as amended by this Act. 40

Short title and commencement

259. (1) This Act is called the Financial Services Laws General Amendment Act, 2012, and comes into operation on a date determined by the Minister by notice in the *Gazette*. 45

(2) The Minister may set different dates for different provisions of this Act to come into operation.

(3) Despite subsection (1), section 1(l) is deemed to have come into operation on 7 December 2001. 50

Schedule

LAWS AMENDED

(Section 257)

No. and year of act	Short title	Extent of amendment
Act No. 78 of 1998	National Payment System Act, 1998	Amendment of section 4 of Act 78 of 1998, as amended by section 4 of Act 22 of 2004, section 90 of Act 40 of 2007 and section 35 of Act 22 of 2008 1. Section 4 of Act 78 of 1998 is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) to act as a medium for communication by its members with the South African Government, the Reserve Bank, the Registrar of Banks, the Co-operative Bank [Supervisors] Supervisor, the Registrar of Financial Institutions, any financial or other exchange, other public bodies, authorities and officials, the news media, the general public and other private associations and institutions; and;”.
Act No. 131 of 1998	Medical Schemes Act, 1998	Amendment of section 1 of Act 131 of 1998, as amended by section 1 of Act 55 of 2001, section 1 of Act 62 of 2002, section 40 of Act 65 of 2002 and section 25 of Act 52 of 2003 1. Section 1 of Act 131 of 1998 is hereby amended— (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b) of the definition of “business of a medical scheme”; (b) by the insertion in subsection (1) of the word “or” after paragraph (c) of the definition of “business of a medical scheme”; and (c) by the addition in subsection (1) to the definition of “business of a medical scheme” of the following paragraph: “(d) to undertake two or more of the activities referred to under paragraphs (a) to (c).”.

No. and year of act	Short title	Extent of amendment
Act No. 14 of 2005	Co-operatives Act, 2005	Amendment of Schedule 1 to Act 14 of 2005, as amended by section 90 of Act 40 of 2007 1. Schedule 1 to Act 14 of 2005 is hereby amended by the substitution for subitem (1) of item 7 of Part 3 of the following subitem: “(1) The Minister may, in consultation with the Minister of Finance, the [relevant supervisor for co-operative banks] <u>Co-operative Bank Supervisor</u>, the Registrar of Banks or the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as the case may be, make regulations regarding any matter relating to the operation or administration of financial services co-operatives or any category of financial services co-operatives.”.

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

1 BACKGROUND TO BILL

- 1.1 The Bill was considered and approved by the Minister of Finance and Cabinet on 22 February 2012. The Bill was thereafter released for public comment on 9 March 2012. The public comment period was extended from 13 April 2012 to 2 May 2012, to accommodate stakeholder requests for an extension.
- 1.2 The Bill amends eleven financial sector laws to address legislative gaps highlighted after the 2008 financial crisis and to align these laws with the Companies Act, 2008 (Act No. 71 of 2008), and other legislation. Many of these gaps were noted in the policy paper, “*A safer financial sector to serve South Africa better*”, published by the National Treasury (“the NT”) with the 2011 Budget. The paper outlined 15 principles that will guide the reform of South Africa’s financial regulatory architecture. However, it should be noted that the proposed amendments do not cover the more fundamental reforms envisaged in the shift towards a twin peaks model of financial regulation, but rather address the more urgent legislative gaps and the removal of inconsistencies in current legislation. Amendments to legislation to introduce the twin peaks model are expected to be published in 2013.
- 1.3 The eleven financial sector Acts amended in this Bill include the Financial Services Board Act, 1990 (Act No. 97 of 1990), the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), Financial Institutions (Protection of Funds) Act, 2001 (Act No. 80 of 2001), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), the Pension Funds Act, 1956 (Act No. 24 of 1956), the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), the Co-operative Banks Act, 2007 (Act No. 40 of 2007), and the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).
- 1.4 A total of 35 submissions were received during the public comment process. Each submission was thoroughly considered by the NT and the Financial Services Board (“the FSB”).
- 1.5 The NT held an information session with key industry stakeholders, including the Association of Savings and Investments South Africa, the South African Insurance Association, the Banking Association of South Africa and the Institute of Retirement Funds. The purpose of the information session was to provide a broad overview of the objectives of the Bill and to clarify comments received on the Bill. The NT also engaged with the Congress of South African Trade Unions, the FSB, the South African Reserve Bank (“the SARB”), the Department of Trade and Industry and the Financial Intelligence Centre.
- 1.6 The Bill effects amendments to take into account comments received during the public consultation process.

2 OBJECTS OF BILL

The primary objective of the Bill is to ensure that even during the transition to the twin peaks system, South Africa has a sounder and better regulated financial services industry which promotes financial stability by—

- strengthening the financial sector regulatory framework;
- enhancing the supervisory powers of the regulators; and
- enhancing the powers of the Government to address potential risks to the financial system.

3 SUMMARY OF BILL

3.1 The Bill addresses several urgent areas by—

- closing gaps identified by the Financial Sector Assessment Program conducted by the International Monetary Fund (“IMF”) and World Bank regarding South Africa’s adherence to international standards for financial regulation;
- aligning financial sector legislation with the Companies Act, 2008;
- eliminating overlaps caused by the Consumer Protection Act, 2008 (Act No. 68 of 2008), the Companies Act, 2008 and the Competition Amendment Act, 2009 (Act No.1 of 2009); and
- making the FSB the lead regulator where there is concurrent jurisdiction.

3.2 The Bill seeks to strengthen the financial sector regulatory framework by—

- updating and aligning existing legislation to the Companies Act, 2008;
- resolving regulatory overlaps caused by the Consumer Protection Act, 2008 and the Competition Act, 1998 (Act No. 89 of 1998);
- closing regulatory gaps identified by the Financial Sector Assessment Program conducted by the IMF and World Bank in existing legislation regarding South Africa’s adherence to international standards for financial regulation;
- rationalising and aligning FSB Registrars’ supervisory powers;
- providing for enhanced supervisory powers by establishing the FSB as the lead regulator where there is concurrent jurisdiction in respect of the same entities;
- clarifying the status of FSB legislation in relation to other legislation, to the extent that such legislation may impact on the stability of the financial services sector and impede effective supervision; and
- effecting technical amendments to clarify the intent and purpose of certain provisions.

3.3 The Bill also provides for the following:

- Repealing all current Advisory and Standing Committees with the aim of rationalising the consultation process;
- enabling the SARB to provide emergency liquidity to the banking system during a financial crisis;
- amending the Co-operative Banks Act, 2007 (Act No. 40 of 2007), to provide for the SARB to be the sole supervisor of Co-operative Banks; and
- amending the definition of “business of a medical scheme” in the Medical Schemes Act, 1998 (Act No. 131 of 1998), to correctly reflect the intention of the Medical Scheme Act, 1998, and to facilitate the appropriate demarcation between health insurance products and medical schemes.

3.4 The Bill was finalised in response to comments received during the public consultation process. A number of general comments were received in relation to the Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, the Financial Advisory and Intermediary Services Act, 2002, and the Financial Institutions (Protection of Funds) Act, 2001. Key amendments were also introduced in the Financial Services Board Act, 1990, and the Pension Funds Act, 1956, to address comments received.

- 3.5 Key amendments effected in the Financial Services Board Act, 1990, include the following:
- Limitation of liability of the regulator if it exercises the powers conferred upon them in terms of statute provided those powers were exercised in good faith (“bona fide”);
 - empowering the Minister to prescribe a code of engagement, consultation and communication for the FSB;
 - appropriately defining the relationship of FSB legislation with other legislation;
 - postponing addressing the emergency powers of the Minister that were included in the version of the Bill that was published for public comment, to the “Twin Peaks” regulatory framework;
 - providing for exemptions and directives to be tabled as part of the FSB annual report to Parliament and to be published on the official web site in order to reduce the costs associated with publication in the *Government Gazette*; and
 - ensuring that information received by the FSB is treated confidentially.
- 3.6 Key amendments effected in the Pension Funds Act, 1956, include the following:
- Whistle blowing protection for Board members, valuers, principal officers, deputy officers and employees who disclose material information to the Registrar;
 - empowering the Registrar to prescribe requirements relating to training and skills for Board members;
 - extending personal liability to employers in respect of non-payment of pension contributions to a fund;
 - protection for Board members from joint and several liabilities if they act independently, honestly, in exercising their fiduciary obligations;
 - requiring pension funds to notify the Registrar of their intention to submit an application to register prior to commencing the business of a pension fund; and
 - providing for a trustee education requirement.
- 3.7 The Bill is divided into the following 12 parts:
- Part 1: Amendments to Pension Funds Act, 1956 (clauses 1 to 52);
 - Part 2: Amendment to South African Reserve Bank Act, 1989 (clause 53);
 - Part 3: Amendments to Financial Services Board Act, 1990 (clauses 54 to 68);
 - Part 4: Amendments to Long-term Insurance Act, 1998 (clauses 69 to 110);
 - Part 5: Amendments to Short-term Insurance Act, 1998 (clauses 111 to 147);
 - Part 6: Amendments to Inspection of Financial Institutions Act, 1998 (clauses 148 to 157);
 - Part 7: Amendments to Financial Institutions (Protection of Funds) Act, 2001 (clauses 158 to 174);

- Part 8: Amendments to Financial Advisory and Intermediary Services Act, 2002 (clauses 175 to 206);
- Part 9: Amendments to Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) (clauses 207 to 238);
- Part 10: Amendments to Co-operative Banks Act, 2007 (clauses 239 to 255);
- Part 11: Amendment to Financial Services Laws General Amendment Act, 2008 (Act No. 22 of 2008) (clause 256); and
- Part 12: Consequential and Related Amendments of Certain Laws, Exemptions, Saving and Short Title and Commencement (clauses 257 to 259).

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The NT has extensively engaged with the FSB, and has consulted with the SARB and the Financial Intelligence Centre. A draft Bill was published for public comment. All comments received were carefully considered and amendments were effected to the Bill. Consultations were also held with industry associations to discuss the comments that they submitted in respect of the Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will not have any financial implications for the FSB or the supervisor of co-operative banks.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

- 7.1 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 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 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.

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