

# DRAFT EXPLANATORY MEMORANDUM ON FINANCIAL SECTOR LEVIES BILL

## **BACKGROUND**

The Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (the Act), was signed by the President and promulgated on 22 August 2017. The Act embodied the new overarching policy framework occasioned by the Twin Peaks model of regulating and supervising financial institutions. This approach focuses on prudential and market conduct supervision, as well as providing financial stability.

In addition to existing regulatory and supervisory structures, the Act also provides for new regulatory structures. The Prudential Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal and the Ombud Council, together with the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Service Providers, are known as the financial sector bodies. In accordance with the Act, their establishment and functioning are to be funded by means of levies and fees paid by the institutions regulated by these bodies.

The prudential regulation of banks, undertaken by the Banking Supervision Department of the South African Reserve Bank, was funded from the general revenue of the Reserve Bank, which included revenue generated from the unremunerated cash reserves held by commercial banks with the Reserve Bank. These functions are now performed by the Prudential Authority.

The costs of regulating other financial institutions, which were regulated by the Financial Services Board, were covered by fees and levies paid to the Financial Services Board. These financial institutions include long-term and short-term insurance companies, retirement funds, collective investment schemes, intermediaries, service providers, exchanges, depositories and credit rating agencies. Since the Financial Services Board has been disestablished in terms of the Act, the relevant financial sector body will be funded by levies from the financial institutions subject to its regulation and control.

A draft Financial Sector Levies Bill was drafted to impose the necessary levies on the regulated financial institutions, as envisaged in the Act. The draft Bill was published for public

comment and comments received from stakeholders were taken into account in the present Bill (the Bill).

## **CLAUSE-BY-CLAUSE OUTLINE**

### **Clause 1: Definitions**

Clause 1 provides definitions for the terms used in the Bill. Many of the terms derive from existing Acts, such as the Banks Act, Cooperative Banks Act, Collective Investments Schemes Control Act, Financial Advisory and Intermediary Services Act, Financial Markets Act, Insurance Act, Pension Funds Act and Financial Sector Regulation Act.

### **Clause 2: Administration of Act**

The Minister of Finance is designated as the person responsible for the administration of the provisions of the Bill, if enacted. The administration must be done in accordance and alignment with the provisions for the assessment, payment and collection of fees and levies contained in sections 241, 242, 243, 244, 245 and 246 of the Act.

### **Clause 3: Levies**

*Subclause (1)* proposes to impose a levy for the benefit of the financial sector bodies.

*Subclause (2)* charges the proposed levy to supervised entities licensed in terms of financial sector laws and specified in the Schedules to the Bill.

*Subclause (3)* provides that the amount of the proposed levy is to be calculated in accordance with a formula specified for each financial sector body in the relevant Schedule to the Bill.

*Subclause (4)* provides for apportionment of levies in case of the supervised entity being licensed for a part of a levy period (defined to be a period from 1 April to 31 March).

### **Clause 4: Implementation special levy**

An implementation special levy is proposed to cover the costs of the establishment of the Prudential Authority, Financial Sector Conduct Authority, Financial Services Tribunal and Ombud Council.

*Subclause (1)* imposes the special levy on supervised entities that pay levies envisaged in Schedules 1, 2 and 3.

*Subclause (2)* caps the special levy at 15 per cent of the normal levy payable and limits its imposition to the first two levy periods.

#### **Clause 5: Adjustment of amounts and levy formulae**

Clause 5 proposes that the amounts of the levies may be adjusted annually. This will be done by each financial sector body in respect of the levy imposed for its benefit.

*Subclause (1)* envisages annual adjustments to the amount or percentage of the levy formulae, including the base or maximum amounts, in accordance with the criteria in sections 239 and 240 of the Act.

*Subclause (2)* specifies that, in preparing levy estimates and determining the amount of a levy, a financial sector body must take into account the levies collected in the previous levy period and relate these to the actual expenditure of the body for that period.

Terms used in the levy formulae, contained in the Schedules to the Bill, may require clarification and definition by the financial sector body. This is provided for in subclause (2)(a).

*Subclause (3)* provides that the proposed levy may be imposed proportionately for the remainder of a levy period. This may be necessary if the levy comes into effect after a levy period has already commenced on 1 April.

#### **Clause 6: Exemption from levy**

It is envisaged that supervised entities may be exempt from the proposed levy in certain circumstances.

*Subclause (1)* confers a discretion on financial sector bodies to exempt types, kinds or categories of supervised entities from payment of the levy for a levy period. A supervised entity may also apply for exemption from the levy on its own behalf.

*Subclause (2)* specifies that an application for exemption lodged by a supervised entity must include certain particulars. The required particulars will be determined by the relevant financial sector body.

*Subclause (3)* determines criteria on which a financial sector body must base its decision to confer or refuse exemption. This includes upholding public interest and avoiding undue hardship or prejudice of a financial or other nature that may be suffered by a type, kind or category of financial entity, supervised entity or financial customer. A financial sector body

may also be of the opinion that exemption from the levy is necessary to advance developmental, financial inclusion and transformation objectives in order to facilitate progressive or incremental compliance with the Act or financial sector laws.

*Subclause (4)* provides for exemption from the proposed levy for the first two levy periods in order to facilitate the affordability of the levy for a specific type of supervised entity.

*Subclause (5)* makes provision for publication of exemptions.

### **Clause 7: Short title and commencement**

Should the Bill be enacted by Parliament, this clause provides a short title and commencement date for the Act.

*Subclause (1)* provides for the proposed Act to take effect on a date to be determined by the Minister by public notice.

*Subclause (2)* makes provision for different provisions of the Act, Schedules to the Act and items in the Schedules to the Act to come into operation on different dates.

### **Schedules 1 to 5**

The relevant levy formulae are set out in:

Schedule 1, with regard to the Prudential Authority;

Schedule 2, with regard to the Financial Sector Conduct Authority;

Schedule 3, with regard to the Financial Services Tribunal;

Schedule 4, with regard to the Ombud Council; and

Schedule 5, with regard to the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers (the statutory ombuds).