

**REPUBLIC OF SOUTH AFRICA**

**CONDUCT OF FINANCIAL INSTITUTIONS BILL**

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

**[B -2018]**

## **BILL**

**To provide for the establishment of a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will—**

- **protect financial customers, promote the fair treatment and protection of financial customers by financial institutions;**
  - **support fair, transparent and efficient financial markets;**
  - **promote innovation and the development of and investment in innovative technologies, processes and practices;**
  - **promote trust and confidence in the financial sector;**
  - **promote sustainable competition in the provision of financial products and financial services;**
  - **promote financial inclusion; promote transformation of the financial sector; and**
  - **assist the South African Reserve Bank in maintaining financial stability;**
- to provide for the application and supervision of requirements for the conduct of financial institutions; to provide for the licensing of financial institutions and the authorisation of representatives; to provide for requirements regarding culture and governance, and empower standards to be made regarding culture and governance; to provide for requirements regarding financial products, and empower conduct standards to be made regarding financial products; to provide for requirements regarding financial services, and empower conduct standards to be made regarding financial services; to**

provide for requirements regarding promotion, marketing and disclosure, and empower conduct standards to be made regarding promotion, marketing and disclosure; to provide for requirements regarding distribution, advice and discretionary investment management, and empower conduct standards to be made regarding distribution, advice and discretionary investment management; to provide for requirements regarding post-sale barriers and obligations, and empower conduct standards to be made regarding post-sale barriers and obligations; to provide for requirements regarding safeguarding assets and operational requirements, and empower conduct standards to be made regarding safeguarding assets and operational requirements; to provide for requirements regarding reporting, and to empower conduct standards to be made regarding reporting; to provide for remedial actions for financial customers; and to provide for matters connected therewith.

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**INTERPRETATION, OBJECTS AND APPLICATION**

***PART 1***  
***INTERPRETATION***

**Definitions**

1. (1) In this Act, unless the context otherwise indicates, words and expressions that are not defined in this subsection that are defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), have the same meaning ascribed to them in terms of that Act, and—

**"accounting records"** has the meaning defined in section 1 of the Companies Act;

**"another regulator"** means—

- (a) the National Credit Regulator;
- (b) the Council for Medical Schemes; or
- (c) the registrar as defined in section 1(1) of the Co-operatives Act and the Companies and Intellectual Property Commission, established by section 185 of the Companies Act, exercising powers referred to in section 78 of the Co-operatives Act;

**"activity"** means an activity listed in Schedule 2 and includes a sub-category of an activity listed in that Schedule;

**"alternative investment fund"** means a collective investment undertaking, including investment compartments of a collective investment undertaking, excluding a collective investment scheme, constituted in any legal form, including in terms of a contract, by means of a trust, or in terms of a statute, which—

- (a) raises capital from one or more financial customers to facilitate the participation

or interest in, subscription, contribution or commitment to, a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the financial customers; and

- (b) the financial customers share the risk and the benefit of investment in proportion to their participation or interest in, subscription, contribution or commitment to, the fund;

**"assets of financial customers"** means any money, or any corporeal or incorporeal, movable or immovable asset, that is invested, held, kept in safe custody, controlled, administered or alienated by any person for, or on behalf of, another person;

**"Auditing Profession Act"** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

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

**"claim"** means a demand exercised in respect of a financial product, irrespective of whether or not the person's demand is valid;

**"collective investment scheme"** means a scheme, established in terms of a deed, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which—

- (a) two or more financial customers contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
- (b) the financial customers share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of the scheme or on any other basis determined in the deed;

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

**"complainant"** means a person who submits a complaint and includes a—

- (a) financial customer or the financial customer's successor in title;
- (b) beneficiary or the beneficiary's successor in title;
- (c) person whose life is insured under an insurance policy;
- (d) person that pays any contribution or money in respect of a financial product or financial service;
- (e) member or member spouse of a pension fund, insurance group scheme, (or other type of member based product or scheme); or
- (f) potential financial customer or potential member of a pension fund, insurance group scheme (or other type of member based product or scheme) whose dissatisfaction relates to the relevant application, approach, solicitation or advertising or marketing material referred to in the definition of potential financial customer,

who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in paragraphs (a) to (f);

**"complaint"** means an expression of dissatisfaction by a person to a financial institution or, to the knowledge of the financial institution, to the financial institution's service provider relating to a financial product or a financial service provided or offered by that financial institution, which indicates or alleges, regardless of whether the expression of dissatisfaction is submitted together with or in relation to a query by a financial customer, that—

- (a) the financial institution or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the financial institution or to which it subscribes;

(b) the financial institution or its service provider's maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or

(c) the financial institution or its service provider has treated the person unfairly;

**"competence"** includes experience, qualifications and continuous professional development;

**"conduct standard"** means a conduct standard prescribed by the Authority as contemplated in section 106 of the Financial Sector Regulation Act and section 107(1)(a) of this Act;

**"Co-operatives Act"** means the Co-operatives Act, 2005 (Act No. 15 of 2005);

**"deed"** means the document of incorporation whereby a collective investment scheme is established and in terms of which it is administered, and includes a supplemental deed entered into in terms of a deed;

**"financial group"** means a group of persons consisting of—

(a) a financial institution;

(b) any juristic person that is part of the group of companies of which the financial institution is a part; and

(c) any associate, or related or inter-related person of any juristic person that is part of the group of companies referred to in paragraph (b);

**"financial institution"** has the meaning defined in section 1(1) of the Financial Sector Regulation Act, but does not include a market infrastructure;

**"financial instrument"** has the meaning defined in section 1(1) of the Financial Sector Regulation Act, and includes a foreign financial instrument;

**"financial product"** has the meaning defined in section 2 of the Financial Sector Regulation Act, and includes a foreign financial product;<sup>1</sup>

**"Financial Sector Regulation Act"** means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

**"financial services co-operative"** has the meaning defined in the Co-operatives Act and includes co-operative financial institutions as defined in section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

**"financial service"** has the meaning defined in section 3 of the Financial Sector Regulation Act, and for the purposes of this Act, where required by the context, includes an activity that is listed in Schedule 2;<sup>2</sup>

**"financial statements"** has the meaning defined in section 1 of the Companies Act;

**"fit and proper requirements"** means—

- (a) in relation to a person, requirements relating to—
  - (i) honesty and integrity;
  - (ii) good standing;
  - (iii) competence, including—
    - (aa) experience;
    - (bb) qualifications;
    - (cc) knowledge of financial products, financial instruments, foreign financial products, and financial services;
    - (dd) knowledge tested through examinations;
    - (ee) continuous professional development; and

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<sup>1</sup> The content of this definition will be considered and further discussed in light of comments received. Refinements to the definition in the Financial Sector Regulation Act potentially may also be considered.

<sup>2</sup> The content of Schedule 2 will potentially necessitate refinements to the definition of "financial service" in the Financial Sector Regulation Act, as is proposed in Schedule 1.



(ff) professional designation or membership;

(b) in relation to a significant owner, requirements relating to—

(i) honesty and integrity;

(ii) good standing; and

(iii) financial standing;

**"joint standard"** means a joint standard as contemplated in terms of section 107 of the Financial Sector Regulation Act and section 107(1)(b) of this Act;

**"licensee"** means a person that has obtained a licence in accordance with section 13;

**"Minister"** means the Minister of Finance;

**"National Payment System Act"** means the National Payment System Act, 1998 (Act No. 78 of 1998);

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

**"pension fund"** includes—

(a) a pension fund, pension preservation fund, provident preservation fund and unclaimed benefit fund as defined in section 1 of the Pension Funds Act and registered in terms of that Act; and

(b) a public sector pension fund;

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

**"pooled investment"** includes a collective investment scheme and an alternative investment fund;

**"portfolio"** means a group of assets including any amount of cash in which financial customers acquire, pursuant to a collective investment scheme or an alternative investment fund, a participatory interest or a participatory interest of a specific class

which as a result of its specific characteristics differs from another class of participatory interests;

**"potential financial customer"** means a person who has—

- (a) applied to or otherwise approached a financial institution or intermediary to become a financial customer;
- (b) been solicited by a financial institution to become a financial customer; or
- (c) received advertising in relation to any financial product or financial service;

**"prescribed"** means prescribed by the Authority in a conduct standard, or in a joint standard, as contemplated in section 107(1);

**"prudentially regulated financial group or conglomerate"** means a banking group referred to in the Banks Act, 1990 (Act No. 94 of 1990), an insurance group referred to in the Insurance Act, 2017 (Act No. 18 of 2017), or a financial conglomerate designated in terms of section 160 of the Financial Sector Regulation Act;

**"prudentially regulated financial institution"** means a financial institution that is subject to regulation and supervision by the Prudential Authority;

**"public sector pension fund"** means a pension fund to which the State, or which a public entity, business enterprise as defined in section 1 of the Public Finance Management Act, or a municipality or municipal entity as defined in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), contributes;

**"related service"** means any service or benefit provided or made available by a financial institution or any associate of that financial institution, together with or in connection with any financial product or benefit;

**"representative"** means any person, including a person employed or mandated by the first-mentioned person, who provides an activity listed in Schedule 5 for or on behalf of

a financial institution in terms of an employment contract or any other mandate or agreement other than an outsourcing arrangement;

**"retail financial customer"** means a financial customer that is—

- (a) a natural person; or
- (b) a juristic person, whose asset value or annual turnover is less than the threshold value as determined by the Minister after consideration of any similar threshold values determined under the Consumer Protection Act, 2008 (Act No. 68 of 2008) and the National Credit Act, 2005 (Act No. 34 of 2005);

**"senior management"** means the managers and executives at the highest level of a financial institution or business, which has responsibility for corporate governance and corporate strategy;

**"service provider"** means any person (whether or not that person is the representative or other agent of a financial institution) with whom a financial institution has an arrangement relating to the marketing, distribution, administration or provision of financial products or related services;

**"small enterprise"** has the meaning defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**"sponsor"** means the entity that establishes a pension fund for the benefit of the members of the pension fund;

**"third party"** means a person that has entered into a third party arrangement with a financial product provider;

**"third party arrangement"** means an arrangement between a financial institution and another person in terms of which the other person may market or offer a financial product or financial service of the first-mentioned person under its brand;

**"this Act"** includes the Schedules to this Act, and standards and joint standards prescribed in terms of this Act; and

**"transformation of the financial sector"** means transformation as envisaged by the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

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

## **Interpretation**

2. (1) This Act must be interpreted and applied in a manner that—
- (a) gives effect to the object of this Act set out in section 3;
  - (b) promotes the achievement of the object of the Financial Sector Regulation Act set out in section 7 of that Act;
  - (c) gives effect to the achievement of the objective of the Authority set out in section 57 of the Financial Sector Regulation Act; and
  - (d) gives effect to the purposes of Chapters 3 to 10 of this Act.

(2) When interpreting, applying or complying with this Act, a court, the Authority or any other person may, to the extent that is practicable, and with due consideration to the South African context, consider relevant international standards relating to financial sector market conduct regulation and supervision.

(3) If, in terms of this Act, information or a document is required to be published, disclosed, produced or provided by a financial institution, it is sufficient, unless otherwise prescribed, if—

- (a) an electronic original or a reproduction of the information or document is published, disclosed, produced or provided by electronic communication in a manner and form that allows the information or document to be printed by the recipient within a reasonable time and at a reasonable cost; or
- (b) a notice of the availability of that information or document, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the information or document, together with instructions for receiving the complete information or document.

(4) Where in this Act a financial institution is required to have a specified policy, process, or procedure, the policy, process or procedure must be set out in writing.

## ***PART 2***

### ***OBJECT AND APPLICATION OF ACT***

#### **Object of Act**

3. (1) The object of this Act is to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will—

- (a) protect financial customers;
- (b) promote the fair treatment and protection of financial customers by financial institutions;
- (c) support fair, transparent and efficient financial markets;

- (d) promote innovation and the development of and investment in innovative technologies, processes and practices;
- (e) promote trust and confidence in the financial sector;
- (f) promote sustainable competition in the provision of financial products and financial services;
- (g) promote financial inclusion;
- (h) promote transformation of the financial sector; and
- (i) assist the South African Reserve Bank in maintaining financial stability.

(2) When performing functions in terms of this Act, the Authority must take into account and seek to promote the object of this Act.

### **General application of Act**

4. (1) Financial institutions that provide financial products and financial services are subject to this Act and must be licensed under this Act.

(2) This Act applies to all supervised entities including, to the extent provided for in this Act, supervised entities that are not financial institutions.

(3) This Act imposes requirements relating to—

- (a) the licensing of financial institutions and the authorisation of their activities;
- (b) supervised entities, in order to promote—
  - (i) the achievement of the object of this Act;
  - (ii) the achievement of the purposes set out in Chapters 3 to 10 of this Act;and
  - (ii) compliance with the principles and requirements specified in this Act;

- (c) the licensing, approval, notification, registration and conduct of certain persons related to financial institutions; and
- (d) the financial products and financial services provided by financial institutions, the activities performed by financial institutions, and their conduct in relation to the provision of those financial products and financial services and the performance of those activities.

### **Application of Act to prudentially regulated financial groups and financial conglomerates**

5. (1) This Act applies to prudentially regulated financial groups and financial conglomerates to the extent provided for in this Act.

(2) (a) In respect of a prudentially regulated financial group or financial conglomerate, the Authority may, after having consulted with the Prudential Authority and the Reserve Bank, impose requirements on the holding company of the financial group or financial conglomerate in conduct standards that apply to the prudentially regulated financial group or financial conglomerate as a whole.

(b) The holding company of a prudentially regulated financial group or financial conglomerate is responsible for meeting the requirements imposed in terms of paragraph (a).

### **Application of Act to pension funds and activities related to pension funds**

6. (1) A board member of a pension fund that is nominated by employees or the employer, or a sponsor, is not required to be licensed in terms of this Act, but the

Authority may prescribe conduct standards regulating and imposing requirements on board members and sponsors of pension funds.

(2) The Authority may prescribe requirements in relation to supervised entities other than licensed financial institutions who are involved in the activities of a pension fund, in order to ensure the protection of members, pensioners, and beneficiaries of pension funds as defined in section 1(1) of the Pension Funds Act and that the activities of a pension fund comply with the requirements of this Act.

### **Proportional application of Act**

7. (1) The Authority must—
- (a) adopt a licensing framework;
  - (b) prescribe conduct standards;
  - (c) develop and implement its supervisory approach;
  - (d) enforce compliance with this Act; and
  - (e) consider the granting of exemptions as contemplated in section 8, in a manner that—
    - (i) promotes the object of the Act and supports the achievement of the objective of the Authority as contemplated in section 57 of the Financial Sector Regulation Act; and
    - (ii) takes into account, and is proportionate to—
      - (aa) the nature, size, scale and complexity of the risks associated with a type of activity;
      - (bb) the nature, size, scale and complexity of financial institutions;
      - (cc) achieving the purpose of the requirement; and



(*dd*) the significance of risks to the achievement of the object of the Act and the Authority's objectives.

(2) The Authority may issue guidance notices and interpretation rulings as appropriate to facilitate the proportionate application of this Act to financial institutions that are small enterprises, and financial cooperatives, in order to minimise regulatory burden and promote financial inclusion and transformation of the financial sector.

### **Exemptions from application of Act, or part, provision or requirement of Act**

8. (1) (*a*) Subject to section 126 of the Financial Sector Regulation Act, the Authority may, on application by a financial institution or on its own initiative, exempt financial institutions from the application of this Act, or a part, provision or requirement of this Act—

- (i) where application of the Act or a part, provision or requirement thereof is not proportional to the nature, size, scale or complexity of the risks or business of the financial institution or activity or type of persons conducting the activity;
- (ii) where practicalities impede the application of a part, provision or requirement of the Act;
- (iii) where any existing Act of Parliament also regulates an activity;
- (iv) for developmental, financial inclusion and transformation objectives in order to facilitate the progressive or incremental compliance with this Act by a financial institution;
- (v) in order to provide scope for innovation, the development and investment in innovative technologies, processes, and practices; or

(vi) if it is in the public interest.

(2) The Authority may grant an exemption to different categories, subcategories, types or kinds of financial institutions, or to one or more specific financial institutions.

(3) An exemption granted in terms of this section may be granted for a specified period and subject to conditions.

(4) The Authority may not grant an exemption from the application of this Act, if the exemption is likely to prevent the achievement of the objective of the Authority as contemplated in section 57 of the Financial Sector Regulation Act, or lead to a systemic event.

(5) An exemption may, subject to the promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) be withdrawn, wholly or in part and on any ground which the Authority may deem sufficient.

### ***PART 3***

## ***APPLICATION AND SUPERVISION OF REQUIREMENTS FOR CONDUCT OF FINANCIAL INSTITUTIONS***

### **General application and supervision of requirements**

**9.** (1) The requirements set out in this Act must be met by financial institutions on an on-going basis to support an appropriate corporate culture.

(2) The governing body of a financial institution is accountable for compliance with the requirements of this Act.

(3) The Authority must, where requirements imposed under this Act overlap with requirements imposed under another Act that is the responsibility of the Prudential Authority or Reserve Bank, to the extent that is reasonable and practical,—

- (a) supervise compliance with this Act and requirements prescribed in terms of this Act together with the Prudential Authority or Reserve Bank, as appropriate;
- (b) minimise overlaps and avoid contradictions among applicable requirements; or
- (c) prescribe joint standards, or issue guidance notes and interpretation rulings to facilitate the appropriate implementation of requirements in terms of this Act in relation to requirements under the other Act.

(4) Subject to section 105, the requirements in this Act apply, unless expressly excluded in this Act or an exemption has been granted by the Authority, to financial institutions, and with the necessary changes in the interpretation and application of provisions and requirements, to prudentially regulated financial groups and financial conglomerates.

(5) When prescribing requirements in terms of this Act, and when applying requirements contained in this Act, the Authority must consider—

- (a) the content of applicable requirements contained in other legislation; and
- (b) the likely impact of requirements that are proposed to be prescribed, and the actual impact of requirements that are imposed on financial institutions, prudentially regulated financial groups and conglomerates, or other persons to whom the requirements apply.

(6) (a) The Authority must regularly assess the impact of requirements that are imposed on financial institutions, prudentially regulated financial groups and conglomerates, payment services providers and providers of services related to the buying and selling of foreign exchange, or other persons to whom the

requirements apply, to determine if the requirements are achieving the intended objective or purpose, and whether the requirements are resulting in unintended consequences or disproportionate impacts on financial institutions, prudentially financial regulated groups and conglomerates, or other persons to whom the requirements apply.

(b) Following an assessment in terms of paragraph (a), the Authority must amend or repeal requirements that are identified as producing unintended consequences or disproportionate impacts on financial institutions, prudentially regulated financial groups and conglomerates, or other persons to whom the requirements apply.

(7) Any policy required by this Act to be made by a financial institution must be subject to approval and oversight by the financial institution's governing body.

### **Monitoring compliance**

**10.** (1) (a) A financial institution must have procedures in place to comply with the requirements of this Act on an ongoing basis and to identify any non-compliance with those requirements.

(b) If the Authority reasonably believes that the effectiveness of the governance framework of a financial institution, or any other policy that a financial institution is required to have in terms of this Act, or a part of the governance framework or policy requires further investigation, the Authority may direct the financial institution to secure an independent review of the governance framework or policy by a person who is approved by the Authority at the cost of the financial institution.

(2) The Authority may direct a financial institution, or the governing body or other key persons of the financial institution, to strengthen or effect improvements to the financial institution's governance framework or policy, or a part of the framework or policy.

(3) A financial institution that has identified, or is informed or made aware, that it has materially failed to comply with a requirement in terms of this Act must, without delay notify the Authority of the failure and the reasons for the failure.

(4) The Authority may prescribe in conduct standards how notifications must be made, including ongoing reporting requirements and manner in which remediation must be effected.

(5) This section does not limit any other action that the Authority may take in terms of this Act.

## **CHAPTER 2**

### **LICENSING**

#### ***PART 1***

#### ***POWER TO GRANT LICENCES AND APPLICATION OF LICENSING PROVISIONS***

#### ***IN FINANCIAL SECTOR REGULATION ACT***

#### **Power to grant licenses**

11. The Authority may, on application, grant a licence under this Act.

#### **Application of provisions of Financial Sector Regulation Act to licensing**

**12.** Section 113(2) and sections 114 to 124 of the Financial Sector Regulation Act apply in relation to licensing under this Act, in conjunction with this Chapter.

## ***PART 2***

### ***REQUIREMENTS FOR LICENSING OF FINANCIAL INSTITUTIONS***

#### **Licensing required per authorisation categories and subcategories**

**13.** (1) Subject to subsection (2), a financial institution may not provide, as a business or part of a business, a financial product or a financial service unless licensed in accordance with this Act.

(2) A licence in terms of this Act—

- (a) must stipulate one or more activities listed in Schedule 2 that the financial institution is authorised to perform; and
- (b) may stipulate, where applicable, the categories and subcategories of financial products, prescribed by conduct standards, in relation to which the financial institution is authorised to perform the authorised activities.

(3) A person with whom a financial institution has entered into an outsourcing arrangement must be licensed if required under conduct standards prescribed by the Authority.

(4) The Minister may amend Schedule 2 to ensure that the licensing framework appropriately accommodates—

- (a) activities in relation to a new category financial product that has been designated in terms of section 2 of the Financial Sector Regulation Act;

- (b) a new activity that has been designated as a financial service in terms of section 3 of the Financial Sector Regulation Act;
- (c) activities in relation to a new sub-category of financial product; and
- (d) a new sub-category of activity.

(5) A person may not structure, arrange, separate or combine businesses in a way that avoids or attempts to avoid licensing requirements in terms of this Act.

(6) A licensee or representative may only conduct financial services or financial services related business with a person providing financial services if that person has, where lawfully required, been issued with a licence or is appointed as a representative to provide those financial services.

(7) A person may not—

- (a) perform any act which indicates that the person is licensed in terms of this Act or is authorised to perform an activity in accordance with this Act, unless the person is so licensed or authorised;
- (b) in any manner make use of any licence or copy of a licence for business purposes where the licence or an applicable authorisation under the licence has been suspended, withdrawn, lapsed or cancelled;
- (c) without the approval of the Authority, apply to that person's business or undertaking a name or description which includes words that may prescribed by the Authority as implicitly or inherently conveying that a person is licensed in terms of this Act, or authorised to conduct and activity, or any derivative of those words, unless that person is licensed in terms of this Act and authorised to conduct the activity; or

- (d) perform any act which indicates that, that person performs or is authorised to perform an activity, unless that person is authorised to perform that particular activity under this Act.

### **General requirements for licensing**

- 14.** (1) To qualify for licensing—
  - (a) an applicant must meet all licensing requirements prescribed under this Part;
  - (b) an applicant must demonstrate to the satisfaction of the Authority that—
    - (i) prescribed fit and proper requirements are met;
    - (ii) it has a business plan that demonstrate that the financial institution is sustainable, able to meet identified customer needs and will result in the fair treatment of financial customers;
    - (iii) it has adequate operational management capabilities to conduct the categories and subcategories of activities for which it is applying to be licensed in relation, where applicable, to identified financial products and targeted categories of financial customers;
    - (iv) it is able to comply with the applicable requirements as prescribed for conducting the categories and subcategories of activities for which it is applying to be licensed, in relation, where applicable, to identified financial products and targeted categories of financial customers; and
    - (v) it will be able to comply with this Act and any other applicable financial sector laws;



- (c) an applicant's licensing may not be contrary to the interests of financial customers or the public interest; and
- (d) an applicant satisfies any other prescribed licensing requirements.

(2) To retain a licence, a licensee must, on an ongoing basis, comply with the general licensing requirements referred to in subsection (1), the applicable licensing requirements specified in terms of sections 15, 16 and Schedules 2, 3, and 4, and the licensing conditions imposed by the Authority in terms of section 19.

### **Specific requirements for licensing**

**15.** (1) The Authority may prescribe specific licensing requirements regarding—

- (a) the prudentially regulated financial institutions;
- (b) the systemically important financial institutions;
- (c) the payment services providers and providers of services relating to the buying and selling of foreign exchange;
- (d) the financial institutions that are regulated by another regulator;
- (e) the categories or subcategories of activities;
- (f) the categories or subcategories of financial products;
- (g) the categories and subcategories of targeted financial customers;
- (h) the threshold requirements for conducting certain activities;
- (i) the licensing applications for specific activities, including additional information that must be provided with an application; and
- (j) the foreign entities, including—

- (i) foreign entities which have been approved in terms of provisions providing for equivalence or recognition of foreign entities in terms of this Act or another financial sector law; and
- (ii) requirements relating to local presence.

(2) Licensing requirements may provide for the progressive realisation of specific requirements, to facilitate the development of a licensee to meet a particular requirement in terms of this Act, within a specified period, including for the promotion of transformation and financial inclusion.

(3) Licensing requirements may provide scope for innovation, the development and investment in innovative technologies, processes, and practices.

### **Legal status, institutional form and structure of requirements for licensing**

**16.** (1) An applicant must comply with the requirements set out in Schedule 3 in respect of its institutional form and structural arrangements, that are applicable in relation to—

- (a) the categories and sub-categories of activities for which it is applying to be licensed or is licensed to carry on;
- (b) the financial products that will be offered, held or managed by that applicant; and
- (c) the targeted categories and subcategories of financial customers.

(2) The institutional form that is specified in Schedule 3, which is not afforded legal status by another Act of Parliament, is afforded legal status by the inclusion of the institutional form in Schedule 3.

(3) In addition to the requirements specified in Schedule 3, the Authority may prescribe conduct standards in relation to the provisions that any

memorandum of incorporation of a financial institution that is a company or the equivalent constitution, deed or founding instrument of a financial institution or rules of a retirement fund that is not a company must include or may not include.

### **Requirements for application for licence**

**17.** (1) An application for a licence must be made to the Authority, and in addition to what is provided in section 113(2) of the Financial Sector Regulation Act, an application must be accompanied by—

- (a) the information necessary to demonstrate that the applicant meets the applicable requirements for licensing referred to under sections 14 to 16 and Schedules 2, 3 and 4, and that it will be able to continue to meet the requirements on an on-going basis;
- (b) any other information determined by the Authority; and
- (c) the prescribed fee.

(2) A licensee must ensure that—

- (a) a reference to the fact that a licence is held is contained in all business documentation, advertisements and other promotional material;
- (b) its licence is at all times available to any person requesting proof of its licence status under the authority of a law, or for the purpose of entering into a business relationship with the licensee; and
- (c) if its licence is suspended or withdrawn—
  - (i) it informs its financial customers of the suspension or withdrawal of the

licence; and

- (ii) any reference to the fact that a licence is held is removed from all business documentation, advertisements and other material.

(3) The Authority, prior to licensing, may require a person to change its proposed name (or a translation, shortened form or derivative thereof), if the proposed name is unacceptable because it—

- (a) is identical to that of another financial institution;
- (b) closely resembles that of another financial institution that the one is likely to be mistaken for the other;
- (c) is identical to or closely resembles that under which another financial institution was previously licensed, and reasonable grounds exist for objection to its use;
- (d) is misleading; or
- (e) is undesirable.

(4) A licensee may not change its name or any shortened form or derivative of the name of the licensee that is used in conducting business without the approval of the Authority.

### ***PART 3***

#### ***REQUIREMENTS FOR LICENSEES***

##### **Activities of licensee**

**18.** A licensee under this Act—

- (a) may only conduct business and activities in the categories and subcategories of activities for which it is licensed, and only, where applicable, in relation to

identified financial products and targeted categories of financial customers as may be specified as conditions of the licence; and

- (b) must conduct the activities for which the institution is licensed in accordance with the requirements applicable in respect of each of the categories and subcategories of activities, financial products and financial customers, where applicable, in terms of—
- (i) this Act or any other Act of Parliament;
  - (ii) conduct standards issued in terms of this Act, the Financial Sector Regulation Act, or another financial sector law; and
  - (iii) the conditions of the licence.

#### ***PART 4***

#### ***LICENSING CONDITIONS***

##### **Licensing conditions**

**19.** (1) The Authority may specify activity, financial product and customer limitations that are specific to a financial institution in its licensing conditions.

(2) The Authority may not impose licensing conditions that apply generally for categories or subcategories of activities.

- (3) The Authority may specify conditions in a manner that seeks to—
- (a) promote the development of the licensee through the progressive realisation of licensing conditions, including by facilitating the licensee to meet a particular requirement of this Act or a conduct standard within a specified period;
  - (b) facilitate financial inclusion; and

- (c) promote innovation, including investment in innovative technology, processes and practices.

(4) Without limiting the range of licensing conditions which the Authority may impose, the Authority may impose conditions—

- (a) relating to the business arrangements, including the outsourcing arrangements that the licensee may enter into;
- (b) relating to the persons with whom the licensee may conduct the licensed business or activities;
- (c) limiting the scope and size of the business or activities that may be conducted as referred to in section 18;
- (d) prohibiting particular terms or conditions from being included in contracts entered into under a specific activity, or a specific category or subcategory of financial product or financial customer;
- (e) limiting the amount or value of the benefits that may be provided under contracts entered into under a specific activity, or a specific category or subcategory of financial product or financial customer;
- (f) limiting the amount of fees or remuneration that the licensee may contract to receive or provide, during a specific period, in respect of all or specific contracts or products entered into by the licensee during that period;
- (g) requiring that the provisions of the Memorandum of Incorporation of a licensee that is a company or the equivalent constitution, deed or founding instrument of a licensee that is not a company—
  - (i) must be appropriate to enable it to carry on the licensed business or activity; and
  - (ii) may not be amended without the approval of the Authority; or

- (h) that are reasonably necessary to ensure that the business or activity is conducted in a manner that ensures the fair treatment and protection of financial customers or in accordance with this Act.

### **Variation of licensing conditions**

**20.** (1) The Authority may amend, delete, replace or vary any licensing conditions or impose other or additional licensing conditions—

- (a) on application by a licensee;
- (b) when in the public interest;
- (c) when in the interests of the financial customers or potential financial customers of the licensee;
- (d) when revoking a suspension of a licence;
- (e) to promote the development of the licensee;
- (f) to facilitate financial inclusion;
- (g) to promote innovation, including investment in innovative technology, processes and practices; or
- (h) to promote the progressive realisation of conditions and licensing requirements.

(2) An amendment, deletion, replacement or variation of any licensing condition, or the imposition of other licensing conditions pursuant to subsection (1) may be made for a specific period subject to certain conditions being met.

(3) If a variation of licence conditions results in a licensee no longer being licensed for a specific activity or sub-activity, or a specific category or

subcategory of financial product or financial customer, the Authority must direct the licensee to make arrangements to the satisfaction of the Authority to—

- (a) discharge its obligations entered into in respect of that category or sub-category of activity or product, or category of financial customers before the variation;
- (b) ensure the orderly resolution of that business of the licensee; or
- (c) transfer that business to another licensee that is licensed for that activity and category of financial customer under section 86 of this Act by a specified date.

(4) The Authority, on varying, amending or imposing other licensing conditions, must publish a notice on the Authority's website and in the Register.

## ***PART 5***

### ***TRANSITIONAL ARRANGEMENTS IN RELATION TO LICENSING***

#### **Transitional arrangements in relation to licensing**

**21.** Schedule 4 sets out transitional arrangements in relation to licensing in terms of this Act, as follows:

- (a) Part 1 provides for transitional arrangements in respect of the conversion of licences for currently licensed financial institutions;
- (b) Part 2 provides for the licensing of services related to credit, including the activity of debt collection arising from credit agreements; and
- (c) Part 3 provides for the licensing of public sector pension funds referred to in part (b) of the definition of "pension fund".

#### **Transitional arrangements in relation to pension funds**



**22.** (1) This Act applies to all pension funds.

(2) A pension fund which at the date when this section comes into effect is registered in terms of the Pension Funds Act must be licensed in terms of this Act, in accordance with Part 1 of Schedule 4.

(3) A public sector pension fund which at the date of commencement of this section is not registered in terms of this Act, must apply for registration in terms of section 4 of this Act, within a period of 12 months after the date of commencement of this section, subject to any exemptions granted and conditions imposed by the Authority in terms of this Act.

(4) (a) Legislation which is in force at the date of commencement of this section, which provides for the establishment and operation of a public sector pension fund, must be amended to the extent necessary to align with this Act and the requirements prescribed in terms of this Act, within 18 months from the date of commencement of this section.

(b) The rules of a pension fund referred to in paragraph (a) must also be amended, to the extent necessary to align with this Act and requirements prescribed in terms of this Act, but subject to any exemptions granted and conditions imposed by the Authority in terms of this Act, within 18 months from the date of commencement of this section.

## ***PART 6***

### ***REPRESENTATIVES***

#### **Appointment and registration of representatives**

**23.** (1) A person may not provide an activity referred to in Schedule 5, and may not act or offer to act as a representative, unless that person—

- (a) is appointed by the licensee as a representative of the licensee to perform that activity; and
- (b) is registered with the Authority for that activity as a representative of a licensee.

(2) The Authority may prohibit—

- (a) representatives generally;
- (b) particular categories of representatives; or
- (c) representatives with a particular institutional form,  
from—
  - (i) acting on behalf of more than one licensee; or
  - (ii) providing certain financial services in respect of certain financial products, financial instruments or foreign financial products.

### **Requirements for appointment of representatives**

**24.** A licensee may only appoint a person as a representative if—

- (a) the person is competent to act, and complies with standards relating to—
  - (i) fit and proper requirements;
  - (ii) governance requirements;
  - (iii) operational ability requirements; and
  - (iv) operational capital requirements;
- (b) the appointment does not—

- (i) materially increase any risk to the licensee or to the fair treatment of its financial customers;
  - (ii) materially impair the governance framework of the licensee, including the licensee's ability to manage its risks and meet its legal and regulatory obligations;
  - (iii) compromise the fair treatment of or continuous and satisfactory service to financial customers;
  - (iv) prevent or hinder the licensee from acting in the best interest of financial customers; and
  - (v) result in key decision-making responsibilities being removed from the licensee; and
- (c) the person complies with the requirements prescribed by the Authority in conduct standards for the reappointment of a debarred person as a representative if that person was previously debarred as contemplated in section 26.
- (2) A licensee must ensure that—
- (a) its representatives—
    - (i) continue to comply with the requirements in subsection (1)(a); and
    - (ii) comply with all requirements of this Act as well as other applicable laws on conduct of business; and
  - (b) the continuation of the appointment referred to in subsection (1) does not result in any of the matters in subsection 1 (b).

### **Specific requirements for representatives**

**25.** (1) A representative must, prior to performing an activity listed in Schedule 5, provide confirmation, certified by the licensee that—

- (a) an employment contract or other mandate or agreement to represent the licensee exists; and
- (b) the financial institution accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any contract, mandate or agreement.

(2) A representative may not perform an activity or contract in respect of an activity listed in Schedule 5, other than in the name of the licensee of which it is a representative.

(3) A licensee is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by its representative in respect of the rendering of an activity listed in Schedule 5.

(4) The licensee must maintain a register of representatives which must—

- (a) contain the information prescribed by the Authority; and
- (b) be updated in the form and manner and with the intervals as prescribed by the Authority.

(5) The Authority may maintain and publish a central register with the information referred to in subsection (3) of all representatives and may publish the register.

### **Debarment of representatives by licensees**

**26.** (1) (a) A licensee must debar a person from rendering financial services if the person is or was, as the case may be, a representative of the licensee if the licensee is satisfied on the basis of available facts and information that the person—

- (i) does not meet, or no longer complies with, the requirements prescribed by the Authority under section 23; or
- (ii) has contravened or failed to comply with any provision of this Act, the Financial Sector Regulation Act, or another financial sector law in a material manner;

(b) The reasons for a debarment in terms of paragraph (a) must have occurred and become known to the licensee while the person was a representative of the licensee.

(2) (a) Before effecting a debarment in terms of subsection (1), the licensee must ensure that the debarment process is lawful, reasonable and procedurally fair.

(b) If a licensee is unable to locate a person in order to deliver a document or information under subsection (3), after taking all reasonable steps to do so, including dissemination through electronic means where possible, delivering the document or information to the person's last known e-mail or physical business or residential address will be sufficient.

(3) A licensee must—

(a) before debarring a person—

- (i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;

- (ii) provide the person with a copy of the licensee's written policy and procedure governing the debarment process; and
    - (iii) give the person a reasonable opportunity to make a submission in response;
  - (b) consider any response provided in terms of paragraph (a)(iii), and then take a decision in terms of subsection (1); and
  - (c) immediately notify the person in writing of—
    - (i) the licensee's decision;
    - (ii) the person's rights in terms of Chapter 15 of the Financial Sector Regulation Act; and
    - (iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.
- (4) Where the debarment has been effected as contemplated in subsection (1), the licensee must—
- (a) immediately withdraw any authority which may still exist for the person to act on behalf of the licensee;
  - (b) where applicable, remove the name of the debarred person from the register referred to in section 25(5);
  - (c) immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to;
  - (d) in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and
  - (e) provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require within 15 days of the debarment.

(5) A debarment in terms of subsection (1) in respect of a person who no longer is a representative of the licensee must be commenced within six months from the date the person ceased to be a representative of the licensee.

(6) For the purposes of debarring a person as contemplated in subsection (1), the licensee must have regard to information regarding the conduct of the person that is furnished by the Authority, the Ombud or any other interested person.

(7) The Authority may, for the purposes of record keeping, require any information, including the information referred to in subsection (4)(d) and (e), to enable the Authority to maintain and continuously update a central register of all persons debarred in terms of subsection (1), and that register must be published on the web site of the Authority, or by means of any other appropriate public media.

(8) A debarment effected in terms of this section must be dealt with by the Authority as contemplated by this section.

(9) A person debarred in terms of subsection (1) may not provide financial services or act as a representative of any licensee, unless the person has complied with the requirements prescribed by the Authority in conduct standards for the reappointment of a debarred person as a representative of a licensee.

## ***PART 7***

### ***CONDUCT STANDARDS REGARDING LICENSING***

#### **Conduct standards regarding licensing**

**27.** (1) The Authority may prescribe licensing requirements in conduct standards in relation to matters referred to in this Chapter.

(2) Without limiting the scope of conduct standards referred to in subsection (1), the Authority may prescribe conduct standards in respect of the—

- (a) requirements for licensing, including general requirements and requirements for specific categories of licensees;
- (b) requirements for licensees;
- (c) transitional matters in relation to licensing, including transitional arrangements relating to pension funds, credit providers and debt collection services;
- (d) requirements relating to representatives, including matters relating to the debarment of representatives and the reappointment of debarred representatives;
- (e) fit and proper requirements;
- (f) governance requirements that must be satisfied at the time of licensing;
- (g) threshold operational ability requirements;
- (h) threshold operational capital requirements;
- (i) legal status, institutional and structural form, requirements set out in section 16;
- (j) other threshold requirements for conducting certain activities, other than operational ability and operational capital requirements;
- (k) naming convention requirements; and
- (l) requirements to have a local presence in South Africa.

(3) In addition to matters that are provided for in this Chapter, the Authority may prescribe requirements in relation to activities in respect of which authorisation by or notification of the Authority is required.

(4) With respect to fit and proper requirements—

- (a) different requirements may be prescribed for persons that are natural persons and for those that are not natural persons; and



- (b) the Authority may amend the fit and proper requirements from time to time, and a person subject to the requirements must comply therewith within such period as prescribed by the Authority.

## **CHAPTER 3**

### **CULTURE AND GOVERNANCE**

#### **Application of Chapter**

- 28.** Parts 2, 3 and 5 of this Chapter do not apply to small enterprises.

#### **Purpose of Chapter**

**29.** (1) The purpose of this Chapter and any conduct standards prescribed under this Chapter is to set out governance requirements for financial institutions, so that financial customers can be confident that they are dealing with firms and persons where the fair treatment of customers is central to the corporate culture, and in particular, to—

- (a) improve confidence in the financial sector by promoting governance that supports the fair treatment of financial customers;
- (b) promote the supply of financial products and financial services that are appropriate for targeted financial customers; and
- (c) enhance transparency and improved market conduct in the sector.

(2) The regulatory framework set out in this Chapter applies to a financial institution in addition to any other governance requirements imposed on that financial institution under another Act.

### **Principles relating to culture and governance for financial institutions**

**30.** (1) A financial institution must at all times conduct its business in a manner that prioritises fair outcomes for financial customers, so that there is confidence that their fair treatment is central to the corporate culture of the financial institution.

(2) When fulfilling its obligations in subsection (1), a financial institution must at all times —

- (a) conduct its business with integrity;
- (b) conduct its business at all times honestly, fairly, with due skill, care and diligence, and in the best interests of financial customers, and the integrity of the financial sector;
- (c) organise and control its affairs responsibly and effectively;
- (d) maintain adequate financial and other resources;
- (e) avoid or, where avoidance is not reasonable, manage, mitigate and disclose conflicts of interest;
- (f) deal with the Authority in an open and cooperative manner;
- (g) comply with the requirements or conduct standards issued in terms of this Act relating to market conduct and the conduct of business;
- (h) have due regard to the interests and fair treatment of its financial customers, including conducting its activity or activities transparently and with due regard to the information needs of its financial customers; and

- (i) ensure that its governing body is accountable for compliance with this Act.

### **Obligations of governing body**

- 31.** The governing body of a financial institution must—
- (a) endorse and be ultimately responsible for the establishment, implementation, subsequent reviews of, and continued internal compliance with, governance arrangements within the financial institution, to reasonably ensure the achievement of requirements in this Chapter; and
- (b) ensure that these governance arrangements, including the governance policy contemplated in Part 2 where applicable, are appropriately embedded in the financial institution.

## ***PART 1***

### ***PRACTICES RELATING TO CORPORATE CULTURE AND GOVERNANCE***

#### **Prohibited practices in relation to financial customers**

**32.** (1) In addition to section 30, a financial institution must not request or induce in any manner a financial customer to waive any right or benefit conferred on a financial customer by or in terms of any provision of this Act, or recognise, accept or act on any waiver by a financial customer.

(2) Any waiver of any right or benefit conferred on a financial customer by or in terms of any provision of this Act is void.

(3) When applying section 30 to a financial customer that is a pension fund or insurance group scheme, or is otherwise acting for, or on behalf of, other retail financial customers, the principles must be applied in a manner that is appropriate for the members of the pension fund or insurance group scheme or those other retail financial customers.

### **Unfair contract terms in contracts with retail financial customers**

**33.** (1) A financial institution that provides financial products or financial services to retail financial customers—

(a) must ensure that the terms, and conditions of a contract or agreement in respect of a financial product or financial service are fair, reasonable and transparent.

(2) A term or condition of a contract or agreement referred to in subsection (1), or a notice to which a term or condition is purportedly subject, is unfair or unreasonable if—

(a) it would cause a significant and unreasonable imbalance in the parties' rights and obligations under the contract;

(b) the terms of the contract or agreement are so adverse to the retail customer that they are inequitable;

(c) it is not reasonably necessary to protect the legitimate interests of the financial institution, who would be advantaged by the term or condition;

(d) it would cause undue detriment, whether financial or otherwise, to a retail financial customer if it were applied or relied on;

(e) a retail financial customer is required, on terms that are unfair, unreasonable, or as a condition to entering into a transaction, to—

- (i) waive any rights;
  - (ii) assume any obligation; or
  - (iii) waive any obligation or liability of the financial institution who is providing a financial product or financial service; or
- (f) the transaction or agreement is subject to a term or condition, or a prescribed requirement to a retail financial customer, and—
- (i) the term, condition or requirement is unfair, unreasonable, unjust or unconscionable; or
  - (ii) the fact, nature and effect of that term, condition or requirement was not appropriately disclosed to the retail financial customer in a manner that satisfied the prescribed notice requirements.

(3) Where a financial institution, including a sponsor of a pension fund, provides financial products or financial services to a pension fund or similar member based entity, or to another financial customer that is acting for or on behalf of other retail financial customers, all requirements in subsections (1) and (2) relating to retail financial customers apply equally in relation to the members of that pension fund or other member based entity, or in relation to those other retail customers.

- (4) A term or condition of a contract or agreement is transparent if the term is—
- (a) expressed in reasonably plain language;
  - (b) legible;
  - (c) presented clearly and unambiguously; and
  - (d) readily available to any party affected by the term.

### **General confidentiality obligations of financial institutions**

**34.** A financial institution may not disclose or use any personal or confidential information acquired or obtained from a financial customer, except in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

**PART 2**  
**GOVERNANCE POLICY**

**Purpose of Part**

**35.** The purpose of this Part is to set out the regulatory framework relating to the overall governance of financial institutions, including corporate governance, risk management and internal controls.

**Governance Policy**

**36.** (1) A financial institution must adopt, document, implement and monitor the effectiveness of a governance policy that is reasonably expected to ensure adherence to the principles in section 30.

- (2) The governance policy referred to in subsection (1) must—
- (a) be approved by and subject to the oversight of the governing body;
  - (b) be proportionate to the nature, scale and complexity of the activity or activities and the risks of the financial institution;
  - (c) demonstrate how the financial institution will comply with this Chapter and standards in terms of this Chapter, and must at least address—
    - (i) roles and responsibility of the governing body and key persons;
    - (ii) remuneration and compensation practices;
    - (iii) record keeping;
    - (iv) communication with the Authority
    - (v) management procedures; and
    - (vi) compliance procedures;

- (d) include—
- (i) the transformation policy required in Part 3 of this Chapter;
  - (ii) the conflict of interest policy required in Part 4 of this Chapter;
  - (iii) financial product oversight arrangements required in Chapter 3;
  - (iv) processes and procedures for the approval of promotional and marketing material required in Part 1 of Chapter 5; and
  - (v) any other policy that may be prescribed; and
- (e) address, and provide for, prescribed matters.

(3) The governance policy, and other policies referred to in subsection (2)(d) and procedures, processes and oversight arrangements that financial institutions are required to have in terms of this Act, must be reviewed and updated from time to time, to ensure that these remain valid and up to date, and where appropriate, the governance policy must be updated accordingly.

(4) The governance policy may be combined with any other policies relating to the governance of the financial institution that may be prescribed by another Act or may be required by any code of practice to which the financial institution subscribes, provided that all requirements of this section are met.

### ***PART 3***

#### ***TRANSFORMATION POLICY***

##### **Purpose of Part**

**37.** The purpose of this Part is to set out the role of a transformation policy in the governance of a financial institution.



## **Transformation Policy**

**38.** If a financial institution is subject to requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of that Act, it must have a policy and plan in place to meet its stated commitments in terms of promoting transformation of the financial sector in line with those requirements.

### ***PART 4***

#### ***KEY PERSONS AND SIGNIFICANT OWNERS***

##### **Fitness and propriety and appointment of key person or significant owner**

**39.** (1) Key persons and significant owners must, at all times, comply with the prescribed fit and proper requirements.

(2) The Authority, when assessing if a key person or significant owner is fit and proper or continues to be fit and proper, may request the verification of information, or may verify information at the Authority's disposal by making enquiries to any organ of state, credit bureau or other source of relevant information, concerning that key person or significant owner.

(3) (a) The Authority may, if it reasonably believes that a key person does not comply or no longer complies with the fit and proper requirements in terms of this Act, in addition to any other action that the Authority may take under this Act, direct the financial institution to make arrangements that are satisfactory to the

Authority to address the non-compliance within such period or subject to such conditions as may be prescribed.

(b) Arrangements referred to in paragraph (a) may include—

- (i) providing additional education or training to that key person;
- (ii) utilising external resources to support that key person;
- (iii) outsourcing the functions and duties of that key person; or
- (iv) suspending or removing a person from the appointment as a key person.

(4) If a financial institution fails to make arrangements contemplated in subsection (3) in order to address the non-compliance of a key person, the Authority, in addition to any other action that it may take under this Act, may—

- (a) impose additional reporting requirements on the financial institution;
- (b) vary the financial institution's licensing conditions; or
- (c) suspend or withdraw the financial institution's licence.

(5) The Authority may, if it reasonably believes that a significant owner does not meet or no longer meets the fit and proper requirements, in addition to any other action that the Authority may take, take any of the actions referred to in subsection (4).

(6) Where a conduct standard requires the approval of the appointment of a key person, the appointment takes effect only if the Authority approves the appointment.

**PART 5****AVOIDANCE OR MITIGATION OF CONFLICT OF INTEREST****Purpose of Part**

**40.** The purpose of this Part is to set out the regulatory framework relating to the avoidance or mitigation of conflicts of interest that pose a risk of unfair treatment of financial customers.

**Conflict of interest policy**

**41.** (1) A financial institution must have—

- (a) a documented conflict of interest policy to promote the effective oversight of conflicts of interest to ensure the fair treatment of customers; and
- (b) an objective monitoring and compliance process for implementing the policy, and assessing its effectiveness in relation to stated objectives and potential risks.

(2) A conflict of interest policy must—

- (a) be proportionate to the nature, scale and complexity of the activity or activities and the risks of the financial institution;
- (b) clearly define where conflicts of interest may arise;
- (c) define the roles and responsibilities of persons accountable for the management and oversight of conflicts of interest;
- (d) set requirements relating to how conflicts of interest must be disclosed and documented to the governing body, senior management and financial customers;

- (e) provide for corrective actions that must be taken for non-compliance with the policy;
- (f) provide for adequate processes and procedures for transactions with related parties, so that they are made on an arm's length basis; and
- (g) address, and provide for, prescribed matters.

### **Disclosure by financial institutions of interest in related and inter-related parties and other undertakings**

**42.** A financial institution, at the request of the Authority, must provide the Authority with information relating to the financial institution's related and inter-related parties, or any joint ventures or partnerships that the financial institution participates in, or intends to enter into.

## ***PART 6***

### ***REMUNERATION AND COMPENSATION***

#### **Purpose of Part**

**43.** The purpose of this Part is to ensure fair remuneration and compensation practices between financial institutions and persons providing activities or services to financial institutions, including representatives, contractors and service providers, that—

- (a) are in the interests of financial customers; and
- (b) seek to avoid conflicts of interest.

## Principles for determining remuneration and compensation

**44.** (1) This section applies to any remuneration, compensation or consideration that is—

- (a) offered or provided, directly or indirectly, by a financial institution or a person on behalf of a financial institution;
- (b) accepted, directly or indirectly, by a financial institution or an associate of a financial institution; or
- (c) accepted, directly or indirectly, by any other person, including a representative, contractor or service provider, from a financial institution.

(2) Remuneration, compensation or consideration referred to in subsection (1) that is paid to, or received by, any person referred to in subsection (1) for the rendering of any activity or service performed by that person, must—

- (a) be reasonably commensurate with the actual activity or service performed;
- (b) not result in any activity or service being remunerated twice; and
- (c) not be structured in a manner that may increase the risk of unfair outcomes for financial customers.

**PART 7****CONDUCT STANDARDS REGARDING GOVERNANCE AND CULTURE****Conduct standards regarding governance and culture**

**45.** (1) The Authority may prescribe conduct standards that provide for requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Despite section 28, the Authority may prescribe conduct standards referred to in subsection (1) providing for requirements, limitations or prohibitions on matters referred to in in Parts 2, 3 and 5 that are applicable to small enterprises.

(3) Without limiting the scope of conduct standards referred to in subsection (1), the Authority may prescribe conduct standards in respect of—

(a) committees or other structures that a financial institution must establish;

(b) the governing body of the financial institution, including—

(i) the composition and governance of the governing body, including requirements relating to independence;

(ii) the roles and responsibilities of the governing body;

(iii) the duties of members of the governing body; and

(iv) the structure of the governing body, including the committees that must be established;

(c) risk management, including in respect of—

(i) a risk management system;

(ii) a risk management strategy;

(iii) a risk management policy; and

(iv) own risk assessments;

- (d) compliance, including in respect of—
  - (i) a compliance system;
  - (ii) a compliance strategy; and
  - (iii) a compliance policy;
- (e) internal controls, including in respect of an internal control system;
- (f) control functions, including in respect of—
  - (i) required control functions;
  - (ii) requirements for control functions; and
  - (iii) roles, responsibilities and functions of control functions and heads of control functions;
- (g) outsourcing arrangements, including in respect of—
  - (i) an outsourcing policy, and the matters that must be included and addressed in that policy;
  - (ii) the principles and requirements with which any outsourcing arrangements, and remuneration paid in respect of outsourcing, must comply;
  - (iii) the requirements with which a financial institution, and any person that will perform an outsourced function or activity, must comply;
  - (iv) the matters that must be included or addressed, or may not be included, in an outsourcing arrangement;
  - (v) the functions or activities that may not be outsourced, or may only be outsourced after the Authority has granted approval for or has been notified of the proposed outsourcing, and the information that must accompany that notification;

- (vi) matters relating to any outsourcing of which the Authority must be informed; and
- (vii) limitations on or requirements for sub-outsourcing;
- (h) record keeping, data management and protection of financial customer information;
- (i) matters which must be addressed in the governance policy, including providing for—
  - (i) the roles and responsibilities of persons accountable for the management and oversight of the financial institution, by clarifying who possesses legal duties and powers to act on behalf of the financial institution, and under which circumstances;
  - (ii) how decisions and actions are taken, including documentation of significant or material decisions, along with their rationale;
  - (iii) sound remuneration practices which promote the alignment of remuneration policies with the long-term interests of the financial institution to avoid excessive risk taking, conflicts of interest and unfair treatment of financial customers;
  - (iv) providing for communication with the Authority, as appropriate, regarding matters relating to the management and oversight of the financial Institution;
  - (v) corrective actions to be taken for non-compliance or weak oversight, controls or management; and
  - (vi) effective systems of corporate governance, conduct risk management (including contingency planning) and internal controls;
- (j) matters which must be addressed in the transformation policy;



- (k) fit and proper requirements in respect of key persons and significant owners of financial institutions, including the approval, notification and registration of key persons;
- (l) avoiding or mitigating conflict of interest, including conduct standards that limit, prohibit or impose requirements on—
  - (i) certain business practices;
  - (ii) certain ownership or business arrangements between financial institutions, representatives, contractors and service providers, including franchise or similar agreements, third party arrangements, distribution arrangements, and outsourcing arrangements; or
  - (iii) the financial services or any other activities or services that certain types or kinds of financial institutions, representatives, contractors or service providers may perform on behalf of another financial institution;
- (m) remuneration and compensation, including in respect of—
  - (i) prohibiting or limiting the remuneration or consideration which may be offered, provided or accepted;
  - (ii) the timing, manner and conditions under which remuneration or consideration may be offered, provided or accepted; and
  - (iii) the adjustment, refund or claw back of remuneration or consideration; and
- (n) prohibited practices and unfair practices.

(4) Different conduct standards prescribed in accordance with subsection (2) may be made for, or in respect of—

- (a) different services, activities or functions in respect of which remuneration or consideration is offered, provided or accepted or different types of financial

customers in relation to whom those services, activities or functions are carried out;

- (b) different categories, subcategories or types of financial institutions or persons referred to in section 44(1); and
- (c) different types or kinds of key persons or significant owners, including the types or kinds of key persons of different types of financial institutions whose appointment by financial institutions require—
  - (i) the approval of the Authority;
  - (ii) notification to the Authority; or
  - (iii) registration with the Authority;

(5) Conduct standards relating to the committees or structures that a financial institution must establish, may impose stricter requirements than requirements in respect of those committees or structures that may be required in another Act that applies to that financial institution.

## **CHAPTER 4**

### **FINANCIAL PRODUCTS**

#### **Purpose of Chapter**

**46.** The purpose of this Chapter and any conduct standards prescribed under this Chapter is to promote the supply to financial customers of financial products that are appropriate in relation to targeted customer needs, circumstances and expectations, while facilitating efficiency, flexibility and innovation in the provision of financial products.

## **Principles for design and provision of financial products**

**47.** (1) Financial products must be designed with due regard to the interest of financial customers and, in the case of retail financial customers, must be designed to meet the needs of identified groups of financial customers and must be targeted accordingly.

(2) A financial product provider must ensure that their financial customers are provided with products that perform as that provider has led its customers to expect, through the information, representations and advertising provided by or on behalf of the financial product provider.

(3) A financial product provider must ensure that relevant personnel involved in designing a financial product possess the necessary skills, knowledge and expertise to properly understand the financial product's main features and characteristics, as well as the interests, objectives and characteristics of the target market.

### ***PART 1***

#### ***DESIGN, SUITABILITY AND PERFORMANCE***

### **Oversight and governance of product design**

**48.** (1) A financial product provider must establish and implement product oversight arrangements relating to the design of financial products, to—

- (a) monitor and review the design process and procedures on an on-going basis;  
and
- (b) ensure that remedial action is taken in respect of financial products that are reasonably expected to lead, or are leading, to poor or unfair outcomes for financial customers.

(2) The financial product oversight arrangements must—

- (a) support the achievement of sections 46 and 47, and provide for senior management confirmation in this regard;
- (b) support the proper management of conflicts of interest, and ensure that the objectives, interests and characteristics of targeted financial customers are duly taken into account;
- (c) be appropriate to account for risks borne by financial customers or groups of financial customers for a financial product;
- (d) allocate clear roles and responsibilities for persons in the financial institution responsible for, or partly responsible for, establishing and implementing the oversight arrangements;
- (e) incorporate effective assessment by the risk and compliance functions of the extent to which sections 46 and 47 are being achieved;
- (f) include senior management confirmation that a product adequately meets required outcomes for the fair treatment of financial customers, including the requirement that it will perform as financial customers are led to expect; and
- (g) include appropriate measures and procedures to ensure the financial institution's compliance with this Chapter.

(3) The financial product oversight arrangements may vary depending on the financial product, in accordance with the principle of proportionality, taking into

consideration the nature, scale and complexity of the relevant business of the financial institution and the complexity of the financial product, and that financial institution's business model.

(4) In addition to the requirements in subsection (2), a financial product provider that is not a small enterprise must include in its product oversight arrangements—

- (a) a product design policy, and ensure that the policy is not compromised as a result of commercial, time or funding pressures; and
- (b) a product approval process;

(5) Financial product provider referred to in subsection (4) must review and update the approval process on a regular basis to ensure that it remains robust and fit for purpose.

(6) A financial product provider that is not a small enterprise must set out the financial product oversight arrangements as part of the governance policy specified in section 36 and make it available to relevant persons involved in product design, including staff members.

(7) A financial institution that provides a financial product must regularly review the product oversight arrangements to ensure that these remain valid and up to date, and must amend the governance policy where appropriate.

(8) (a) A new financial product must be signed off by the governing body before a financial institution that provides a financial product starts to market offer or enter into contracts in respect of the product.

(b) The sign-off of a new financial product by the governing body must be accompanied by a confirmation that the financial product, distribution methods and disclosure documents meet the requirements set out in subsection (2).

## **Design and suitability of products for retail financial customers**

**49.** (1) A financial institution that provides financial products to retail customers must—

- (a) when developing the product, make use of adequate information on retail financial customers' needs and undertake a thorough assessment of the main characteristics of a new product, the distribution methods intended to be used in relation to the product, and the related disclosure documents, by competent persons with relevant skills to ensure that the product, distribution methods and disclosure documents—
  - (i) are consistent with the financial institution's business model, risk management approach and applicable conduct standards;
  - (ii) target the retail financial customers for whose needs the product is likely to be appropriate, while taking reasonable measures to limit access by retail financial customers for whom the product is likely to be inappropriate;
  - (iii) take into account the risks resulting or that may result from the product that could harm retail financial customers; and
  - (iv) are appropriate, taking into account considerations of fairness;
- (b) take appropriate steps to identify the needs of the group or groups of financial customers to whom its products are targeted and to satisfy itself, prior to making the financial products available to the market, and on an on-going basis, that the financial products are appropriate to meet those needs;

- (c) ensure that financial product design provides sufficient flexibility to cope with reasonably expected changes in a financial customer's needs during the lifetime of the product; and
  - (d) adjust the design of the financial products that it provides to—
    - (i) respond to identified changes that affect the financial products and impact on financial customers; and
    - (ii) allow sufficient flexibility to meet financial customers' changing needs.
- (2) Where a financial institution, including a sponsor of a pension fund, provides financial products to a pension fund or similar member based entity, or to another financial customer that is acting for or on behalf of other retail financial customer, all requirements in subsection (1) relating to retail financial customers apply equally in relation to the members of that pension fund or similar member based entity or in relation to those other retail customers.

### **Product performance**

- 50.** Products provided to financial customers must—
- (a) be subject to on-going monitoring and periodic reporting of product performance, to allow financial customers to make on-going, informed decisions in respect of financial products;
  - (b) meet the reasonable expectations created with financial customers; and
  - (c) be supported by adequate post-sales service.

**PART 2****CONDUCT STANDARDS REGARDING FINANCIAL PRODUCTS****Conduct standards regarding financial products**

51. (1) The Authority may prescribe conduct standards that provide for additional requirements with which specific financial products must comply, and limitations or prohibitions on financial products.

(2) Without limiting the scope of conduct standards that may be prescribed in terms of subsection (1), the Authority may prescribe conduct standards that address—

- (a) financial product features;
- (b) valuation and pricing methodologies;
- (c) charging structures;
- (d) appropriate financial product testing;
- (e) the terms and conditions of financial product contracts, including unfair terms and fair, just and reasonable terms and conditions;
- (f) prohibited financial products;
- (g) financial product flexibility;
- (h) financial product performance, including monitoring and reporting of performance;
- (i) on-going monitoring requirements relating to the suitability of a financial product;
- (j) the identification of—
  - (i) an appropriate target market of a financial product; and
  - (ii) a target market for whom a financial product would likely be inappropriate;



- (k) the design and offering of a financial product or financial service to an appropriate target market;
- (l) appropriate remedial action in respect of a financial product or financial service in the event of poor customer outcomes;
- (m) transparency of financial products;
- (n) frequency and nature of disclosure and reporting to financial customers;
- (o) financial product cost and charging structures;
- (p) the prohibition or restriction of the offering of products or services to particular categories, subcategories or types of customer; and
- (q) prohibited terms relating to the transfer or termination of a contract for the provision of financial products and financial services.

(3) Standards that may be prescribed in terms of subsections (1) and (2) may include standards aimed at ensuring that, where financial products are provided to pension funds, or similar member-based entities, where appropriate—

- (a) protections afforded to financial customers by this Chapter also apply in relation to the members of pension funds (or entities); and
- (b) obligations imposed by this Chapter on financial institutions that provide products are also imposed on sponsors of pension funds.

## **CHAPTER 5**

### **FINANCIAL SERVICES**

#### **Purpose of Chapter**

**52.** The purpose of this Chapter and any conduct standards prescribed under this Chapter is to promote the provision of financial services that support the fair treatment of financial customers.

#### **Principles for provision of financial services**

**53.** (1) When providing financial services, a financial service provider or a representative must—

- (a) take into account the needs, circumstances and expectations of financial customers that are targeted, impacted, or likely to be impacted by the service, including those customers that are impacted indirectly through another financial institution;
- (b) reasonably ensure that services are suitable and perform as the provider has led the financial customer to expect, through information and representations provided; and
- (c) enable financial customers to understand and compare the nature, value and cost of financial services.

(2) If a financial institution that provides a financial service identifies, during the lifetime of a financial service, circumstances which are related to the service that give rise to the risk of poor or unfair outcomes to financial customers or is no longer

suitable, the financial institution must take appropriate action to mitigate the situation and prevent the reoccurrence of poor or unfair outcomes for financial customers.

- (3) A financial institution that provides a financial service must—
- (a) where possible, enter into a written contract of engagement with the financial customer; and
  - (b) always act within the mandate given by the financial customer in terms of the contract between the financial institution and the financial customer.

## ***PART 1***

### ***SUITABILITY AND PERFORMANCE***

#### **Oversight of the provision of financial services**

**54.** (1) A financial service provider must establish and implement, on an on-going basis, oversight arrangements relating to the provision of financial services.

- (2) The oversight arrangements referred to in (1) must—
- (a) support the achievement of sections 52 and 53, and provide for senior management confirmation in this regard;
  - (b) ensure proper disclosure and management of conflicts of interest, and ensure that the objectives, interests and characteristics of targeted financial customers are duly taken into account;
  - (c) be appropriate to identify and disclose risks that financial customers or groups of financial customers for a financial service is exposed to;

- (d) allocate clear roles and responsibilities for persons in the financial institution responsible for, or partly responsible for, establishing and implementing the oversight arrangements;
- (e) incorporate effective assessment by the risk and compliance functions of the extent to which sections 52 and 53 are being achieved; and
- (f) include appropriate measures and procedures to ensure the financial institution's compliance with this Chapter.

(3) The financial services oversight arrangements may vary depending on the financial service in accordance with the principle of proportionality, taking into consideration the nature, scale and complexity of the relevant business of the financial institution, and that financial institution's business model.

(4) A financial service provider that is not a small enterprise must set out the service oversight arrangements as part of the governance policy specified in section 36 and make it available to relevant persons.

(5) A financial service provider must regularly review the service oversight arrangements to ensure that these remain valid and up to date, and must amend the governance policy, where applicable and where appropriate.

(6) (a) A new financial service must be signed off by the governing body of a financial institution before the financial institution markets, offers or enters into contracts to provide the financial service.

(b) The sign-off of a new financial service by the governing body referred to in paragraph (a) must be accompanied by a confirmation that the service reasonably complies with subsection (2).

**Providing financial services to retail financial customers**

- 55.** (1) A financial institution that provides financial services to retail financial customers must—
- (a) conduct a thorough assessment of the main characteristics of the financial service, and related disclosure documents, to ensure that the service and disclosure documents—
    - (i) are consistent with the financial institution’s business model, risk management approach and applicable conduct standards; and
    - (ii) take steps to mitigate risks resulting or that may result from the service that could harm retail financial customers; and
  - (b) on an on-going basis take into account changes in customer needs, circumstances or expectations, or external factors such as economic conditions, that could affect how the financial service impacts on financial customers, and allow sufficient flexibility in the way in which the service is provided to meet these changes without harm or prejudice to the customer.
- (2) Where a financial institution, including a sponsor of a pension fund, provides financial services to pension funds or similar member based entities, all requirements in subsection (1) relating to retail financial customers apply equally in relation to the members of those pension funds or other entities.

**PART 2****CONDUCT STANDARDS REGARDING FINANCIAL SERVICES****Conduct standards regarding financial services**

**56.** (1) The Authority may prescribe conduct standards that provide for additional requirements with which a financial institution providing specific financial services must comply, and limitations or prohibitions on financial services.

(2) Without limiting the scope of conduct standards that may be prescribed in terms of subsection (1), the Authority may prescribe conduct standards that address—

- (a) investment platform administration;
- (b) financial services provided to another financial institution;
- (c) charging structures for financial services;
- (d) the terms and conditions of financial services contracts, including unfair terms and fair, just and reasonable terms and conditions;
- (e) on-going monitoring requirements relating to the suitability of a financial service;
- (f) the identification of—
  - (i) a suitable target market of a financial service; and
  - (ii) a target market for whom a financial service would likely be unsuitable;
- (g) the offering of a financial service to a suitable target market;
- (h) the assessment of whether it is appropriate to offer a financial service to a particular customer, and in particular where the financial customer would gain access to complex financial products;

- (i) appropriate remedial action in respect of a financial service in the event of poor customer outcomes;
- (j) transparency of financial services;
- (k) frequency and nature of reporting to financial customers; and
- (l) prohibited financial services or the prohibition or restriction of the offering of services to particular categories, subcategories or types of customer;
- (m) payment services; and
- (n) the methodologies in determining a benchmark.

## CHAPTER 6

### PROMOTION, MARKETING AND DISCLOSURE

#### **Purpose of Chapter**

**57.** The purpose of this Chapter and any conduct standards prescribed under this Chapter is to ensure that financial customers are given clear, complete and accurate information about a financial product or a financial service across its life cycle, to enable that customer to assess whether it meets his or her needs, make comparisons across similar financial products and financial services, and hold the financial institution to account for unfair treatment.

## **Principles for promotion, marketing and disclosure**

**58.** (1) A financial institution must ensure that financial products and financial services are promoted and marketed to financial customers in a way that is clear, fair, unambiguous and not misleading.

(2) Before, during and after the conclusion of a contract or agreement for the provision of a financial product or a financial service or the participation in a product, a financial customer must be given adequate and clear information, and be kept appropriately informed, to place the financial customer in a position to make informed decisions regarding the financial product or financial service, including whether the financial product or financial service meets the financial customer's needs and expectations.

### ***PART 1***

## ***PROMOTION, MARKETING AND DISCLOSURE***

### **Promotion and marketing**

**59.** (1) A financial institution must, prior to publishing promotional and marketing material, take reasonable measures to ensure that the information provided in the promotional and marketing material complies with this Chapter and conduct standards prescribed under this Chapter.

(2) A financial institution must at all times ensure that any publication of promotional and marketing material which relates to its business, activities, financial products or financial services, that another person publishes on behalf of the financial



institution, or of which the financial institution is aware or ought to be aware, complies with this Chapter and conduct standards prescribed under this Chapter.

(3) A financial institution remains responsible for the manner in which a financial product issued by it or a financial service rendered by it is promoted or marketed, even where the financial institution relies on another person to promote or market the financial product or service on its behalf.

(4) Promotional and marketing material of a financial institution must be appropriate to the needs and reasonably assumed level of knowledge of the financial customers at whom it is targeted.

(5) Promotional and marketing material of a financial institution may not be misleading or likely to mislead, deceptive, fraudulent, contrary to the public interest or contain incorrect statements.

(6) Promotional and marketing material must use clear, plain and unambiguous language, and take into account the needs and reasonably assumed level of knowledge of the retail financial customers to whom it is targeted.

(7) A financial institution that is not a small enterprise must have processes and procedures for the approval of promotional and marketing material by a person of appropriate seniority and expertise within the business of the financial institution, which must form part of the governance policy required in section 36(2)(d).

**Disclosure**

**60.** (1) Before, during and after the conclusion of a contract for the provision of a financial product or a financial service, a financial institution must make a financial customer aware of all relevant facts that could influence the financial customers' decisions relating to the financial product or financial service, including but not limited to—

- (a) benefits and risks in relation to the financial product or financial service;
- (b) all costs to the financial customer in relation to the supply of that product or service;
- (c) contractual obligations on the financial customer and the financial institution;
- (d) consequences for each party should there be a breach of contract; and
- (e) recourse options for the financial customer in the case of a dispute with the financial institution, or a related intermediary, in relation to its supply of a financial product or financial service.

(2) A financial institution must make disclosures to financial customers that—

- (a) use plain language that is clear, unambiguous, and is appropriate for the target market;
- (b) are adequate, appropriate, timely, relevant and complete;
- (c) are factually correct and not misleading or deceptive;
- (d) promote understanding of the financial product or financial service being provided; and
- (e) promote comparison across similar financial products or financial services.

(3) When making disclosures to financial customers in accordance with this Part, a financial institution must take into account—

- (a) the nature and complexity of the financial product or financial service concerned; and
- (b) the needs and reasonably assumed level of knowledge, understanding and experience of financial customers at whom the disclosure is targeted.

## ***PART 2***

### ***CONDUCT STANDARDS REGARDING PROMOTION, MARKETING AND DISCLOSURE***

#### **Conduct standards in respect of promotion, marketing and disclosure**

**61.** (1) The Authority may prescribe conduct standards providing for additional requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Without limiting the scope of the conduct standards that may be prescribed in terms of subsection (1), the Authority may prescribe conduct standards in respect of—

- (a) the design of promotional and marketing material;
- (b) the positioning of words in, and the display and presentation of promotional and marketing material;
- (c) information, data, descriptions and disclosures in promotional and marketing material;
- (d) the appropriateness of the medium used for promoting and marketing a financial product or service;

- (e) the identification of the financial institution that is financially liable or accountable for the financial product or financial service that is being promoted or marketed;
- (f) direct marketing, product and services descriptions, bait marketing, negative option marketing;
- (g) inducements;
- (h) loyalty programmes and competitions;
- (i) the publication of prices;
- (j) investment performance and projected values contained in promotional and marketing material;
- (k) comparative promotional and marketing practices;
- (l) false, misleading or deceptive representations;
- (m) third party arrangements;
- (n) puffery, endorsements and value judgments, matters of opinion or subjective assessments;
- (o) prohibited and predatory marketing practices;
- (p) remedial actions to be taken by a financial institution when it has published an inaccurate, unclear, misleading or fraudulent promotional or marketing material;
- (q) the provision of information in plain and understandable language;
- (r) standardised point-of-sale disclosure documents, or key information documents, which may be adapted to also provide for the standardisation of disclosure over the life of the financial product or financial service, and which may include information about pricing;
- (s) disclosures, including—
  - (i) the person responsible for making certain disclosures;
  - (ii) required disclosures;

- (iii) the appropriateness of certain disclosures;
- (iii) the content of and accuracy of disclosures; and
- (iv) the method and timing of disclosures;
- (t) restrictions on unsolicited communications between a financial institution that provides a financial product or financial service and a financial customer before contracting and once the contractual relationship is terminated; and
- (u) disclosures in relation to financial products where membership is a requirement of employment.

(3) Conduct standards in terms of this section may distinguish between promotional and marketing materials and disclosures targeted at different segments of financial customers or relating to different financial products and financial services, including providing that certain requirements do not apply in relation to a category, sub-category or type of financial customer, financial product or financial service or that more stringent requirements apply in relation to a specified category, sub-category or type of financial customer, financial product or financial service.

## **CHAPTER 7**

### **DISTRIBUTION, ADVICE AND DISCRETIONARY INVESTMENT MANAGEMENT**

#### **Interpretation of Chapter**

**62.** For the purposes of this Chapter, "financial instrument" includes foreign exchange.

#### **Purpose of Chapter**

**63.** The purpose of this Chapter and any conduct standards prescribed under this Chapter is to ensure that the distribution of financial products and financial instruments to financial customers, advice provided in relation to financial products and financial instruments, and discretionary investment management—

- (a) supports the delivery of appropriate financial products and financial instruments to financial customers;
- (b) enables financial customers to understand and compare the nature, value and cost of financial products and financial instruments;
- (c) enhances standards of professionalism in distribution, advice and discretionary investment management;
- (d) enables financial customers and persons that distribute financial products and financial instruments to benefit from fair competition for quality services related to that distribution, at a price more closely aligned with the nature and quality of the service provided, and
- (e) supports sustainable business models for distribution, advice and discretionary investment management to viably deliver fair customer outcomes over the long term.

### **Principles for distribution, advice and discretionary investment management**

**64.** Services related to the distribution of and advice regarding financial products and financial instruments to financial customers, and discretionary investment management must—

- (a) be provided in a manner that is as objective as possible;

- (b) not be conflicted, where the conflict can reasonably be avoided, and in all instances disclose any conflict of interest; and
- (c) support the delivery of appropriate financial products and financial instruments to those financial customers.

## ***PART 1***

### ***DISTRIBUTION, ADVICE AND DISCRETIONARY INVESTMENT MANAGEMENT***

#### **Selection of distribution and advice channels**

**65.** (1) Financial institutions must satisfy themselves that the method or methods used to distribute or provide advice on their financial products or financial instruments are appropriate to the nature and complexity of that product or instrument and to the targeted financial customers.

(2) A financial institution that provides a financial product or financial instrument must, if it enters into an arrangement with one or more other financial institutions to distribute or provide advice on its financial products or financial instruments, select financial institutions that have the necessary knowledge, expertise and competence to understand the features and the characteristics of the identified target market of the financial product or financial instrument, correctly place the product or instrument in the market and give the appropriate information to financial customers.

(3) (a) A financial institution that provides a financial product or financial instrument must provide adequate information, including the details of the financial product or financial instrument, to a financial institution or other person who is

involved in its distribution, that is of an adequate standard, clear, precise and up-to-date.

(4) Information given by the financial institution that provides a financial product or financial instrument to a financial institution or any other person that is involved in distributing or providing advice on a financial product or financial instrument must be sufficient to enable it to—

- (a) understand and adequately place the financial product, instrument or financial service in the relevant target market;
- (b) identify the target market for which the financial product, instrument or financial service is designed; and
- (c) identify types of financial customers for whom the financial product or financial instrument is likely to be inappropriate.

(5) A financial institution that is involved in distributing or providing advice on a financial product or financial instrument must take all reasonable steps to ensure that its distribution or advice channels act in compliance with the objectives of its governance policy and distribution or advice model.

(6) A financial institution that is distributing or providing advice on a financial product or financial instrument must monitor, on a regular basis, whether the financial products or financial instruments are provided to financial customers belonging to the relevant target market.

(7) Where a financial institution is of the opinion that its distribution or advice channel does not meet the objectives of its governance policy or its distribution or advice model, the financial institution must take immediate remedial actions in relation to the channel.



**Distribution and advice models**

- 66.** (1) Distribution models must—
- (a) be supported by clearly specified contractual arrangements between the financial institutions that are involved in the distribution of the financial product or financial instrument that clearly sets out—
    - (i) the obligations of each of the financial institutions;
    - (ii) how the arrangements may be adjusted or terminated;
  - (b) comply with any prescribed institutional or structural arrangements;
  - (c) provide that—
    - (i) ultimate responsibility to the financial customer for the financial product or financial instrument is retained by the financial institution that provides a financial product or financial instrument; and
    - (ii) a financial institution that distributes a financial product or financial instrument is responsible to both the financial customer and the financial institution that provides the financial product or financial instrument in respect of the quality of its distribution activities; and
  - (d) ensure that adequate and appropriate information is—
    - (i) provided to the institution that provides the financial product or financial instrument to the financial institution or institutions in the distribution model to enable them to be sufficiently informed about the financial product or financial instrument that is being distributed, so that they can comply with their legal obligations and their obligations to financial customers;
    - (ii) provided to the financial institution that provides a financial product or

financial instrument by the other financial institutions in the distribution model to enable the provider to be able to adequately monitor and assess the performance of the distribution model and make necessary adjustments to the model; and

- (iii) obtained from the financial customers to ensure that the sale and distribution of the financial product or financial instrument is appropriate for financial customers.

(2) A financial institution that provides a financial product or financial instrument must ensure that the distribution model that is employed in relation to the financial product or financial instrument complies with subsection (1) and adheres to prescribed standards.

(3) A financial institution, other than the financial institution that provides a financial product or financial instrument, who is involved in the distribution of a financial product or financial instrument must ensure that the distribution model that is employed in relation to that product or instrument complies with subsection (1) and adheres to prescribed standards.

## **Principles for financial institutions providing advice or discretionary investment management**

**67.** (1) A financial institution providing financial advice or providing discretionary investment management, must—

- (a) ensure that financial customers understand the extent of advice or discretionary investment management to be provided, including whether such services will be ongoing or not;

- (b) ensure that financial customers fully understand who is responsible and accountable for the advice or discretionary investment management;
- (c) inform financial customers about the charges to be imposed for providing the advice or discretionary investment management;
- (d) clearly explain the advice or discretionary investment management to be provided to the financial customer;
- (e) document that financial institution's recommendations, and keep a record of the recommendations for a period that may be prescribed; and
- (f) base the advice provided on adequate information in respect of the financial customer's profile, including a risk profile, and the financial customer's financial objectives, knowledge, capabilities and experience.

- (2) A financial institution providing discretionary investment management must, in addition to subsection (1)—
- (a) not cause the assets of financial customers to be invested or dealt with otherwise than in a manner directed in, or required by, the financial customer;
  - (b) apply adequate and effective due diligence processes;
  - (c) assess that the structure and risk-reward profile of the financial product or investment is consistent with the customer's needs and objectives, financial situation, knowledge and experience, risk profile and appetite and capacity for loss;
  - (d) not cause the assets of financial customers to be invested or dealt with otherwise than in a manner directed in, or required by, the financial customer; and
  - (e) provide and communicate information to customers in a fair, accurate, comprehensible and balanced manner.

(3) (a) Where a financial customer has not provided all the information that has been requested by a financial institution providing advice, or where the financial institution is only able to provide limited advice, because, in the circumstances, there was not reasonably sufficient time to provide comprehensive advice, the financial institution must fully inform the financial customer accordingly, and ensure that the financial customer clearly understands that—

- (i) there may be limitations on the extent and the appropriateness of the advice provided; and
- (ii) the financial customer should take particular care to consider whether the advice is appropriate, considering the financial customer's objectives, financial situation and particular needs.

(b) If a financial customer elects—

- (i) to conclude a transaction that differs from that recommended by the financial institution;
- (ii) not to follow the advice furnished; or
- (iii) to receive more limited information or advice than the financial institution is able to provide,

the financial institution must alert the financial customer as soon as reasonably possible of the clear existence of any risk to the financial customer, and must advise the financial customer to take particular care to consider whether any product or instrument selected is appropriate to the financial customer's needs, objectives and circumstances.

### **Responsibilities of providers of products and financial instruments in relation to advice**

**68.** A provider of a financial product or financial instrument must take reasonable measures to—

- (a) monitor the quality of advice provided to financial customers by other financial institutions that are providing advice in respect of the provider's financial products or financial instruments;
- (b) ensure that financial institutions providing advice in respect of the provider's financial products or financial instruments have adequate knowledge of those products or instruments, and in particular, the features and intended target market of the products or instruments; and
- (c) ensure that financial institutions providing advice in respect of the provider's financial products or financial instruments comply with any applicable prescribed competency requirements in relation to the provision of such advice.

**PART 2****CONDUCT STANDARDS REGARDING DISTRIBUTION, ADVICE AND  
DISCRETIONARY INVESTMENT MANAGEMENT****Conduct standards regarding distribution, advice and discretionary investment  
management**

**69.** (1) The Authority may prescribe conduct standards that provide for additional requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Without limiting the scope of conduct standards referred to in subsection (1) that can be prescribed, the Authority may prescribe conduct standards in respect of—

- (a) ownership;
- (b) disclosure;
- (c) distribution models;
- (d) distribution design;
- (e) persons who distribute financial products and financial instruments;
- (f) requirements that apply in relation to any financial institution who is involved in the distribution of financial products and financial instruments, whether or not that person may be required to be authorised or licensed in terms of this Act or another financial sector law;
- (g) the provision of advice and advice process;
- (h) intermediation;
- (i) remuneration and incentive arrangements and financial interests;
- (j) initial and on-going fees;

- (k) advice models, and wholesale models, of distribution;
- (l) product aggregation and comparison and leads and referrals; and
- (m) distribution to the low-income market;
- (n) sales execution;
- (o) on-going maintenance and servicing of financial products or financial instruments;
- (p) relationships between financial institutions involved in the distribution of a financial product or financial instrument;
- (q) financial advisers;
- (r) financial planners;
- (s) intermediaries;
- (t) risk management and liquidity management;
- (u) exercising of voting rights;
- (v) risk limits and leverage
- (w) frequency and nature of reporting;
- (x) valuations and pricing methodologies;
- (y) best execution of transactions on behalf of customers;
- (z) the terms and conditions of product and service agreements;
- (aa) minimum requirements relating to the terms and provisions of the contract of engagement with the client, including the provision of a mandate by a client;
- (bb) order handling, aggregation and allocation; and
- (cc) any other matter related to the distribution and advice of financial products or financial instruments.

## CHAPTER 8

## **POST-SALE BARRIERS AND OBLIGATIONS**

### **Purpose**

**70.** The purpose of this Chapter and any conduct standards prescribed under this Chapter is to promote competition, and promote the fair treatment of financial customers by financial institutions after a contract relating to a financial product, financial instrument or financial service has been entered into.

### **Principles relating to post-sale barriers and post-sale obligations**

**71. (1)** Financial institutions may not impose unreasonable post-sale barriers on financial customers that may prevent customers from holding a financial institution accountable for its contractual obligations, expectations created that are not being met, or perceived unfair treatment pertaining to a financial product or financial service that is being provided.

**(2)** Financial institutions must, after the point of contracting with a financial customer, continue to promote the fair treatment of that customer, including in relation to how that contract may be terminated and after the contract is terminated.



**PART 1****POST-SALE BARRIERS AND POST-SALE OBLIGATIONS****Limiting unreasonable post-sale barriers**

**72.** (1) Financial institutions may not impose post-sale barriers on financial customers that may unreasonably prevent financial customers from—

- (a) changing to another financial product or financial service, whether individually, or as a group of members of a pension fund or other similar member based entity;
- (b) changing to another financial institution;
- (c) submitting a claim; or
- (d) making a complaint.

(2) To ensure that financial customers do not face unreasonable post-sale barriers—

- (a) financial customers must have access to, and be provided with, relevant information regarding the financial products or financial instruments that they have purchased, or the financial services that they are being provided, on an ongoing basis, as required in Chapter 5;
- (b) where possible and appropriate, financial customers must be provided with financial products that are appropriately flexible and portable;
- (c) financial customers must be provided with efficient and effective complaints management that resolves their complaints in relation to financial products and financial services in a fair and expeditious manner;
- (d) financial institutions must have systems in place to monitor complaints, and processes that enable the financial institution to pro-actively identify and

manage conduct risks, effect improved financial customer outcomes and prevent recurrences of poor outcomes and errors;

- (e) financial customers and beneficiaries must, where applicable, be provided with claims management processes that handle their claims in relation to financial products in a fair, transparent, and expeditious manner;
- (f) financial customers must be advised of, and have access to, effective internal and, where appropriate, external dispute resolution mechanisms to resolve disputes relating to financial products and financial services;
- (g) financial customers must not face unreasonable barriers when terminating a contract in respect of a financial product or financial service, and must be provided with an efficient and fair termination process; and
- (h) financial customers must not be subject to unreasonable fees, charges or penalties when a contract is terminated.

### **Post-sale obligations**

**73.** (1) A financial institution must, after the point of contracting with a financial customer, continue to treat that customer fairly, both for the duration of, and to a reasonable extent after the termination of, the contractual relationship between the financial institution and the financial customer.

(2) The contractual relationship between a financial institution and a financial customer may only be terminated in a fair manner, in accordance with procedures and requirements that may be prescribed.

(3) Amounts owing to or unclaimed benefits of a financial customer must be treated as amounts being held in trust by the financial institution on behalf of

the financial customer, and must be handled by the financial institution in accordance with the requirements of this Act and other applicable legislation.

(4) (a) When seeking to collect debts that are owed by a financial customer to a financial institution, both during the term of a contract or subsequent to the termination of the contractual relationship between the financial institution and the financial customer, a financial customer must be treated fairly, and in accordance with applicable requirements in this Act and other legislation.

(b) The obligation in paragraph (a) applies in respect of—

- (i) a financial institution;
- (ii) a person to whom the right to collect a debt has been ceded or transferred by a financial institution to another person; and
- (iii) a person to whom the function of collecting debts has been outsourced, either by the financial institution or a person to whom the financial institution has ceded or transferred the debt.

## **Service levels**

**74.** A financial institution must—

- (a) provide acceptable levels of service support for the financial products and financial services provided, including in relation to responses to enquiries and any transaction or engagement that occurs after the initial sale of a financial product or financial instrument or the initial provision of a financial service to a financial customer;
- (b) provide service that is fair, reliable, and transparent and consistent with the reasonable expectations of the financial customer that have been created by the

information and representations provided by or on behalf of the financial institution to the financial customer; and

- (c) provide acceptable levels of protection of safety and security in relation to the financial products and financial services provided and in relation to a customer's personal information.

## ***PART 2***

### ***CONDUCT STANDARDS REGARDING POST-SALES BARRIERS AND OBLIGATIONS***

#### **Conduct standards regarding post-sales barriers and obligations**

**75.** (1) The Authority may prescribe conduct standards that provide for additional requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Without limiting the scope of conduct standards that may be prescribed in terms of subsection (1), the Authority may prescribe conduct standards in relation to—

- (a) product flexibility and portability;
- (b) the handling, management and reporting of complaints and disputes, which may include requirements relating to monitoring, processes to promote 'learning' from complaints, reporting of complaints information to the Authority or to the public;
- (c) the provision of redress for financial customers;
- (d) handling and management of claims, including prohibited claims practices;
- (e) access to information by customers of financial products and financial services;

- (f) limits, restrictions and any other requirements relating to charges, fees and penalties that may be imposed on a financial customer when transferring to another financial product or terminating a financial product or financial service;
- (g) the renewal and automatic renewal of contracts for the provision of financial products and financial services;
- (h) cooling-off rights and requirements relating to the termination of financial products and financial services;
- (i) circumstances under which amounts must be repaid to a financial customer on the termination of a contract for the provision of a financial product or a financial service, and determining the value of the amount payable and the timing of those repayments;
- (j) the termination of agreements, accounts or contracts for financial products and financial services;
- (k) how unclaimed benefits or other amounts owing to a financial customer must be managed;
- (l) debt collection, including the cession or transfer of debt;
- (m) appropriate service level and administration agreements;
- (n) post-sales obligations; and
- (o) post-sales barriers that may be identified by the Authority.

**CHAPTER 9****SAFEGUARDING ASSETS AND OPERATIONAL REQUIREMENTS****Application of Chapter**

**76.** (1) Part 1 of this Chapter applies to a financial institution that, or a nominee company, or director, member, partner, official, employee or agent of the financial institution or nominee company, who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property.

(2) Part 2 of this Chapter does not apply to financial institutions that are subject to financial soundness requirements imposed under a financial sector law other than this Act.

**Purpose of Chapter**

- 77.** The purpose of this Chapter is to—
- (a) ensure that the assets of financial customers, and the funds and assets of financial institutions are adequately safeguarded;
  - (b) ensure that financial institutions have personnel, accommodation, facilities, resources and other services that are required to function effectively;
  - (c) identify transactions or actions that may significantly impact on the structure, corporate form or ability of the financial institution to continue providing financial services in substantially the same manner, and
  - (d) to require the notification or approval of the Authority of the transactions referred

to in paragraph (c).

**PART 1**  
**SAFEGUARDING**

**Principles for persons dealing with assets of financial customers or financial institutions**

**78.** A financial institution, any member of its governing body, or any of its employees or agents, who invests, holds, keeps in safe custody, controls, administers or alienates any funds or assets of the financial institution or any assets of financial customers —

- (a) must, regarding the assets of financial customers, observe the utmost good faith and exercise proper care and diligence required of a trustee in the exercise or discharge of the trustee's powers and duties, and ensure that the assets of financial customers are adequately safeguarded;
- (b) must at all times deal with the assets of financial customers strictly in accordance with the mandate given to the financial institution;
- (c) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the assets of financial customers, or furnish any guarantee in a manner calculated to gain, directly or indirectly, any improper advantage for any person to the prejudice of the financial institution or other person for, or on whose behalf, the financial institution is acting;
- (d) must account for the assets of financial customers properly and promptly, and when documents of title are lodged with the financial institution, it must

immediately provide written confirmation of receipt of the documents, which contains a description of the documents that is sufficient to identify them;

- (e) must, when assets of financial customers are received without the mediation of a bank, issue a written confirmation of receipt of the assets of financial customers; and
- (f) must, where a transaction or agreement has been recorded in writing, deliver the original or a copy of the agreement to the financial customer or other person for, or on whose behalf, the financial institution is acting.

### **Declaration of interest**

**79.** (1) Any member of the governing body of a financial institution, or any of its employees or agents who takes part in a decision to invest any of the funds of the financial institution, or any assets of financial customers, in a person or venture in which that person has a direct or indirect financial interest, must declare that interest in writing to the governing body of the financial institution, indicating the nature and extent of the interest, before a decision is made.

(2) For the purposes of subsection (1), "invest" includes—

- (a) the purchase of shares in a company, or of an interest in a close corporation or partnership;
- (b) the granting of a secured or unsecured loan; or
- (c) acquiring a financial interest in an agreement or other matter in which the financial institution or the financial group of which it is a part has a material interest.



(3) A declaration of interest made in terms of subsection (1) must be recorded in the minutes of the meeting of the governing body at which the declaration is made or considered.

### **Investment of assets of financial customers**

**80.** (1) A financial institution, any member of its governing body, or any of its employees or agents, which administers assets of financial customers in terms of any contract or agreement may not cause the assets of financial customers to be invested otherwise than in a manner directed in, or required by, the contract or agreement.

(2) A financial institution, any member of its governing body, or any of its employees or agents, may not cause any assets of financial customers to be invested otherwise than in the name of—

- (a) the person for, or on whose behalf, the financial institution is acting;
  - (b) the financial institution in its capacity as administrator, trustee, curator or agent;
- or
- (c) a nominee.

(3) (a) Despite subsection (2)—

(i) where the 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—

- (aa) a trust;
- (bb) a financial institution in its capacity as administrator, trustee or curator; or
- (cc) any nominee; and

(ii) where those shares or debentures form part of assets of financial customers administered by a financial institution,

those shares or debentures must be registered in the name of a member of the governing body of that financial institution.

(b) The member of the governing body must hold those shares or debentures in a fiduciary capacity on behalf of the person for, or on whose behalf, the financial institution is acting.

(c) Prior to the registration of any shares or debentures in the name of a member of the governing body as contemplated in paragraph (a), the financial institution concerned must furnish security to the satisfaction of the Master of the High Court, if security has not already been furnished in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

### **Segregation of assets of financial customers from property of financial institution**

**81.** (1) A financial institution must—

(a) keep assets of financial customers separate from funds or assets belonging to it; and

(b) in its accounting records and financial statements, clearly indicate the assets of financial customers as being property belonging to a specified person for, or on whose behalf, the financial institution is acting.

(2) Despite anything to the contrary in any law or the common law, assets of financial customers invested, held, kept in safe custody, controlled or administered by a financial institution under no circumstances form part of the funds or assets of the financial institution.

- (3) Despite subsection (1), the Authority may prescribe—
- (a) different segregation requirements in respect of different—
- (i) types of assets of financial customers; or
  - (ii) financial institutions;
- (b) operating and management requirements relating to segregation.

## ***PART 2***

### ***OPERATING CAPITAL AND OPERATIONAL ABILITY***

#### **Operating capital**

**82.** (1) A financial institution must at all times maintain sufficient financial resources of an adequate amount and quality to carry out its activities, fulfil its obligations and comply with all legal requirements, and to ensure that there is no risk that its liabilities cannot be met as they fall due.

(2) The assets of a financial institution must at all times exceed its liabilities.

(3) A financial institution must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considers adequate to cover the nature and level of the risks to which it is exposed, or is likely to be exposed in the future.

(4) In addition to what is provided in subsection (3), a financial institution that holds assets of financial customers, or that collects, holds or receives any monies in respect of a financial product, must at all times comply with any

additional asset, working capital and liquidity requirements that are prescribed.

(5) A financial institution must have procedures in place to identify any non-compliance with this section which, for a financial institution that is not a small enterprise, must form part of the governance policy.

(6) A financial institution that has identified a failure to comply with this section must, without delay—

- (a) notify the Authority of the failure and the reasons for the failure;
- (b) within 30 days after the notification referred to in paragraph (a), submit a compliance scheme to the Authority for approval that sets out the measures that the financial institution will implement within a four month-period to remedy any non-compliance.

(7) The Authority may, if appropriate, extend the four-month period referred to by two months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors.

(8) A financial institution whose compliance scheme was approved as contemplated in subsection (6)(b) must submit a monthly progress report to the Authority that sets out the measures taken and the progress made with implementing the compliance scheme.

(9) The Authority may, until a compliance scheme is implemented—

- (a) restrict or prohibit certain activities or transactions of the financial institution; or
- (b) impose conditions or limitations on the financial institution or governing body.

(10) The Authority may—

- (a) require the governing body or senior management, or both, of the financial institution to demonstrate that the operational capital requirements provided for in this section and any other prescribed requirements are being complied with;

(b) if the Authority reasonably believes that the adequacy of the operational capital requirements of a financial institution requires further investigation, direct the financial institution to secure an independent review of the operational capital requirements by a person who is approved by the Authority at the cost of the financial institution.

(11) The Authority may direct a financial institution, or the governing body or other key persons of the financial institution, to strengthen or effect improvements to its operational capital requirements.

(12) This section does not limit any other action that the Authority may take in terms of this Act.

### **Operational ability**

**83.** (1) A financial institution must have and be able to maintain the operational ability to fulfil the responsibilities imposed by this Act on financial institutions, including—

- (a) a fixed business address;
- (b) adequate access to communication facilities, including at least a full-time telephone or cell phone service, and typing and document duplication facilities;
- (c) adequate storage and record keeping systems for the safe-keeping of records, business communications and correspondence;
- (d) an account with a registered bank, including, where required by this Act, a separate bank account for assets of financial customers; and
- (e) a financial institution who is an accountable institution as defined in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), must have in place all the

necessary policies, procedures and systems to ensure full compliance with that Act and other applicable anti-money laundering or terrorist financing legislation.

(2) A financial institution must ensure that internal control structures, processes, procedures and controls, which include at least the following, are in place:

- (a) Application of access security;
- (b) access rights and data security on electronic data, where applicable;
- (c) physical security of premises, assets and records, where applicable;
- (d) system application testing, where applicable;
- (e) disaster recovery and back-up procedures on electronic data, where applicable;
- (f) appropriate recruitment and training for key persons, employees, representatives and other persons as required by this Act; and
- (g) a business continuity plan.

(3) A financial institution must have and be able to maintain the operational ability to fulfil the responsibilities imposed by this Act, including oversight of financial services provided by representatives of the financial institution, or other financial institutions and service providers who are in the sales and distribution of a financial product.

### **Guarantee and indemnity**

**84.** A financial institution, if and to the extent prescribed by the Authority, must maintain in force appropriate guarantees or professional indemnity insurance or fidelity insurance to cover the risk of losses due to negligence, fraud or dishonesty, both for itself and its employees subject to those conditions and requirements that may be prescribed.

**PART 3****CERTAIN TRANSACTIONS AND STRUCTURE****Conducting business other than licensed activities**

**85.** (1) A financial institution that belongs to a category, subcategory or type of financial institution that is prescribed by the Authority for the purposes of this subsection may not, without the approval of the Authority, conduct any business other than the activity or activities for which it is licensed in the Republic, including any activity or a part of an activity performed on behalf of another financial institution.

(2) A financial institution may not, without the approval of the Authority, conduct any business, including business similar to the activity or activities for which it is licensed in the Republic, outside the Republic.

(3) (a) Despite any approval under subsection (1) or (2), the Authority may, after having consulted the Prudential Authority, in the case of a prudentially regulated financial institution, and with the concurrence of the Reserve Bank, in the case of a systemically important financial institution, direct a financial institution to cease conducting business referred to in subsection (1) or (2), if the Authority reasonably believes that the business may introduce a risk or risks that cannot be appropriately mitigated.

(b) A financial institution that is directed under paragraph (a) must, submit to the Authority for approval a plan to reorganise its business within the period agreed with the Authority, which period must not exceed three months after a directive referred to in paragraph (a) is issued.

(c) A financial institution whose plan was approved under paragraph (b) must submit a monthly progress report to the Authority that sets out the measures taken and the progress made with implementing the plan.

(d) The Authority may restrict or prohibit certain activities or transactions of the financial institution until the plan is implemented.

### **Transfer, fundamental transaction or change of institutional form**

**86.** (1) (a) A financial institution that belongs to a category, subcategory or type of financial institution that is prescribed by the Authority for the purposes of this subsection may not, without the approval of the Authority, transfer more than 25% of its assets and liabilities relating to the financial service that it is licenced to conduct to another person.

(b) The 25% referred to in paragraph (a) must be calculated by aggregating the amount of the transferred assets, liabilities or assets and liabilities together with any previous transfer of assets, liabilities or assets and liabilities within the same financial year of the financial institution concerned.

(2) A financial institution may not, without the approval of the Authority—

(a) participate in any fundamental transaction or compromise contemplated in Part A of Chapter 5 or section 155 of the Companies Act; or

(b) convert from one type of corporate form to another, or in any other way change the type of person it was on the date that it was licensed under this Act.

(3) The Authority may only grant an approval referred to under subsection (1) or (2) if—



- (a) the Authority is satisfied—
  - (i) that the transfer, transaction or change will not impede the ability of the financial institution to treat its financial customers fairly; and
  - (ii) that any prescribed procedures have been complied with; and
- (b) in the case of a financial institution that is prudentially regulated, the Prudential Authority has been consulted.

(4) The Authority may—

- (a) prescribe the processes that a financial institution must comply with in respect of transfers, transactions or changes, which may include processes for informing and consulting financial customers; and
- (b) appoint a person, at the cost of the financial institution, to assess the transfer, transaction or change and express a view on the desirability or otherwise of the transfer, transaction or change.

(5) A transfer, transaction or change referred to in subsections (1) or (2) that is approved by the Authority is binding on and enforceable against all persons.

(6) Any person in charge of a deeds registry or other office in which any mortgage bond or movable or immovable property is registered which will be transferred in accordance with an approved transfer, transaction or change referred to in subsections (1) or (2) must, on receipt of the relevant bond, title deed or registration certificate and a certified copy of the Authority's approval, take the measures necessary to effect the transfer.

(7) A transfer, transaction or change referred to in subsections (1) or (2) may not be effected without the approval of the Authority, with the concurrence of the Prudential Authority in the case of a prudentially regulated financial institution, as

well as with the concurrence of the Reserve Bank in the case of a systemically important financial institution.

### **Registration of shares in name of nominee**

**87.** (1) A financial institution that is a profit company registered under the Companies Act may not, without the approval of the Authority—

- (a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended holder of a beneficial interest;
- (b) register a transfer of any of its shares to a person other than the intended holder of a beneficial interest.

(2) The Authority may prescribe the circumstances in which approval under subsection (1) is not required.

### **Acquisitions or disposals**

**88.** (1) A financial institution must, prior to making a material acquisition or disposal, notify the Authority.

(2) The Authority must prescribe what constitutes a material acquisition or disposal for the purposes of subsection (1).

(3) (a) The Authority may issue a directive to a financial institution in relation to a material acquisition or disposal, if the Authority reasonably believes that the acquisition or disposal will impede—

- (i) the ability of the financial institution to treat its financial customers fairly; or

(ii) the ability of the Authority to supervise the financial institution and its related and inter-related parties appropriately.

(b) A directive may direct the financial institution to undertake specified measures to address the concerns referred to in paragraph (a).

(c) If a directive has been issued to a prudentially regulated financial institution, the Authority must also provide a copy of the directive to the Prudential Authority.

**Alteration of Memorandum of Incorporation or equivalent constitution, deed or founding instrument of a financial institution, and change of name of a financial institution**

**89.** (1) Any alteration in terms of section 16 of the Companies Act of the Memorandum of Incorporation of a financial institution licensed under this Act that is a company, or any change in terms of section 16(8) of the Companies Act of the name of any financial institution licensed under this Act that is a company, must be approved by the Authority prior to the adoption of alteration or change in terms of the applicable process in section 16 of the Companies Act.

(2) (a) Any alteration to the constitution, deed or founding instrument of a financial institution licenced under this Act that is not a company, that is equivalent to the Memorandum of Incorporation of a company, must be approved by the Authority.

(b) Any change in the name of any financial institution licenced under this Act that is not a company must be approved by the Authority.

(3) The Authority must not grant any application referred to in subsection (1) and (2) if it is of the opinion—

(a) that the proposed alteration is inconsistent with any provision of this Act or other applicable legislation or is undesirable in so far as it concerns the activity or activities of the financial institution;

(b) the proposed change in the name of the financial institution is unacceptable because it—

(i) is identical to that of another financial institution;

- (ii) so closely resembles that of another financial institution that the one is likely to be mistaken for the other;
- (iii) is identical to or so closely resembles that under which another financial institution was previously licensed, and reasonable grounds exist for objection to its use; or
- (iv) is misleading; or
- (v) is undesirable.

(4) Any alteration or change referred to in subsections (1) or (2)

without the approval of the Authority is void.

#### ***PART 4***

### ***CONDUCT STANDARDS REGARDING SAFEGUARDING ASSETS AND OPERATIONAL REQUIREMENTS***

#### **Conduct standards regarding safeguarding assets and operational requirements**

**90.** (1) The Authority may prescribe conduct standards that provide for requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Without limiting the scope of conduct standards referred to in subsection (1), the Authority may prescribe conduct standards in respect of—

- (a) the safeguarding and handling of assets of financial customers;
- (b) operational capital;
- (c) the operational ability of financial institutions;
- (d) certain transactions;
- (e) institutional structures; and

(f) guarantees and professional indemnity insurance or fidelity insurance to be held by financial institutions.

(3) Different conduct standards prescribed in accordance with subsection (2) may be made for, or in respect of different activities and sub-categories of activities, and different categories, subcategories or types of financial institutions or persons, including—

- (a) significant owners;
- (b) holding companies of financial institutions;
- (c) financial groups; and financial conglomerates; and
- (d) persons to whom a function is outsourced.

## **CHAPTER 10**

### **REPORTING**

#### ***PART 1***

#### ***REPORTING AND PUBLIC DISCLOSURE***

#### **Information for supervisory purposes (prescribed returns)**

**91.** (1) In addition to any specific or general requirement provided for elsewhere in this Act, a financial institution must provide the Authority with any information that the Authority may require, in the medium, form and manner, and at the intervals, prescribed by the Authority, for the supervision and enforcement of this Act.

(2) The requirements referred to in subsection (1) may—

- (a) apply generally or to a particular financial institution; and

(b) may differentiate between different—

- (i) types of financial institutions;
- (ii) types of activities;
- (iii) categories, subcategories or types of financial customers; or
- (iv) financial products or financial service.

(3) A financial institution must, when providing information, ensure that

the information is—

- (a) complete in all material respects;
- (b) comparable and consistent from one reporting period to another;
- (c) relevant, reliable and comprehensible; and
- (d) not misleading, false or deceptive.

### **Public disclosures by financial institution**

**92.** (1) A financial institution must annually, by no later than six months after its financial year end, publicly disclose the prescribed quantitative and qualitative information in full, or by way of prominent references to information equivalent in nature and scope disclosed publicly under any other law or legal obligation, in the form and manner that may be prescribed.

(2) In prescribing the quantitative and qualitative information in accordance with subsection (1), the Authority may differentiate between different —

- (a) types of financial institutions;
- (b) types of activities;
- (c) categories, subcategories or types of financial customers; or
- (d) financial products or financial services.

(3) (a) The Authority may approve the non-disclosure of specific information, if the disclosure of the information—

- (i) may afford the competitors of the financial institution undue advantage;
- (ii) is subject to contractual obligations of secrecy and confidentiality;
- (iii) may negatively impact on the financial soundness of the financial institution;
- (iv) may negatively impact on the financial stability of the financial services sector;
- (v) relates to non-compliance with this Act that is not material; or
- (vi) relates to a matter in which the public does not have an interest.

(b) If the Authority approves the non-disclosure of specific information, it may direct the financial institution to include a statement to this effect, and the reasons for the non-disclosure of the information, in its disclosure.

(c) The Authority may not make a determination regarding disclosure by prudentially regulated institutions unless the Prudential Authority has concurred with the determination.

(4) (a) In the event of any major development affecting the relevance of the information disclosed in accordance with subsection (1), a financial institution must publicly disclose appropriate information on the nature and effects of that major development, unless the Authority has approved in terms of subsection (3) that disclosure need not be made.

(b) For the purposes of paragraph (a), "a major development" means any material non-compliance with this Act, or a review, investigation or verification required by the Authority to be disclosed in accordance with this Act.

(c) In the circumstances referred to in paragraph (a), a financial institution must immediately publicly disclose the extent of non-compliance, an explanation of the reasons for the non-compliance, the consequences of the non-



compliance, and the remedial measures taken by the financial institution, unless the Authority has approved that disclosure need not take place.

(5) (a) The Authority may, in addition to subsection (1), at any time, require a financial institution to publish information in the form, and within the time limits, that the Authority may determine, if the publication—

- (i) is in the interest of financial customers or prospective financial customers;
- (ii) is in public interest; or
- (iii) would support the integrity of the financial services sector.

(b) If a financial institution fails to comply with a requirement under paragraph (a) within the time limit set in terms of that paragraph, the Authority may itself publish the information, after giving the financial institution reasonable time to make representations as to why it should not be published.

### **Incomplete, incorrect, false or misleading information**

93. (1) If the Authority reasonably believes that any information provided in accordance with this Chapter is incomplete, incorrect, false or misleading, after providing the financial institution with appropriate information to indicate why it believes that the information is incomplete, incorrect, false or misleading, the Authority may—

- (a) direct the financial institution to provide the Authority, within a specified period, with specified information or documents, to complete or correct the information provided to the Authority; or
- (b) reject the information, and direct the financial institution to provide the Authority, within a specified period, with new information which is in the opinion of the Authority complete and correct.

(2) If the Authority reasonably believes that information, or a part of the information, requires further investigation, it may direct the financial institution to secure a report containing the information required by the Authority from a person who is approved by the Authority, at the cost of the financial institution, by a specified date, or within a specific period, and in the form and, manner determined by the Authority.

### **Information concerning beneficial interests**

**94.** (1) A financial institution must, when required to do so by the Authority, provide the Authority with any information the Authority may require, in the form and manner, determined by the Authority, in respect of—

- (a) the names of its shareholders, other holders of a beneficial interest, and the size of their shareholding and other beneficial interests, as the case may be; and
- (b) the name of any person who, directly or indirectly, has the power to require the shareholders referred to in paragraph (a) to exercise their rights as shareholders in the financial institution.

(2) A person, or any person acting on behalf of that person, must, at the request of a financial institution, provide the financial institution with the information it may require for the purposes of complying with subsection (1), if—

- (a) shares in a financial institution are registered in that person's name; or
- (b) that person wishes to have shares in a financial institution allotted, issued or registered in that person's name.

(3) The Authority must prescribe what constitutes a beneficial interest for the purposes of this section.

**PART 2**

**ACCOUNTING RECORDS, FINANCIAL STATEMENTS, VERIFICATION OR  
AUDITING REQUIREMENTS AND RETENTION OF RECORDS**

**Financial year of financial institution**

**95.** (1) A financial institution may not change its financial year end without the approval of the Authority.

(2) Despite subsection (1), the Authority's approval is not necessary where a change of a financial year end has been approved by the Prudential Authority.

(3) Where a change of a financial year end was approved by the Prudential Authority, the financial institution must inform the Authority of that approval within 14 days of the approval being granted.

**Accounting records and financial statements**

**96.** (1) A financial institution must—

- (a) maintain full and proper accounting records on a continual basis, brought up to date monthly; and
- (b) annually prepare, in respect of the relevant financial year of the financial institution, financial statements that—
  - (i) fairly represent the state of affairs of the financial institution's business;
  - (ii) refer to any material matter which has affected or is likely to affect the financial affairs of the financial institution;
  - (iii) reflects those matters that are prescribed; and
  - (iv) prepare the annual financial statements in the format as may be prescribed.

(2) Section 28 of the Companies Act that deals with accounting records, applies to the accounting records of financial institutions referred to in this section, despite the fact that the financial institution may not be a company.

(3) Section 29 of the Companies Act that deals with financial statements, applies to any financial institution referred to in this section, despite the fact that a financial institution may not be a company.

(4) Subject to this section, section 30 of the Companies Act that deals with annual financial statements, applies to any financial institution referred to in this section, including a financial institution that is not a company.

(5) The Authority may prescribe additional statements or reports that must be included in the annual financial statements of a financial institution after having consulted with any relevant regulatory authority.

**Auditing or independently reviewed annual financial statements**

- 97.** (1) A financial institution must cause to be audited—
- (a) its annual financial statements referred to in section 96; and
  - (b) the information as prescribed referred to in part 1 of this Chapter.
- (2) A financial institution must submit its audited annual financial statements to the Authority and make it available to the public within the prescribed period after its financial year-end.
- (3) The Authority may, in addition to auditing pronouncements as defined in section 1 of the Auditing Profession Act, prescribe auditing standards or requirements in respect of the information referred to section 98 or part 1 of this Chapter.
- (4) Despite subsection (1), the Authority may, subject to section 30 of the Companies Act, exempt certain types or kinds of financial institutions from the requirement to have their financial statements and the information referred to in subsection (1)(b) audited.
- (5) Those financial institutions, including financial institutions that are not companies, which are exempted under subsection (4) must, if so required by the Authority in a conduct standard, comply with the independent review requirements of section 30 of the Companies Act.

**Retention of records**

**98.** (1) A financial institution must have in place and implement a framework for the retention of data and records, in accordance with requirements prescribed in conduct standards in relation to the activities that the financial institution is conducting, and other applicable legislation.

(2) Where data and records are maintained by a service provider or any third party, such records and data remains the property of the financial institution and must be made available to the financial institution free of charge.

***PART 3******AUDITORS*****Appointment of auditor**

**99.** (1) (a) A financial institution must appoint and at all times have an auditor approved in terms of the Auditing Profession Act who has no direct or indirect financial interest in the business of the financial institution, unless it is exempted from the requirement to have audited annual financial statements under section 97.

(b) Sections 90 to 93, inclusive, of the Companies Act apply to a financial institution referred to in paragraph (a).

(2) (a) The appointment of an auditor is subject to the approval of the Authority in the form and manner prescribed by the Authority.

(b) Paragraph (a) does not apply in respect of the reappointment of an auditor that does not involve a break in the continuity of the appointment.

(c) Where the appointed auditor is a firm defined under the Auditing Profession Act, both the firm and the partner who takes responsibility for the financial institution must be approved by the Authority.

(d) The Authority's approval of a firm as defined under the Auditing Profession Act does not lapse due to a change in the membership of the firm, if at least half of the members of the firm, after the change, were members when the appointment of the firm was approved by the Authority, and the partner that takes responsibility for the financial institution is not affected by this change.

(3) (a) The Authority may prescribe minimum requirements for auditors.

(b) Auditors must, at all times, comply with the prescribed fit and proper requirements.

(c) The Authority may, if it reasonably believes that an auditor does not comply or no longer complies with the requirements referred to paragraph (a), in addition to any other action that the Authority may take under this Act, direct the financial institution to terminate the appointment of the auditor.

(4) (a) If a financial institution referred to in subsection (1) for any reason fails to appoint an auditor under subsection (1), the Authority may, despite the Companies Act, appoint an auditor for that financial institution.

(b) A person or firm appointed under paragraph (a) is deemed to have been appointed by that financial institution in accordance with this Act.

(5) A financial institution must notify the Authority of the termination of the appointment of an auditor, within 14 days of the termination.

(6) Any auditor of a financial institution who resigns or whose appointment is terminated must submit to the Authority—

- (a) a written statement on the reasons for the resignation or the reasons that the auditor believes are the reasons for the termination; and
- (b) any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act that the auditor would, but for the termination, have had reason to submit.

### **Duties of auditor**

**100.** (1) The auditor must, in addition to the requirements of the Financial Sector Regulation Act, without delay, submit a detailed written report to the Authority, and to the governing body of the financial institution, on any matter of which the auditor becomes aware in the performance of the auditor's functions and duties referred to in section 99(6), and which, in the opinion of the auditor—

- (a) may be contrary to the governance framework requirements of this Act, or amounts to inadequate maintenance of internal controls;
- (b) in respect of a significant owner of the financial institution, constitutes a contravention of any section of this Act.

(2) The auditor of a financial institution must—

- (a) audit the annual financial statements of a financial institution in the manner prescribed;
- (b) perform the duties and functions assigned to the auditor of a financial institution under this Act, the Companies Act and the Auditing Profession Act; and



- (c) perform any other duties or functions prescribed.

#### ***PART 4***

### ***CONDUCT STANDARDS REGARDING REPORTING***

#### **Conduct standards regarding reporting**

**101.** (1) The Authority may prescribe conduct standards that provide for requirements, limitations or prohibitions on matters referred to in this Chapter.

(2) Without limiting the scope of conduct standards referred to in subsection (1), the Authority may prescribe conduct standards in respect of—

- (a) reporting;
- (b) public disclosures;
- (c) accounting; and
- (d) auditing.

(3) Different conduct standards prescribed in accordance with subsection (2) may be made for, or in respect of different activities and sub-categories of activities, and different categories, subcategories or types of financial institutions or persons, including—

- (a) significant owners;
- (b) holding companies of financial institutions;
- (c) financial groups; and financial conglomerates; and
- (d) auditors.

## REMEDIAL ACTIONS FOR FINANCIAL CUSTOMERS

### Redress

**102.** The Authority may issue a directive, in accordance with section 146 of the Financial Sector Regulation Act, to a financial institution requiring the financial institution to undertake specified measures to remedy the effects of a contravention of this Act, including through the provision of appropriate redress to financial customers.

### Remedies for financial customers

**103.** A financial customer who has suffered any loss or damages as a result of a contravention by a financial institution of this Act or other legislation that regulates financial sector by a financial institution may institute legal proceedings in a court with the relevant jurisdiction, seeking compensation or any other redress as determined by the court.

### Court orders

**104.** (1) In addition to its powers in terms of section 152 of the Financial Sector Regulation Act, the Authority may apply to the High Court, and the Court may grant any appropriate order or relief, including making the following orders:

- (a) An order to prevent concealment, removal, dissipation or destruction of specified assets;

- (b) an interim order to a person to cease trading or to seize and remove assets for safe custody, in order to protect financial customers while an investigation is underway or to enable the Authority to exercise any other legal remedy;
- (c) a declaratory order regarding the interpretation of a provision of this Act or another financial sector law, or the business of a financial institution;
- (d) an order for disgorgement, requiring a payment to the Authority of amounts obtained or losses or other costs or expenses avoided by the financial institution, as a result of a failure to comply with, or a contravention of, this Act or another financial sector law for which the Authority is the responsible Authority.

(2) An application by the Authority seeking an order referred to in subsection (1)(a) may be made on an *ex parte* basis.

**CHAPTER 12**  
**GENERAL PROVISIONS**

***PART 1***

***APPLICATION OF ACT IN RELATION TO OTHER LAWS***

**Application of Act in relation to other laws**

**105.** (1) The memoranda of understanding referred to in section 77 of the Financial Sector Regulation Act must include processes to address any inconsistency between—

- (a) a provision of this Act, other than a conduct standard prescribed under this Act, and a provision of another Act that is a financial sector law, other than the Financial Sector Regulation Act, or other legislation administered by the Reserve Bank, that relates to the conduct of financial institutions as regulated in terms of this Act; or
- (b) a provision of a conduct standard prescribed in terms of this Act, and a provision of a regulatory instrument prescribed in terms of another financial sector law, or a regulatory instrument prescribed in terms of other legislation administered by the Reserve Bank, that relates to the conduct of financial institutions.

(2) Processes referred to in subsection (1) would, in addition, provide for the discussion of and an agreement on proposed legislation or proposed amendments to legislation, to address existing or potential inconsistencies with this Act and conduct standards prescribed under this Act.

(3) (a) In the event of any inconsistency between a provision of this Act or a conduct standard prescribed under this Act, and a rule made by a market infrastructure under the Financial Markets Act, 2012 (Act No. 19 of 2012), or by a payment system management body under the National Payment System Act, that relates to the conduct of financial institutions or market infrastructures as regulated in terms of this Act, the provision of this Act or the conduct standard prescribed in terms of this Act prevails.

(b) A market infrastructure or a payment system management body must, when making rules that relate to the conduct of financial institutions as regulated in terms of this Act promote and facilitate compliance with this Act and any standard prescribed in terms of this Act.

(4) Parts 3 and 6 of Chapter 2, Chapter 5, and sections 5, 159 and 164 of the Financial Sector Regulation Act apply in relation to the application of this Act to prudentially regulated financial institutions, systemically important financial institutions, prudentially regulated financial groups and conglomerates, payment services providers, providers of services related to the buying and selling of foreign exchange, and financial institutions that are subject to regulation by another regulator.

**PART 2****IMPOSITION AND APPLICATION OF REQUIREMENTS, MAKING OF CONDUCT STANDARDS AND JOINT STANDARDS, AND ADMINISTRATIVE ACTIONS IN TERMS OF ACT****Imposition and application of requirements**

- 106.** The Authority may make a conduct standard that imposes requirements—
- (a) in relation to a payment service, with the concurrence of the Reserve Bank;
  - (b) on systemically important financial institutions, with the concurrence of the Reserve Bank;
  - (c) on prudentially regulated financial institutions, and providers of services related to the buying and selling of foreign exchange, after having consulted with the Prudential Authority or Reserve Bank respectively; and
  - (d) on financial institutions that are subject to conduct regulation by another regulator in terms of other legislation, after having consulted the other regulator.

**Conduct standards and joint standards made by Authority**

**107.** (1) (a) The Authority may make a conduct standard on any matter in respect of which it is required or permitted to make a conduct standard in terms of this Act.

(b) The Authority may make a joint standard in relation to any matter that the Authority may make a conduct standard in terms of this Act.

(c) A conduct standard or joint standard must be aimed at achieving the object of the Act or the stated purpose of the applicable Chapter or Part of this Act.

(2) When prescribing conduct standards, the Authority must consider the—

- (a) nature, scale and complexity of different financial institutions, financial products and financial services; and
- (b) need to—
  - (i) provide fair access to appropriate financial products and financial services;
  - (ii) enable financial customers to understand and compare the nature, value and cost of financial products and financial services;
  - (iii) enable financial customers to benefit from fair competition for quality financial products and financial services;
  - (iv) support sustainable business models that enable financial institutions to be able to deliver fair customer outcomes; and
  - (v) facilitate access to market for emerging financial institutions.

(3) A conduct standard may—

- (a) apply to financial institutions, key persons, contractors, representatives or significant owners generally;
- (b) apply to financial products, financial services, or the conduct of business in respect of financial products or financial services generally;
- (c) be limited in application to particular categories, subcategories, kinds or types of—

- (i) financial institutions, key persons, contractors, representatives or significant owners;
  - (ii) financial products or financial services; or
  - (iii) activities referred to in Schedule 2;
- (d) apply to financial groups or financial conglomerates, or categories of financial groups or financial conglomerates;
- (e) apply to a category, kind or type of other related person; and
- (f) differ based on category or subcategories of financial customers.

(4) A conduct standard may impose requirements for approval by the Authority in respect of specified matters, or be made applicable to existing actions, activities, transactions, policies, contracts, and appointments.

- (5) When making conduct standards, the Authority must consider—
- (a) the content of applicable requirements contained in other legislation; and
  - (b) the impact of requirements on financial institutions and prudentially regulated groups and conglomerates to whom the requirements apply.

### ***PART 3***

### ***EQUIVALENCE***

#### **Equivalence recognition of foreign jurisdictions**

**108.** (1) On application by an interested party, the Authority, with the concurrence of the Reserve Bank and the Prudential Authority, may determine that the regulatory framework of a specified foreign country is equivalent to the regulatory framework established in terms of this Act or another financial sector law for which the



Authority is the responsible authority, if the legislative and regulatory framework established in that foreign country meets the objectives of this Act or the financial sector law.

(2) A recognition in terms of subsection (1) must be published on the Authority's website and in the Register.

(3) The Authority must maintain a list of all foreign countries recognised under this section.

(4) When assessing the equivalence of the regulatory framework of a foreign country, the Authority, the Reserve Bank and the Prudential Authority must take into account—

- (a) the nature and intensity of the supervisory authority's oversight processes, including direct comparison with the regime applied by the Authority, the Reserve Bank and the Prudential Authority, as the case may be;
- (b) alignment of the foreign country's regulatory framework with relevant principles developed by international standard setting bodies applicable to financial institutions;
- (c) observed outcomes of the foreign regulatory framework applicable to financial institutions relative to those in South Africa; and
- (d) the need to prevent regulatory arbitrage.

## **Withdrawal of recognition**

**109.** The Authority may, with the concurrence of the Reserve Bank and the Prudential Authority, withdraw recognition where the criteria set out in section 108(4) are no longer met.

## **Principles of co-operation**

**110.** (1) The Authority must enter into a supervisory cooperation arrangement with the relevant supervisory authority from the equivalent jurisdiction for the purpose of performing its functions in terms of this Act.

(2) A supervisory co-operation arrangement referred to in subsection (1) must at least specify—

- (a) the mechanism for the exchange of information between the Authority, the Reserve Bank, the Prudential Authority, and the relevant supervisory authorities, including access to all information requested by the Authority regarding a financial institution;
- (b) the mechanism for prompt notification to the Authority, the Reserve Bank and the Prudential Authority where the supervisory authority deems a financial institution which it is supervising to be in breach of the conditions of its authorisation or of other laws to which it is subject, or any other matter which may have an effect on the authorisation of the financial institution;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border supervisory on-site inspections;

- (d) the processes the authorities should use if an authority subsequently determines that it needs to use requested supervisory information for law enforcement or disciplinary purposes, such as obtaining the consent of the requested authority and handling the requested information in accordance with the terms of existing memoranda of understanding for enforcement cooperation;
- (e) the procedures for co-operation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or obtaining information from a financial institution and members of the controlling body or senior management; and
- (f) the degree to which a supervisory authority may onward-share to a third party any non-public supervisory information received from another authority, and the processes for doing so.

(3) The Authority and supervisory authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must—

- (a) establish and maintain appropriate confidential safeguards to protect all non-public supervisory information obtained from another supervisory authority;
- (b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and financial customers;
- (c) consult, co-operate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets;
- (d) co-operate in the day-to-day and routine oversight of internationally financial institutions;

- (e) provide advance notification and consult, where possible and otherwise as soon as practicable, regarding issues that may materially affect the respective regulatory or supervisory interests of another authority;
- (f) design mechanisms for supervisory co-operation to provide information both for routine supervisory purposes and during periods when issues of concern for the Authority and the supervisory authorities may arise; and
- (g) undertake ongoing communications as needed regarding internationally active financial institutions, as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.

#### ***PART 4***

### ***APPLICATIONS AND NOTIFICATIONS***

#### **Applications**

- 111.** (1) A written application must be submitted to the Authority—
- (a) in respect of any application for approval under this Act, other than an application for a licence;
  - (b) if any determination, decision, exemption or the performance of any other act is required by the Authority under this Act.
- (2) A written application referred to in subsection (1) must be—
- (a) submitted in the form and manner prescribed by the Authority;
  - (b) accompanied by the information prescribed by the Authority; and
  - (c) accompanied by the prescribed fee.

(3) A person must promptly amend an application referred to under subsection (1) if any information provided to the Authority on application becomes inaccurate prior to the Authority approving or declining an application.

(4) The Authority, in respect of any application referred to in subsection (1)—

(a) may—

- (i) require a person to furnish additional information, to verify that information, or verify any information that accompanied the application, in the manner specified by the Authority; and
- (ii) take into consideration any other information, derived from whatever source, including information provided by the Prudential Authority, the Reserve Bank, or another regulator;

(b) must, after considering the application—

- (i) grant the application, if the Authority reasonably believes that the person complies with the requirements for that application; or
- (ii) refuse the application, if the Authority reasonably believes that the person does not comply with the requirements for that application; and

(c) where an application is refused, must notify the applicant of the refusal.

(5) The Authority may grant any application subject to any conditions.

(6) Any approval, determination, decision, exclusion or exemption granted by the Authority is valid only if it is in writing.

(7) If the Authority under subsection (4)(a)(i) required a person to furnish additional information or required a person to verify any information, the Authority does not need to consider the application further, until the person has furnished or verified the information.

## Notifications

- 112.** Any notification by a person under this Act must be—
- (a) submitted in the form and manner determined by the Authority; and
  - (b) accompanied by the information determined by the Authority.

## ***PART 5***

### ***OFFENCES AND REPORTING OF CONTRAVENTIONS***

## Offences

- 113.** (1) A person required to be licensed in terms of this Act, and who is not so licensed, commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment of a period not exceeding 10 years, or to both a fine and imprisonment.
- (2) A person who contravenes section 13(7) commits an offence and is liable on conviction to a fine not exceeding R\* or imprisonment of a period not exceeding \* years, or to both a fine and imprisonment.
- (3) A person who contravenes section 23(1) commits an offence and is liable on conviction to a fine not exceeding R\* or imprisonment of a period not exceeding \* years, or to both a fine and imprisonment.
- (4) A person who contravenes section 78(a) to (c) commits an offence and is liable on conviction to a fine not exceeding R\* or imprisonment of a period not exceeding \* years, or to both a fine and imprisonment.

(5) A person who contravenes section 80 commits an offence and is liable on conviction to a fine not exceeding R\* or imprisonment of a period not exceeding \* years, or to both a fine and imprisonment.

(6) A financial institution who contravenes section 81(1) commits an offence and is liable on conviction to a fine not exceeding R\* or imprisonment of a period not exceeding \* years, or to both a fine and imprisonment.

(7) (a) A financial institution may not in connection with a financial product or a financial service engage in conduct that is, in all the circumstances, unconscionable.

(b) Without limiting the general nature of sub-paragraph (a), the following may be taken in consideration to determine whether conduct amount to unconscionable conduct:

- (i) Whether the financial customer was able to understand any documentation relating to the financial product or financial service;
- (ii) whether any undue influence was exerted on, or any unfair tactics were used against a financial customer by the financial institution;
- (iii) the amount for which and the circumstances under which the financial customer could have acquired identical or equivalent financial products or financial services from another financial institution; and
- (iv) the extent to which the financial institution's conduct towards the financial customer was consistent with the financial institution's conduct in similar transactions with similar financial customers.

## **Reporting of contraventions**

**114.** (1) The Authority must prescribe in conduct standards a framework to provide for the reporting of contraventions of this Act to the Authority.

(2) Sections 253 and 254 of the Financial Sector Regulation Act apply to the reporting of contraventions of this Act to the Authority.

## CHAPTER 13

### FINAL PROVISIONS

#### Review of Act

**115.** (1) The National Treasury and the Authority must regularly conduct an assessment of the impact and effectiveness of the Act, and in particular, whether the object of the Act is being achieved, and the purpose of the various Chapters of the Act are being achieved.

(2) In light of the assessment of the Act, amendments to this Act, or new legislation must be developed and tabled in Parliament by the Minister, to—

- (a) address identified shortcomings in the Act that inhibit the effectiveness of its implementation;
- (b) address identified gaps in the legislative framework;
- (c) address unintended consequences that may have arisen in the implementation of this Act; and
- (d) promote the effectiveness of the Act and the achievement of the object of the Act and the purpose of the Chapters of the Act.



(3) When legislation referred to in subsection (2) is tabled in Parliament, an impact assessment report must be tabled in Parliament along with the legislation, which identifies—

- (a) the shortcomings identified in the legislation that hampered its effective implementation; and
- (b) explains how the proposed amendments to this Act or the new legislation will address those shortcomings.

(4) The Authority must regularly assess the effectiveness of conduct standards prescribed in terms of this Act, and amend or prescribe new standards to address deficiencies identified in the standards or gaps which exist.

## **Savings**

**116.** (1) Anything done under a section, subsection or paragraph of an Act amended by this Act remains valid—

- (a) to the extent that it is not inconsistent with this Act; and
- (b) until anything done under this Act overrides it.

(2) Any matter prescribed under a section of an Act amended by this Act remains valid and enforceable and is considered to have been prescribed under this Act as a conduct standard or joint standard—

- (a) to the extent that it is not inconsistent with this Act; and
- (b) until it is repealed or replaced by a conduct standard or a joint standard prescribed under this Act.

(3) An authorisation, approval, registration, consent or similar permission given in terms of a financial sector law for which the Authority is the

responsible authority and in force immediately before the effective date, remains in force for the purposes of the financial sector law, but may be amended or revoked by the Authority in terms of this Act.

(4) Rules made in terms of a financial sector law for which the Authority is the responsible authority which are in effect on the effective date remain in effect, but may be replaced by conduct standards or joint standards prescribed under this Act.

(5) A regulatory instrument prescribed, made or issued in terms of a financial sector law for which the Financial Sector Conduct Authority is the responsible authority and in force immediately before the effective date, remains in force for the purposes of the financial sector law, but may be amended or revoked by a conduct standard or a joint standard prescribed in terms of this Act.

### **Amendment of laws**

**117.** The Acts listed in Schedule 1 are amended or repealed as set out in that Schedule.

### **Short title and commencement**

**118.** (1) This Act is called the Conduct of Financial Institutions Act, 2018, and comes into effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into effect of—

(a) different provisions of this Act and the Schedules to this Act;

- (b) different provisions of this Act in respect of different categories of financial institutions, financial products, financial services, or other persons; and
- (c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

## SCHEDULE 1

## LAWS AMENDED

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
Act No.24 of 1956	Pension Funds Act, 1956	<p>1. Section 1(1) of the Pension Funds Act, 1956 is amended by inserting after the definition of "prudential standard"—  "<b>public sector pension fund</b>  means a pension fund to which the State, or which a public entity, business enterprise as defined in section 1 of the Public Finance Management Act, or a municipality or municipal entity as defined in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) contributes;"; and</p> <p>2. Section 4A is amended by substituting for the section the following section:</p> <p><b>" Application of Act to public sector pension funds</b></p> <p><b>4A.</b> (1) This Act applies to all public sector pension funds.  (2) A public sector pension fund which at the date of commencement of this section is not registered in terms of this Act, must apply for registration in terms of section 4 of this Act, within a period of 12 months after the date of commencement of this section, subject to any exemptions granted and conditions imposed by the Authority in terms of this Act.  (3) (a) Legislation which is in force at the date of commencement of this section, which provides for the establishment of a public sector pension fund, must be amended to the extent necessary to align with this Act and requirements prescribed in terms of this Act, within 18 months from the date of commencement of this section.  (b) The rules of a pension fund referred to in paragraph</p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><u>(a) must also be amended, to the extent necessary to align with this Act and requirements prescribed in terms of this Act, but subject to any exemptions granted and conditions imposed by the Authority in terms of this Act, within 18 months from the date of commencement of this section.</u></p> <p><u>(4) Legislation that may be enacted subsequent to the date on which this section comes into operation that establishes a public sector pension fund contributes, must, subject to any exemptions granted and conditions imposed by the Authority in terms of this Act —</u></p> <p><u>(a) be consistent with this Act; and</u></p> <p><u>(b) provide that the fund that is established and its rules must comply with requirements prescribed in terms of this Act."</u></p> <p><i>Additional amendments to the Pension Funds Act will be included in the finalised version of the Bill that will be tabled in Parliament, to ensure alignment with the content of the Pension Funds Act with the Bill as tabled. These would at least remove all provisions that are directly applicable to pension fund benefit administrators, as they will in future fall under this legislation.</i></p>
Act No. 52 of 1998	Long-term Insurance Act, 1998	The whole
Act No. 53 of 1998	Short-term Insurance Act, 1998	The whole
Act No. 28 of 2001	Financial Institutions (Protection of Funds) Act, 2001	The whole
Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2002	The whole
Act No. 45 of 2002	Collective Investment Schemes Control Act, 2002	The whole
Act No. 9 of 2017	Financial Sector Regulation Act, 2017	<p><b>1.</b> The amendment of section 1(1)—</p> <p><b>(a)</b> by the substitution for the definition of "benchmark" of the following definition:</p> <p><i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be</i></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><i>tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definition of "benchmark" in the Financial Sector Regulation Act;</i></p> <p>(b) <i>by the substitution for the definition of "financial instrument" of the following definition:</i>  <i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definition of "financial product" in the Financial Sector Regulation Act.;</i></p> <p>(c) <i>by the substitution for the definition of "financial product" of the following definition:</i>  <i>Amendment will be finalised in light of further assessment of finalised version of this Bill with the definition of "financial product" in the Financial Sector Regulation Act. The amendment would particularly address pension funds and pooled investments;</i></p> <p>(d) <i>by the substitution for the definition of "financial service" of the following definition:</i>  <i>Amendment will be finalised in light of further assessment of finalised version of this Bill with the definition of "financial product" in the Financial Sector Regulation Act, particularly to ensure that there is alignment between Schedule 2 and this definition.;</i></p> <p>(e) <i>by the substitution for the definition of "index" of the following definition:</i>  <i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definition of "index" in the Financial Sector Regulation Act;</i></p> <p>(f) <i>by the substitution for the definition of "payment service" of the following definition:</i>  <i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised</i></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><i>in light of further assessment of finalised version of this Bill with the definition of "payment service" in the Financial Sector Regulation Act;</i></p> <p>(g) by the substitution for the definition of "provision of a benchmark" of the following definition:  <i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definition of "provision of a benchmark" in the Financial Sector Regulation Act;</i></p> <p>(h) by the substitution for the definition of "representative" of the following definition:  <i>There is a possibility that this definition may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definition of "representative" in the Financial Sector Regulation Act; and</i></p> <p>(i) by the substitution for the definition of "supervised entity" of the following definition:  <i>This definition may potentially be amended in light of the finalised content of the Bill as it will eventually be tabled, to ensure that the appropriate range of persons are potentially able to be regulated in terms of the financial sector legislation;</i></p> <p><b>2.</b> The amendment of section 3 by the substitution for subsection (4) of the following subsection:  <i>There is a possibility that the definitions of "dealing" and "making a market" in this subsection may need to be amended in light of the finalised version of the Bill as it would be tabled. An amendment would be finalised in light of further assessment of finalised version of this Bill with the definitions of "dealing" and "making a market" in the Financial Sector Regulation Act.;</i></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p data-bbox="772 264 1278 360">3. The amendment of section 107 by the substitution for the section of the following section:</p> <p data-bbox="836 432 1066 461"><b>"Joint standards</b></p> <p data-bbox="836 499 1289 730"><b>107.</b> (1) The Prudential Authority and the Financial Sector Conduct Authority may make joint standards with each other on any matter in respect of which either of them have the power to make a standard.</p> <p data-bbox="836 734 1299 999">(2) (a) <u>The Prudential Authority or the Financial Sector Conduct Authority may make joint standards with the Reserve Bank in respect of the Reserve Bank's functions in terms of legislation relating to the payment system or foreign exchange.</u></p> <p data-bbox="836 1003 1315 1301">(b) <u>Joint standards may be issued in respect of any matter on which the Prudential Authority has the power to make a standard, or on which the Reserve Bank may issue a directive in terms of this Act, or legislation regulating the payment system or foreign exchange.</u>";</p> <p data-bbox="772 1339 1315 1435">4. The amendment of section 111(1) by the substitution for the subsection of the following subsection: <i>An amendment may potentially be included to ensure that the referencing to licensing in terms of other legislation is correct.</i></p> <p data-bbox="772 1608 1278 1704">5. The amendment of section 126 by the substitution for the section of the following section:</p> <p data-bbox="836 1742 1326 1839"><b><u>Concurrence and consultation of financial sector regulators and Reserve Bank on licensing matters</u></b></p> <p data-bbox="836 1877 1289 2040"><b>126.</b> (1) The responsible authority may not take any of the actions specified in subsection <b><u>[(2)](3)</u></b> in respect of a <u>systemically important financial institution or a</u></p>



<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><u>system operator or other participant in systemically important payment system unless</u>—</p> <p>(a) <b>the other financial sector regulator has concurred; and</b></p> <p>(b) <b>if the action relates to or affects a systemically important financial institution,]</b> the Reserve Bank has concurred.</p> <p>(2) <u>The responsible authority may only take any of the actions specified in subsection (3) after having consulted</u>—</p> <p>(a) <u>the other financial sector regulator; and</u></p> <p>(b) <u>if the action relates to or affects a financial institution that provides payment services or provides services in respect of foreign exchange, the Reserve Bank.</u></p> <p><del>[(2)]</del>(3) <u>The actions</u> are—</p> <p>(a) issuing a licence;</p> <p>(b) varying, suspending or revoking a licence, however these are described in the relevant financial sector law; and</p> <p>(c) granting an exemption in terms of section 281 <u>or another financial sector law.</u></p> <p>6. The amendment of section 282 by the insertion of the following section:</p> <p>"(4) <u>If this Act provides that a financial sector regulator or the reserve Bank may not take a particular action without having first consulted the other financial sector regulator or the Reserve Bank, as the case may be, the concurrence is not required if the other regulator or the Reserve Bank has agreed, in a memorandum of understanding or otherwise, that the concurrence is unnecessary.</u>"</p> <p>7. The amendment of Schedule 1—</p> <p>(a) by the deletion of the following references:</p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p>"Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);".</p> <p><i>A further Chapter to the Bill relating to market activities will be developed in light of research that is currently being undertaken, and the repeal of the Credit Rating Services Act may be proposed, as principles relating to the provision of Credit Rating Services would be proposed in that Chapter, and</i></p> <p>(b) by the insertion in Schedule 1 below the reference to "Insurance Act, 2017, Act No. 18 of 2017" of the following reference:</p> <p style="padding-left: 40px;">"Conduct of Financial Institutions Act, 2019".</p> <p><i>Additional amendments to Schedules 1 and 2 may be included to address cross-references in the Financial Sector Regulation Act that refer to legislation that will be repealed.</i></p> <p><b>8.</b> The amendment of Schedule 2—</p> <p>(a) by the deletion of the rows relating to the following legislation: "Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);";</p> <p>(b) by the insertion in Schedule 2 below the row referencing the Insurance Act, 2017 (Act No. 19 of 2017) of the following row: "Conduct of Financial institutions Act, 2019 (Act No. [--] of 2019) Financial Sector Conduct Authority"</p> <p>(c) by the insertion after row (b) relating to joint standards of the following row:</p> <p style="padding-left: 40px;">"(c) the Reserve Bank and the Prudential Authority or Financial Sector Conduct</p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p>Authority Reserve Bank and Prudential Authority or Financial Sector Conduct Authority, as the case may be.</p>
Act No. 18 of 2017	Insurance Act, 2017	<p>1. The amendment of section 52 by the insertion of the following subsection:</p> <p style="padding-left: 40px;"><u>"(4) The Prudential Authority must act with the concurrence of the South African Reserve Bank in respect of an insurer that has been designated as a systemically important financial institution in accordance with the Financial Sector Regulation Act."</u></p> <p>2. The substitution for section 53 of the following section:</p> <p style="padding-left: 40px;"><b>"Appointment of statutory manager</b></p> <p style="padding-left: 40px;"><b>53. (1)</b> <u>Despite any other law, the Prudential Authority may, by agreement with an insurer or controlling company and without the intervention of a court, appoint a statutory manager for that insurer or controlling company.</u></p> <p style="padding-left: 40px;"><u>(2) An appointment under subsection (1) takes effect immediately, but the Prudential Authority must, as soon as practicable after the appointment, and in any event within 30 days after the appointment, apply to the High Court for an order confirming the appointment.</u></p> <p style="padding-left: 40px;"><u>(3) On hearing the application in terms of subsection (2), the court must confirm the appointment, unless satisfied that the grounds for making the appointment no longer exist.</u></p> <p style="padding-left: 40px;"><u>(4) The statutory manager of an insurer or controlling company—</u></p> <p style="padding-left: 40px;"><u>(a) must be allowed full access to the accounting records, financial statements and other information relating to</u></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p>the affairs of the insurer or controlling company;</p> <p><i>(b)</i> <u>must participate in the management of the affairs of the insurer or controlling company with its executive directors or managers;</u></p> <p><i>(c)</i> <u>has the final decision, in the event of a disagreement between the statutory manager and the executive directors or managers of the insurer or controlling company; and</u></p> <p><i>(d)</i> <u>is entitled to receive remuneration from the insurer or controlling company that the Court may order.</u></p> <p><i>(5) (a)</i> <u>The statutory manager of an insurer or controlling company and the insurer or controlling company must manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, report to the Prudential Authority and indicate what steps should be taken to ensure that the insurer or controlling company addresses the concerns that resulted in the appointment of the statutory manager.</u></p> <p><i>(b)</i> <u>If the statutory manager considers that it is not practicable to take steps in terms of paragraph (a), the statutory manager must report to the Prudential Authority and must indicate—</u></p> <p><i>(i)</i> <u>whether steps should be taken to transfer the insurance business or a part of the business of the insurer or controlling company to an appropriate financial institution, and if so, on what terms; or</u></p> <p><i>(ii)</i> <u>whether the insurer or controlling company should be wound up or placed under curatorship.</u></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p>(6) <u>The statutory manager of an insurer or controlling company and the insurer or controlling company must comply with directives issued by the Prudential Authority from time to time in relation to the statutory manager's functions, and report to the Prudential Authority should the statutory manager be hindered in giving effect to any directives.</u></p> <p>(7) <u>The statutory manager of an insurer or controlling company and the insurer or controlling company may, after giving notice to the Prudential Authority, at any time apply to the court for directions.</u></p> <p>(8) <u>The Prudential Authority may at any time apply to the court to—</u>  <u>(a) terminate the statutory management; or</u>  <u>(b) remove a statutory manager from office and, subject to subsection (2), to confirm the appointment of a replacement.</u></p> <p>(9) <u>The statutory manager of an insurer or controlling company is not liable for loss suffered by the insurer or controlling company, unless it is established that the loss was caused by the statutory manager's fraud, dishonesty or wilful failure to comply with the law.</u></p> <p>(10) <u>The provisions of this section must not be construed as limiting any of the powers of the Prudential Authority provided for elsewhere in this Act or the Financial Sector Regulation Act.</u></p> <p>(11) <u>If a statutory manager is appointed under this section, no business rescue or winding-up proceedings may be commenced in respect of an insurer or controlling company until the appointment of the statutory manager is terminated. "</u></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p>3. The amendment of section 54—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p><u>"(1) The Prudential Authority may, on 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 insurer or controlling company.</u></p> <p><u>(1A) Upon an application in terms of subsection (1) the court may—</u></p> <p><u>(a) provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution, on the conditions, and for the period, that the court deems fit; and</u></p> <p><u>(b) simultaneously grant a rule nisi calling upon the insurer or controlling company and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.</u></p> <p><u>(1B) On application by the Prudential Authority or the insurer or controlling company, the court may anticipate the return day, if not less than 48 hours' notice of the application has been given to the other party.</u></p> <p><u>(1C) If, at the hearing pursuant to the rule nisi, the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.</u></p> <p><u>(1D) The court may, for the purposes of a provisional appointment in terms of subsection (2)(a) or a final appointment in terms of subsection (1C), make an order with regard to—</u></p> <p><u>(a) the suspension of legal or foreclosure proceedings against the insurer or</u></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><u>controlling company for the duration of the curatorship;</u></p> <p><u>(b) the Prudential Authority of the curator to investigate the affairs of the insurer or controlling company or any related, inter-related or associated entity;</u></p> <p><u>(c) in addition to subsection (2), the powers and duties of the curator;</u></p> <p><u>(d) the remuneration of the curator;</u></p> <p><u>(e) the costs relating to any application made by the Authority;</u></p> <p><u>(f) the costs incurred by the Prudential Authority in respect of any supervisory on-site inspection or investigation conducted in terms of the Financial Sector Regulation Act;</u></p> <p><u>(g) the method of service or publication of the order; or</u></p> <p><u>(h) any other matter which the court deems necessary.</u></p> <p><u>(1E) (a) Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the Prudential Authority with regard to any matter arising out of, or in connection with, the control and management of the business of an insurer or controlling company which has been placed under curatorship.</u></p> <p><u>(b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of the application to the Prudential Authority or the curator, as the case may be, and the Prudential Authority or curator is entitled to be heard at the application.</u></p> <p><u>(c) The court may, on good cause shown, cancel the appointment of the curator at any time.</u></p>

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><u>(1F) (a) Despite subsections (1) to (1E), the Prudential Authority may, by agreement with an institution, and without the intervention of the court, appoint a curator for the purpose set out in subsection (1).</u></p> <p><u>(b) The terms of the appointment contemplated in paragraph (a) must be set out in a letter of appointment issued by the Prudential Authority to the curator and—</u></p> <p><u>(i) must include—</u></p> <p><u>(aa) the powers and duties of the curator;</u></p> <p><u>(bb) the remuneration of the curator; and</u></p> <p><u>(ii) may include any other matter agreed upon between the Prudential Authority and the insurer or controlling company.</u></p> <p><u>(c) The rights of any creditor or client of the institution are not affected by the appointment of a curator in terms of paragraph (a).</u></p> <p><u>(1G) An appointment in terms of subsection (1F) lapses—</u></p> <p><u>(a) if the Authority, after consultation with the curator, withdraws the letter of appointment; or</u></p> <p><u>(b) by order obtained at the instance of the insurer or controlling company in terms of subsection (1E)(c).</u></p> <p><u>(1H) The curator acts under the control of the Authority, and in accordance with guidelines made by the Authority, and the curator may apply to the Prudential Authority for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the insurer or controlling company.</u></p> <p><u>(1I) The curator must furnish the Prudential Authority with the reports or information concerning the affairs of the</u></p>



<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
		<p><u>institution that the Prudential Authority may require.</u>"; and</p> <p>(b) by the substitution for subsection (2) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">"(2) In addition to any powers or functions that may be afforded by a court to a curator on appointment under subsection (1), <b>[but subject to section 5 of the Financial Institutions (Protection of Funds) Act,]</b> a curator on appointment—".</p>

**SCHEDULE 2****CATEGORIES AND SUBCATEGORIES OF ACTIVITIES REQUIRING LICENSING<sup>3</sup>**

In this Schedule—

**"acquisition"** includes participation or investing in, subscribing for, contributing or commitment to, underwriting of or exercising any rights conferred by an investment;

**"credit rating"** means an opinion regarding the creditworthiness of—

- (a) an entity;
- (b) a security or a financial instrument; or
- (c) an issuer of a security or a financial instrument,

using an established and defined ranking system of rating categories, excluding any recommendation to purchase, sell or hold any security or financial instrument;

**"benchmark"** means a standard against which the performance of a financial instrument is measured;

**"disposal"** includes—

- (a) disinvesting, unsubscribing, ceasing participation or withdrawal of commitment;
- (b) in the case of a financial product consisting of rights under a contract—
  - (i) surrendering, assigning or converting those rights; or
  - (ii) assuming the corresponding liabilities under the contract;
- (c) in the case of a financial product consisting of rights under other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (d) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists.

**"index"** means any figure—

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<sup>3</sup> The descriptions of activities in this Schedule still require further discussion and input to confirm their scope and accuracy, and comments on the content of the descriptions will be very welcome.

- (a) that is published or made available to the public; and
- (b) that is regularly determined—
  - (i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and
  - (ii) on the basis of the value of one or more underlying assets or prices, and any derivative thereof;

**"investment"** has the meaning defined in section 1 of the Financial Sector Regulation Act.

	<b>ACTIVITY CATEGORY</b>		<b>ACTIVITY SUBCATEGORY</b>	<b>DESCRIPTION</b>
1.	Providing a financial product or financial instrument <sup>4</sup>	a.	Providing a financial instrument	Structuring a financial instrument for the purpose of making it available to financial customers to purchase or transact in as an investment.
		b.	Providing a financial product	Undertaking responsibility for the obligations owed under the contract or arrangement that constitutes or establishes a financial product.
2.	Distributing Financial Products	a.	Sales and execution	Providing a facility or performing a service or any other act (other than the performance of another authorised activity defined in this Schedule ) on the instruction of a financial customer that results in the conclusion of an agreement to buy, sell, deal, invest or disinvest in, replace or vary one or more financial products or financial instruments.
		b.	Product comparison or aggregation services	Providing a facility or performing a service or any other act (other than the performance of another authorised activity defined in this Schedule) through a website portal, web-based search utility or any other similar medium that enables the public to obtain and/or compare similar t of financial product prices, benefits and/or features
3.	Financial Advice			Providing a recommendation, guidance or proposal, by any means or medium, to any financial customer or group of financial customers (a) in respect of— <ul style="list-style-type: none"> <li>(i) the acquisition or disposal of a financial product or financial instrument, or class of financial product or financial instrument;</li> <li>(ii) the allocation of an investment or part of an investment in a financial product or class of financial product;</li> <li>(iii) maintaining or holding a financial product or financial instrument or</li> </ul>

<sup>4</sup> This activity includes classes of business that are authorised by the Prudential Authority. The licensing of this activity would occur essentially automatically, although it would be necessary for the holder of a licence for this activity to adhere to additional standards in terms of this Bill. This activity includes the activity of a pension fund providing pension benefits to its members, medical schemes providing medical benefits to members, and credit provided in terms of credit agreements.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				<p>class of financial product or financial instrument;</p> <p>(b) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product;</p> <p>(c) on the variation of any term or condition applying to a financial product or on the replacement of any such product; or</p> <p>(d) in respect of the selection by a financial customer of one or more particular financial product providers or financial service providers and irrespective of whether or not such advice—</p> <p>(i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or</p> <p>(ii) results in any such acquisition, disposal, allocation, investment, disinvestment, transaction, variation, replacement, termination, or selection as the case may be, being effected.</p>
4.	Managing and Administering Investments	a.	Discretionary investment management <sup>5</sup>	
		b.	Administering a pooled investment	<p>Administering a pooled investment by—</p> <p>(a) receiving, paying or investing of money or other assets, including income accruals derived or resulting from investments held on behalf of or due to financial customers, in respect of a pooled investment or portfolio;</p> <p>(b) selling, repurchasing, issuing or cancelling of an investment in a pooled investment or portfolio and disclosing of information on any of those matters to financial</p>

<sup>5</sup> The FSCA, through its Retail Distribution Review (RDR) process, is in the process of consulting stakeholders on a definition of this activity. The FSCA has identified a need to define the activity in a way that distinguishes it more clearly from the broader situation (contemplated in the current FAIS Cat II license criteria) of simply holding a customer mandate to make decisions regarding the purchase of or investment in financial products. Input on the activities that comprise "true" investment management to be included in such a definition is invited

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				customers or potential financial customers; and / or (c) buying and selling of assets or handing over thereof to a trustee or custodian for safe custody.
		c.	Operating an investment platform	Arranging, safeguarding, administering and distributing financial products offered to retail financial customers by more than one financial institution, but not solely paid for by adviser charges and not ancillary to the activity of discretionary investment management, by giving effect to instructions of a retail financial customer or financial institution, through the method of bulking <sup>6</sup> .
5.	Benefit Administration	a.	Pension fund benefit administration	Receiving, controlling or managing contributions and benefits in accordance with the rules of a licensed pension fund.
		b.	Medical scheme administration <sup>7</sup>	Receiving, controlling or managing contributions and benefits in accordance with the rules of a medical scheme registered under the Medical Schemes Act.
		c.	Funeral administration	Receiving, controlling or managing premiums and benefits or providing other administration services on behalf of an insurer in relation to a policy of insurance in the funeral class of policies as defined in the Insurance Act.
6.	Professional Fiduciary or Custodian Service	a.	Professional custodian service	Holding assets in custody on behalf of financial customers as a business or part of a business.
		b.	Professional nominee company service	Holding assets in custody on behalf of financial customers as a business or part of a business.

<sup>6</sup> At this stage, this description is limited to the current FAIS "administrative FSP" (LISP) activity, where the distinguishing feature is "bulking" (also defined in FAIS). The current FAIS definition of an administrative FSP is as follows: "means a FSP, other than a discretionary FSP, that renders intermediary services in respect of [an identified list of financial products] on the instructions of a client or another FSP and through the method of bulking". The current description simply indicates that this activity is the activity currently carried out by an Administrative FSP (Cat III licence) as contemplated in FAIS, but further consideration is being given to whether there are any other forms of "investment platform" that need to be licensed in the category.

<sup>7</sup> This is included as an activity that requires licensing, as in terms of section 291 of the Financial Sector Regulation Act, the Authority is given authority in relation to conduct regulation of medical schemes, subject to the transitional measures contemplated in that section.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
		c.	Professional pension fund trustee service	Holding assets in custody on behalf of financial customers as a business or part of a business.
		d.	Independent pension fund trustee service	Holding assets in custody on behalf of financial customers as a business or part of a business
7.	Payment Service			<p>Any of the following:<sup>8</sup></p> <p>(a) enabling cash to be placed on or deposited into a payment account and all of the operations required for operating a payment account;</p> <p>(b) enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;</p> <p>(c) executing of the following types of payment transactions (excluding clearing and settlement as defined in section 1 of the National Payment System Act, whether the funds are covered by a credit line for the payment user or not—</p> <p>(i) debit orders, including one-off debit orders;</p> <p>(ii) payment transactions through a payment card or a similar device;</p> <p>(iii) credit transfers, including debit orders and stop orders;</p> <p>(d) issuing payment instruments;</p> <p>(e) money remittance, in respect of operator/provider interactions with the consumer;</p> <p>(f) executing of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment user and</p>

<sup>8</sup> This definition will be engaged upon and refined, and some terms referred to within the definition also may subsequently be defined.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				<p>the supplier of the goods or services;</p> <p>(g) initiating a payment order at the request of the payment service user with respect to a payment account held at another payment service provider; excluding—</p> <ul style="list-style-type: none"> <li>(i) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;</li> <li>(ii) payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;</li> <li>(iii) the professional physical transport of banknotes and coins, including their collection, processing and delivery;</li> <li>(iv) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;</li> <li>(v) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction;</li> <li>(vi) money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account;</li> </ul>



	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				<p>(vii) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee—</p> <ul style="list-style-type: none"> <li>(aa) paper cheques of any kind, including travellers' cheques;</li> <li>(bb) bankers' drafts;</li> <li>(cc) paper-based vouchers;</li> <li>(dd) paper postal orders;</li> </ul> <p>(viii) payment transactions carried out within a clearing or securities settlement system between payment services providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;</p> <p>(ix) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (viii) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;</p> <p>(x) services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—</p>

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				<p>(aa) the processing and storage of data;</p> <p>(bb) trust and privacy protection services;</p> <p>(cc) data and entity authentication;</p> <p>(dd) information technology;</p> <p>(ee) communication network provision; and</p> <p>(ff) the provision and maintenance of terminals and devices used for payment services;</p> <p>(xi) services based on instruments that can be used to acquire goods or services only—</p> <p>(aa) in or on the issuer's premises; or</p> <p>(bb) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services, and for these purposes the "issuer" is the person who issues the instrument in question;</p> <p>(xii) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;</p>

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				<p>(xiii) payment transactions carried out between payment service providers, or their agents or branches, for their own account;</p> <p>(xix) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;</p> <p>(xx) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the framework contract with the customer withdrawing money from a payment account, where no other payment service is conducted by the provider';</p> <p>(xxi) the clearing and settlement of payment instruction/obligations in the payment system as regulated in terms of the National Payment System Act.</p>
8.	Financial Markets Activities <sup>9</sup>	a.	Underwriting a public offering <sup>10</sup>	Guaranteeing of the sale of an issue or part of an issue of securities by purchasing it at a stated price from the issuer

<sup>9</sup> The scope and definitions of these sub-activities will be informed by the Financial Markets Review currently being undertaken.

<sup>10</sup> Input is invited as to whether this activity must be licenced. In the current regulatory framework this activity is indirectly regulated under the Financial Markets Act in respect of listed securities (through exchange rules) and the Companies Act in respect of unlisted securities issued by public companies. The underwriting of CIS participatory interests is included in the activity of the provider of a pooled investment (i.e. the CIS management company itself).

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
9.		a.	Trading <sup>11</sup>	Buying or selling of securities for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business, or using of the trading system or infrastructure of an exchange to buy or sell listed securities
		b.	Making a market <sup>12</sup>	Stating, through a facility, at a place or otherwise, the prices at which a person offers to acquire or dispose of financial instruments, whether or not on the person's own account, and other persons reasonably expect that they can enter into transactions for those instruments at those prices
		c.	Clearing service <sup>13</sup>	In respect of securities, calculating and determining, before each settlement process, the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller, and the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or a group of transactions

<sup>11</sup> Input is invited on whether the proposed sub-activity "Trading" should be limited to only trading in securities. [Note: The definition of 'securities' in the FMA includes participatory interests in CISs] or whether trading in a broader range of products and instruments should be covered. This would result in the scope of Trading being broader than the current scope of securities services as defined in the Financial Markets Act (which deals with transactions in relation to "securities" only). Stakeholder engagement is also required to ensure there is appropriate demarcation between Trading and the sub-activity Distribution: Sales and Execution.

<sup>12</sup> The FSRA definition of making a market relates to "financial instruments" (as defined in the FSRA) only. Stakeholder engagement is required as to whether there are any other types of facilities (financial products) to which this sub-activity should apply. There are overlaps between this definition of making a market and aspects of the sub-activity Financial Markets Activities: Underwriting a Public Offering. Generally, the purpose of making a market is to inject liquidity into financial markets. Stakeholder engagement is required to clarify the scope of the activity. For example, it needs to be clarified whether the activity may be carried out either as principal or agent (as per the FSRA definition) or as principal only (as per certain international descriptions of the activity). At this stage, the only South African entities that have been clearly identified as performing the activity of making a market are the Primary Dealers appointed by the National Treasury in respect of the SA bond market.

<sup>13</sup> The current FMA definitions of *clearing service* and *clear* refer to the services provided by clearing members of an exchange or clearing house, and applies only to transactions in relation to securities. Input is required on whether this sub-activity should also focus on clearing activities that are not carried out by clearing members of a market infrastructure, and, on the scope of the activity. One possible example is the clearing and settlement activities carried out by prime brokers, particularly in relation to hedge funds. Depending on the scope of activities identified, the question may arise whether separate licensing of this sub-activity is in fact necessary, or whether the activities concerned can be regarded as incidental to certain other sub-activities (such as *Trading* or *Making a Market*)?

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
		d.	Settlement service <sup>14</sup>	In respect of securities, settling transactions in securities, "settlement" means the completion of the transaction and the fulfilment of all contractual obligations, by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules in the listed environment
		e.	Custody service <sup>15</sup>	Holding securities or funds in custody on behalf of another person
10.	Providing benchmarks and related services	a.	Providing a benchmark	Providing a benchmark that – (a) is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of the Rand value determined by the Authority from time to time on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or (b) has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or

<sup>14</sup> The current FMA definitions of settlement service and settlement refer to services provided by members of the relevant MIs and apply only to transactions in relation to securities. The FMA definition for "transaction" is limited to a contract of sale and purchase of 'securities'. This raises the question whether a 'transfer' as defined in section 1 of the FMA is included. A transfer does not appear to fit the definition as it is neither buying nor selling of securities but is a transfer of uncertificated securities or an interest in uncertificated securities by debiting and crediting the account in the securities register. These transfers are concluded outside of the exchange.

<sup>15</sup> The current FMA definition of safeguarding refers to services provided by authorised users, whilst 'custody and administration of securities' are services performed by participants of central securities depositories. Similar discussion points therefore apply as for the sub-activities Clearing Service and Settlement Service. Engagement is also required regarding the demarcation between this Custody Service sub-activity and the sub-activities Professional Custodian Service and Professional Nominee Service.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	DESCRIPTION
				the financing of households or businesses
		b.	Providing an index	Providing any of the following indices <sup>16</sup> —
		c.	Administering a benchmark or index	Controlling the provision of a benchmark or index, and in particular, administering the arrangements for determining the benchmark or index, collecting and analysing the input data, determining the benchmark or index, and publishing the benchmark or index
11.	Service related to buying or selling of foreign exchange <sup>17</sup>			Exchanging of one currency for another or the conversion of one currency into another currency as a business or part of a business
12.	Credit Rating Service			Gathering, collecting of data and information analysis, evaluation, approval, issuing for review of such data and information for the purposes of providing an opinion regarding the creditworthiness of— <i>(a)</i> an entity; <i>(b)</i> a security or financial instrument; or <i>(c)</i> an issuer of a security or a financial instrument; or <i>(d)</i> a sovereign state using an established and defined ranking system of rating categories, excluding any recommendation to purchase, sell or hold any security or financial instrument, and includes a rating outlook; but excluding credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships.
13.	Debt Collection Service <sup>18</sup>			

<sup>16</sup> This list will be developed.

<sup>17</sup> Inputs will be welcome, regarding whether this should be captured as a separate activity, or whether it should form part of one of the other activities or sub-activities - for e.g. trading, sales & execution, etc.

<sup>18</sup> A definition of this activity must still be developed. Note that it is intended to refer to the collection of debts arising from all credit agreements that are subject to the oversight of the National Credit Regulator in accordance with the National Credit Act. Inputs on a potential definition and scope of the activity will be welcome.

**SCHEDULE 3**  
**INSTITUTIONAL FORM**

This Schedule will include a table of categories of financial institutions and financial activities that are undertaken, and indicate the nature of the institutional form that a licensee to conduct a particular activity would be required to have. The content of this Schedule will be developed after having consulted relevant stakeholders.

**SCHEDULE 4****TRANSITIONAL ARRANGEMENTS IN RESPECT OF LICENSING**

Schedule 4 will set out transitional arrangements in relation to licensing in terms of this Act, as follows:

- (a) Part 1 will provide for transitional arrangements in respect of the conversion of licences of currently licensed financial institutions in terms of legislation for which the Authority is the responsible authority in terms of Schedule 2 of the Financial Sector Regulation Act.
- (b) Part 2 will provide for the licensing of services related to credit, including the activity of debt collection arising from credit agreements. Engagements will take place with the Department of Trade and Industry, the Department of justice and Constitutional Development, the National Credit Regulator, and relevant industry stakeholders in relation to the scope and content of this Part, including the extent to which the FSCA will play a role in relation to the licensing of some or all credit providers; and
- (c) Part 3 will provide for the licensing of pension funds to which the state or public entities as contemplated in terms of section 1 of the Public Finance Management Act contribute, which are not currently licensed in terms of the Pension Funds Act. Engagements will take place with relevant stakeholders in relation to the content of this Part.



## Definitions and interpretation

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

**"effective date"** means the date fixed by the Minister in accordance with section 118(1) as the date that this Act comes into operation;

**"previous Act"** means the financial sector law listed in Schedule 2 of the Financial Sector Regulation Act for which the Authority is designated as the responsible authority; and

**"previously licensed financial institution"** means a financial institution that is licensed or deemed to have been licensed under the previous Act.

(2) A reference in this Schedule to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

## Continuation of previously licensed financial institutions

7. (1) As of the effective date of this Schedule, every previously licensed financial institution that was, immediately before that date, licensed under the previous Act continues to exist as a licensed financial institution in terms of the previous Act, as if it had been licensed under this Act, and may continue to conduct the business for which it was licensed, until its licence under the previous Act is converted to a licence under this Act during the period of two years referred to in sub-item (2), subject to and in accordance with the requirements and obligations imposed under this Act.

(2) The Authority must, subject to sub-item (4), within a period of two years after the effective date, convert the licences of all previously licensed financial institutions to a licence in accordance with this Act.

(3) (a) The Authority must, within two months of the effective date, publish the process that the Authority will implement to give effect to sub-item (2).

(b) The process referred to in paragraph (a) must be—

- (i) reasonable and fair; and
- (ii) allow for sufficient engagement with a previously licensed financial institution.

(4) (a) The Authority must convert the licence of a previously licensed financial institution to a license to conduct activities and sub-activities referred to in Schedule 2, if the previously licensed financial institution, immediately prior to the effective date, was actively and prudently conducting business similar to that activity or sub-activity.

(b) Despite paragraph (a), and subject to any limitations relating to an activity or sub-activity provided for in this Act, a previously licensed financial institution that applies for the conversion of its licence, may only be issued a licence in terms of this Act to conduct activities or a class or sub-class or activities that it is permitted to be licensed for in terms of this Act.

(5) If the Authority does not convert the licence of a previously licensed financial institution to a licence to conduct an activity or sub-activity set out in Schedule 2 that is similar to the business that the previously licensed financial institution was licensed for on the effective date because —

(a) the previously licensed financial institution did not immediately prior to the effective date conduct that activity or sub-activity; or

(b) of the application of sub-item 4(b),  
the Authority must direct the previously licensed financial institution to make arrangements to the satisfaction of the Authority to—

- (i) discharge its obligations under all contracts entered into in respect of that activity or sub-activity before the conversion of that previously licensed financial institution's licence;
- (ii) ensure the orderly resolution of that business of the financial institution; or
- (iii) transfer that business to another financial institution under section 86 of this Act by a specified date.

**SCHEDULE 5**

**ACTIVITIES OF REPRESENTATIVES**

*This Schedule will be populated after further consultation with key stakeholders.*