

**NATIONAL TREASURY
18 DECEMBER 2017**

**DRAFT REGULATIONS IN TERMS OF SECTION 304 OF FINANCIAL SECTOR
REGULATION ACT, 2017**

Draft Regulations in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA) are set out in the Schedule, and are published, as required in terms of section 288(4) of the FRSA, for comment.

In terms of section 304 of the FSRA, the Minister of Finance may make Regulations that provide for additional matters that are necessary in order to provide for the appropriate implementation of the FSRA that are not addressed in the Act, and for the establishment of the Prudential Authority and the Financial Sector Conduct Authority (“the financial sector regulators”) and other entities that must be established. The draft Regulations are intended to clarify the performance of functions in terms of the Act during the transitional period prior to the establishment of the financial sector regulators. The draft Regulations also provide for transitional arrangements until the Financial Services Tribunal (“the Tribunal”) is operational. The application of certain transitional provisions in the FSRA is clarified. The intended purpose of the draft Regulations is to facilitate the smooth implementation of the FSRA, and the establishment of the financial sector regulators and the Tribunal.

The Minister of Finance is required to make Regulations in terms of section 61(4) of the FSRA, to provide a process for the selection of persons for the appointment of the Commissioner and Deputy Commissioners of the Financial Sector Conduct Authority. The draft Regulations provide for the advertising of the positions, and for the establishment of panels to consider, short-list, interview, and recommend candidates for appointment to the Minister of Finance. The intended effect of the draft Regulations is to provide for a fair and transparent process for the appointment of the Commissioner and Deputy Commissioners of the Financial Sector Conduct Authority.

A comprehensive impact report on the FSRA is available on the Treasury website: www.treasury.gov.za

Written comments on the draft Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on 31 January 2018.

Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

SCHEDULE

Definitions

1. In these Regulations, “the Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in section 1 or 289 of the Act has that meaning, and—
“**appointment criteria**” means the criteria for appointment as Commissioner or Deputy Commissioner, as the case may be, specified in section 61 of the Act and regulation 11;
“**Board of Review**” means the Board of Review established by section 9(2) of the Banks Act;
“**Ministerial Panel**” means the panel convened by the Minister in terms of regulation 10(1) to interview shortlisted candidates for appointment as the Commissioner and Deputy Commissioners of the Financial Sector Conduct Authority; and
“**Shortlisting Panel**” means the panel established by regulation 9(1) for the shortlisting of candidates to be interviewed for appointment as the Commissioner and Deputy Commissioners of the Financial Sector Conduct Authority.

Part 1 Transitional Measures

Exercise of functions

2.(1) If any provision of the Act comes into effect in terms of section 305 of the Act before Chapter 3 of the Act comes into effect, then until Chapter 3 comes into effect—

- (a) a reference in a financial sector law, other than the Financial Markets Act, to the ‘Prudential Authority’, or a reference to ‘a financial sector regulator’, must be read as referring to or as including a reference to the Reserve Bank;
- (b) the Reserve Bank must perform the functions of the Prudential Authority;
- (c) in respect of the Financial Markets Act, section 1A of that Act applies.

(2) If any provision of the Act comes into effect in terms of section 305 of the Act before Chapter 4 of the Act comes into effect, then until Chapter 4 comes into effect—

- (a) a reference in a financial sector law to the ‘Financial Sector Conduct Authority’, or a reference to ‘a financial sector regulator’, must be read as referring to or as including a reference to the Financial Services Board;
- (b) the executive of the Financial Services Board, referred to in section 9 of the Financial Services Board Act, must perform the functions of the Financial Sector Conduct Authority in terms of the Act;
- (c) the executive officer of the Financial Services Board, referred to in section 1 of the Financial Services Board Act, must perform the functions of the Financial Sector Conduct Authority in terms of legislation referred to in paragraph (b), (c) or (d) of the definition of a financial sector law in section 1(1) of the Act, subject to a delegation under section 20(3) or (3A) of the Financial Services Board Act;
- (d) in respect of the Financial Markets Act, section 1A of that Act applies.

(3) If Chapter 4 of the Act comes into effect before Chapter 16 of the Act comes into effect, then until Chapter 16 comes into effect, a reference to the board in sections 15A and 16 of the Financial Services Board Act must be read as a reference to the Financial Sector Conduct Authority.

Management of transitional process to establish Financial Sector Conduct Authority

3.(1) The executive of the Financial Services Board referred to in section 9 of the Financial Services Board Act, acting under the oversight of the Financial Services Board, must perform the functions of the Executive Committee of the Financial Sector Conduct Authority, to facilitate the disestablishment of the Financial Services Board and the establishment of the

Financial Sector Conduct Authority in an efficient and effective manner with the least disruption, until the persons appointed as the Commissioner and Deputy Commissioners have all commenced service.

- (2) The functions referred to in paragraph (a) include functions relating to—
- (a) the transfer of staff from the Financial Services Board to the Financial Sector Conduct Authority, staff placements and other human resources matters;
 - (b) the transfer of assets and liabilities from the Financial Services Board to the Financial Sector Conduct Authority;
 - (c) the appointment of contractors, consultants and staff in order to manage the transition;
 - (d) financial management and reporting;
 - (e) entering into the Memoranda of Understanding required in terms of sections 27 and 77 of the Act, in the event that the Commissioner and Deputy Commissioners have not been appointed during the six month period referred to in sections 27(1) and 77(1) within which the Memoranda of Understanding must be entered into;
 - (f) agreements and arrangements with international standard-setting bodies and other regulators;
 - (g) the ongoing implementation of the financial sector laws for which the Financial Services Board is responsible, and for which the Financial Sector Conduct Authority will be the responsible authority in terms of the Act;
 - (h) compliance with the Public Finance Management Act;
 - (i) all matters that are necessary to enable the establishment of the Financial Sector Conduct Authority; and
 - (j) other procedural or administrative matters that are necessary to implement subregulation (1).

(3) The executive must fund the performance of the functions referred to in subregulations (1) and (2) from the funds of the Financial Services Board, or the Financial Sector Conduct Authority, as may be applicable.

(4)(a) The executive of the Financial Services Board must, in an advisory capacity, assist the Commissioner and Deputy Commissioners in the performance of their functions for a period of six months after the Commissioner and Deputy Commissioners have all commenced service.

(b) The terms of appointment of the members of the executive of the Financial Services Board are extended for the period of six months referred to in paragraph (a).

(5) Despite section 56 of the Act coming into effect, the board of the Financial Services Board and its relevant committee remain responsible for the approval of the financial statements of the Financial Services Board in respect of the financial year preceding, and, if the Financial Sector Conduct Authority is established after the commencement of a financial year, also for the year during which the Financial Sector Conduct Authority is established.

Management of transitional process to establish Financial Services Tribunal

4.(1) From the date that Chapter 15 of the Act comes into effect until 31 March 2019, the Financial Services Board or the Financial Sector Conduct Authority, as the case may be, must provide financial, secretarial, administrative and other support to the Tribunal, and the Board or the Authority must enter into agreements with the Reserve Bank and the Prudential Authority to share the costs.

(2)(a) From the date that Chapter 15 of the Act comes into effect until the Chairperson of the Tribunal makes Tribunal rules in accordance with section 227 of the Act, , the Tribunal must apply the rules, regulations, practice directions and guidelines jointly designated by the Chairperson of the Appeal Board and the Chairperson of the Board of Review, insofar as the Act does not provide for the procedure, .

(b) The Tribunal may amend or repeal the rules, regulations, directions and guidelines designated in terms of paragraph (a) at any time.

(c) If at the date on which the Tribunal is established, a designation has not been made in terms of paragraph (a), the Regulations in respect of appeals to the Appeal Board, 2011, and any practice directions and guidelines issued by the Chairperson of the Appeal Board remain in force, with the necessary changes, and insofar as the Act does not provide for the procedure, until the Chairperson of the Tribunal makes Tribunal rules in accordance with section 227 of the Act.

Publication

5. Until Part 2 of Chapter 17 and section 287 come into effect, a requirement in a financial sector law to publish a document or information in the Register is satisfied by publication of the document or information on the website of the person who is required to publish it.

Application of sections

6.(1) In section 296(2) of the Act, the phrase ‘the date on which this Chapter comes into effect’ means the date on which section 296 comes into effect.

(2) In section 298(1)(a)(i) of the Act, the phrase ‘the date on which this Part comes into effect’ means the date on which section 298 comes into effect.

(3) In section 301 of the Act, the phrase ‘the date on which this section comes into effect’ means ‘the date on which this subsection comes into effect’.

Part 2

Appointment of Commissioner and Deputy Commissioners of Financial Sector Conduct Authority

Advertising vacancy

7.(1) The National Treasury must advertise the position of Commissioner or Deputy Commissioner on the website of the National Treasury, as well as in other appropriate media and request the Financial Sector Conduct Authority, or prior to the establishment of the Financial Sector Conduct Authority, the Financial Services Board, to advertise the position on its website.

(2) The advertisement referred to in paragraph (a) must specify—

- (a) the appointment criteria to qualify for appointment as a Commissioner or a Deputy Commissioner;
- (b) information which must be submitted in support of an application; and
- (c) the date by which applications must be submitted to the Shortlisting Panel.

Applications for Commissioner and Deputy Commissioner

8.(1) When the position of Commissioner or a Deputy Commissioner is advertised, any person who satisfies the appointment criteria may apply.

(2) Applications in terms of subregulation (1) must—

- (a) be made in writing to the Shortlisting Panel;
- (b) include a comprehensive curriculum vitae of the person applying;
- (c) include a motivation for the person’s application, in which it is specified how the candidate satisfies the appointment criteria;
- (d) include supporting information that is specified in the advertisement; and
- (e) be submitted by the date indicated in the advertisement for the position as the deadline for submission for applications.

Shortlisting Panel

9.(1) A panel for the shortlisting of persons to be interviewed for appointment as Commissioner or Deputy Commissioner is hereby established.

(2) The Shortlisting Panel consists of persons of appropriate experience appointed by the Minister.

(3) In the performance by the Shortlisting Panel of the functions described under subregulation (6)—

(a) the person appointed by the Minister as the Chairperson of the Shortlisting Panel has a deliberative vote and, in the event of an equality of votes, a casting vote; and

(b) a quorum consists of Chairperson and two other members of the Shortlisting Panel.

(4)(a) The Shortlisting Panel determines its procedures, subject to applicable requirements provided for in these Regulations.

(b) The procedure of the Shortlisting Panel must be fair, impartial, and transparent.

(5) The Director-General, or his or her nominee, must ensure that minutes of each meeting of the Panel are kept.

(6)(a) The Shortlisting Panel must—

(i) scrutinise all applications for the positions advertised;

(ii) assess whether the interviewed candidates satisfy the appointment criteria; and

(iii) submit a shortlist of four suitable candidates for each advertised position.

(b) The Shortlisting Panel may interview applicants for appointment as part of the process referred to in paragraph (a).

(c) If the Shortlisting Panel determines that there are not sufficient candidates that are suitable to be shortlisted for interviewing by the Ministerial Panel for an advertised position, to meet the requirements of paragraph (a), the Panel must without delay advise the Minister accordingly, and the National Treasury must re-advertise the position.

Ministerial Panel

10.(1) The Minister must convene a Ministerial Panel to interview candidates shortlisted by the Shortlisting Panel, which consists of persons of appropriate experience appointed by the Minister.

(2) The Ministerial Panel must ensure that the persons who are recommended for appointment as Commissioner or Deputy Commissioner—

(a) satisfy the appointment criteria; and

(b) contribute to a range of experience and expertise among the Commissioner and Deputy Commissioners that will enable the Financial Sector Conduct Authority to effectively fulfil its mandate and perform its functions.

(3)(a) A quorum for the Ministerial Panel consists of the Minister and two other members of the Panel.

(b) The Ministerial Panel determines its procedures, subject to applicable requirements provided for in these Regulations.

(c) The procedures of the Ministerial Panel must be fair, impartial and transparent.

(4) The Minister must ensure that minutes of each meeting of the Ministerial Panel are kept.

(5)(a) After interviewing and deliberating on all of the candidates who were interviewed, and assessing whether the interviewed candidates satisfy the appointment criteria, the Ministerial Panel must recommend a preferred person for appointment to each position that has been advertised.

(b) If the Ministerial Panel determines that there are not sufficient candidates that are suitable for appointment to an advertised position, to meet the requirements of paragraph (a), the Ministerial Panel must without delay request that the National Treasury re-advertise the position.

Appointment criteria

11. When determining whether a candidate is suitable to be shortlisted and recommended for appointment as the Commissioner or a Deputy Commissioner, the Shortlisting and Ministerial Panels must, in addition to the appointment criteria in section 61 of the Act, assess whether a candidate has—

- (a) at least 7 years' experience in a senior or executive position with—
 - (i) a regulator (preferably a financial sector regulator);
 - (ii) a financial institution;
 - (iii) a financial sector industry body;
 - (iv) a government department that is responsible for overseeing the regulation of the financial sector;
 - (v) an international financial regulatory body; or
 - (vi) any two or more of the institutions mentioned in subparagraphs (i) to (v); and
- (b) skills, knowledge and expertise that would reasonably be expected of a person in the position of Commissioner or Deputy Commissioner.

Commencement and short title

12. These Regulations are called the Financial Sector Regulations, 2017, and come in effect on the date of publication in the *Gazette*.