

REPUBLIC OF SOUTH AFRICA

FINANCIAL SECTOR REGULATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 39127 of 21 August 2015)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 34—2015]

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BILL

To establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority, and conferring powers on these entities; to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank; to establish the Financial Stability Oversight Committee; to regulate and supervise financial product providers and financial services providers; to improve market conduct in order to protect financial customers; to provide for co-ordination, co-operation, collaboration and consultation among the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the National Credit Regulator and other organs of state in relation to financial stability and the functions of these entities; to establish the Financial System Council of Regulators and the Financial Sector Inter-Ministerial Council; to provide for making regulatory instruments, including prudential standards, conduct standards and joint standards; to make provision for the licensing of financial institutions; to make comprehensive provision for powers to gather information and to conduct supervisory on-site inspections and investigations; to make provision in relation to significant owners of financial institutions and the supervision of financial conglomerates in relation to eligible financial institutions that are part of financial conglomerates; to provide for powers to enforce financial sector laws, including by the imposition of administrative penalties; to establish the Ombud Regulatory Council and confer powers on it in relation to ombud schemes; to require financial product and financial service providers to be members of, or be covered by, appropriate ombud schemes; to establish the Financial Services Tribunal as an independent tribunal and to confer on it powers to review decisions by financial sector regulators, the Ombud Regulatory Council and certain market infrastructures; to establish the Financial Sector Information register and make provision for its operation; to provide for information sharing arrangements; to create offences; to provide for regulation-making powers of the Minister; to amend and repeal certain financial sector laws; to make transitional and savings provisions; and to provide for matters connected therewith.

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

CHAPTER 1

INTERPRETATION, OBJECT AND ADMINISTRATION OF ACT

Part 1

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Interpretation

Definitions

1. (1) In this Act, unless the context indicates otherwise—
 - “**administrative action**” has the same meaning ascribed to it in terms of section 1 of the Promotion of Administrative Justice Act; 10
 - “**administrative action committee**” means a committee established in terms of section 87;
 - “**administrative action procedure**” means a procedure determined in terms of section 92;
 - “**administrative penalty order**” means an order in terms of section 165; 15
 - “**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);
 - “**binding interpretation**” means an interpretation made in terms of section 141;
 - “**business document**”, in relation to a person, means a document held by the person in connection with carrying on a business;
 - “**business premises**” means premises, including a building or a part of a building, 20 used by a person for carrying on a business;
 - “**Chairperson**” means the person holding the office of the Chairperson of the Tribunal in terms of section 216(4), and includes a person acting as the Chairperson;
 - “**Chief Executive Officer**” means the Chief Executive Officer of the Prudential 25 Authority appointed in terms of section 36(1), and includes a person acting as the Chief Executive Officer;

- “**collective investment scheme**” has the same meaning ascribed to it in terms of section 1 of the Collective Investments Schemes Control Act, 2002 (Act No. 45 of 2002);
- “**Commissioner**”, in relation to the Financial Sector Conduct Authority, means the Commissioner of the Financial Sector Conduct Authority appointed in terms of section 61(1), and includes a person acting as the Commissioner; 5
- “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
- “**company**” has the same meaning ascribed to it in terms of section 1 of the Companies Act;
- “**Competition Commission**” means the Competition Commission established in terms of section 19 of the Competition Act, 1998 (Act No. 89 of 1998); 10
- “**conduct standard**” means a standard made in terms of section 106;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Consumer Protection Act**” means the Consumer Protection Act, 2008 (Act No. 68 of 2008); 15
- “**contractor**” means a person with whom a financial institution has entered into an outsourcing arrangement but does not include an independent contractor as envisaged in the definition of “**staff member**”;
- “**control function**” means each of the following: 20
- (a) The risk management function;
 - (b) the compliance function;
 - (c) the internal audit function; and
 - (d) the actuarial function;
- “**Council for Medical Schemes**” means the Council for Medical Schemes established in terms of section 3 of the Medical Schemes Act; 25
- “**Court**” means a Superior Court as defined in section 1 of the Superior Courts Act, 2013 (Act No. 10 of 2013);
- “**debarment order**” means an order made in terms of section 152 or 203;
- “**decision-maker**”, in relation to a review, means the financial sector regulator, the statutory ombud, the Ombud Regulatory Council or the financial market infrastructure that made a decision that may be the subject of a review; 30
- “**Deputy Commissioner**” means a person appointed as a Deputy Commissioner in terms of section 61(2), and includes a person acting as a Deputy Commissioner;
- “**Deputy Governor**” means a person appointed in terms of section 4 or 6(1)(a) of the Reserve Bank Act as a Deputy Governor of the Reserve Bank; 35
- “**Director-General**” means the Director-General of the National Treasury, and includes a person acting as the Director-General;
- “**disqualified person**” means a person who—
- (a) is engaged in the business of a financial institution, or has a direct material financial interest in a financial institution, except as a financial customer; 40
 - (b) is a member of the Cabinet, a member of the Executive Council of a province, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council;
 - (c) is an office-bearer of, or is in a remunerated leadership position in, a political party; 45
 - (d) has at any time been removed from an office or position of trust;
 - (e) is or has been subject to debarment in terms of a financial sector law;
 - (f) is or has at any time been sanctioned for contravening a law relating to the regulation or supervision of financial institutions, or the provision of financial products or financial services or a corresponding law of a foreign jurisdiction; 50
 - (g) is or has at any time been convicted of—
 - (i) theft, fraud, forgery, uttering of a forged document, perjury or an offence involving dishonesty, whether in the Republic or elsewhere; or
 - (ii) an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Parts 1 to 4, or sections 17, 20 or 21 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence in terms of the law of a foreign country; 55
 - (h) is or has been convicted of any other offence committed after the Constitution came into operation, where the penalty imposed for the offence is or was imprisonment without the option of a fine; 60
 - (i) is subject to a provisional sequestration order or is an unrehabilitated insolvent;

- (j) is disqualified from acting as a member of a governing body of a juristic person in terms of applicable legislation; or
- (k) is declared by the High Court to be of unsound mind or mentally disordered, or is detained in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);
- “document”** includes— 5
- (a) a book, record, security, invoice, account and any other information appearing on a physical object;
- (b) information stored or recorded electronically, digitally, photographically, magnetically or optically; and
- (c) any device on, or by means of, which information is recorded or stored; 10
- “eligible financial institution”** means each of the following:
- (a) A financial institution licensed or required to be licensed as a bank in terms of the Banks Act;
- (b) a financial institution licensed or required to be licensed as a long-term insurer in terms of the Long-term Insurance Act or a short-term insurer in terms of the Short-term Insurance Act; 15
- (c) a market infrastructure; and
- (d) a financial institution prescribed in Regulations for the purposes of this definition;
- “enforceable undertaking”** means an undertaking referred to in section 150 or 201; 20
- “Executive Committee”** means the Committee established in terms of section 60;
- “Financial Advisory and Intermediary Services Act”** means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- “financial conglomerate”** means a group of companies designated as a financial conglomerate in terms of section 158; 25
- “financial crime”** includes an offence in terms of—
- (a) a financial sector law;
- (b) sections 2, 4, 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); 30
- (c) the Financial Intelligence Centre Act; or
- (d) section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);
- “financial customer”** means a person to, or for, whom a financial product, a financial instrument, a financial service or a service provided by a market infrastructure is offered or provided, in whatever capacity, and includes— 35
- (a) a successor in title of the person; and
- (b) the beneficiary of the product, instrument or service;
- “financial inclusion”** means that all persons have timely and fair access to appropriate, fair and affordable financial products and services; 40
- “financial institution”** means any of the following, other than a representative:
- (a) A financial product provider;
- (b) a financial service provider;
- (c) a market infrastructure;
- (d) a holding company of a financial conglomerate; or 45
- (e) a person licensed or required to be licensed in terms of a financial sector law;
- “financial instrument”** means—
- (a) a share as defined in section 1 of the Companies Act;
- (b) a depository receipt and other equivalent instruments;
- (c) debt instruments such as debentures and bonds; 50
- (d) a money market security as defined in section 1 of the Financial Markets Act;
- (e) a derivative instrument as defined in section 1 of the Financial Markets Act; or
- (f) a warrant, certificate, securitisation instrument or other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert, the financial instruments referred to in paragraphs (a) to (e); 55
- “Financial Intelligence Centre”** means the Financial Intelligence Centre established in terms of section 2 of the Financial Intelligence Centre Act;
- “Financial Intelligence Centre Act”** means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- “Financial Markets Act”** means the Financial Markets Act, 2012 (Act No. 19 of 2012); 60
- “financial product”** means a financial product as defined in section 2;

- “**financial product provider**” means a person that, as a business or as part of a business, provides a financial product;
- “**Financial Sector Conduct Authority**” means the authority established in terms of section 56;
- “**financial sector law**” means— 5
- (a) this Act;
 - (b) a law listed in Schedule 1;
 - (c) a Regulation made in terms of this Act or made in terms of a law referred to in Schedule 1; or
 - (d) a regulatory instrument made in terms of this Act or made in terms of a law referred to in Schedule 1; 10
- “**financial sector regulator**” means—
- (a) the Prudential Authority;
 - (b) the Financial Sector Conduct Authority;
 - (c) the National Credit Regulator, but only in respect of Parts 2, 3 and 5 of Chapter 2, and Parts 1, 2 and 3 of Chapter 5; or 15
 - (d) the Financial Intelligence Centre, but only in respect of Parts 2, 3 and 5 of Chapters 2, and Parts 1, 2 and 3 of Chapter 5;
- “**financial service**” means a financial service as defined in section 3;
- “**financial service provider**” means a person that, as a business or as part of a business, provides a financial service; 20
- “**financial stability**” means financial stability as defined in section 4;
- “**Financial Stability Oversight Committee**” means the committee established in terms of section 20;
- “**financial system**” means the system of institutions and markets through which financial products, financial instruments and financial services are provided and traded, and includes the operation of a market infrastructure and a payment system; 25
- “**Financial System Council of Regulators**” means the council established in terms of section 79(1);
- “**financial year**” means a period of 12 months commencing on 1 April of each year; 30
- “**foreign financial product**” means a facility or arrangement provided outside the Republic, or provided by a person outside the Republic, that is similar to, or corresponds to, a financial product;
- “**Friendly Societies Act**” means the Friendly Societies Act, 1956 (Act No. 25 of 1956); 35
- “**governing body**” means—
- (a) in relation to a financial institution, a person or body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the financial institution, directs its affairs or has the authority to exercise the powers and perform the functions of the financial institution, and includes— 40
 - (i) the general partner of an *en commandite* partnership or the partners of any other partnership;
 - (ii) the members of a close corporation;
 - (iii) the trustees of a trust; 45
 - (iv) the board of directors of a company; and
 - (v) the board of a pension fund referred to in section 7A of the Pension Funds Act; and
 - (b) in relation to an ombud scheme, the person or body of persons that manages the affairs of the ombud scheme; 50
- “**Governor**” means the person appointed in terms of section 4 or 6(1)(a) of the Reserve Bank Act as the Governor of the Reserve Bank;
- “**group of companies**” has the same meaning ascribed to it in terms of section 1 of the Companies Act;
- “**head of a control function**” means a person appointed by a financial institution to ensure the performance of a control function, and includes a person so appointed through an outsourcing arrangement; 55
- “**holding company**” means a holding company as defined in section 1 of the Companies Act, being a company incorporated in the Republic;
- “**industry ombud scheme**” means an arrangement with the following characteristics: 60
- (a) The arrangement is established by one or more financial institutions;

- (b) the purpose of the arrangement is to facilitate mediation and resolution of complaints from financial customers about specific financial products or financial services; and
- (c) mediation or resolution of the complaints in terms of the ombud scheme is undertaken by an ombud appointed in terms of the ombud scheme’s governing rules; 5
- “**Inter-Ministerial Council**” means the Financial Sector Inter-Ministerial Council established in terms of section 83(1);
- “**interrelated**” has the same meaning ascribed to it in terms of section 1 of the Companies Act; 10
- “**investigator**” means a person appointed as an investigator in terms of section 133;
- “**joint standard**” means a standard made in terms of section 107;
- “**juristic person**” includes—
- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere; 15
- (b) an association, partnership, club or other body of persons of whatever description, corporate or unincorporated;
- (c) a trust or trust fund;
- (d) an entity referred to in paragraph (a), (b) or (c) that is in liquidation, under business rescue proceedings or under judicial management; and 20
- (e) the estate of a deceased or insolvent person;
- “**key person**”, in relation to a financial institution, means each of the following:
- (a) A member of the governing body of the financial institution;
- (b) the chief executive officer or other person in charge of the financial institution; 25
- (c) a person other than a member of the governing body of the financial institution who makes or participates in making decisions that—
- (i) affect the whole or a substantial part of the business of the financial institution; or
- (ii) have the capacity to affect significantly the financial standing of the financial institution; 30
- (d) a person other than a member of the governing body of the financial institution who oversees the enforcement of policies and the implementation of strategies approved, or adopted, by the governing body of the financial institution;
- (e) the head of a control function of the financial institution; and 35
- (f) a person performing a function in or for the financial institution that a financial sector law requires to be performed;
- “**legal practitioner**” means a legal practitioner as defined in section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014);
- “**leniency agreement**” means an agreement referred to in section 154; 40
- “**levy**” means any levy imposed in terms of the Levies Act, and includes interest payable on an unpaid levy;
- “**levy body**” means each of the following:
- (a) The Prudential Authority;
- (b) the Financial Sector Conduct Authority; 45
- (c) the Tribunal; and
- (d) the Ombud Regulatory Council;
- “**Levies Act**” means the Financial Sector Levies Act, 2015;
- “**licence**” includes a written licence, registration, approval, recognition, permission, consent or any other authorisation in terms of a financial sector law, however it is described in that law, to provide a financial product, financial service or a market infrastructure;
- “**Long-term Insurance Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- “**market infrastructure**” means each of the following, as they are defined in section 1(1) of the Financial Markets Act: 55
- (a) A central securities depository;
- (b) a clearing house;
- (c) an exchange;
- (d) a trade repository; and 60
- (e) a central counterparty;
- “**Medical Schemes Act**” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

- “**Minister**” means the Minister of Finance;
- “**National Credit Act**” means the National Credit Act, 2005 (Act No. 34 of 2005);
- “**National Credit Regulator**” means the National Credit Regulator established in terms of section 12 of the National Credit Act;
- “**National Payment System Act**” means the National Payment System Act, 1998 (Act No. 78 of 1998); 5
- “**National Treasury**” means the National Treasury established in terms of section 5 of the Public Finance Management Act;
- “**ombud**” means each of the following:
- (a) The Adjudicator as defined in section 1(1) of the Pension Funds Act; 10
- (b) the Ombud for Financial Services Providers as defined in section 1(1) of the Financial Advisory and Intermediary Services Act;
- (c) a person declared by a specific financial sector law to be a statutory ombud; and
- (d) a person who has the function, in terms of the rules of an industry ombud scheme, of mediating or resolving complaints to which the scheme applies; 15
- “**Ombud Board**” means the Board of the Ombud Regulatory Council established in terms of section 177(1);
- “**Ombud Regulatory Council**” means the Ombud Regulatory Council established in terms of section 173; 20
- “**Ombud Regulatory Council rule**” means a rule made by the Ombud Regulatory Council in terms of section 199;
- “**ombud scheme**” means—
- (a) an industry ombud scheme; or
- (b) a statutory ombud scheme; 25
- “**organ of state**” has the same meaning ascribed to it in terms of section 239 of the Constitution;
- “**outsourcing arrangement**”, in relation to a financial institution, means an arrangement between the financial institution and another person for the provision to the financial institution of a specified service related to the provision by the financial institution of a financial product, a financial service or a market infrastructure, but does not include a contract of employment with a person who is a staff member; 30
- “**Panel**” means a Panel of the Tribunal constituted in terms of section 219(2);
- “**Panel member**” means a member of a Panel; 35
- “**panel list**” means the list referred to in section 218;
- “**party**”, to a review in terms of this Act, means—
- (a) the person who applied for the review; and
- (b) the decision-maker that made the decision which is the subject of the review;
- “**payment system**” has the same meaning ascribed to it in terms of section 1 of the National Payment System Act; 40
- “**payment service**” means a service provided to a financial customer to facilitate payments to, or from, the financial customer;
- “**Pension Funds Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956);
- “**person**” means a natural person or a juristic person, and includes an organ of state; 45
- “**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- “**Protection of Personal Information Act**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013); 50
- “**Prudential Authority**” means the authority established in terms of section 32;
- “**Prudential Committee**” means the committee established in terms of section 41;
- “**prudential standard**” means a standard made in terms of section 105;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 55
- “**recognised industry ombud scheme**” means an industry ombud scheme that has been recognised in terms of section 192;
- “**Regulation**” means a Regulation made in terms of section 278;
- “**regulator’s directive**” means a directive issued by a financial sector regulator in terms of section 142 or 143; 60
- “**regulatory instrument**” means each of the following:
- (a) A prudential standard;
- (b) a conduct standard;

- (c) a joint standard;
- (d) an Ombud Regulatory Council rule;
- (e) a determination in terms of section 235;
- (f) an instrument identified as a regulatory instrument in a financial sector law; and 5
- (g) an instrument amending or revoking an instrument referred to in paragraphs (a) to (f);
- “related party”**, means a person connected to the first person in a manner described in section 2(1)(a), (b) or (c) of the Companies Act;
- “Register”** means the Financial Sector Information Register referred to in section 244; 10
- “representative”**, in relation to a financial institution, means a representative of the institution in terms of the Financial Advisory and Intermediary Services Act;
- “Reserve Bank”** means the South African Reserve Bank as referred to in section 223 of the Constitution, read with the Reserve Bank Act; 15
- “Reserve Bank Act”** means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);
- “responsible authority”** means the responsible authority as defined in section 5;
- “review”** means a proceeding before the Tribunal on a review as contemplated in Chapter 15 or in terms of a provision of a specific financial sector law; 20
- “section 27 memorandum of understanding”** means a memorandum of understanding referred to in section 27;
- “section 77 memorandum of understanding”** means a memorandum of understanding referred to in section 77;
- “securities services”** has the same meaning ascribed to it in terms of section 1(1) of the Financial Markets Act; 25
- “Short-term Insurance Act”** means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- “significant owner”** means a significant owner of the institution as described in section 155; 30
- “specific financial sector law”** means a financial sector law, other than this Act, regulating a specific type of financial product, financial service or market infrastructure;
- “staff member”** of a person, means—
- (a) an employee, as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995); 35
- (b) a natural person who is seconded to the person;
- (c) a natural person who is engaged by the person on contract as an independent contractor to provide goods or services to the person or to perform functions or duties on behalf of the person under terms specified in the contract, but not in terms of an outsourcing arrangement; 40
- “standard”** means any of the following:
- (a) A prudential standard;
- (b) a conduct standard; and
- (c) a joint standard; 45
- “statutory ombud scheme”** means a scheme declared by a specific financial sector law to be a statutory ombud scheme;
- “supervised entity”** means each of the following:
- (a) A licensed financial institution;
- (b) a person with whom a licensed financial institution has entered into an outsourcing arrangement; and 50
- (c) a representative of a financial institution;
- “supervisory on-site inspection”** means an inspection as contemplated in Part 3 of Chapter 9;
- “systemic event”** means an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services; 55
- “systemically important financial institution”** means a financial institution designated in terms of section 29; 60

“**this Act**” includes the Regulations, Schedules and regulatory instruments made in terms of this Act;

“**Tribunal**” means the Financial Services Tribunal established in terms of section 214(1);

“**Tribunal member**” means a member of the Tribunal referred to in section 216; 5

“**trust**” has the same meaning ascribed to it in terms of section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);

“**trustee**” has the same meaning ascribed to it in terms of section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);

“**website**” means a website as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and 10

“**winding-up**” means the process of dissolving a financial institution that includes the selling of all assets, the paying off of creditors and the distribution of any remaining assets.

(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. 15

(3) A reference in a financial sector law, or in an instrument made or issued in terms of a financial sector law, to compliance with financial sector laws or to compliance with a particular financial sector law includes a reference to compliance with requirements in instruments made or issued in terms of the relevant financial sector laws. 20

Financial products

2. (1) In this Act—

“**financial product**” means—

(a) a participatory interest in a collective investment scheme; 25

(b) a long-term policy as defined in section 1(1) of the Long-term Insurance Act;

(c) a short-term policy as defined in section 1(1) of the Short-term Insurance Act;

(d) a benefit provided by—

(i) a pension fund organisation, as defined in section 1(1) of the Pension Funds Act, to a member of the organisation by virtue of membership; or 30

(ii) a friendly society, as defined in section 1(1) of the Friendly Societies Act, to a member of the society by virtue of membership;

(e) a deposit as defined in section 1(1) of the Banks Act;

(f) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act; 35

(g) credit, as defined in section 1 of the National Credit Act, provided in terms of a credit agreement as defined in that section;

(h) a warranty, guarantee or other credit support arrangement as provided for in a financial sector law;

(i) a facility or arrangement designated by Regulations for this section as a financial product; and 40

(j) a facility or arrangement that includes one or more of the financial products referred to in paragraphs (a) to (i).

(2) The Regulations may designate as a financial product any facility or arrangement that is not regulated in terms of a specific financial sector law if— 45

(a) in doing so, this shall further the object of this Act set out in section 7; and

(b) the facility or arrangement is one through which, or through the acquisition of which, a person conducts one or more of the following activities:

(i) Lending;

(ii) making a financial investment; and 50

(iii) managing financial risk.

(3) For the purposes of subsection (2)(b)(ii), a person makes a financial investment when the person—

(a) gives a contribution, in money or money’s worth, to another person and any of the following apply: 55

(i) The other person uses the contribution to generate a financial return for the investor;

(ii) the investor intends that the other person must use the contribution to generate a financial return for the investor, even if no return, or a loss, is in fact generated; and 60

- (iii) the other person intends that the contribution be used to generate a financial return for the investor, even if no return, or a loss, is in fact generated; and
 - (b) has no day-to-day control over the use of the contribution.
- (4) For the purposes of subsection (2)(b)(iii), a person manages financial risk when the person—
- (a) manages the financial consequences to the person of particular events or circumstances occurring or not occurring; or
 - (b) avoids or limits the financial consequences of fluctuations in, or in the value of, receipts or costs, including prices and interest rates.
- (5) Regulations designating a financial product in terms of subsection (2) may specify the financial sector regulator that is the responsible authority for regulating the providers of the financial product.

Financial services

3. (1) In this Act—
- “**financial service**” means—
- (a) any of the following in relation to a financial product, a foreign financial product or a financial instrument:
 - (i) Offering, promoting, marketing or distributing;
 - (ii) providing advice, recommendations or guidance;
 - (iii) dealing or making a market; and
 - (iv) operating or managing, or providing administration services;
 - (b) a payment service;
 - (c) a service provided by a financial institution, being a service regulated by a specific financial sector law;
 - (d) a service related to the buying and selling of foreign exchange;
 - (e) a service, including a debt collection service, provided to a financial institution through an outsourcing arrangement, being a service provided in relation to the provision by a financial institution of a financial product, a foreign financial product, a financial instrument or a financial service; and
 - (f) a service designated by the Regulations for this section as a financial service.
- (2) A service provided by a market infrastructure, and a function under a financial sector law performed by a market infrastructure, are not financial services unless designated by Regulations in terms of subsection (3).
- (3) The Regulations may designate as a financial service any service that is not regulated in terms of a specific financial sector law if—
- (a) in doing so, this will further the object of this Act set out in section 7; and
 - (b) the service relates to—
 - (i) a financial product, a foreign financial product, a financial instrument or a market infrastructure; or
 - (ii) an arrangement that is in substance an arrangement for lending, making a financial investment or managing financial risk, all as contemplated in sections 2(2) to (4).
- (4) For purposes of subsection (1)(a)(iii) of the definition of “financial service” in subsection (1)—
- “**dealing**” means any of the following, whether done as a principal or as an agent:
- (a) In relation to securities or participatory interests in a collective investment scheme, underwriting the securities or interests; and
 - (b) disposing of a financial instrument;
- “**making a market**” in a financial instrument takes place when—
- (a) a person, through a facility, at a place or otherwise, states the prices at which the person offers to acquire or dispose of financial instruments, whether or not on the person’s own account; and
 - (b) other persons reasonably expect that they can enter into a transaction for those instruments at those prices.
- (5) Regulations designating a financial service in terms of subsection (3) may specify the financial sector regulator that is the responsible authority for the regulating the providers of service.

Financial stability

4. (1) For the purposes of this Act, financial stability means that—
- (a) financial institutions generally provide financial products and financial services without interruption;
 - (b) financial institutions are capable of continuing to provide financial products and financial services without interruption despite changes in economic circumstances; and
 - (c) there is general confidence in the ability of financial institutions to continue to provide financial products and financial services without interruption despite changes in economic circumstances.
- (2) A reference in this Act to maintaining financial stability includes, where financial stability has been adversely affected, a reference to restoring financial stability.

Responsible authorities

5. (1) Subject to subsection (2), the responsible authority for a financial sector law is the financial sector regulator identified in Schedule 2 as the responsible authority for that financial sector law.
- (2) Regulations made in terms of section 2(5) or 3(5) may designate a financial sector regulator as the responsible authority for a designated financial product or financial service.
- (3) Despite subsections (1) and (2), if a section 77 memorandum of understanding provides for one of the financial sector regulators to delegate its functions and powers in relation to a provision of a financial sector law for which it is the responsible authority to another financial sector regulator, the other financial sector regulator is, to the extent of the delegation, the responsible authority for the provision.

Financial institutions that are juristic persons

6. Where a financial sector law imposes an obligation to be complied with by an entity that is a juristic person, the members of the governing body of that juristic person must ensure that the obligation is complied with.

Part 2***Object and administration of Act*****Object of Act**

7. The object of this Act is to achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the specific financial sector laws, a regulatory and supervisory framework that promotes—
- (a) financial stability;
 - (b) the safety and soundness of financial institutions;
 - (c) the fair treatment and protection of financial customers;
 - (d) the efficiency and integrity of the financial system;
 - (e) the prevention of financial crime;
 - (f) financial inclusion; and
 - (g) confidence in the financial system.

Administration of Act

8. The Minister is responsible for the administration of this Act.

Part 3**Application of other legislation****Inconsistencies between Act and other financial sector laws**

9. (1) In the event of any inconsistency between a provision of this Act and a provision of another Act that is a financial sector law, the provision of this Act prevails. 5

(2) In the event of any inconsistency between a provision of a Regulation or a regulatory instrument made in terms of this Act, and a provision of a Regulation or a regulatory instrument made in terms of a specific financial sector law, the provision of the Regulation or regulatory instrument made in terms of this Act prevails.

Application of other legislation 10

10. (1) The Consumer Protection Act does not apply to, or in relation to—

(a) a function, act, transaction, financial product or financial service that is subject to the National Payment System Act or a financial sector law, and which is regulated by the Financial Sector Conduct Authority in terms of a financial sector law; or 15

(b) the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the Prudential Committee, the Executive Committee, the Chief Executive Officer, the Commissioner or a Deputy Commissioner.

(2) (a) Section 18(2) and (3) of the Competition Act apply, with the necessary changes required by the context, to a merger which requires the approval of the Minister, the Prudential Authority or the Financial Sector Conduct Authority in terms of a financial sector law. 20

(b) For the purposes of paragraph (a), “merger” means a merger as defined in section 12 of the Competition Act.

(c) Section 116 (4) and (9) of the Companies Act apply, with the necessary changes required by the context, to an amalgamation or a merger which requires the approval of the Minister, the Prudential Authority or the Financial Sector Conduct Authority in terms of a financial sector law. 25

(d) For the purposes of paragraph (c), “amalgamation or merger” means an “amalgamation or merger” as defined in section 1 of the Companies Act. 30

CHAPTER 2**FINANCIAL STABILITY****Part 1****Powers and functions of Reserve Bank****Responsibility for financial stability** 35

11. (1) The Reserve Bank is responsible—

(a) for protecting and enhancing financial stability; and
(b) if a systemic event has occurred or is imminent, for restoring or maintaining financial stability.

(2) When fulfilling its responsibility in terms of subsection (1), the Reserve Bank— 40

(a) must act within a policy framework agreed between the Minister and the Governor;
(b) may utilise any power vested in it as the Republic’s central bank or conferred on it in terms of this Act or any other legislation; and
(c) must have regard to, amongst other matters, the roles and functions of other 45 organs of state exercising powers that affect aspects of the economy.

Monitoring of risks by Reserve Bank

12. The Reserve Bank must—

(a) monitor and keep under review—
(i) the strengths and weaknesses of the financial system; and 50

- (ii) any risks to financial stability, and the nature and extent of those risks, including risks that systemic events will occur and any other risks contemplated in matters raised by members of the Financial Stability Oversight Committee or reported to the Reserve Bank by a financial sector regulator; 5
- (b) take steps to mitigate risks to financial stability, including advising the financial sector regulators, and any other organ of state, of the steps to take to mitigate those risks; and
- (c) regularly assess the observance of principles in the Republic developed by international standard setting bodies for market infrastructures, and report its findings to the financial sector regulators and the Minister, having regard to the circumstances and the context within the Republic. 10

Financial stability review

- 13.** (1) The Reserve Bank must, at least every six months, make an assessment of the stability of the financial system, herein referred to as the “financial stability review”. 15
- (2) A financial stability review must set out—
- (a) the Reserve Bank’s assessment of financial stability in the period under review;
 - (b) its identification and assessment of the risks to financial stability in at least the next 12 months; 20
 - (c) an overview of steps taken by it and the financial sector regulators to identify and manage risks, weaknesses or disruptions in the financial system during the period under review and that are envisaged to be taken during at least the next 12 months; and
 - (d) an overview of recommendations made by it and the Financial Stability Oversight Committee during the period under review and progress made in implementing those recommendations. 25
- (3) A financial stability review may not include information the publication of which may materially increase the possibility of a systemic event.
- (4) The Reserve Bank must— 30
- (a) submit a copy of each review to the Minister and the Financial Stability Oversight Committee for information and comment, and allow the Minister or the Financial Stability Oversight Committee at least two weeks to make comments, should they wish to do so; and
 - (b) publish the review, after having taken into account any comments that may have been received in terms of paragraph (a). 35

Part 2

Managing systemic events and risks in relation to systemic events

Determination of systemic events

- 14.** (1) The Governor may, after having consulted the Minister, determine in writing that a specified event or circumstance, or a specified combination of events or circumstances, is a systemic event. 40
- (2) The Governor may, before making a determination in terms of subsection (1), consult the Financial Stability Oversight Committee.
- (3) A determination in terms of subsection (1) may be made whether or not the event or circumstance, or combination of events or circumstances, has already occurred or arisen. 45
- (4) The Governor may, after having consulted the Minister as contemplated in subsection (1), determine in writing that a specified systemic event has occurred or is imminent. 50
- (5) The Governor—
- (a) must notify the Minister of a determination made in terms of subsection (1) or (4);
 - (b) must keep the determination under review;
 - (c) may, at any time, after having consulted the Minister, amend or revoke a determination in writing; and 55

(d) must notify the Minister of any amendment or revocation of a determination made in terms of subsection (1) or (4).

(6) The Reserve Bank must notify the financial sector regulators of a determination in terms of this section, and of an amendment or revocation of such a determination.

(7) The Reserve Bank must publish a determination made in terms of subsection (1) or (4), and any amendment or revocation of such a determination. 5

Functions of Reserve Bank in relation to systemic events

15. (1) The Reserve Bank must take all reasonable steps—

- (a) to prevent systemic events from occurring; and
- (b) if a systemic event has occurred or is imminent, to— 10
 - (i) mitigate without delay the adverse effects of the event on financial stability; and
 - (ii) manage the systemic event and its effects.

(2) When acting in terms of subsection (1), the Reserve Bank must have regard to the need to— 15

- (a) minimise adverse effects on financial stability and economic activity;
- (b) protect, as appropriate, financial customers; and
- (c) contain the cost to the Republic of the systemic event and the steps taken.

Information to Minister

16. (1) If the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, the Governor must ensure that the Minister is kept informed of the event and of any steps being taken or proposed to manage the event and the effects of the event. 20

(2) The Reserve Bank may not, except with the Minister's approval, take a step in terms of section 15 that will or is likely to— 25

- (a) bind the National Revenue Fund to any expenditure;
- (b) have a material impact on the cost of borrowing for the National Revenue Fund; or
- (c) create a future financial commitment or a contingent liability for the National Revenue Fund. 30

Responsibilities of financial sector regulators

17. If the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, each financial sector regulator must—

- (a) provide the Reserve Bank with any information in the possession of the financial sector regulators, which may be relevant for the Bank to manage the systemic event or the effects of the systemic event; and 35
- (b) consult the Reserve Bank before exercising any of their powers in a way that may compromise steps taken or proposed in terms of section 15 to manage the systemic event or the effects of the systemic event.

Directives of Reserve Bank to financial sector regulators 40

18. (1) The Governor may direct a financial sector regulator, in writing, to provide the Reserve Bank with information specified in the directive that the Reserve Bank or the Governor needs for exercising their powers in terms of section 14 or 15, that is in the possession of the financial sector regulator or obtainable by it.

(2) (a) If the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, the Governor may, in writing, direct a financial sector regulator to assist the Reserve Bank in complying with section 15 by acting in accordance with the directive when exercising its powers. 45

(b) A directive in terms of paragraph (a) may include directions aimed at—

- (i) supporting the restructuring, resolution or winding up of any financial institution; 50
- (ii) preventing or reducing the spread of risk, weakness or disruption through the financial system; or
- (iii) increasing the resilience of financial institutions to risk, weakness or disruption.

(3) The Prudential Authority, Financial Sector Conduct Authority and the Financial Intelligence Centre must comply with a directive issued to it in terms of subsection (1) or (2).

(4) The National Credit Regulator must comply with a directive issued to it in terms of subsection (1) or (2), provided that the Minister has consulted the Minister responsible for consumer credit matters on such a directive. 5

Exercise of powers by other organs of state

19. (1) If the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, an organ of state exercising powers in respect of the financial system may not, without the approval of the Minister, acting in consultation with the Cabinet member responsible for that organ of state, exercise its powers in a way that is inconsistent with a decision or steps taken by the Governor or the Reserve Bank in terms of this Part, in order to manage that systemic event or the effects of that systemic event. 10

(2) Any unresolved issues between the Minister and that Cabinet member must be referred to Cabinet. 15

(3) Subsection (1) does not apply to the financial sector regulators, and such financial sector regulators must, in the event of an actual or imminent systemic event, exercise their powers in accordance with the provisions of this Part applicable to them.

Part 3 20

Financial Stability Oversight Committee

Establishment of Financial Stability Oversight Committee

20. (1) A committee called the Financial Stability Oversight Committee is hereby established.

- (2) The primary objectives of the Financial Stability Oversight Committee are to— 25
- (a) support the Reserve Bank when the Reserve Bank performs its functions in relation to financial stability; and
 - (b) facilitate co-operation and collaboration between, and co-ordination of action among, the financial sector regulators and the Reserve Bank in respect of matters relating to financial stability. 30

Functions of Financial Stability Oversight Committee

- 21.** The Financial Stability Oversight Committee has the following functions:
- (a) To serve as a forum for representatives of the Reserve Bank and of each of the financial sector regulators to be informed, and to exchange views, about the activities of the Reserve Bank and the financial sector regulators regarding financial stability; 35
 - (b) to make recommendations to the Governor on the designation of systemically important financial institutions;
 - (c) to advise the Minister and the Reserve Bank on— 40
 - (i) steps to be taken to promote, protect or maintain, or to manage or prevent risks to, financial stability; and
 - (ii) matters relating to crisis management and prevention;
 - (d) to make recommendations to other organs of state regarding steps that are appropriate for them to take to assist in promoting, protecting or maintaining, or managing or preventing risks to financial stability; and 45
 - (e) any other function conferred on it in terms of applicable legislation.

Membership

22. (1) The Financial Stability Oversight Committee consists of the following members:

- (a) The Governor; 50
- (b) the Deputy Governor responsible for financial stability matters;
- (c) the Chief Executive Officer;
- (d) the Commissioner;

- (e) the Chief Executive Officer of the National Credit Regulator;
- (f) the Director-General;
- (g) the Director of the Financial Intelligence Centre; and
- (h) any additional persons appointed by the Governor.

(2) A member of the Committee referred to in terms of subsection (1)(h) holds office 5
for the period, and on the terms, determined by the Governor.

Administrative support by Reserve Bank

23. (1) The Reserve Bank must provide administrative support, and other resources, including financial resources, for the effective functioning of the Financial Stability Oversight Committee. 10

(2) The Reserve Bank must ensure that minutes of each meeting of the Committee are kept, in a manner determined by the Governor.

Meetings and procedure

24. (1) The Financial Stability Oversight Committee must meet at least twice every year. 15

(2) The Governor—

(a) may convene a meeting of the Financial Stability Oversight Committee at any time; and

(b) must convene a meeting if requested to do so by the Chief Executive Officer, the Commissioner or the Chief Executive Officer of the National Credit Regulator. 20

(3) (a) The Governor chairs a meeting of the Financial Stability Oversight Committee at which the Governor is present.

(b) If the Governor is not present at a meeting, the Deputy Governor responsible for financial stability matters chairs the meeting. 25

(4) (a) A member of the Financial Stability Oversight Committee who is unable to attend a meeting may, after notice to the other members and with the concurrence of the person who will chair the meeting, nominate an alternate to attend that meeting in the member's absence.

(b) An alternate referred to in paragraph (a) has, for that meeting, the same rights as the member of the Financial Stability Oversight Committee. 30

(5) The Financial Stability Oversight Committee may determine its procedures, including quorum requirements.

(6) The person chairing a meeting may invite any person, including a representative of an organ of state or a financial institution, to attend the meeting. 35

(7) The Committee may establish separate working groups or subcommittees.

(8) In the event of an equality of votes on a matter that may be voted upon by the Committee, the person chairing a meeting has a casting vote in addition to a deliberative vote.

Part 4 40

Financial Sector Contingency Forum

Financial Sector Contingency Forum

25. (1) The Governor must establish a forum, called the Financial Sector Contingency Forum.

(2) The primary objective of the Financial Sector Contingency Forum is to assist the Financial Stability Oversight Committee with— 45

(a) the identification of potential risk that systemic events will occur; and

(b) the co-ordination of appropriate plans, mechanisms and structures to mitigate those risks.

(3) The Financial Sector Contingency Forum is composed of at least eight members, including— 50

(a) a Deputy Governor designated by the Governor, who is the Chairperson;

(b) representatives of each of the financial sector regulators;

(c) representatives of other organs of state, as the Chairperson may determine; and 55

- (d) representatives of financial sector industry bodies and any other relevant bodies, as the Chairperson may determine.
- (4) The Financial Sector Contingency Forum must meet at least twice a year.
- (5) The Financial Sector Contingency Forum must be convened and must function in accordance with procedures determined by the Governor. 5
- (6) The Reserve Bank must provide administrative support, and other resources, including financial resources, for the effective functioning of the Financial Sector Contingency Forum.

Part 5

Roles of financial sector regulators and other organs of state in maintaining financial stability 10

Co-operation among Reserve Bank and financial sector regulators in relation to financial stability

26. (1) The financial sector regulators must—
- (a) co-operate and collaborate with the Reserve Bank, and with each other, to maintain, protect and enhance financial stability; 15
- (b) provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee to maintain or restore financial stability, as the Reserve Bank or the Financial Stability Oversight Committee may reasonably request; 20
- (c) promptly report to the Reserve Bank any matter of which the financial sector regulator becomes aware of that poses or may pose a risk to financial stability; and
- (d) gather information from, or about, financial institutions that concerns financial stability. 25
- (2) The Reserve Bank must, when exercising its powers in terms of this Chapter, take into account—
- (a) any views expressed and any information reported by the financial sector regulators; and
- (b) any recommendations of the Financial Stability Oversight Committee. 30

Memoranda of understanding relating to financial stability

27. (1) The financial sector regulators and the Reserve Bank must, not later than six months after this Chapter takes effect, enter into one or more memoranda of understanding with respect to how they must co-operate and collaborate with, and provide assistance to, each other and otherwise perform their roles and comply with their duties relating to financial stability. 35
- (2) The financial sector regulators and the Reserve Bank must review and update the memoranda of understanding as appropriate, but at least once every three years.
- (3) A copy of a memorandum of understanding must, without delay after being entered into or updated, be provided to the Minister and the Cabinet member responsible for consumer credit matters. 40
- (4) The validity of any action taken by a financial sector regulator in terms of a financial sector law, the National Credit Act or the Financial Intelligence Centre Act is not affected by a failure to comply with this section or a memorandum of understanding contemplated in this section. 45

Roles of other organs of state in relation to financial stability

28. An organ of state, other than a financial sector regulator, must—
- (a) in performing its functions, have regard to the implications of its activities on financial stability; and
- (b) provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee so as to maintain and restore financial stability, as the Bank or the Committee may reasonably request. 50

Part 6***Systemically important financial institutions*****Designation of systemically important financial institutions**

- 29.** (1) (a) The Governor may, by written notice to a financial institution, designate the institution as a systemically important financial institution. 5
- (b) The power of the Governor in terms of paragraph (a) may not be delegated.
- (2) Before designating a financial institution in terms of subsection (1) as a systemically important financial institution, the Governor must—
- (a) give the Financial Stability Oversight Committee, and thereafter the financial institution, notice of the proposed designation and a statement of the reasons why the designation is proposed; and 10
- (b) invite the financial institution to make submissions on the matter, and give it a reasonable period to do so.
- (3) In deciding whether to designate a financial institution in terms of subsection (1), the Governor must take into account at least the following: 15
- (a) The size of the financial institution;
- (b) the complexity of the financial institution and its business affairs;
- (c) the interconnectedness of the institution with other financial institutions within or outside the Republic;
- (d) whether there are readily available substitutes for the financial products and financial services or market infrastructure that the financial institution provides; 20
- (e) recommendations of the Financial Stability Oversight Committee;
- (f) submissions made by or for the institution; and
- (g) any other matters that may be prescribed by Regulation. 25
- (4) (a) If the Governor has determined in terms of section 14(4) that a systemic event has occurred or is imminent, the Governor may designate a financial institution as a systemically important financial institution without complying, or complying fully, with subsection (2) or (3).
- (b) If the Governor acts in terms of paragraph (a) and designates the financial institution without complying, or complying fully, with subsection (2) or (3), the financial institution may make submissions on the designation to the Governor within 30 days after being notified of the designation. 30
- (c) The Governor must consider any submissions in terms of paragraph (b), and by notice to the financial institution, either confirm or revoke the designation. 35
- (5) The designation of a financial institution as a systemically important financial institution does not imply, or entitle the financial institution to, a guarantee or any form of credit or other support from any organ of state.
- (6) The Governor may, in writing, and subject to due process, revoke a designation made in terms of this section. 40
- (7) A designation, and the revocation of a designation, in terms of this section must be published.

Prudential standards in respect of systemically important financial institutions

- 30.** (1) To mitigate the risks that systemic events may occur, the Reserve Bank may, after consulting the Prudential Authority, direct the Prudential Authority to impose, either through directives or prudential standards, requirements applicable to one or more specific systemically important financial institutions or to such institutions generally in relation to any of the following matters: 45
- (a) Solvency measures and capital requirements, which may include requirements in relation to counter-cyclical capital buffers; 50
- (b) leverage ratios;
- (c) liquidity;
- (d) organisational structures;
- (e) risk management arrangements, including guarantee arrangements; 55
- (f) sectoral and geographical exposures;
- (g) required statistical returns;
- (h) recovery and resolution planning; and

- (i) any other matter in respect of which a prudential standard may be made that is prescribed by Regulations made on the recommendation of the Governor.
- (2) The Prudential Authority may issue directives or make prudential standards as contemplated in subsection (1).
- (3) The Prudential Authority must notify the Reserve Bank and the Financial Stability Oversight Committee of any steps taken to enforce a directive issued or prudential standard made in terms of subsection (2), and the effect of those steps. 5

Winding up and similar steps in respect of systemically important financial institutions

- 31.** (1) None of the following steps may be taken in relation to a systemically important financial institution or a systemically important financial institution within a financial conglomerate without the approval of the Reserve Bank: 10
- (a) Suspending, varying, amending or cancelling a licence issued to that financial institution;
 - (b) adopting a special resolution to wind up the financial institution voluntarily; 15
 - (c) applying to a court for an order that the financial institution be wound up;
 - (d) appointing an administrator, trustee or curator for the financial institution;
 - (e) placing the financial institution under business rescue or adopting of a business rescue plan for the financial institution;
 - (f) entering into an agreement for amalgamation or merger of the financial institution with a company; and 20
 - (g) entering into a compromise arrangement with creditors of the financial institution.
- (2) A step referred to in subsection (1) that is taken without the Reserve Bank's approval is of no legal force. 25

CHAPTER 3

PRUDENTIAL AUTHORITY

Part 1

Establishment, objectives and functions

Establishment 30

- 32.** (1) An authority called the Prudential Authority is hereby established.
- (2) The Prudential Authority is a juristic person operating within the administration of the Reserve Bank.
- (3) The Prudential Authority is not a public entity in terms of the Public Finance Management Act. 35

Objective

- 33.** The objective of the Prudential Authority is to—
- (a) promote and enhance the safety and soundness of financial institutions that provide financial products and securities services;
 - (b) promote and enhance the safety and soundness of market infrastructures; 40
 - (c) protect financial customers against the risk that those financial institutions may fail to meet their obligations; and
 - (d) assist in maintaining financial stability.

Functions

- 34.** (1) In order to achieve its objective, the Prudential Authority must— 45
- (a) regulate and supervise, in accordance with the financial sector laws—
 - (i) financial institutions that provide financial products or securities services; and
 - (ii) market infrastructures;
 - (b) co-operate with and assist the Reserve Bank, the Financial Stability Oversight Committee, the Financial Sector Conduct Authority, the National Credit 50

- Regulator and the Financial Intelligence Centre, as required in terms of this Act;
- (c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest;
 - (d) support sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission; 5
 - (e) support financial inclusion;
 - (f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions; and 10
 - (g) conduct and publish research relevant to its objective.
- (2) The Prudential Authority must also perform any other function conferred on it in terms of any other provision of this Act or other legislation.
- (3) The Prudential Authority may do anything else reasonably necessary to achieve its objective, including— 15
- (a) co-operating with its counterparts in other jurisdictions; and
 - (b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.
- (4) When performing its functions, the Prudential Authority must— 20
- (a) take into account the need for a primarily pre-emptive, outcomes focused and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective; and
 - (b) to the extent practicable, have regard to international regulatory and supervisory standards set by bodies referred to in subsection (3)(b), and 25 circumstances in the Republic.
- (5) The Prudential Authority must perform its functions without fear, favour or prejudice.

Part 2

Governance 30

Overall governance objective

35. The Prudential Authority must manage its affairs in an efficient and effective way, and establish and implement appropriate and effective governance systems and processes, having regard to, among other things, internationally accepted standards and practices in these matters. 35

Appointment of Chief Executive Officer

- 36.** (1) The Governor must, with the concurrence of the Minister, appoint a Deputy Governor who has appropriate expertise in the financial sector, other than the Deputy Governor responsible for financial stability, as the Chief Executive Officer of the Prudential Authority. 40
- (2) When appointing a Deputy Governor as the Chief Executive Officer, that Deputy Governor and the Governor must agree, in writing, on—
- (a) the performance measures that must be used to assess the Deputy Governor's performance as the Chief Executive Officer; and
 - (b) the level of performance to be achieved against those performance measures. 45
- (3) A person may not be appointed or hold office as the Chief Executive Officer if the person—
- (a) is a disqualified person; or
 - (b) is not ordinarily resident in the Republic.

Role of Chief Executive Officer 50

- 37.** (1) The Chief Executive Officer—
- (a) is responsible for the day-to-day management and administration of the Prudential Authority; and

- (b) subject to section 42(b), must perform the functions of the Prudential Authority, including exercising the powers and carrying out the duties associated with those functions.
- (2) When acting in terms of subsection (1), the Chief Executive Officer must implement the policies and strategies adopted by the Prudential Committee. 5

Term of office of Chief Executive Officer

- 38.** (1) A person appointed in terms of section 36 as the Chief Executive Officer—
- (a) holds office for a term no longer than five years, as the Governor may determine;
 - (b) is, at the expiry of that term, eligible for re-appointment for one further term; 10
 - and
 - (c) must vacate office before the expiry of a term of office if that person—
 - (i) resigns as Chief Executive Officer, by giving at least three months written notice to the Governor, or a shorter period that the Governor may accept; 15
 - (ii) ceases to hold office as Deputy Governor; or
 - (iii) is removed from office as Chief Executive Officer.
- (2) The Governor must, at least three months before the end of the Chief Executive Officer's first term of office, inform the Chief Executive Officer whether the Governor proposes to re-appoint the person as Chief Executive Officer. 20

Removal of Chief Executive Officer

- 39.** (1) The Governor must, subject to due process, remove the Chief Executive Officer from office if the Chief Executive Officer becomes a disqualified person.
- (2) The Governor may, subject to due process and with the concurrence of the Minister, remove the Chief Executive Officer from office if an independent inquiry, 25 established by the Governor with the concurrence of the Minister, has found that the Chief Executive Officer—
- (a) is unable to perform the duties of office for health or other reasons;
 - (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 36(2); 30
 - (c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or
 - (d) has acted in a way that is inconsistent with continuing to hold the office.
- (3) If an independent inquiry has been established in terms of subsection (2), the Governor may suspend the Chief Executive Officer from office pending a decision on 35 the removal of the Chief Executive Officer.
- (4) Without limiting subsection (2)(c), the Chief Executive Officer must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Prudential Committee without the leave of the Prudential Committee. 40
- (5) If the Chief Executive Officer is removed from office in terms of subsection (2), the Minister must submit the report and findings of the independent inquiry to the National Assembly.

Acting Chief Executive Officer

- 40.** The Governor may appoint a senior staff member of the Prudential Authority or a Deputy Governor to act as Chief Executive Officer when the Chief Executive Officer is absent from office, suspended or is otherwise unable to perform the functions of office. 45

Establishment of Prudential Committee

- 41.** (1) A committee called the Prudential Committee is hereby established for the Prudential Authority. 50
- (2) The Prudential Committee consists of the Governor, the Chief Executive Officer and the other Deputy Governors.

Role of Prudential Committee

- 42.** The Prudential Committee must—
- (a) generally oversee the management and administration of the Prudential Authority to ensure that it is efficient and effective; and
 - (b) act for the Prudential Authority in the following matters:
 - (i) Authorising the Chief Executive Officer to sign, on behalf of the Prudential Authority, a section 27 or section 77 memorandum of understanding and any amendment to such a memorandum; 5
 - (ii) delegating powers of the Prudential Authority to the Financial Sector Conduct Authority in terms of a section 77 memorandum of understanding; 10
 - (iii) adopting the regulatory strategy of the Prudential Authority, and any amendment to the strategy;
 - (iv) making prudential standards or joint standards, and any amendments to those standards; 15
 - (v) adopting the administrative action procedures of the Prudential Authority, and any amendment to those procedures;
 - (vi) appointing members of subcommittees of the Prudential Authority required or permitted by this Act or a specific financial sector law, and giving directions regarding the conduct of the work of any subcommittee; 20
 - (vii) making regulatory instruments under financial sector laws for which it is the responsible authority;
 - (viii) making determinations of fees in terms of a financial sector law; and
 - (ix) any other matter assigned in terms of a financial sector law to the Prudential Committee. 25

Meetings of Prudential Committee

- 43.** (1) (a) The Prudential Committee must meet as often as necessary for the performance of its functions.
- (b) An audio or audio-visual conference among a majority of the members of the Prudential Committee, which enables each participating member to hear and be heard by each of the other participating members, must be regarded as a meeting of the Prudential Committee, and each participating member must be regarded as being present at such a meeting. 30
- (2) Meetings of the Prudential Committee are convened at times and, except where subsection (1)(b) applies, at places determined by the Governor. 35
- (3) A quorum for a meeting of the Prudential Committee is a majority of its members.
- (4) (a) The Governor chairs meetings of the Prudential Committee at which the Governor is present.
- (b) If the Governor is not present at a meeting, a Deputy Governor nominated by the Governor or selected in accordance with a procedure determined by the Governor, chairs the meeting. 40
- (5) The Governor or the Deputy Governor chairing a meeting of the Prudential Committee may invite or allow any other person, including a representative of the Financial Sector Conduct Authority or the National Credit Regulator, to attend a meeting of the Prudential Committee, but a person who is invited has no right to vote at the meeting. 45
- (6) The members may regulate proceedings at Prudential Committee meetings as they consider appropriate.
- (7) The Chief Executive Officer must ensure that minutes of each meeting of the Prudential Committee are kept in a manner approved by the Chief Executive Officer. 50

Decisions of Prudential Committee

- 44.** (1) (a) A proposal before a meeting of the Prudential Committee becomes a decision of the said committee if a majority of the members present, or regarded as being present, and who may participate in the consideration of the proposal, vote for the proposal. 55
- (b) In the event of an equality of votes on a proposal, the person chairing the meeting has a casting vote in addition to a deliberative vote.

- (2) The Prudential Committee may, in accordance with procedures determined by the said committee, make a decision on a proposal outside a meeting of the committee.
- (3) A decision of the Prudential Committee is not invalid merely because—
- (a) there was a vacancy in the office of a member when the decision was taken; or
 - (b) a person who was not a member participated in the decision, as long as such person did not vote.

Governance and other subcommittees

- 45.** (1) The Prudential Committee must establish—
- (a) a subcommittee to review, monitor and advise the Prudential Committee on the risks faced by the Prudential Authority and plans for managing those risks; and
 - (b) a subcommittee to advise the Prudential Committee on measures that must be taken to ensure that the Prudential Authority complies with its obligations in relation to auditing and financial management.
- (2) The Prudential Committee may establish one or more other subcommittees with functions that the Prudential Authority Oversight Committee may determine.
- (3) (a) The Prudential Committee determines the membership of a subcommittee established in terms of this section.
- (b) The majority of the members of a subcommittee established in terms of subsection (1) may not be staff members of the Prudential Authority or the Reserve Bank.
- (c) A subcommittee established in terms of subsection (2) may include persons who are neither members of the Prudential Committee nor staff members of the Prudential Authority.
- (d) A disqualified person may not be a member of a subcommittee established in terms of this section.
- (4) The Prudential Committee may, instead of establishing a subcommittee referred to in subsection (1), assign the subcommittee’s function to a committee of the Reserve Bank performing a similar function.
- (5) A member of a subcommittee established in terms of this section, including a member who is not in the service of an organ of state, holds office for the period, and on the terms and conditions, and terms regarding remuneration, as determined by the Prudential Committee.
- (6) A subcommittee established in terms of subsection (1) must be chaired by a person who is not the Governor, a Deputy Governor, the Chief Executive Officer or a staff member of the Prudential Authority.
- (7) A subcommittee established in terms of this section determines its procedures subject to any directions by the Prudential Committee.
- (8) The Chief Executive Officer must ensure that minutes of each meeting of each subcommittee established in terms of this section are kept in a manner determined by the Prudential Committee.

Duties of members of Prudential Committee and members of subcommittees

- 46.** (1) A member of the Prudential Committee or of a subcommittee established in terms of section 45(1) must—
- (a) act honestly in all matters relating to the Prudential Authority; and
 - (b) perform the functions of office as a member—
 - (i) in good faith;
 - (ii) for a proper purpose; and
 - (iii) with the degree of care and diligence that a reasonable person in the member’s position would exercise.
- (2) A person who is or has been a member of the Prudential Committee or of a subcommittee established in terms of section 45(1) may not use that position or any information obtained as such a member to—
- (a) improperly benefit himself or herself or another person;
 - (b) cause a detriment to the Prudential Authority’s ability to perform its functions; or
 - (c) cause a detriment to another person.
- (3) For the purposes of this section, “benefit” and “detriment” are not limited to financial benefit or detriment.

Regulatory strategies

47. (1) The Prudential Committee must, within six months after the date on which this Chapter takes effect, adopt a regulatory strategy for the Prudential Authority to give general guidance to the Prudential Authority in the achievement of its objective and the performance of its regulatory and supervisory functions. 5
- (2) A regulatory strategy must—
- (a) state—
 - (i) the regulatory and supervisory priorities for the Prudential Authority for the next three years; and
 - (ii) the intended key outcomes of the strategy; 10
 - (b) set guiding principles for the Prudential Authority on—
 - (i) how it should perform its regulatory and supervisory functions;
 - (ii) the matters to which it should have regard to in performing those functions;
 - (iii) its approach to administrative actions; and 15
 - (iv) how it should give effect to the requirements applicable to it with respect to—
 - (aa) transparency;
 - (bb) openness to consultation; and
 - (cc) accountability; and 20
 - (c) be aimed at consistency with relevant international principles.
- (3) The Prudential Committee must review the regulatory strategy at least annually, and may amend it at any time.
- (4) (a) Before the Prudential Committee adopts a regulatory strategy or an amendment to a regulatory strategy, it must— 25
- (i) provide a copy of the draft of the strategy or amendment to the Minister, the Financial Sector Conduct Authority and the National Credit Regulator; and
 - (ii) invite comments from the Minister, the Financial Sector Conduct Authority and the National Credit Regulator, on the draft, to be made within a period specified by the Committee. 30
- (b) The period referred to in paragraph (a)(ii) must be at least one month.
- (5) In deciding whether to adopt a regulatory strategy or an amendment of a regulatory strategy, the Prudential Authority must have regard to all comments made on the draft.
- (6) The Prudential Committee must seek to minimise, to the extent that is practicable and appropriate, inconsistencies between the Prudential Authority's regulatory strategy and the Financial Sector Conduct Authority's regulatory strategy. 35
- (7) The Chief Executive Officer must—
- (a) provide a copy of the Prudential Authority's regulatory strategy, and each amendment, as adopted, to the Minister, the Financial Sector Conduct Authority and the National Credit Regulator; and 40
 - (b) publish the strategy and each amendment.

Delegations

48. (1) The Prudential Committee may, in writing—
- (a) delegate any power or duty referred to in section 42(b)(ix) to the Chief Executive Officer or another staff member of the Prudential Authority; and 45
 - (b) at any time, amend a delegation made in terms of paragraph (a).
- (2) The Chief Executive Officer may, in writing—
- (a) delegate to a staff member of the Prudential Authority or an official or staff member of the Reserve Bank any power or duty assigned or delegated to the Chief Executive Officer in terms of a financial sector law, except the power to delegate contained in this subsection; 50
 - (b) delegate to an administrative action committee the power to impose administrative penalties that are specified in the delegation, if the Prudential Authority establishes an administrative action committee; and 55
 - (c) at any time amend a delegation made in terms of paragraph (a) or (b).
- (3) A delegation in terms of subsection (1)(a) or (2)(a) may be to a specific person or to a person holding a specific position.
- (4) Any power or duty of the Prudential Authority may be delegated to the Financial Sector Conduct Authority by a section 77 memorandum of understanding. 60

- (5) A delegation in terms of this section—
- (a) is subject to the limitations and conditions specified in the delegation;
 - (b) does not divest the Prudential Authority, the Prudential Committee or the Chief Executive Officer of responsibility in respect of the delegated power or duty; and
 - (c) may be revoked at any time, subject to any rights that may have accrued.
- (6) Anything done by a delegate in accordance with a delegation in terms of this section must be regarded as having been done by the Prudential Authority.

Disclosure of interests

- 49.** (1) A member of the Prudential Committee or of a subcommittee established in terms of section 45(1) must disclose, at a meeting of the Prudential Committee or subcommittee, as the case may be, or in writing to each of the other members of that committee, any interest in any matter that is or may be considered by the relevant committee that—
- (a) the member has; or
 - (b) a person who is a related party to the member has.
- (2) A disclosure referred to in subsection (1) must be given as soon as practicable after the member becomes aware of the interest.
- (3) A member who has, or who has a related party who has, an interest that is required to be disclosed in terms of subsection (1), may not participate in the consideration of, or decision on, a matter to which the interest relates unless—
- (a) the member has disclosed the interest as required by subsection (1); and
 - (b) the other members of that committee have decided that the interest cannot be seen as affecting that member's proper execution of that member's functions in relation to the matter.
- (4) (a) Each member of the Prudential Authority's staff and each person to whom a power of the Prudential Authority has been delegated must make timely, proper and adequate disclosure of their interests, including the interests of a related party, that could reasonably be seen as interests that may affect them in the proper execution of their functions of office or the delegated power.
- (b) The Chief Executive Officer must ensure that paragraph (a) is complied with.
- (5) For the purposes of this section, it does not matter—
- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
 - (b) when the interest was acquired.
- (6) For the purposes of this section, a person does not have to disclose—
- (a) the fact that that person, or a person who is a related party to that person, is an official or employee of the Reserve Bank; or
 - (b) an interest that is not material.
- (7) The Chief Executive Officer must maintain a register of all disclosures made in terms of this section and of all decisions made in terms of this section.

Part 3

Staff, resources and financial management

Staff and resources

- 50.** (1) The Prudential Authority must determine the personnel, accommodation, facilities, use of assets, resources and other services that it requires to function effectively.
- (2) The Prudential Authority may—
- (a) enter into secondment arrangements in respect of persons;
 - (b) engage persons on contract otherwise than as employees;
 - (c) enter into contracts;
 - (d) acquire or dispose of property;
 - (e) insure itself against any loss, damage, risk or liability that it may suffer or incur; and
 - (f) do anything else necessary for the performance of its functions.
- (3) The Prudential Authority may not enter into a secondment arrangement in respect of a person, or engage persons on contract, unless the person and the Prudential Authority have agreed in writing on—

- (a) the performance measures that will be used to assess that person's performance; and
- (b) the level of performance that must be achieved against those measures.

Resources provided by Reserve Bank

51. (1) The Reserve Bank must provide the Prudential Authority with the personnel, accommodation, facilities, use of assets, resources and other services determined in accordance with section 50(1) and as agreed to by the Reserve Bank. 5

(2) The Reserve Bank must second the personnel that it provides in terms of subsection (1) to the Prudential Authority.

Duties of staff members 10

52. (1) A person who is or has been a staff member of the Prudential Authority may not use that position or any information obtained as a staff member to—

- (a) improperly benefit himself or herself or another person;
- (b) cause a detriment to the Prudential Authority's ability to perform its functions; or 15
- (c) cause a detriment to another person.

(2) For the purposes of this section, "benefit" and "detriment" are not limited to financial benefit or detriment.

Financial management duties of Chief Executive Officer

53. The Chief Executive Officer must— 20

- (a) recommend to the Prudential Committee fees for prudential supervision by, and other services provided by, the Prudential Authority in terms of this Act and other financial sector laws, and levies in terms of the Levies Act;
- (b) exercise the utmost care to protect the assets and records of the Prudential Authority; 25
- (c) act with fidelity, honesty, integrity and in the best interests of the Authority in managing the financial affairs of the Prudential Authority;
- (d) on request, disclose to the Minister or the Governor all material facts relating to the affairs of the Prudential Authority, including those reasonably discoverable, that in any way may influence decisions or actions of the Minister or the Governor; 30
- (e) seek, within the Chief Executive Officer's sphere of influence, to prevent any prejudice to the financial interests of the Republic;
- (f) ensure that the Prudential Authority has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management; 35
 - (ii) an effective, efficient and transparent system of internal audit; and
 - (iii) a procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective;
- (g) take appropriate and cost-effective steps to— 40
 - (i) collect revenue due to the Prudential Authority;
 - (ii) prevent losses resulting from criminal conduct and expenditure that is not in accordance with the Prudential Authority's operational policies; and
 - (iii) manage available working capital efficiently and economically; 45
- (h) manage and safe-guard the assets of the Authority, and manage the revenue, expenditure and liabilities of the Authority;
- (i) establish systems and processes to ensure that effective and appropriate disciplinary steps are taken against any staff member of the Authority who—
 - (i) contravenes a law relevant to the performance of the Authority's functions; or 50
 - (ii) engages in conduct that undermines the financial management and internal control systems of the Authority; and
- (j) generally ensure that the Authority complies with its legal obligations.

Information by Chief Executive Officer

- 54.** (1) The Chief Executive Officer must provide the Prudential Committee and the National Treasury with the information, returns, documents, explanations and motivations that may be prescribed by Regulation for this section or that the Prudential Committee or the National Treasury may request. 5
- (2) Subsection (1) does not require or permit the provision of information about persons identifiable from the information.

Annual reports and financial statements

- 55.** (1) The Chief Executive Officer must—
- (a) ensure that full and proper records of the financial affairs of the Prudential Authority are kept and maintained; 10
 - (b) prepare financial statements for the Prudential Authority for each financial year in accordance with internationally recognised financial reporting standards and practices;
 - (c) submit those financial statements within three months after the end of each financial year to— 15
 - (i) the Prudential Authority’s auditors for auditing; and
 - (ii) the National Treasury; and
 - (d) submit to the Minister within five months after the end of each financial year, for tabling in the National Assembly— 20
 - (i) an annual report on the activities of the Prudential Authority during that financial year;
 - (ii) the financial statements for that financial year, after the statements have been audited; and
 - (iii) the report of the auditors on the financial statements. 25
- (2) The annual report and financial statements of the Prudential Authority in respect of a financial year must—
- (a) fairly present the state of affairs of the Prudential Authority, its business, its financial results, its performance against its objective and its financial position as at the end of the financial year; and 30
 - (b) include particulars of any other matters that may be prescribed by Regulation for this section.

CHAPTER 4

FINANCIAL SECTOR CONDUCT AUTHORITY

Part 1 35

Establishment, objectives and functions

Establishment

- 56.** (1) The Financial Sector Conduct Authority is hereby established, as a juristic person. 40
- (2) The Authority is a national public entity for the purposes of the Public Finance Management Act and, despite section 49(2) of the Public Finance Management Act, the Commissioner is the accounting authority of the Financial Sector Conduct Authority for the purposes of that Act.

Objective

- 57.** The objective of the Financial Sector Conduct Authority is to— 45
- (a) enhance and support the efficiency and integrity of the financial system; and
 - (b) protect financial customers by—
 - (i) promoting fair treatment of financial customers by financial institutions; and
 - (ii) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy 50

- and the ability of financial customers and potential financial customers to make sound financial decisions; and
- (c) assist in maintaining financial stability.

Functions

- 58.** (1) In order to achieve its objective, the Financial Sector Conduct Authority must— 5
- (a) regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions;
 - (b) co-operate with, and assist, the Reserve Bank, the Financial Stability Oversight Committee, the Prudential Authority, the National Credit Regulator, and the Financial Intelligence Centre, as required in terms of this Act; 10
 - (c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest;
 - (d) promote, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority, sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission; 15
 - (e) promote financial inclusion;
 - (f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions; 20
 - (g) administer the collection of levies and the distribution of amounts received in respect of levies;
 - (h) conduct and publish research relevant to its objective;
 - (i) monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers; and 25
 - (j) formulate and implement strategies and programs for financial education for the general public. 30
- (2) The Financial Sector Conduct Authority may not regulate and supervise credit agreements except with the concurrence of the National Credit Regulator, but may regulate and supervise financial services provided in relation to a credit agreement.
- (3) The Financial Sector Conduct Authority must also perform any other function conferred on it in terms of any other provision of this Act or other legislation. 35
- (4) The Financial Sector Conduct Authority may do anything else reasonably necessary to achieve its objective, including—
- (a) co-operating with its counterparts in other jurisdictions; and
 - (b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies. 40
- (5) When performing its functions, the Financial Sector Conduct Authority must—
- (a) take into account the National Credit Act and regulatory requirements for financial institutions that are authorised and regulated under that Act;
 - (b) take into account the need for a primarily pre-emptive, outcomes focused and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective; and 45
 - (c) to the extent practicable, have regard to international regulatory and supervisory standards set by bodies referred to in subsection (4)(b), and circumstances prevalent in the Republic.
- (6) The Financial Sector Conduct Authority must perform its functions without fear, favour or prejudice. 50

Part 2

Governance

Overall governance objective

- 59.** The Financial Sector Conduct Authority must manage its affairs in an efficient and effective way, and establish and implement appropriate and effective governance 55

systems and processes, having regard, among other things, to internationally accepted standards in these matters.

Establishment and role of Executive Committee

- 60.** (1) A committee called the Executive Committee is hereby established for the Financial Sector Conduct Authority. 5
- (2) The Executive Committee consists of the Commissioner and the Deputy Commissioners.
- (3) The Commissioner is the chairperson of the Executive Committee.
- (4) The Executive Committee must—
- (a) generally oversee the management and administration of the Financial Sector Conduct Authority to ensure that it is efficient and effective; and 10
 - (b) act for the Financial Sector Conduct Authority in the following matters:
 - (i) Authorising the Commissioner to sign, on behalf of the Financial Sector Conduct Authority, a section 27 or section 77 memorandum of understanding and any amendments to such a memorandum; 15
 - (ii) delegating powers of the Financial Sector Conduct Authority to the Prudential Authority in terms of a section 77 memorandum of understanding;
 - (iii) making conduct standards or joint standards, and any amendments to those standards; 20
 - (iv) adopting the regulatory strategy of the Financial Sector Conduct Authority, and any amendments to the strategy;
 - (v) adopting the administrative action procedures of the Financial Sector Conduct Authority, and any amendments to those procedures;
 - (vi) appointing members of subcommittees of the Financial Sector Conduct Authority required or permitted by a law, and giving directions regarding the conduct of the work of any subcommittee; 25
 - (vii) making determinations of fees in terms of a financial sector law;
 - (viii) making regulatory instruments in terms of specific financial sector laws for which it is the responsible authority; and 30
 - (ix) any other matter assigned in terms of a financial sector law to the Executive Committee.

Commissioner and Deputy Commissioners

- 61.** (1) The Minister must appoint a person who has appropriate expertise in the financial sector as the Commissioner of the Financial Sector Conduct Authority. 35
- (2) The Minister must appoint at least two, but no more than four, persons who have appropriate expertise in the financial sector as Deputy Commissioners.
- (3) The Commissioner and Deputy Commissioners serve in a full-time executive capacity.
- (4) A process for the selection of persons for appointment as Commissioner or Deputy Commissioner may be prescribed by Regulation. 40
- (5) (a) The Commissioner may designate a Deputy Commissioner to act as Commissioner when the Commissioner is absent from office.
- (b) If the Commissioner is unable to designate an acting Commissioner in terms of paragraph (a), or if the office of Commissioner is vacant, the Minister may designate a Deputy Commissioner to act as Commissioner during the Commissioner's absence or pending the appointment of a Commissioner. 45
- (6) A person may not be appointed to, or hold office as, Commissioner or Deputy Commissioner if the person—
- (a) is a disqualified person; or 50
 - (b) is not ordinarily resident in the Republic.
- (7) When appointing the Commissioner or Deputy Commissioner, the Minister and the person appointed must agree, in writing, on—
- (a) the performance measures that must be used to assess the person's performance; and 55
 - (b) the level of performance to be achieved against those measures.

Roles of Commissioner and Deputy Commissioners

- 62.** (1) The Commissioner—
- (a) is responsible for the day-to-day management and administration of the Financial Sector Conduct Authority; and
 - (b) subject to section 60(4)(b), must perform the functions of the Financial Sector Conduct Authority, including exercising the powers and carrying out the duties associated with those functions. 5
- (2) The Executive Committee may assign specific responsibilities to a Deputy Commissioner.
- (3) When acting in terms of subsection (1) or (2), the Commissioner or a Deputy Commissioner must implement the policies and strategies adopted by the Executive Committee. 10

Terms of office

- 63.** (1) A person appointed as Commissioner or Deputy Commissioner—
- (a) holds office for a term determined by the Minister, which term may not be longer than five years; 15
 - (b) is, at the expiry of that term of office, eligible for re-appointment for one further term; and
 - (c) must vacate office before the expiry of a term of office if that person—
 - (i) resigns by giving at least three months written notice to the Minister, or a shorter period that the Minister may accept; or 20
 - (ii) is removed from office as Commissioner or Deputy Commissioner, as the case may be.
- (2) The Minister must, at least three months before the end of a person's first term of office as Commissioner or Deputy Commissioner, inform the person whether or not the Minister proposes to re-appoint that person as Commissioner or Deputy Commissioner, as the case may be. 25

Service conditions

- 64.** (1) Subject to this Act, the Commissioner and the Deputy Commissioners hold office on the terms and conditions determined in writing by the Minister. 30
- (2) The terms and conditions of office of the Commissioner or a Deputy Commissioner may not be reduced during that person's term of office.

Removal from office

- 65.** (1) The Minister must, subject to due process, remove the Commissioner from office if the Commissioner becomes a disqualified person. 35
- (2) The Commissioner must, subject to due process and with the concurrence of the Minister, remove a Deputy Commissioner from office if the Deputy Commissioner becomes a disqualified person.
- (3) The Minister may remove the Commissioner from office if an independent inquiry established by the Minister has found that the Commissioner— 40
- (a) is unable to perform the duties of office for health or other reasons;
 - (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 61(7);
 - (c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or 45
 - (d) has acted in a way that is inconsistent with continuing to hold the office.
- (4) If an independent inquiry has been established in terms of subsection (3), the Minister may suspend the Commissioner from office pending a decision on that person's removal from office.
- (5) The Commissioner may, with the concurrence of the Minister, remove a Deputy Commissioner from office if an independent inquiry established by the Commissioner, with the concurrence of the Minister, has found that the Deputy Commissioner— 50
- (a) is unable to perform the duties of office for health or other reasons;
 - (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 61(7); 55

(c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or

(d) has acted in a way that is inconsistent with the requirements of continuing to hold the office.

(6) If an independent inquiry has been established in terms of subsection (5), the Commissioner may suspend the Deputy Commissioner from office pending a decision on that person's removal from office. 5

(7) Without limiting subsection (3)(c) or (5)(c), the Commissioner or a Deputy Commissioner, as the case may be, must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Executive Committee without the leave of the Executive Committee. 10

(8) If the Commissioner or a Deputy Commissioner is removed from office in terms of this section, the Minister must submit the report and findings of the independent inquiry to the National Assembly.

Meetings of Executive Committee 15

66. (1) (a) The Executive Committee must meet as often as necessary for the performance of its functions.

(b) An audio or audio-visual conference among a majority of the members of the Executive Committee, which enables each participating member to hear and be heard by each of the other participating members, must be regarded as a meeting of the Executive Committee, and each participating member must be regarded as being present at such a meeting. 20

(2) Meetings of the Executive Committee must be held at times and, except where subsection (1)(b) applies, at places determined by the Commissioner.

(3) A quorum for a meeting of the Executive Committee is a majority of its members. 25

(4) (a) The Commissioner chairs the meetings of the Executive Committee at which the Commissioner is present.

(b) If the Commissioner is not present at a meeting, a Deputy Commissioner nominated by the Commissioner or selected in accordance with a procedure determined by the Commissioner, chairs the meeting. 30

(5) The Commissioner or Deputy Commissioner chairing a meeting of the Executive Committee may invite or allow any other person, including a representative of the Prudential Authority, the Reserve Bank or the National Credit Regulator, to attend the meeting, but a person who is invited may participate but has no right to vote at the meeting. 35

(6) The members may regulate proceedings at Executive Committee meetings as they consider appropriate.

(7) The Commissioner must ensure that minutes of each meeting of the Committee are kept in a manner determined by the Commissioner.

Decisions of Executive Committee 40

67. (1) (a) A proposal before a meeting of the Executive Committee becomes a decision of the Executive Committee if a majority of the members present, or regarded as being present, and who may participate in the consideration of the proposal, vote for the proposal.

(b) In the event of an equality of votes on a proposal, the person chairing the meeting has a casting vote in addition to a deliberative vote. 45

(2) The Executive Committee may, in accordance with procedures determined by the Executive Committee, make a decision on a proposal outside a meeting of the Executive Committee.

(3) A decision of the Executive Committee is not invalid merely because— 50

(a) there was a vacancy in the office of a member when the decision was taken; or

(b) a person who was not a member participated in the decision, as long as such person did not vote.

Governance and other subcommittees

68. (1) The Director-General must establish a subcommittee— 55

(a) to advise the Executive Committee on the remuneration policy of the Financial Sector Conduct Authority; and

- (b) to review, monitor and advise the Executive Committee on the risks faced by the Financial Sector Conduct Authority and plans for managing those risks.
- (2) The Executive Committee may establish one or more other subcommittees for the Financial Sector Conduct Authority, with functions that the Executive Committee may determine. 5
- (3) (a) The Director-General determines the membership of each subcommittee established in terms of subsection (1).
- (b) The majority of the members of a subcommittee established in terms of subsection (1) may not be staff members of the Financial Sector Conduct Authority.
- (c) The Executive Committee determines the membership of each subcommittee established in terms of subsection (2). 10
- (d) A subcommittee established in terms of subsection (2) may include persons who are neither members of the Executive Committee nor staff members of the Financial Sector Conduct Authority.
- (e) A disqualified person may not be or remain a member of a committee or subcommittee established in terms of this section. 15
- (4) A member of a subcommittee established in terms of this section, including a person who is not in the service of an organ of state, holds office for the period, and on the and terms and conditions, and terms regarding remuneration, determined by the Director-General or the Executive Committee, as the case may be, who established the subcommittee. 20
- (5) A subcommittee established in terms of subsection (1) must be chaired by a person who is not the Commissioner, a Deputy Commissioner or a staff member of the Financial Sector Conduct Authority.
- (6) A subcommittee established in terms of this section determines its procedure, subject to any directions of the Director-General or the Executive Committee, as the case may be, who established the subcommittee. 25
- (7) The Commissioner must ensure that minutes of each meeting of a subcommittee established in terms of this section are kept in a manner determined by the Executive Committee. 30

Duties of Commissioner, Deputy Commissioners and other subcommittee members

- 69.** (1) The Commissioner, each Deputy Commissioner and each member of a subcommittee of the Financial Sector Conduct Authority established as contemplated in section 51(1)(a)(ii) of the Public Finance Management Act or of section 68 of this Act must— 35
- (a) act honestly in all matters relating to the Financial Sector Conduct Authority; and
- (b) perform the functions of office as a member— 40
- (i) in good faith;
- (ii) for a proper purpose; and
- (iii) with the degree of care and diligence that a reasonable person in that person's position would exercise.
- (2) A person who is or has been a person mentioned in subsection (1) must not use the position, or any information obtained because of the position, to— 45
- (a) improperly benefit himself or herself or another person;
- (b) cause detriment to the Financial Sector Conduct Authority's ability to perform its functions; or
- (c) cause detriment to another person.
- (3) For the purposes of this section, "benefit" and "detriment" are not limited to financial benefit or detriment. 50

Regulatory strategies

- 70.** (1) The Executive Committee must, within six months after the date on which this Chapter takes effect, adopt a regulatory strategy for the Financial Sector Conduct Authority to give general guidance in the achievement of the Financial Sector Conduct Authority's objective and the performance of its regulatory and supervisory functions. 55
- (2) A regulatory strategy must—
- (a) state—
- (i) the regulatory and supervisory priorities for the Financial Sector Conduct Authority for the next three years; and 60

- (ii) the intended key outcomes of the strategy;
- (b) set guiding principles for the Financial Sector Conduct Authority on—
 - (i) how it should perform its regulatory and supervisory functions;
 - (ii) the matters which it should have regard to in performing those functions;
 - (iii) its approach to administrative actions; and
 - (iv) how it should give effect to the requirements applicable to it with respect to—
 - (aa) transparency;
 - (bb) openness to consultation; and
 - (cc) accountability; and
- (c) be aimed at consistency with relevant international principles.
- (3) The Executive Committee must review its regulatory strategy at least annually, and may amend it at any time.
- (4) (a) Before the Executive Committee adopts a regulatory strategy or an amendment to a regulatory strategy, it must—
 - (i) provide a copy of the draft of the strategy or amendment to the Minister, the Prudential Authority and the National Credit Regulator; and
 - (ii) invite comments from the Minister, the Prudential Authority and the National Credit Regulator, on the draft, which must be made within a period specified by the Executive Committee.
- (b) The period referred to in paragraph (a)(ii) must be at least one month.
- (5) In deciding whether to adopt a regulatory strategy or an amendment of a regulatory strategy, the Executive Committee must consider all comments made on the draft.
- (6) If the Minister agrees, the Financial Sector Conduct Authority's adopted regulatory strategy may be incorporated into its corporate plan in terms of section 52(b) of the Public Finance Management Act.
- (7) The Executive Committee must seek to minimise, to the extent that is practicable and appropriate, inconsistencies between the Financial Sector Conduct Authority's regulatory strategy and the Prudential Authority's regulatory strategy.
- (8) The Commissioner must—
 - (a) provide a copy of the Financial Sector Conduct Authority's regulatory strategy, and each amendment, as adopted, to the Minister, the Prudential Authority and the National Credit Regulator; and
 - (b) publish the regulatory strategy and each amendment.

Delegations

71. (1) The Executive Committee may, in writing—
- (a) delegate to the Commissioner or a Deputy Commissioner any power or duty of or delegated to the Financial Sector Conduct Authority in terms of a financial sector law, except—
 - (i) the power to delegate contained in this subsection; and
 - (ii) the powers referred to in section 60(4)(b)(i) to (viii);
 - (b) delegate to an administrative action committee the power to impose administrative penalties that are specified in the delegation, if the Financial Sector Conduct Authority establishes an administrative action committee; and
 - (c) at any time, amend a delegation made in terms of paragraph (a) or (b).
- (2) The Commissioner may, in writing—
- (a) delegate any power or duty assigned or delegated to the Commissioner in terms of a financial sector law, except the power to delegate contained in this subsection, to—
 - (i) a Deputy Commissioner; or
 - (ii) a staff member of the Financial Sector Conduct Authority; and
 - (b) at any time, amend a delegation made in terms of paragraph (a).
- (3) A Deputy Commissioner may, in writing—
- (a) delegate any power or duty delegated to that Deputy Commissioner in terms of a financial sector law, except the power to delegate contained in this subsection, to a staff member of the Financial Sector Conduct Authority; and
 - (b) at any time, amend a delegation made in terms of paragraph (a).
- (4) A delegation in terms of subsection (2)(a)(ii) or (3)(a) may be made to a specified person or to a person holding a specified position.

- (5) Any power or duty of the Financial Sector Conduct Authority may be delegated to the Prudential Authority in terms of a section 77 memorandum of understanding.
- (6) A delegation made in terms this section—
- (a) is subject to the limitations and conditions specified in the delegation;
 - (b) does not divest the Financial Sector Conduct Authority, the Commissioner or the Deputy Commissioner concerned of responsibility in respect of the delegated power or duty; and
 - (c) may be revoked in writing at any time, subject to any rights that may have accrued.
- (7) Anything done by a delegate in terms of the delegation must be regarded as having been done by the Financial Sector Conduct Authority.
- (8) This section does not affect a power under a specific financial sector law to delegate a power of the Financial Sector Conduct Authority.

Disclosure of interests

- 72.** (1) A member of the Executive Committee must disclose, at a meeting of the Executive Committee, or in writing to each of the other members, any material interest in a matter that is being or is intended to be considered by him or her, whether or not at a meeting of the Executive Committee, being an interest that—
- (a) the member has; or
 - (b) a person who is a related party to the member has.
- (2) A disclosure in terms of subsection (1) must be given as soon as practicable after the member concerned becomes aware of the interest.
- (3) A member referred to in subsection (1) may not perform a function in relation to the matter concerned unless—
- (a) the member has disclosed the interest in accordance with subsection (1); and
 - (b) the other members of the Executive Committee have decided that the interest does not affect the member's proper execution of the member's functions in relation to the matter concerned.
- (4) A member of a subcommittee of the Financial Sector Conduct Authority established as contemplated in section 51(1)(a)(ii) of the Public Finance Management Act or section 68(1), must disclose, at a meeting of the subcommittee, or in writing to each of the other members of that subcommittee, any interest in a matter that is being or is intended to be considered by that subcommittee, being an interest that—
- (a) the member has; or
 - (b) a person has who is a related party to the member.
- (5) A disclosure in terms of subsection (4) must be given as soon as practicable after the member concerned becomes aware of the interest.
- (6) A member referred to in subsection (4) may not participate in the consideration of or decision on that matter by the subcommittee unless—
- (a) the member has disclosed the interest in accordance with subsection (4); and
 - (b) the other members of that subcommittee have decided that the interest cannot be seen as affecting the member's proper execution of the member's functions in relation to the matter.
- (7) (a) Each member of the Financial Sector Conduct Authority's staff and each other person involved in the performance of the Financial Sector Conduct Authority's functions or the exercise of its powers must make timely, proper and adequate disclosure of their interests, including the interests of a related party, that could reasonably be seen as interests that may affect the proper execution of their functions of office or the delegated power.
- (b) The Commissioner must ensure that paragraph (a) is complied with.
- (8) For the purposes of this section, it does not matter—
- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
 - (b) when the interest was acquired.
- (9) For the purposes of this section, a person does not have to disclose—
- (a) the fact that that person, or a person who is a related party to that person, is—
 - (i) an official or employee of the Financial Sector Conduct Authority; or
 - (ii) a financial customer of a financial institution; or
 - (b) an interest that is not material.
- (10) The Commissioner must maintain a register of all disclosures made in terms of this section and of all decisions made in terms of this subsection.

Part 3**Staff and resources****Staff and resources**

- 73.** (1) The Financial Sector Conduct Authority may, in accordance with applicable law— 5
- (a) for the work of the Financial Sector Conduct Authority—
 - (i) appoint persons as employees;
 - (ii) enter into secondment arrangements; or
 - (iii) engage persons on contract otherwise than as employees;
 - (b) enter into contracts; 10
 - (c) acquire and dispose of property;
 - (d) insure itself against any loss, damage, risk or liability that it may suffer or incur; and
 - (e) do anything else necessary for the performance of its functions.
- (2) The Financial Sector Conduct Authority may not enter into a secondment arrangement in respect of a person, or engage persons as employees or on contract, unless the person and the Authority have agreed in writing on— 15
- (a) the performance measures that must be used to assess that person’s performance; and
 - (b) the level of performance that must be achieved against those measures. 20

Duties of staff members

- 74.** (1) A person who is or was a staff member of the Financial Sector Conduct Authority may not use that position or any information obtained as a staff member to—
- (a) improperly benefit the person or another person;
 - (b) cause detriment to the Financial Sector Conduct Authority’s ability to perform its functions; or 25
 - (c) cause detriment to another person.
- (2) For the purposes of this section, “benefit” and “detriment” are not limited to financial benefit or detriment.

Information by Commissioner 30

- 75.** (1) The Commissioner must provide the Executive Committee and the National Treasury with the information, returns, documents, explanations and motivations that may be prescribed by Regulation for this section or information that the Executive Committee or the National Treasury may request.
- (2) Subsection (1) does not require or permit the provision of information about persons identifiable from the information. 35

CHAPTER 5**CO-OPERATION AND COLLABORATION****Part 1****Co-operation and collaboration 40****Co-operation and collaboration between financial sector regulators and Reserve Bank**

- 76.** (1) The financial sector regulators and the Reserve Bank must co-operate and collaborate when performing their functions in terms of financial sector laws, the National Credit Act, and the Financial Intelligence Centre Act, and must for this purpose— 45
- (a) generally assist and support each other in pursuing their objectives in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;

- (b) inform each other about, and share information about, matters of common interest;
 - (c) strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges;
 - (d) co-ordinate, to the extent appropriate, actions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act, including in relation to—
 - (i) standards and other regulatory instruments, including similar instruments provided for in terms of the National Credit Act and the Financial Intelligence Centre Act;
 - (ii) licensing;
 - (iii) supervisory on-site inspections and investigations;
 - (iv) actions to enforce financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;
 - (v) information sharing;
 - (vi) recovery and resolution; and
 - (vii) reporting by financial institutions, including statutory reporting and data collection measures;
 - (e) minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;
 - (f) agree on attendance at relevant international forums; and
 - (g) develop, to the extent that is appropriate, consistent policy positions, including for the purpose of presentation and negotiation at relevant South African and international forums.
- (2) The financial sector regulators and the Reserve Bank must, at least annually, as part of their annual reports or on request, report to the Minister, the Cabinet member responsible for administering the National Credit Act and the National Assembly on measures taken to co-operate and collaborate with each other.

Memoranda of understanding

77. (1) The financial sector regulators and the Reserve Bank, must, as soon as practicable but not later than six months after the date on which this Chapter comes into effect, enter into one or more memoranda of understanding to give effect to their obligations in terms of section 76.
- (2) A delegation of a power or duty by a financial sector regulator to another financial sector regulator must be effected by a memorandum of understanding entered into in terms of this section.
- (3) The validity of any action taken by a financial sector regulator, the Reserve Bank or the Governor in terms of a financial sector law, the National Credit Act and the Financial Intelligence Centre Act is not affected by a failure to comply with this section or a memorandum of understanding in terms of this section.
- (4) The financial sector regulators and the Reserve Bank must review the memoranda of understanding at least once every three years and amend them as appropriate.
- (5) The financial sector regulators and the Reserve Bank must provide a copy of each memorandum of understanding entered into in terms of this section, and each amendment of such memorandum of understanding to the Minister and the Cabinet member responsible for administering the National Credit Act.
- (6) The financial sector regulators and the Reserve Bank must each publish each memorandum of understanding that they enter into and each amendment thereof.

Other organs of state

78. (1) An organ of state that has a regulatory or supervisory function in relation to financial institutions must, to the extent practicable, consult the financial sector regulators and the Reserve Bank in relation to the performance of that function.
- (2) A financial sector regulator or the Reserve Bank may, in writing, request an organ of state referred to in subsection (1) to provide information about any action that the organ of state has taken or proposes to take in relation to a financial institution specified in the request.
- (3) The organ of state must comply with a request in terms of subsection (2), but this subsection does not require or permit an organ of state to do something that contravenes a law.

*Part 2**Financial System Council of Regulators***Financial System Council of Regulators**

79. (1) The Financial System Council of Regulators is hereby established.

(2) The objective of the Financial System Council of Regulators is to facilitate co-operation and collaboration, and, where appropriate, consistency of action, between the institutions represented on the Financial System Council of Regulators by providing a forum for senior representatives of those institutions to discuss, and inform themselves about, matters of common interest. 5

(3) The Financial System Council of Regulators must be composed of the following members: 10

- (a) The Director-General;
- (b) the Director-General of the Department of Trade and Industry;
- (c) the Director-General of the Department of Health;
- (d) the Chief Executive Officer; 15
- (e) the Commissioner;
- (f) the Chief Executive Officer of the National Credit Regulator;
- (g) the Chief Executive Officer of the Council for Medical Schemes;
- (h) the Director of the Financial Intelligence Centre;
- (i) the Commissioner of the National Consumer Commission; 20
- (j) the Commissioner of the Competition Commission;
- (k) the Deputy Governor responsible for financial stability matters; and
- (l) the head, however described, of any organ of state or other organisation that the Minister may determine.

Meetings 25

80. (1) Meetings of the Financial System Council of Regulators must be held at least twice a year, or more frequently as determined by the Director-General.

(2) The Director-General, or an alternate nominated by the Director-General, chairs the meetings of the Financial System Council of Regulators.

(3) The Director-General must convene a meeting at the request of a member of the Financial System Council of Regulators. 30

(4) A member of the Financial System Council of Regulators may, with the concurrence of the Director-General, nominate a senior official of the member's institution to act as an alternate for the member.

(5) Meetings of the Financial System Council of Regulators must be conducted in accordance with procedures determined by the Financial System Council of Regulators. 35

Working groups and subcommittees

81. (1) The Financial System Council of Regulators must establish separate working groups or subcommittees in respect of the following matters:

- (a) Enforcement and financial crime; 40
- (b) financial stability and resolution;
- (c) policy and legislation;
- (d) standard-setting;
- (e) financial sector outcomes;
- (f) financial inclusion; and 45
- (g) any other matter that the Director-General may determine after consulting the other members of the Financial System Council of Regulators.

(2) The Financial System Council of Regulators must determine the membership, terms of reference and procedure of a working group or subcommittee.

Support for Financial System Council of Regulators 50

82. (1) The Financial Sector Conduct Authority must provide administrative support and other resources for the Financial System Council of Regulators and its working groups and subcommittees.

(2) The Financial Sector Conduct Authority must ensure that minutes of each meeting of the Financial System Council of Regulators, and of each meeting of a working group or subcommittee, are kept in a manner determined by the Financial Sector Conduct Authority.

Part 3

5

Financial Sector Inter-Ministerial Council

Financial Sector Inter-Ministerial Council

83. (1) The Financial Sector Inter-Ministerial Council is hereby established.

(2) The objective of the Inter-Ministerial Council is to facilitate co-operation and collaboration between Cabinet members responsible for administering legislation relevant to the regulation and supervision of the financial sector by providing a forum for discussion and consideration of matters of common interest. 10

(3) The members of the Inter-Ministerial Council are—

- (a) the Minister;
- (b) the Cabinet members responsible for consumer protection and consumer credit matters; 15
- (c) the Cabinet member responsible for health; and
- (d) the Cabinet member responsible for economic development.

Meetings

84. (1) Meetings of the Inter-Ministerial Council take place at times and places determined by the Minister. 20

(2) The Minister, or another Cabinet member nominated by the Minister, chairs the meetings of the Inter-Ministerial Council.

(3) The Minister must convene a meeting at the request of a member of the Inter-Ministerial Council. 25

(4) A member of the Inter-Ministerial Council may nominate a Deputy Minister to act as alternate for the member at a particular meeting of the Inter-Ministerial Council.

(5) The Minister may invite any Cabinet member who is not a member of the Inter-Ministerial Council to attend a meeting of the Inter-Ministerial Council.

(6) Meetings of the Inter-Ministerial Council are conducted in accordance with procedures determined by the Inter-Ministerial Council. 30

Protection for financial customers in terms of financial sector laws, National Credit Act and Consumer Protection Act

85. (1) The Cabinet members responsible for consumer protection and consumer credit matters may request the Inter-Ministerial Council to consider and inform the Minister and the Cabinet members whether or not a relevant provision in a financial sector law, a Regulation or a regulatory instrument made under a financial sector law or a proposal in a financial sector law, a Regulation or a regulatory instrument made under a financial sector law, provides or would provide for a standard of protection for financial customers that is equivalent to, or higher than, the protection provided for them in terms of the National Credit Act or the Consumer Protection Act. 35 40

(2) The Inter-Ministerial Council—

- (a) must comply with the request; and
- (b) may, if it considers that the relevant provision does not provide for such a standard of protection for financial customers, make recommendations to amend the relevant provision, or to take other lawful and appropriate action, to ensure that the protection is at least equivalent. 45

Independent evaluation of effectiveness of co-operation and collaboration

86. The Inter-Ministerial Council may require an independent evaluation of the effectiveness of co-operation and collaboration between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission. 50

CHAPTER 6

ADMINISTRATIVE ACTIONS

*Part 1**Administrative action committees***Establishment and membership** 5

87. (1) A financial sector regulator may establish an administrative action committee to consider and make recommendations to the financial sector regulator on administrative actions that are referred to it by that financial sector regulator.

(2) The financial sector regulator may delegate to its administrative action committee the financial sector regulator's power to impose administrative penalties specified in the delegation. 10

(3) The members of an administrative action committee—

(a) must include-

(i) a retired judge; or

(ii) at least one advocate or attorney with at least 10 years' experience in practising law in the Republic; and 15

(b) may include persons who are not members of the Prudential Committee or the Executive Committee or staff members of the financial sector regulator.

(4) Only a person who is not a member of the Prudential Committee or the Executive Committee may be appointed as chairperson of an administrative action committee. 20

(5) A disqualified person may not be appointed to, or remain a member of, an administrative action committee.

Terms of membership

88. (1) A person appointed as a member of a financial sector regulator's administrative action committee who is not a member of the Prudential Committee, the Executive Committee or a staff member of a financial sector regulator holds office for the period not exceeding five years, and on the terms, including terms regarding remuneration, determined by the financial sector regulator. 25

(2) A member of an administrative action committee whose term expires may be reappointed. 30

(3) The financial sector regulator that established an administrative action committee may, subject to due process, remove a member of the administrative action committee from office if the member—

(a) is unable to perform the functions of the office effectively;

(b) has failed in a material way to discharge any of the responsibilities of the office; or 35

(c) has acted in a way that is inconsistent with the requirements of continuing to hold the office.

(4) Without limiting subsection (3)(b), a member must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the administrative action committee without the leave of the administrative action committee. 40

Meetings

89. (1) A meeting of an administrative action committee—

(a) is convened by the chairperson of the committee; and 45

(b) is chaired by the chairperson or, in the chairperson's absence, by another member designated by the chairperson or the remaining members.

(2) An administrative action committee determines its procedures, subject to any directions of the financial sector regulator that established the administrative action committee. 50

(3) The financial sector regulator must ensure that written minutes of each meeting of its administrative action committee are kept.

Application of Part to Ombud Regulatory Council

90. This Part applies, with the necessary changes required by the context, in relation to the Ombud Regulatory Council.

Part 2

Administrative justice

5

Applicability of Promotion of Administrative Justice Act to administrative action by financial sector regulators

91. The Promotion of Administrative Justice Act applies to any administrative action taken by a financial sector regulator in terms of this Act or a specific financial sector law.

Application of procedures for specific administrative action in terms of Act 10

92. (1) A financial sector regulator may, by Notice in the Register, determine procedures for administrative action taken by it in terms of a financial sector law, which must—

- (a) be aimed at promoting a fair and consistent approach to administrative action taken by the financial sector regulator in terms of the financial sector laws; and 15
- (b) be consistent with—
 - (i) the principles of the Promotion of Administrative Justice Act; and
 - (ii) any applicable requirements of a financial sector law.

(2) If it is reasonable and justifiable in the circumstances, procedures for administrative action may depart from specific requirements of the Promotion of Administrative Justice Act, in accordance with sections 3(4), 4(4) and 5(4) of that Act.

(3) Different procedures may be determined for different types of administrative actions.

Processes for determining, amending or reviewing administrative action procedures 25

93. (1) Before a financial sector regulator determines or amends an administrative action procedure in terms of section 92, the financial sector regulator must—

- (a) publish on its website—
 - (i) a draft of the proposed procedure or amendment; and
 - (ii) a notice calling for written public comment within a period stated in the notice, which must be at least 30 days from the date of publication of the notice; 30
- (b) submit a draft of the proposed procedure or amendment to the Director-General and the other financial sector regulator; and
- (c) consider any comments received. 35

(2) If a financial sector regulator changes a proposed procedure or amendment after expiry of the comment period, it is not obliged to publish the change before publishing the final version of the procedure or amendment.

(3) A financial sector regulator must review any administrative action procedures determined by it in terms of section 92 at least once every three years. 40

Reconsideration of decisions

94. (1) A financial sector regulator may, at any time, on its own initiative or on written application by an aggrieved person in terms of section 215—

- (a) reconsider a decision made by the financial sector regulator;
- (b) confirm, alter, substitute or revoke the decision; and 45
- (c) end or undo any action taken by it as a result of the decision.

(2) No decision may be reconsidered in terms of subsection (1) if the decision is the subject of—

- (a) proceedings in the Tribunal; or
- (b) judicial proceedings. 50

(3) No decision may be altered, substituted or revoked in terms of subsection (1) on the initiative of the financial sector regulator without the concurrence of the person affected by the decision if—

- (a) that person had been notified of the decision at the time the financial sector regulator decided to reconsider the decision; and 5
- (b) the alteration, substitution or revocation would detract from any right or legitimate expectation that accrued to that person as a result of the decision.

Interpretation

95. In this Part “financial sector regulator” includes the Ombud Regulatory Council.

CHAPTER 7 10

REGULATORY INSTRUMENTS

Part 1

Regulatory instruments

Interpretation

96. In this Part, “maker”, in relation to a regulatory instrument, means the person that proposes to make a regulatory instrument. 15

Regulatory instruments and consultation process

97. (1) Before making a regulatory instrument, the maker of the regulatory instrument must publish—

- (a) a draft of the regulatory instrument; 20
- (b) a statement explaining the need for and the intended operation of the regulatory instrument;
- (c) a statement of the expected impact of the regulatory instrument; and
- (d) a notice inviting submissions in relation to the regulatory instrument and stating where, how and by when submissions are to be made. 25

(2) The period allowed for making submissions must be at least two months.

(3) If the maker is a financial sector regulator, the maker must, when complying with subsection (1), provide a copy of the documents referred to in that subsection to—

- (a) the other financial sector regulator, the Reserve Bank, the National Credit Regulator, the Council for Medical Schemes and the Director-General; and 30
- (b) if the regulatory instrument would impose requirements on providers of securities services, the market infrastructure that has the function of licensing those providers in terms of a financial sector law.

(4) If the maker is the Ombud Regulatory Council, the maker must, when complying with subsection (1), provide a copy of the documents referred to in that subsection to the financial sector regulators, the National Credit Regulator and the Director-General. 35

(5) In deciding whether to make the regulatory instrument, the maker must take into account all submissions received by the expiry of the period referred to in subsection (2).

Substantially different regulatory instrument 40

98. If a maker of a regulatory instrument intends, whether or not as a result of a consultation process, to make a regulatory instrument in a materially different form from the draft regulatory instrument published in terms of section 97, the maker must, before making the regulatory instrument, repeat the consultation process referred to in section 97. 45

Urgent regulatory instruments

99. (1) A maker may make a regulatory instrument without having complied, or complied fully, with section 97 or 98 if the delay involved in complying, or complying

fully, with those sections is likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed regulatory instrument.

(2) As soon as practicable after making a regulatory instrument in terms of subsection (1), the maker must—

- (a) follow a procedure similar to section 97; and 5
- (b) include in the explanatory statement as required in terms of section 97(1), reasons why the regulatory instrument has been made urgently.

Submission of regulatory instruments to National Assembly

100. A maker that makes a regulatory instrument must submit to the National Assembly, within 14 days after the regulatory instrument is made— 10

- (a) a copy of the regulatory instrument;
- (b) a statement explaining the need for, and the intended operation of, the regulatory instrument; and
- (c) a statement of the expected impact of the regulatory instrument.

Reports on consultation processes 15

101. With each regulatory instrument, the maker must publish a report of the consultation process undertaken in respect of the regulatory instrument, which report must include—

- (a) a general account of the issues raised in the submissions; and
- (b) a response to the issues raised in the submissions. 20

Part does not limit other consultation

102. This Part does not prevent a maker of a regulatory instrument from engaging in consultations in addition to those required in terms of this Part.

Commencement of regulatory instruments

103. (1) A regulatory instrument may be published in the Register, after the regulatory instrument has been submitted to the National Assembly as required in terms of section 100, and a period of 30 days has elapsed, when Parliament is in session. 25

(2) Subject to section 104, a regulatory instrument comes into operation—

- (a) on the date the instrument is published in the Register; or
- (b) if the instrument provides that it comes into effect on a later date, on the later 30 day.

Commencement of urgent regulatory instruments

104. If the instrument was made in circumstances mentioned in section 99, it comes into effect on the date the regulatory instrument is published in the Register.

Part 2 35

Standards

Prudential standards

105. (1) The Prudential Authority may make prudential standards for, or in respect of—

- (a) financial institutions that provide financial products or securities services; 40
- (b) market infrastructures;
- (c) significant owners of such financial institutions; and
- (d) key persons of such financial institutions, aimed at—
 - (i) ensuring the safety and soundness of those financial institutions;
 - (ii) reducing the risk that those financial institutions, significant owners and 45 key persons engage in conduct that amounts to, or contributes to, financial crime; and
 - (iii) assisting in maintaining financial stability.

- (2) Prudential standards made in terms of subsection (1) may be made on any of the following matters:
- (a) Financial soundness requirements for financial institutions referred to in subsection (1), including requirements in relation to capital adequacy, minimum liquidity and minimum asset quality; 5
 - (b) requirements for, or in respect of, financial institutions, significant owners or key persons of those financial institutions concerning any of the matters referred to in section 108;
 - (c) matters on which a regulatory instrument may be made by the Prudential Authority in terms of a specific financial sector law; 10
 - (d) matters that may in terms of any other provision of this Act be regulated by prudential standards, including matters as contemplated in section 30; and
 - (e) any other matter that is appropriate and necessary for achieving any of the aims set out in subsection (1).

Conduct standards 15

106. (1) The Financial Sector Conduct Authority may make conduct standards for, or in respect of—

- (a) financial institutions;
- (b) representatives of financial institutions;
- (c) significant owners of such financial institutions; 20
- (d) key persons of financial institutions; and
- (e) contractors,

aimed at—

- (i) ensuring the efficiency and integrity of financial markets;
- (ii) ensuring that financial institutions and representatives treat financial customers fairly; 25
- (iii) reducing the risk that financial institutions, representatives, significant owners, key persons and contractors engage in conduct that is or contributes to financial crime; and
- (iv) assisting in maintaining financial stability. 30

(2) Conduct standards made in terms of subsection (1) may be made on any of the following matters:

- (a) Efficiency and integrity requirements for financial markets;
- (b) measures to combat abusive practices;
- (c) requirements for the fair treatment of financial customers, including in relation to— 35
 - (i) the design and suitability of financial products and financial services;
 - (ii) the promotion, marketing and distribution of, and advice in relation to, those products and services; and
 - (iii) the resolution of complaints and disputes concerning those products and services, including redress; 40
- (d) the disclosure of information to financial customers;
- (e) requirements for financial institutions, representatives and key persons concerning any of the matters referred to in section 108;
- (f) matters on which a regulatory instrument may be made by the Financial Sector Conduct Authority in terms of a specific financial sector law; 45
- (g) matters that may in terms of any other provision of this Act be regulated by conduct standards; and
- (h) any other matter that is appropriate and necessary for achieving any of the aims set out in subsection (1). 50

(3) A conduct standard may declare specific conduct in connection with a financial product or a financial service to be unfair business conduct if the said conduct—

- (a) is or is likely to be materially inconsistent with the fair treatment of financial customers;
- (b) is deceiving, misleading or is likely to deceive or mislead financial customers; 55
- (c) is unfairly prejudicing or is likely to unfairly prejudice financial customers or a category of financial customers; or
- (d) impedes in any other way the achievement of any of the objectives of a financial sector law.

(4) Conduct standards made in relation to a financial service that is provided in relation to a credit agreement, which credit agreement is regulated under the National

Credit Act, must support the aims of, not duplicate, and not be inconsistent with, regulatory requirements made under that Act, and may only be made after consultation with the National Credit Regulator.

Joint standards

107. The Prudential Authority and the Financial Sector Conduct Authority may make joint standards on any matter in respect of which either of them have the power to make a standard. 5

Additional matters for making standards

108. The standards referred to in sections 105, 106 or 107 may be made on any of the following additional matters: 10

- (a) Fit and proper person requirements for financial institutions, key persons of financial institutions, representatives of financial institutions and key persons of representatives, including in relation to—
 - (i) personal character qualities of honesty and integrity;
 - (ii) competence, including experience, qualifications and knowledge; and 15
 - (iii) financial standing;
- (b) governance of financial institutions and representatives, including in relation to—
 - (i) the composition, membership and operation of governing bodies and of substructures of governing bodies; 20
 - (ii) the roles and responsibilities of governing bodies and their substructures;
 - (iii) the appointment, duties, responsibilities, remuneration, reward, incentive schemes, and subject to applicable labour legislation, the suspension and dismissal of members of governing bodies and of their substructures; and 25
 - (iv) the appointment, duties, responsibilities, remuneration, reward, incentive schemes, and subject to applicable labour legislation, the suspension and dismissal of key persons;
- (c) the operation of, and operational requirements for, financial institutions;
- (d) financial management of financial institutions and representatives, including— 30
 - (i) accounting, actuarial and auditing requirements;
 - (ii) risk management and internal control requirements;
 - (iii) asset, debt, transaction, acquisition and disposal management; and
 - (iv) financial statements, updates on financial position, and public reporting 35 and disclosures;
- (e) the control functions of financial institutions, including the outsourcing of control functions;
- (f) recordkeeping and data management by financial institutions and representatives; 40
- (g) reporting by financial institutions and representatives to a financial sector regulator;
- (h) outsourcing arrangements by financial institutions;
- (i) insurance arrangements, including re-insurance, of financial institutions;
- (j) the amalgamation, merger, acquisition, disposal and dissolution of financial 45 institutions;
- (k) business rescue and continuity of financial institutions; and
- (l) requirements for identifying and managing conflicts of interest.

Standards requiring concurrence of Reserve Bank

109. (1) The Financial Sector Conduct Authority may not make a standard that imposes requirements on providers of payment services without the concurrence of the Reserve Bank. 50

(2) A financial sector regulator may not make a standard aimed at assisting in maintaining financial stability without the concurrence of the Reserve Bank.

General

- 110.** (1) Different standards may be made for, or in respect of—
- (a) different categories of financial institutions, representatives, significant owners, contractors or key persons; or
 - (b) different circumstances. 5
- (2) The financial sector regulator that made a standard may, at any time, amend or revoke the standard.

CHAPTER 8**LICENSING*****Part 1*** 10***Licensing requirements*****Licence requirement in respect of financial products, financial services and market infrastructures**

- 111.** (1) A person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except— 15
- (a) in accordance with a licence in terms of a specific financial sector law or the National Credit Act; or
 - (b) if no specific financial sector law provides for such a licence, in accordance with a licence in terms of this Act.
- (2) A person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of this Chapter. 20
- (3) A person may not describe himself or herself or hold out as being licensed in terms of a financial sector law, including being licensed to provide particular financial products, financial services or market infrastructure, unless that person is so licensed. 25
- (4) A person may not permit another person to identify the first person as licensed in terms of a financial sector law, including licensed in terms of a financial sector law to provide particular financial products, financial services or market infrastructure, unless the first person is so licensed.
- (5) For the purposes of subsections (3) and (4), a person whose licence has been 30 suspended or revoked is not licensed.
- (6) Except to the extent expressly provided by this Act, this Act does not affect the provisions of the specific financial sector laws with respect to licensing in relation to financial products, financial services and market infrastructure.

Part 2 35***Licences required in terms of section 111(2) or 160*****Interpretation**

- 112.** In this Part—
- “**application**” means an application for a licence required in terms of section 111(2) or 160; 40
 - “**licence**” means a licence required in terms of section 111(2) or 160;
 - “**licensee**” means a person licensed in terms of section 111(2) or 160.

Power to grant licences

- 113.** (1) The responsible authority may, on application, grant a licence, subject to subsection (2). 45
- (2) The application must—
- (a) be in writing and in a form approved or accepted by the responsible authority; and
 - (b) include or be accompanied by the information and documents— 50
 - (i) required in the form; or

- (ii) required by the responsible authority.

Request for further information or documents by responsible authority

- 114.** (1) The responsible authority may, by notice in writing, require an applicant for a licence to—
- (a) give the responsible authority additional information or documents specified by the responsible authority; and 5
 - (b) verify any information given by the applicant in connection with the application in a manner specified by the responsible authority.
- (2) The responsible authority need not deal further with the application until the applicant has complied with the notice. 10

Relevant matters for application of licence

- 115.** The matters to be taken into account in relation to an application for a licence include—
- (a) the objectives of this Act;
 - (b) the financial and other resources of and available to the applicant; 15
 - (c) fit and proper person requirements applicable to the applicant and to any key person or significant owner of the applicant;
 - (d) the governance and risk management arrangements of the applicant; and
 - (e) whether the applicant made a statement that is false or misleading, including by omission, in or in relation to the application. 20

Determination of applications

- 116.** (1) The responsible authority in respect of an application for a licence must determine the application by—
- (a) granting the application and issuing a licence to the applicant; or
 - (b) refusing the application. 25
- (2) The responsible authority may not grant a licence to an applicant unless satisfied that—
- (a) the applicant has or has available to it sufficient resources and capacity to ensure that it will comply with the requirements of financial sector laws in relation to the licence; and 30
 - (b) issuing the licence to the applicant will not be contrary to the interests of financial customers, the financial sector or the public interest.
- (3) (a) If the responsible authority has not determined an application within three months after it is made, the responsible authority is taken to have refused the application. 35
- (b) The responsible authority may, by notice to the applicant, extend the period of three months in paragraph (a) for one or more further periods, but the total period may not be more than nine months.
- (c) In working out when the period mentioned in paragraph (a) or (b) expires, any period between the responsible authority giving the applicant a notice in terms of section 114 and the requirements in the notice being satisfied is not to be counted. 40

Reporting obligations of licensee

- 117.** (1) A licensee must promptly report any of the following to the responsible authority that issued the licence:
- (a) The fact that the licensee has contravened or is contravening— 45
 - (i) a financial sector law;
 - (ii) a regulator's directive or a directive in terms of section 200;
 - (iii) an enforceable undertaking;
 - (iv) an order of a court made in terms of a financial sector law; or
 - (v) a decision of the Tribunal; 50
 - (b) the fact that the licensee has become aware that information given in connection with the application for the licence was false or misleading.
- (2) Subsection (1) also applies in relation to events and circumstances that occur while a licence is suspended.

Licences not transferable

118. A licence is not transferable from the licensee to another person.

Variation of licences

119. (1) The responsible authority that issued a licence may, by notice to the licensee, vary the licence if to do so will assist in achieving the object of this Act set out in section 7. 5

(2) A variation of a licence may include—

- (a) removing or varying a condition of the licence, or adding a condition; and
- (b) changing the categories of financial products or financial services to which the licence relates. 10

(3) A variation of a licence takes effect on a date of the notice in terms of subsection (1) or, if a later date is specified in the notice, the later date.

Suspension of licences

120. (1) The responsible authority that issued a licence may, by notice to the licensee, suspend the licence if— 15

- (a) the licensee applies for suspension of the licence;
- (b) a condition of the licence has been contravened or not been complied with in a material respect;
- (c) the licensee has contravened in a material respect— 20
 - (i) a financial sector law;
 - (ii) a prudential standard, a conduct standard, a joint standard or an Ombud Regulatory Council rule;
 - (iii) a regulator's directive or a directive in terms of section 200;
 - (iv) an enforceable undertaking;
 - (v) an order of a court made in terms of a financial sector law; or 25
 - (vi) a decision of the Tribunal;
- (d) the licensee has in a foreign country contravened a law of that country that corresponds to a financial sector law;
- (e) information provided in or in relation to an application in relation to the licence was false or misleading (including by omission) in a material respect; 30
- (f) the suspension is necessary to prevent—
 - (i) a serious contravention of a financial sector law; or
 - (ii) financial customers of the licensee suffering material prejudice; or
- (g) fees in respect of the licence, a levy or an administrative penalty payable by the licensee, including any interest, are unpaid and have been unpaid for at least 14 days. 35

(2) The responsible authority may refuse to suspend a licence in terms of subsection (1)(a) if the suspension—

- (a) would not be in the best interests of financial customers; or
- (b) would frustrate the objects of a financial sector law applicable to the licence. 40

(3) The responsible authority that suspended a licence may at any time revoke the suspension.

(4) The suspension of a licence takes effect on the date of the notice in terms of subsection (1) or, if a later date is specified in the notice, the later date.

(5) The suspension of a licence does not affect an obligation of the licensee that it has in terms of a financial sector law. 45

Revocation of licences

121. (1) The responsible authority that issued a licence may, by notice to the licensee, revoke the licence—

- (a) if the licensee applies for revocation of the licence; 50
- (b) on any of the bases on which it may suspend the licence, as set out in section 120(1)(b) to (g); or
- (c) the licensee has ceased to conduct the licensed business.

(2) The responsible authority may refuse to revoke a licence in terms of subsection (1)(a) if the revocation— 55

- (a) would not be in the best interests of financial customers; or

- (b) would frustrate the objects of a financial sector law applicable to the licence.
- (3) Revocation of a licence takes effect on a date of the notice in terms of subsection (1) or, if a later date is specified in the notice, the later date.

Continuation of licensed activity despite suspension or revocation of licence

- 122.** (1) The responsible authority that suspended or revoked a licence may, by notice to the licensee, on conditions specified in the licence, allow the licensee to carry out the licensed activity to the extent, and for the period specified in the notice, to facilitate the orderly suspension or termination of the activity. 5
- (2) Conditions in terms of subsection (1) must be aimed at—
- (a) ensuring that financial customers of the licensee are treated fairly; or 10
- (b) the orderly suspension or termination of the licensed activity.
- (3) Carrying out the licensed activity in accordance with the requirements of a notice in terms of subsection (1) is not a contravention of section 111(2) or 160.

Procedure for varying, suspending and revoking licences

- 123.** (1) Before the responsible authority varies, suspends or revokes a licence, it must— 15
- (a) give the licensee notice of the proposed action and a statement of the reasons for it; and
- (b) invite the licensee to make submissions on the matter, and give it a reasonable period to do so. 20
- (2) The period referred to in subsection (1)(b) must be at least one month.
- (3) The responsible authority need not comply with subsection (1) if the licensee has applied for the proposed action to be taken.
- (4) In deciding whether to vary, suspend or revoke a licence, the responsible authority must take into account all submissions made within the period specified in the notice in terms of subsection (1)(b). 25
- (5) If the delay involved in complying, or complying fully, with subsection (1) in respect of a proposed action is likely to prejudice financial customers, prejudicially affect financial stability or defeat the object of the action, the responsible authority may take the action without having complied, or complied fully, with those subsections. 30
- (6) (a) If the responsible authority takes action without having complied, or complied fully, with subsection (1) for the reason set out in subsection (5), the licensee must be given a written statement of the reasons why that subsection was not complied with.
- (b) The licensee may make submissions to the responsible authority within one month after being provided with the statement. 35
- (c) The responsible authority must consider the submissions, and notify the licensee, as soon as practicable, whether the responsible authority proposes to amend or revoke the variation, suspension or revocation.

Applications for licences in terms of Part

- 124.** (1) The responsible authority may, in writing, determine procedures and requirements for applications. 40
- (2) Requirements determined in terms of subsection (1) may include requirements with respect to—
- (a) the institutional form of an applicant;
- (b) an applicant's business activities; 45
- (c) an applicant's financial capacity; and
- (d) an applicant's governance and risk management arrangements.
- (3) An application to the responsible authority for the purposes of this Part must be made in accordance with the relevant procedures in terms of subsection (1).
- (4) The responsible authority must publish requirements determined in terms of subsection (1). 50

Part 3**Provisions relating to all licences under financial sector laws****Application of Part**

125. This Part applies in relation to licences in terms of all financial sector laws.

Concurrence of financial sector regulators on licensing matters 5

126. (1) The responsible authority may not take any of the actions specified in subsection (2) unless—

- (a) the other financial sector regulator has concurred; and
- (b) if the action relates to or affects a systemically important financial institution, the Reserve Bank has also concurred. 10

(2) The actions are—

- (a) issuing a licence;
- (b) varying, suspending or revoking a licence, however these are described in the relevant financial sector law; and
- (c) granting an exemption in terms of section 271. 15

Compulsory disclosure of licences

127. (1) A licensed financial institution must—

- (a) identify the licence that it holds in all its business documentation, and in all its advertisements and other promotional material, relating to the licensed activity; and 20
- (b) make its licence or a copy of its licence available at no cost to any person on request.

(2) If a financial institution's licence has been suspended, the institution must, during the period of suspension, identify the licence, and state that it is suspended, in all its business documentation, and in all its advertisements and other promotional material, relating to the licensed activity. 25

Publication

128. (1) Each licence must be published by the responsible authority that issues it.

(2) Each variation, suspension and revocation of a licence must be published by the responsible authority that takes the action. 30

CHAPTER 9**INFORMATION GATHERING, SUPERVISORY ON-SITE INSPECTIONS AND INVESTIGATIONS****Part 1****Application and interpretation** 35**Application and interpretation of Chapter**

129. (1) This Chapter applies to information gathering, supervisory on-site inspections and investigations by the Prudential Authority or the Financial Sector Conduct Authority.

(2) In relation to the exercise of the powers in terms of this Chapter in respect of a medical scheme, a reference in this Chapter to— 40

- (a) a financial sector regulator or the responsible authority must be read as including a reference to the Council for Medical Schemes;
- (b) a financial sector law is to be read as including a reference to regulatory instruments and to the Medical Schemes Act; and 45

- (c) a licensed financial institution must be read as including a reference to a medical scheme registered in terms of the Medical Schemes Act or an administrator of a medical scheme approved in terms of the Medical Schemes Act.

Part 2

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Information gathering

Information gathering

130. (1) (a) The responsible authority for a financial sector law may, by written notice to a supervised entity, require the supervised entity to provide specified information or a specified document in the possession of, or under the control of, the entity, that is relevant to the responsible authority's assessment of compliance or risk of contraventions by a supervised entity with—

- (i) a financial sector law;
- (ii) a financial sector regulator's directive issued by the financial sector authority; or
- (iii) an enforceable undertaking accepted by the responsible authority.

(b) The responsible authority may require the information or document to be verified as specified in the notice, including by an auditor approved by the responsible authority.

(2) A supervised entity that has been given a notice in terms of subsection (1) must comply with the requirements in the notice.

(3) The responsible authority for a financial sector law may, for the purpose of gathering information relevant to its functions, engage in the activity commonly called "mystery shopping" in respect of financial products or financial services, and similar activities.

Part 3

Supervisory on-site inspections

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Powers to conduct supervisory on-site inspections

131. (1) A financial sector regulator may, at any time during normal business hours—

- (a) without a warrant enter the business premises of a supervised entity; and
- (b) conduct a supervisory on-site inspection on the premises.

(2) The purpose for which a financial sector regulator may conduct a supervisory on-site inspection of a supervised entity is to—

- (a) check compliance by the entity with a financial sector law for which the financial sector regulator is the responsible authority or an enforceable undertaking accepted by the financial sector regulator;
- (b) determine the extent of the risk posed by the entity of contraventions of a financial sector law for which the financial sector regulator is the responsible authority; and
- (c) assist the financial sector regulator in supervising the relevant financial institution.

(3) A supervisory on-site inspection must be conducted with strict regard to decency and good order.

(4) (a) An official of a financial sector regulator has, when conducting a supervisory on-site inspection, the right of access to any part of the premises and to any business document on the premises, and may do any of the following:

- (i) Examine, make extracts from and copy any business document in the premises;
- (ii) question any person on the premises to find out information relevant to the inspection;
- (iii) give the supervised entity or a person on the premises a written directive to produce to the financial sector regulator, at a time and place and in a manner specified in the directive, a specified business document that is relevant to the inspection and is in the possession or under the control of the supervised entity;
- (iv) when a business document is produced as required by a directive in terms of subparagraph (iii), examine, make extracts from and copy the document;

- (v) if, as a result of the inspection, the official or the financial sector regulator suspects on reasonable grounds that a contravention of a financial sector law has occurred or is likely to occur—
- (aa) give a written directive to the person apparently in charge of the premises not to remove from the premises, or conceal, destroy or otherwise interfere with, a specified business document; or
 - (bb) take possession of, and remove from the premises, a business document for the purpose of preventing another person from removing, concealing, destroying or otherwise interfering with the document.
- (b) The financial sector regulator must ensure that the person apparently in charge of the premises is given a written receipt for any business document taken as mentioned in paragraph (a)(v)(bb).
- (c) The financial sector regulator must ensure that any business document removed as contemplated in paragraph (a)(v)(bb) is returned to the supervised entity when retention of the document is no longer necessary to achieve the object of a financial sector law.
- (d) The supervised entity from whose premises a document was removed as contemplated in paragraph (a)(v)(bb), or its authorised representative, may, during normal office hours and under the supervision of the financial sector regulator, examine, copy and make extracts from the document.

Interference with supervisory on-site inspections 20

- 132.** (1) A person may not intentionally or negligently interfere with or hinder the conduct of a supervisory on-site inspection.
- (2) Subject to Part 5, a person who is given a notice or directive in terms of this Part must comply with the requirements in it.
- (3) Subject to Part 5, a person who is asked a question in terms of this Part must answer the question fully and truthfully, to the best of the person's knowledge.
- (4) A person may not, except with a lawful excuse, refuse or fail to comply with any reasonable request by a financial sector regulator in connection with the conduct of a supervisory on-site inspection.

Part 4 30

Investigations

Investigators

- 133.** (1) A financial sector regulator may, in writing, appoint a person as an investigator and may appoint any person to assist the investigator in carrying out an investigation.
- (2) The financial sector regulator must issue an investigator appointed in terms of subsection (1) with a certificate of appointment, which must be in the possession of the investigator when an investigator exercises any power or performs any duty in terms of this Act, and such investigator must produce the certificate of appointment at the request of any person in respect of whom such power is being exercised.

Powers to conduct investigations

- 134.** A financial sector regulator may instruct an investigator appointed by it to conduct an investigation in terms of this Part in respect of any person—
- (a) if the financial sector regulator suspects that the person has contravened, or may be contravening or is about to contravene, a financial sector law for which the financial sector regulator is the responsible authority; or
 - (b) to comply with a request by a requesting authority in terms of a bilateral or multilateral agreement or memorandum of understanding contemplated in section 239.

Powers of investigators to question and require production of documents or other items

- 135.** (1) (a) An investigator may, for the purposes of conducting an investigation, do any of the following:
- (i) By written notice, require any person who the investigator reasonably believes may be able to provide information relevant to the investigation to appear before the investigator, at a time and place specified in the notice, to be questioned by an investigator; 5
 - (ii) by written notice, require any person who the investigator reasonably believes may be able to produce a document or item relevant to the investigation, to— 10
 - (aa) produce the document or item to an investigator, at a time and place specified in the notice; or
 - (bb) produce the document or item to an investigator, at a time and place specified in the notice, to be questioned by an investigator about the document or item; 15
 - (iii) question a person who is complying with a notice in terms of subparagraph (i) or (ii)(bb);
 - (iv) require a person being questioned as mentioned in subparagraph (i) or (ii)(bb) to make an oath or affirmation, and administer such an oath or affirmation;
 - (v) examine, copy or make extracts from any document or thing produced to an investigator as required in terms of this paragraph (a); 20
 - (vi) take possession of, and retain, any document or item produced to an investigator as required in terms of this paragraph (a); and
 - (vii) give a directive to a person present while the investigator is exercising powers in terms of this section, to facilitate the exercise of such powers. 25
- (b) An investigator who takes a document or item in terms of paragraph (a)(vi) must give the person producing it a written receipt.
- (c) The investigator must ensure that a document or item taken in terms of paragraph (a)(vi) is returned to the person who produced it when retention of the document or item is no longer necessary to achieve the object of a financial sector law. 30
- (d) A person otherwise entitled to possession of a document or item taken in terms of paragraph (a)(vi), or its authorised representative, may, during normal office hours and under the supervision of the financial sector regulator, examine, copy and make extracts from the document, or inspect the item.
- (2) A person being questioned in terms of this section may be assisted and represented by a legal practitioner. 35

Powers of investigators to enter and search premises

- 136.** (1) An investigator may, for the purposes of conducting an investigation, do any of the following:
- (a) Enter any premises at any time— 40
 - (i) with the prior consent of the person apparently in control of the premises; or
 - (ii) without that consent and without prior notice to any person—
 - (aa) if the entry is authorised by a warrant; or
 - (bb) if an investigator believes, on reasonable grounds, that the delay 45
 - caused by applying for and obtaining the warrant will defeat the purpose of the search, and believes on reasonable grounds that a warrant under section 137 would be issued.
 - (b) search the premises for anything that may afford evidence of a contravention of a financial sector law. 50
- (2) An investigator exercising powers in terms of this section must do so with strict regard to decency, good order and a person's rights, including the rights to human dignity, freedom and security of the person and privacy.
- (3) An entry or search of premises in terms of this Part must be done during the day, not the night, unless the warrant authorising it expressly authorises entry at night. 55
- (4) An investigator may be accompanied and assisted during the entry and search of any premises for an investigation by a police officer or a person appointed in terms of section 133.

- (5) (a) While on premises in terms of this section, an investigator, for the purpose of conducting the investigation, has the right of access to any part of the premises and to any document or item on the premises, and may do any of the following:
- (i) Open or cause to be opened any strongroom, safe, cabinet or other container in which the investigator reasonably suspects there is a document or item that may afford evidence of the contravention concerned; 5
 - (ii) examine, make extracts from and copy any document in the premises;
 - (iii) question any person on the premises to find out information relevant to the investigation;
 - (iv) require a person on the premises to produce to the investigator any document or item that is relevant to the investigation and is in the possession or under the control of the person; 10
 - (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (aa) search any information in or available through that system; and 15
 - (bb) produce a record of that information in any media that the investigator reasonably requires;
 - (vi) if it is not practicable or appropriate to make a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and 20
 - (vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned.
- (b) An investigator must give the person apparently in charge of the premises a written receipt for any document or item taken by the investigator as mentioned in paragraph (a)(vii). 25
- (c) The investigator must ensure that any document or item taken by the investigator as mentioned in paragraph (a)(vii) is returned to the person when retention of the document or item is no longer necessary for an investigation.
- (d) A person from whose premises a document or item was taken as mentioned in paragraph (a)(vii), or its authorised representative, may, during normal office hours and under the supervision of the financial sector regulator, examine, copy and make extracts from the document or item. 30

Warrants

- 137.** (1) (a) Any judge or magistrate may issue a warrant for the purposes of this Part on application by an investigator. 35
- (b) The application must include a statement on oath or affirmation by the investigator as to why it is necessary to enter the premises under the authority of a warrant.
- (c) The judge or magistrate may issue a warrant in terms of this section only if satisfied that—
- (i) the investigator is conducting or is about to conduct an investigation; and 40
 - (ii) there is a reasonable suspicion that a document or item relevant to the investigation is at the premises.
- (2) A warrant issued in terms of this section must be signed by the judge or magistrate issuing it.
- (3) An investigator who enters premises under the authority of a warrant must— 45
- (a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place in the premises; and
 - (b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant. 50

Interference with investigations

- 138.** (1) A person may not intentionally or negligently interfere with or hinder the conduct of an investigation.
- (2) A person may not give an investigator any information that is false or misleading, including by omission, and is relevant to an investigation, if the person knew that the information was false or misleading, including by omission, and relevant to an investigation. 55
- (3) Subject to Part 5, a person who is given a notice or directive in terms of this Part must comply with the requirements in the notice or directive, as the case may be.

(4) Subject to Part 5, a person who is asked a question in terms of this Part must answer the question fully and truthfully, to the best of the person's knowledge.

(5) A person may not, except with a lawful excuse, refuse or fail to comply with any reasonable request by an investigator in connection with the conduct of an investigation.

Part 5

5

Incriminating statements

Protections

139. (1) For the purposes of this Part, an answer tends to incriminate a person if it would tend to show that the person has committed an offence, a contravention of a financial sector law or an offence or contravention in terms of the law of a foreign country. 10

(2) (a) A person who is questioned by a financial sector regulator or an investigator in terms of this Chapter may object to answering the question on the grounds that the answer may tend to incriminate himself or herself.

(b) On such an objection, the financial sector regulator or investigator may require the question to be answered. 15

(c) An answer given as required in terms of paragraph (b)—

(i) is not admissible in evidence against the person in any proceedings for an offence or a penalty, except proceedings in respect of a contravention of section 263 based on the false or misleading nature of the answer; and 20

(ii) must not be taken into account by a financial sector regulator in determining whether or not the person has contravened a financial sector law, or taken into account in relation to a penalty to be imposed on the person in relation to such a contravention.

(3) Before a financial sector regulator or an investigator starts to question a person in terms of this Chapter, if the financial sector regulator or the investigator suspects that the person has contravened a financial sector law, the financial sector regulator or the investigator must inform the person of the right to object in terms of this section. 25

(4) (a) A person does not have to produce a document or answer a question asked in terms of this Part if that person is entitled to claim legal professional privilege in relation to the contents of the document or such answer; or 30

(b) If the person contemplated in paragraph (a) is a legal practitioner, the said person is entitled or required to claim that privilege on behalf of a client of the person.

(5) Subsections (2) and (4) do not limit any right of a person.

CHAPTER 10

35

ENFORCEMENT

Part 1

Guidance notices and binding interpretations

Guidance notices

140. (1) The responsible authority for a financial sector law may publish guidance notices on the application of the financial sector law. 40

(2) Guidance notices are for information, and are not binding.

Binding interpretations

141. (1) The responsible authority for a financial sector law may issue a binding interpretation on the application of a specified provision of that law, in circumstances specified in the interpretation. 45

(2) The purpose of a binding interpretation is to promote clarity, consistency and certainty in the interpretation and application of financial sector laws.

(3) A binding interpretation ceases to be effective if—

(a) a provision of the financial sector law that was the subject of the binding interpretation is repealed or amended in a manner that materially affects the 50

- binding interpretation, in which case the binding interpretation will cease to be effective from the date that the repeal or amendment is effective; or
- (b) a court overturns or modifies an interpretation of the financial sector law on which the binding interpretation is based, in which case the binding interpretation will cease to be effective from the date of judgment unless— 5
- (i) the decision is under appeal;
 - (ii) the decision is fact-specific and the general interpretation upon which the binding interpretation was based is unaffected; or
 - (iii) the reference to the interpretation upon which the binding interpretation was based did not form a part of the reasoning on which the judgment of the court was based. 10
- (4) The responsible authority that issues a binding interpretation may amend or revoke the interpretations if it is necessary to do so because of a change in the law or a judicial decision.
- (5) A binding interpretation ceases to be effective upon the occurrence of any of the circumstances described in subsection (3), whether or not the responsible authority publishes a notice of withdrawal or modification of the binding interpretation. 15
- (6) Before the responsible authority issues a binding interpretation, it must publish—
- (a) a draft of the proposed interpretation; and
 - (b) a notice calling for written public comments within a period specified in the notice, which period must be at least one month from the date of publication of the notice. 20
- (7) The responsible authority is not obliged to comply with subsection (4) in relation to an amendment to, or a revocation of, a binding interpretation.
- (8) The responsible authority that issues a binding interpretation must apply the provision of the financial sector law to which the interpretation relates in accordance with the interpretation in the circumstances specified in the interpretation. 25
- (9) The responsible authority that issues a binding interpretation must publish it.

Part 2

Directives of financial sector regulators 30

Directives by Prudential Authority

- 142.** (1) The Prudential Authority may issue to—
- (a) a financial institution that provides a financial product or securities services, or that is a market infrastructure; or
 - (b) a key person of a financial institution, 35
- a written directive requiring the financial institution to take action specified in the directive if the financial institution—
- (i) is conducting its business in an improper or financially unsound way and, as a result, there is a risk that the financial institution may not be able to comply with its obligations; 40
 - (ii) has contravened or is likely to contravene a financial sector law;
 - (iii) is involved or is likely to be involved in financial crime; or
 - (iv) is causing or contributing to instability in the financial system, or is likely to do so.
- (2) The Prudential Authority may issue to a holding company of a financial conglomerate a written directive requiring the holding company to take action specified in the directive if the holding company or another company in the financial conglomerate concerned— 45
- (a) is conducting its business in an improper or financially unsound way and, as a result, there is a risk that an eligible financial institution in the conglomerate will not be able to comply with its obligations; 50
 - (b) has contravened or is likely to contravene a financial sector law;
 - (c) is involved or is likely to be involved in financial crime; or
 - (d) is causing or contributing to instability in the financial system, or is likely to do so. 55
- (3) A directive in terms of subsection (1) or (2) must be aimed at achieving the objective of the Prudential Authority set out in section 33 and—
- (a) reducing any risks referred to in subsection (1)(b)(i) or (2)(a);

- (b) stopping the financial institution or company from contravening applicable financial sector laws, or reducing the risk of such contraventions;
 - (c) stopping the financial institution or company from being involved in financial crime, and reducing the risk that it may be so involved;
 - (d) reducing the risk that a systemic event may occur; or 5
 - (e) remedying the effects of the relevant contravention or involvement in financial crime.
- (4) The Prudential Authority may not issue a directive to a financial institution on the basis set out in subsection (1)(b)(iv) without the concurrence of the Reserve Bank.
- (5) Action that may be specified in a directive in terms of subsection (1) includes the following: 10
- (a) The financial institution ceasing offering or providing a specific financial product;
 - (b) the financial institution modifying a specific financial product or the terms on which it is provided; 15
 - (c) the financial institution not paying a dividend or a specified bonus or performance payment;
 - (d) the financial institution not entering into a specific transaction or undertaking a specific obligation, contingent or otherwise.

Directives by Financial Sector Conduct Authority 20

- 143.** (1) The Financial Sector Conduct Authority may issue to—
- (a) a person who is a financial institution;
 - (b) a key person of a financial institution;
 - (c) a representative of a financial institution; or
 - (d) a contractor, 25
- a written directive requiring the person to take action specified in the directive if the financial institution, the key person, the representative or the contractor—
- (i) has contravened or is likely to contravene a financial sector law;
 - (ii) is involved or is likely to be involved in financial crime; or
 - (iii) is causing or contributing to instability in the financial system, or is likely 30 to do so.
- (2) A directive in terms of subsection (1) must be aimed at achieving the objective of the Financial Sector Conduct Authority set out in section 57 and—
- (a) stopping the financial institution, the key person, the representative or the contractor from contravening applicable financial sector laws, or reducing the 35 risk of such contraventions;
 - (b) stopping the financial institution, the key person, the representative or the contractor from being involved in financial crime, and reducing the risk that it may be so involved;
 - (c) reducing the risk that a systemic event may occur; or 40
 - (d) remedying the effects of a contravention by the financial institution, the key person, the representative, or the contractor of a financial sector law or involvement in financial crime.
- (3) The Financial Sector Conduct Authority may not issue a directive on the basis set out in subsection (1)(d)(iii) without the concurrence of the Reserve Bank. 45
- (4) Action that may be specified in a directive in terms of subsection (1) includes the following:
- (a) The financial institution ceasing providing a specific financial product or financial service;
 - (b) the financial institution modifying a specific financial product or financial 50 service or the terms on which it is provided;
 - (c) the financial institution not paying a specified bonus or performance payment; and
 - (d) the financial institution remedying the effects of the contravention.
- (5) The Financial Sector Conduct Authority may issue to a significant owner of a financial institution a written directive requiring the significant owner to take action specified in the directive if the institution has contravened or is likely to contravene a financial sector law for which the Financial Sector Conduct Authority is the responsible authority. 55
- (6) A directive in terms of subsection (5) must be aimed at stopping the institution 60 from contravening the financial sector law, or reducing the risk of such a contravention.

(7) In addition to subsections (1) and (4), if a person is engaging, or is proposing to engage, in conduct that contravenes a financial sector law, a financial sector regulator may issue a written directive to the person requiring the person to cease engaging, or not to engage, in the conduct.

(8) Action that may be specified in a directive in terms of subsection (1) issued to a key person or a contractor must be aimed at achieving the objective of the Financial Sector Conduct Authority and ensuring that the key person or contractor performs its relevant function in a specified way. 5

Removal of key persons from position

144. (1) A financial sector regulator may not issue a directive in terms of this Part that requires a key person to be removed from his or her position in the financial institution unless the key person— 10

- (a) has contravened a financial sector law;
 - (b) has been involved in financial crime;
 - (c) is responsible for, or in any way participated in, or failed to take steps open to him or her aimed at preventing— 15
 - (i) a contravention of a financial sector law by the financial institution; or
 - (ii) the financial institution being involved in financial crime; or
 - (d) no longer complies with applicable fit and proper requirements.
- (2) The removal of a key person from his or her position is subject to due process. 20

Consultation requirements

145. (1) Before issuing a directive in terms of this Part to a financial institution or person, the financial sector regulator must—

- (a) give the financial institution or person a draft of the proposed directive and a statement of the reasons as to why it is proposed to issue it, including a statement of the relevant facts and circumstances; and 25
 - (b) invite the financial institution or person to make submissions on the matter, and give it a specified period, which must be reasonable, to do so.
- (2) If the directive requires a key person to be removed from his or her position in a financial institution, the financial sector regulator must also— 30
- (a) give the key person a draft of the proposed directive and a statement of the reasons why it is proposed to issue it, including a statement of the relevant facts and circumstances; and
 - (b) invite the key person to make submissions on the matter within the period specified in terms of subsection (1)(b). 35
- (3) In deciding whether to issue the directive, the financial sector regulator must take into account all submissions received by the end of the period referred to in subsection (1)(b).
- (4) If the delay involved in complying, or complying fully, with subsections (1) and (2) in respect of a proposed directive is likely to lead to loss to financial customers, prejudicially affect financial stability or defeat the object of the directive, the financial sector regulator may issue the directive without having complied, or complied fully, with those subsections.
- (5) (a) If a financial sector regulator issues a regulator's directive without having complied, or complied fully, with subsections (1) and (2), the person to whom it was issued, and, where subsection (2) applies, the key person must be given a written statement of the reasons as to why those subsections were not complied with. 45
- (b) A person to whom the statement was given may make submissions to the financial sector regulator within one month after being provided with the statement.
- (c) The financial sector regulator must consider the submissions, and notify the person, as soon as practicable, whether the financial sector regulator proposes to revoke the directive. 50

Period for compliance

146. A directive issued by a financial sector regulator must specify a reasonable period for compliance, where applicable. 55

Revoking directives

147. A financial sector regulator may at any time revoke a directive it has issued by written notice to the person to whom it was issued.

Compliance with directives

148. (1) A financial institution, key person, representative or contractor to which a directive in terms of this Part has been issued must comply with the directive. 5

(2) A directive of a financial sector regulator is not a ground on which a person may terminate a contract with a financial institution, accelerate a debt under such a contract or close out a transaction with the financial institution, despite any provision to the contrary in any contract or document. 10

(3) The High Court may, on application by a party to a contract referred to in subsection (2), other than the financial institution, make an order relating to the effect of a directive of a financial sector regulator on the contract.

(4) (a) Without limiting what the order may do, the order may require the financial institution to— 15

- (i) perform its obligations under the contract; or
- (ii) compensate the applicant, as specified in the order;

(b) An order in terms of paragraph (a) may not require a person to take action that would contravene the directive of a financial sector regulator.

Application and interpretation 20

149. This Part applies in addition to any power in a specific financial sector law that relates to the issuing of directives by a financial sector regulator.

Part 3***Enforceable undertakings*****Enforceable undertakings** 25

150. (1) A person may give a written undertaking to the responsible authority concerning that person's future conduct in relation to a matter regulated by a financial sector law, and that undertaking, upon its acceptance by the responsible authority, becomes a legal instrument enforceable by the responsible authority as contemplated in this Act. 30

(2) A written undertaking referred to in subsection (1) may include an undertaking to provide specified redress to financial customers.

(3) The person who gave an enforceable undertaking may, with the consent of the responsible authority, vary or withdraw the undertaking at any time, except if the undertaking is already a subject of enforcement. 35

(4) If a financial institution licensed under a specific financial sector law that gave an enforceable undertaking breaches a term of the undertaking, the responsible authority may suspend or withdraw the licence.

(5) The responsible authority must publish each enforceable undertaking that it accepts, and each variation or withdrawal of an enforceable undertaking. 40

(6) If the Tribunal is satisfied, on application by the responsible authority, that a person has contravened an enforceable undertaking, the Tribunal may make any one or more of the following orders:

- (a) An order directing the person to comply with the undertaking;
- (b) if the undertaking relates to a past contravention of the financial sector law, an order directing the person to perform a specified act, or refrain from performing a specified act, for one or both of the following purposes: 45
 - (i) to remedy the effects of the contravention;
 - (ii) to ensure that the person does not contravene the undertaking again;
- (c) any other incidental or relevant order. 50

(7) The responsible authority may file with the registrar of a competent court a certified copy of an order in terms of subsection (6), if—

- (a) the order has not been complied with; and

- (b) either—
- (i) no proceedings in a court appealing against the making of the order have been commenced by the end of the period for lodging such appeals; or
 - (ii) if such an appeal has been lodged, the appeal has been finally disposed of.

(8) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

Part 4

Court orders by responsible authorities

Compliance with financial sector laws 10

151. (1) The responsible authority for a financial sector law may commence proceedings against a person in the High Court for—

- (a) an order that a person do, or not do, a specified thing to ensure compliance with the financial sector law; and
- (b) any ancillary order. 15

(2) The High Court may make an order in terms of subsection (1)—

- (a) if it appears to the High Court that the person is engaging, or proposes to engage, in conduct contravening a financial sector law;
- (b) if the person has previously engaged in such conduct;
- (c) if there is a danger of substantial or irreparable damage, prejudice or harm if the person engages in conduct contravening a financial sector law; or 20
- (d) even if another remedy is available.

(3) The High Court may not require the responsible authority to give any undertaking as to damages in connection with the application for an order in terms of this section.

(4) The responsible authority must publish each court order, other than interlocutory orders, that it obtains in terms of this section. 25

Part 5

Debarment of individuals

Debarment

152. (1) The responsible authority for a financial sector law may make a debarment order in respect of an individual if the individual has— 30

- (a) contravened a financial sector law in a material respect;
- (b) contravened in a material respect an enforceable undertaking that was accepted by the responsible authority in terms of section 151(1);
- (c) attempted, or conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law in a material respect; or 35
- (d) contravened in a material respect a law of a foreign country that corresponds to a financial sector law.

(2) A debarment order prohibits the individual, for a specified period, as specified in the debarment order, from— 40

- (a) providing, or being involved in the provision of, specified financial products or financial services, generally or in circumstances specified in the order;
- (b) acting as a key person of a financial institution; or
- (c) providing specified services to a financial institution, whether under outsourcing arrangements or otherwise. 45

(3) A debarment order takes effect from—

- (a) the date on which it is served on the individual; or
- (b) if the order specifies a later date, the later date.

(4) (a) An individual who is subject to a debarment order may not engage in conduct that, directly or indirectly, contravenes the debarment order. 50

(b) Without limiting paragraph (a), an individual contravenes that paragraph if the individual enters into an arrangement with another person to engage in the conduct that directly or indirectly contravenes a debarment order, on behalf of, or in accordance with the directions, instructions or wishes of, the individual.

(5) A licensed financial institution that becomes aware that a debarment order has been made in respect of an individual employed or engaged by the financial institution must take all reasonable steps to ensure that the debarment order is given effect to.

(6) The responsible authority must publish each debarment order that it makes.

Consultation requirements 5

153. (1) Before making a debarment order in respect of an individual, the responsible authority must—

- (a) give a draft of the debarment order to the individual and to the other financial sector regulator, along with reasons for and other relevant information about the proposed debarment; and 10
- (b) invite the individual to make submissions on the matter, and give them a reasonable period to do so.

(2) The period contemplated in terms of subsection (1)(b) must be at least one month.

(3) In deciding whether or not to make a debarment order in respect of an individual, the responsible authority must take into account at least— 15

- (a) any submission made by, or on behalf of, the individual; and
- (b) any advice from the other financial sector regulator.

Part 6

Leniency agreements

Leniency agreements 20

154. (1) The responsible authority for a financial sector law may, in exchange for a person's co-operation in an investigation or in proceedings in relation to conduct that contravenes or may contravene that law, enter into a leniency agreement with the person, which may provide that the responsible authority undertakes not to impose an administrative penalty on the person in respect of the conduct. 25

(2) A leniency agreement with a person may provide that the agreement also applies to—

- (a) specified persons in the service of, or acting on behalf of, the person; or
- (b) specified partners and associates of the person.

(3) The responsible authority may not enter into a leniency agreement with a person unless it is satisfied that it is appropriate to do so, having regard, among other matters, to— 30

- (a) the nature and effect of the contravention concerned;
- (b) the nature and extent of the person's involvement in the contravention; and
- (c) the extent of the person's co-operation. 35

(4) The responsible authority that enters into a leniency agreement must publish it, unless the responsible authority determines that the publication may—

- (a) create an unjustifiable risk to the safety of a person; or
- (b) prejudice an investigation into a contravention of a law.

(5) The responsible authority that enters into a leniency agreement may terminate it— 40

- (a) if the person agrees;
- (b) if the person gave the responsible authority false or misleading information in relation to entering into the agreement;
- (c) if the person has failed to comply with the agreement; or
- (d) in circumstances specified in the agreement. 45

CHAPTER 11

SIGNIFICANT OWNERS

Significant owners

155. (1) A person is a significant owner of a financial institution if—

- (a) the person, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of the financial institution; 50

- (b) the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint a person to be a member of the governing body of the financial institution;
 - (c) the person's consent is required for the appointment of a person as a member of a governing body of the financial institution; 5
 - (d) in the case of a financial institution that is a company, the person, directly or indirectly, alone or together with a related or interrelated person—
 - (i) holds at least 15%, or a lower percentage as may be prescribed in Regulations, of the issued shares of the financial institution;
 - (ii) is able to exercise or control the exercise of at least 15%, or a lower percentage as may be prescribed in Regulations, of the voting rights attached to securities of the financial institution; or 10
 - (iii) holds rights in relation to the financial institution that, if exercised, would result in the person, directly or indirectly, alone or together with a related or interrelated person— 15
 - (aa) holding at least 15%, or a lower percentage as may be prescribed in Regulations, of the securities of the financial institution;
 - (bb) having the ability to exercise or control at least 15%, or a lower percentage as may be prescribed in Regulations, of the voting rights attached to shares or other securities of the financial institution; or 20
 - (cc) having the ability to dispose of or direct the disposal of at least 15%, or a lower percentage as may be prescribed in Regulations, of the financial institution's securities;
 - (e) in the case of a financial institution that is a close corporation, the person, directly or indirectly, alone or together with a related or interrelated person, owns at least 15%, or a lower percentage prescribed in Regulations, of the members' interest, or controls directly, or has the right to control, at least 15%, or a lower percentage as may be prescribed in Regulations, of members' votes in the close corporation; 25
 - (f) in the case of a financial institution that is a trust, the person, directly or indirectly, alone or together with a related or interrelated person— 30
 - (i) controls or has the ability to control at least 15%, or a lower percentage as may be prescribed in Regulations, of the votes of the trustees;
 - (ii) has the power to appoint at least 15%, or a lower percentage as may be prescribed in Regulations, of the trustees; or 35
 - (iii) has the power to appoint or change any beneficiaries of the trust; or
 - (g) is declared in terms of section 156 to be a significant owner of a financial institution. 40
- (2) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, significant owners of a financial institution. 40

Declaration of significant owners of financial institution

- 156.** (1) The responsible authority for the financial sector law in terms of which a financial institution is required to be licensed may declare in writing that a specified person is or is not a significant owner of the financial institution.
- (2) The responsible authority may not declare that a person is a significant owner of a financial institution unless satisfied that the person has the ability to control or influence materially the business or strategy of the financial institution. 45
- (3) (a) Before making a declaration in terms of subsection (1) that a person is a significant owner of a financial institution, the responsible authority must—
- (i) give the person, the financial institution and the other relevant financial sector regulator notice of the proposed declaration; and 50
 - (ii) invite the person and the financial institution to make submissions on the matter, and give them a reasonable period to do so.
- (b) The period referred to in paragraph (a) must be at least 14 days.
- (4) In deciding whether to declare that a person is or is not a significant owner of a financial institution, the responsible authority must take into account at least— 55
- (a) any submission made by, or for, the person or the financial institution; and
 - (b) any advice from the other financial sector regulator.
- (5) The responsible authority may, in writing, revoke a declaration in terms of this section, subject to due process. 60

(6) The responsible authority that makes or revokes a declaration in terms of this section must publish it.

(7) A financial sector regulator may make standards for significant owners.

Approvals relating to significant owners

157. (1) A person may not enter into an arrangement in respect of any of the following institutions, being an arrangement that results, or would result, in the person, alone or together with a related or interrelated person, becoming a significant owner of the financial institution, without the approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed: 5

(a) An eligible financial institution; 10

(b) a manager of a collective investment scheme; or

(c) a financial institution prescribed in the Regulations.

(2) A person may not enter into an arrangement in respect of any of the following institutions, being an arrangement that results or would result in an increase or reduction in the extent of the ability of the person, alone or together with a related or interrelated person, to control or influence the business or strategy of the financial institution, without the approval of the responsible authority for the financial sector law in terms of which the institution is required to be licensed: 15

(a) An eligible financial institution;

(b) a manager of a collective investment scheme; 20

(c) a financial institution prescribed in the Regulations.

(3) An arrangement referred to in subsection (1) or (2) need not involve the acquisition of, or disposition of, shares or other interests or property.

(4) If a person enters into an arrangement in contravention of subsection (1) or (2), the arrangement, in so far as it has an effect mentioned in the relevant subsection, is of no effect. 25

(5) An approval in terms of subsection (1) or (2) may not be given unless—

(a) the responsible authority is satisfied that the person becoming a significant owner, or the arrangement, will not prejudicially affect the prudent management and the financial soundness of the financial institution; and 30

(b) in the case of an arrangement that results or would result in an increase in the extent of the ability of the person to control or influence the business or strategy of the financial institution as mentioned in subsection (2), the responsible authority is satisfied that the person meets the applicable fit and proper person requirements. 35

(6) The Financial Sector Conduct Authority may not give approval in terms of subsection (1) or (2) in respect of an eligible financial institution that is a market infrastructure without the concurrence of the Prudential Authority and the Reserve Bank.

(7) This section does not affect any other requirement in terms of a financial sector law to obtain approval or consent in respect of an acquisition or disposal. 40

CHAPTER 12

FINANCIAL CONGLOMERATES

Financial conglomerates

Designation of financial conglomerates 45

158. (1) The Prudential Authority may designate members of a group of companies as a financial conglomerate.

(2) A financial conglomerate designated in terms of subsection (1) must include both an eligible financial institution and a holding company of the eligible financial institution, but need not include all the members of the group of companies. 50

(3) The Prudential Authority must consult the Financial Sector Conduct Authority in connection with any designation in terms of subsection (1).

(4) A designation in terms of subsection (1) must be for the purpose of facilitating the prudential supervision of the eligible financial institution.

(5) The Prudential Authority must keep designations in terms of subsection (1) under review, including if the Prudential Authority becomes aware of a change in the risk profile of the financial conglomerate.

(6) The Prudential Authority may amend or revoke a designation in terms of subsection (1). 5

(7) The Prudential Authority must publish each designation made in terms of this section, and each amendment and revocation of a designation, subject to due process.

Notification by eligible financial institution

159. (1) An eligible financial institution must, within 14 days of becoming part of a group of companies, notify the Prudential Authority of that event. 10

(2) A notification in terms of subsection (1) must be in the form determined by the Prudential Authority, completed in accordance with the instructions on the form, and be accompanied by any information that the Prudential Authority may determine.

Licensing requirement for holding companies of financial conglomerate

160. (1) The Prudential Authority may, by notice to a holding company of a financial conglomerate, require the holding company to be licensed in terms of this Act. 15

(2) Subsection (1) does not apply to a holding company that is licensed in terms of a financial sector law.

(3) A requirement in terms of subsection (1) must be for the purpose of enabling the Prudential Authority to exercise its powers with respect to the financial conglomerate, to enhance the safety and soundness of the eligible financial institution. 20

(4) A holding company given a notice in terms of subsection (1) must comply with the requirements of the notice.

Non-operating holding companies of financial conglomerate

161. (1) The Prudential Authority may, by notice to a holding company of a financial conglomerate, require the holding company to be a non-operating company. 25

(2) A requirement in terms of subsection (1) must be for the purpose of managing risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate, more effectively.

(3) A holding company given a notice in terms of subsection (1) must comply with the requirements of the notice. 30

Standards for financial conglomerates

162. (1) The power of the Prudential Authority to make prudential standards extends to making prudential standards that must be complied with by holding companies of financial conglomerates. 35

(2) In addition to the matters referred to in section 105, a prudential standard contemplated in subsection (1) may include requirements with respect to—

- (a) financial or other exposures of companies within financial conglomerates;
- (b) the governance and management arrangements for holding companies or financial conglomerates; 40
- (c) reporting of information about companies within financial conglomerates that are not financial institutions; and
- (d) reducing or managing risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate. 45

(3) The power of the Financial Sector Conduct Authority to make conduct standards extends to making such standards to be complied with by holding companies of financial conglomerates.

Directives to holding companies

163. (1) The power of the Prudential Authority to issue a directive in terms of section 142 extends to issuing such a directive to the holding company of a financial conglomerate imposing requirements on the holding company to manage and otherwise 50

mitigate risks to the prudent management or financial soundness of an eligible financial institution in the conglomerate arising from other members of the conglomerate.

(2) Requirements that a directive contemplated in subsection (1) may impose in terms of subsection (1) include requirements with respect to restructuring the conglomerate in accordance with a plan submitted to the Prudential Authority within a period agreed by the Prudential Authority, and approved by the Prudential Authority. 5

(3) The power of the Financial Sector Conduct Authority to issue a directive in terms of section 143 extends to issuing such a directive to the holding company of a financial conglomerate requiring the holding company to ensure that a financial institution in the conglomerate complies with a financial sector law for which the Financial Sector Conduct Authority is the responsible authority. 10

Approval and prior notification of acquisitions and disposals

164. (1) A holding company of a financial conglomerate may not acquire or dispose of a material asset as defined in prudential standards made for this section, without the approval of the Prudential Authority. 15

(2) The Prudential Authority may not give an approval in terms of subsection (1) unless satisfied that the acquisition or disposal will not prejudicially affect the prudent management and the financial soundness of an eligible financial institution within the financial conglomerate.

(3) An acquisition or disposal in contravention of subsection (1) has no legal effect. 20

CHAPTER 13

ADMINISTRATIVE PENALTIES

Part 1

Administrative penalties

Administrative penalties 25

165. (1) The responsible authority for a financial sector law may, by order served on a person, impose on the person an appropriate administrative penalty, that must be paid to the financial sector regulator within the period specified in the order, if the person—

- (a) has engaged in conduct that contravenes a financial sector law; or
- (b) has contravened an enforceable undertaking accepted by the responsible authority. 30

(2) The period specified in terms of subsection (1) must be at least one month.

(3) In determining an appropriate administrative penalty for particular conduct, the responsible authority must have regard to—

- (a) the need to deter such conduct;
- (b) the degree to which the person has co-operated with a financial sector regulator in relation to the investigation of the contravention; and 35
- (c) any submissions by, or on behalf of, the person that is relevant to the matter, including mitigating factors referred to in those submissions.

(4) In determining an appropriate administrative penalty for particular conduct, the responsible authority may consider any of the following: 40

- (a) The nature, duration, seriousness and extent of the contravention;
- (b) any loss or damage suffered by any person as a result of the conduct;
- (c) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct;
- (d) whether the person has previously contravened a financial sector law; 45
- (e) the effect of the conduct on the financial system and financial stability;
- (f) the effect of the proposed penalty on financial stability;
- (g) the extent to which the conduct was deliberate or reckless.

(5) An administrative penalty order may include an amount to reimburse the responsible authority for reasonable costs incurred by the responsible authority in connection with investigating the contravention. 50

(6) The responsible authority may not impose an administrative penalty on a person if a prosecution of the person for an offence arising out of the same set of facts has been commenced.

(7) An administrative penalty order is not a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 55

(8) The responsible authority that makes an administrative penalty order must publish the order.

Payment

166. An amount payable in terms of an administrative penalty order is due and payable as set out in Regulations made for this Chapter. 5

Interest

167. Interest, at the rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), is payable in respect of the unpaid portion of the amount payable as an administrative penalty until it is fully paid.

Enforcement 10

168. (1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if—

- (a) the amount payable in terms of the order has not been paid as required by the order; and
- (b) either— 15
 - (i) no application for review in terms of a financial sector law against the making of the order has been lodged by the end of the period for making such applications; or
 - (ii) if such an application has been made, the review has been finally disposed of. 20

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

Application of amounts paid as administrative penalties

169. (1) (a) All amounts recovered by the responsible authority as administrative penalties must be applied— 25

- (i) first, to reimburse the responsible authority its costs and expenses reasonably and properly incurred in investigating the relevant contravention, making the order and enforcing it; and
- (ii) to reimburse the responsible authority for its costs and expenses reasonably and properly incurred in administering the distribution of the amount in terms of this section. 30

(b) Any balance after applying the amount in accordance with paragraph (a) must be applied for the purposes of financial education or the protection of the public, as determined by the responsible authority.

Administrative penalty taken into account in sentencing 35

170. When determining the sentence to impose on a person convicted of an offence in terms of a financial sector law, a court must take into account any administrative penalty order made in respect of the same set of facts.

Remission of administrative penalties

171. The responsible authority that imposed an administrative penalty on a person may, on application by the person, by order, remit all or some of the penalty. 40

Prohibition of indemnity for administrative penalties

172. (1) A person may not undertake to indemnify or compensate another person, directly or indirectly, wholly or partly, in respect of a payment made or liability incurred by the other person in connection with an administrative penalty order imposed on the other person. 45

(2) An undertaking in terms of subsection (1) is of no effect.

CHAPTER 14

OMBUDS

Part 1

Ombud Regulatory Council

Ombud Regulatory Council 5

173. (1) The Ombud Regulatory Council is hereby established.

(2) The Ombud Regulatory Council is a juristic person.

(3) The Ombud Regulatory Council is a national public entity for the purposes of the Public Finance Management Act and, notwithstanding section 49(2) of the Public Finance Management Act, the Chairperson of the Ombud Regulatory Council is the accounting authority of the Ombud Regulatory Council for the purposes of that Act. 10

Objective

174. The objective of the Ombud Regulatory Council is to assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial products and financial services. 15

Functions of Ombud Regulatory Council

175. (1) In order to achieve its objective, the Ombud Regulatory Council must—

- (a) recognise, in accordance with this Chapter, industry ombud schemes;
- (b) promote co-operation between, and co-ordination of the activities of ombuds; 20
- (c) strive to protect the independence and impartiality of ombuds;
- (d) promote public awareness of ombuds and the services they provide;
- (e) take steps to facilitate access by financial customers to appropriate ombuds;
- (f) publicise ombud schemes, including publicising the kinds of complaints that different ombud schemes deal with; 25
- (g) resolve, in accordance with this Act, overlaps of the coverage of different ombud schemes;
- (h) monitor the performance of ombud schemes, including the extent to which they comply with the requirements of this Chapter and specific financial sector laws; and 30
- (i) promote financial inclusion.

(2) The Ombud Regulatory Council must also perform any other function conferred on it in terms of any other provision of this Act or other applicable legislation.

(3) The Ombud Regulatory Council may do anything else reasonably necessary to achieve its objective. 35

(4) The Ombud Regulatory Council must perform its functions without fear, favour or prejudice.

Overall governance objective

176. The Ombud Regulatory Council must—

- (a) manage its affairs in an efficient and effective way; and 40
- (b) establish and implement appropriate and effective governance systems and processes.

Board of Ombud Regulatory Council

177. (1) A Board for the Ombud Regulatory Council is hereby established.

(2) The Board consists of— 45

- (a) the Commissioner;
- (b) the Chief ombud; and
- (c) at least four, but not more than six, other members.

(3) The Commissioner does not have a vote on a question being considered by the Board. 50

Appointment of Board members

- 178.** (1) The members of the Board are appointed by the Minister.
- (2) (a) The Minister must appoint a member as Chairperson and another member as Deputy Chairperson. 5
- (b) The Commissioner may not be appointed as Chairperson or Deputy Chairperson.
- (3) The Deputy Chairperson acts as Chairperson when the Chairperson is absent from office or is otherwise unable to perform his or her functions.
- (4) A person may not be appointed to, or hold office as, the Chairperson, the Deputy Chairperson or a member of the Board if such person—
- (a) is a disqualified person; 10
 - (b) is not ordinarily resident in the Republic; or
 - (c) is engaged in—
 - (i) the business of a financial institution; or
 - (ii) the provision of financial products or financial services to financial customers. 15

Terms of office of Board members

- 179.** (1) A person appointed as a member of the Board—
- (a) holds office for a term of no longer than five years, as the Minister may determine;
 - (b) is, at the expiry of that term of office, eligible for re-appointment for one further term; and 20
 - (c) must vacate office before the expiry of a term of office if that person—
 - (i) resigns by giving at least three months written notice to the Minister, or a shorter period that the Minister may accept; or
 - (ii) is removed from office. 25
- (2) The Minister must, at least three months before the end of a person's first term of office, inform the person whether or not the Minister intends to re-appoint the person as a member of the Board.

Service conditions of Board members

- 180.** A member of the Board holds office on the terms and conditions, including terms and conditions relating to remuneration, that are determined by the Minister. 30

Removal of Board members

- 181.** (1) The Minister must, subject to due process, remove a member of the Board from office if the member becomes a disqualified person.
- (2) The Minister may remove a member of the Board from office if an independent inquiry established by the Minister has found that the member— 35
- (a) is unable to perform the duties of office for health or other reasons;
 - (b) has failed in a material way to discharge any of the responsibilities of office; or
 - (c) has acted in a way that is inconsistent with the requirements of continuing to hold the office. 40
- (3) Without limiting subsection (2)(b), a member of the Board must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Board without the leave of the Board.
- (4) If an independent inquiry has been established in terms of subsection (2), the Minister may suspend the member of the Board from office pending a decision on that person's removal from office. 45
- (5) If a member of the Board is removed from office in terms of subsection (2), the Minister must submit the report and findings of the independent inquiry to the National Assembly. 50

Role of Board

182. The Board must—

- (a) generally oversee the management and administration of the Ombud Regulatory Council in order to ensure that it is efficient and effective; and
- (b) act for the Ombud Regulatory Council by—
 - (i) making Ombud Regulatory Council rules and any amendments to those rules;
 - (ii) appointing members of committees of the Ombud Regulatory Council required or permitted by a law, and giving directions regarding the conduct of the work of any committee;
 - (iii) making determinations of fees in terms of a financial sector law; and
 - (iv) any other matter assigned in terms of a financial sector law to the Board.

Meetings of Board

183. (1) (a) The Board must meet on a quarterly basis or as often as necessary for the performance of its functions. 15

(b) An audio or audio-visual conference among a majority of the members of the Board, which enables each participating member to hear and be heard by each of the other participating members, must be regarded to be a meeting of the Board, and each participating member must be regarded as being present at such a meeting.

(2) Meetings of the Board are to be at times and, except where subsection (1)(b) applies, at places determined by the Chairperson. 20

(3) A quorum for a meeting of the Board is a majority of its members.

(4) (a) The Chairperson chairs the meetings of the Board at which the Chairperson is present.

(b) If the Chairperson is not present at a meeting, the Deputy Chairperson chairs the meeting. 25

(5) The person chairing a meeting of the Board may invite or allow any other person to attend a meeting of the Board, but a person who is invited has no right to vote at the meeting.

(6) The members may regulate proceedings at Board meetings as they consider appropriate. 30

(7) The Chairperson must ensure that minutes of each meeting of the Board are kept in a manner determined by the Chairperson.

Decisions of Board

184. (1) (a) A proposal before a meeting of the Board becomes a decision of the Board if a majority of the members who are present or regarded as being present, and who may vote, vote for the proposal. 35

(b) In the event of an equality of votes on a proposal, the person chairing the meeting has a casting vote in addition to a deliberative vote.

(2) The Board may, in accordance with procedures determined by the Board, make a decision on a proposal outside a meeting of the Board. 40

(3) A decision of the Board is not invalid merely because—

- (a) there was a vacancy in the office of a member when the decision was taken; or
- (b) a person who was not a member participated in the decision, but did not vote.

Governance and other committees of Ombud Regulatory Council 45

185. (1) The Board must establish—

(a) a committee to advise the Board on the remuneration policy of the Ombud Regulatory Council; and

(b) a committee to review, monitor and advise the Board on the risks faced by the Ombud Regulatory Council and plans for managing those risks. 50

(2) (a) The Board may establish one or more other committees for the Ombud Regulatory Council, with membership and functions as determined by the Board.

(b) A committee may include persons who are not members of Board.

(3) A disqualified person may not be, or remain, a member of a committee.

(4) A member of a committee holds office for the period, and on the terms and conditions, including, in the case of a person who is not in the service of an organ of state, terms regarding remuneration, determined by the Board.

(5) (a) A committee established in terms of subsection (1) or section 51(1)(a)(ii) of the Public Finance Management Act must be chaired by a person who is not the Chairperson, the Deputy Chairperson or a staff member of the Ombud Regulatory Council. 5

(b) The majority of the members of that committee may not be as staff members of the Ombud Regulatory Council.

(6) A committee determines its procedure, subject to any directions that may be issued by the Board. 10

(7) The Board must ensure that minutes of each meeting of a committee are kept in a manner determined by the Board.

Chief Ombud

186. (1) The Minister must appoint a Chief Ombud, and the person appointed as such must agree with the Minister, in writing, on— 15

(a) the performance measures that must be used to assess the said person's performance; and

(b) the level of performance to be achieved against those measures.

(2) Subject to this Act, the Chief Ombud holds office on the terms and conditions, including terms and conditions relating to remuneration, pension, leave and other benefits, that are determined by the Board and specified in an employment contract between the Chief Ombud and the Ombud Regulatory Council. 20

(3) The Chief Ombud of the Ombud Regulatory Council—

(a) is responsible for the day-to-day management and administration of the Ombud Regulatory Council; and 25

(b) must perform the functions of the Ombud Regulatory Council, except those mentioned in section 182, including exercising the powers and carrying out the duties associated with those functions.

(4) When acting in terms of subsection (3), the Chief Ombud must implement the policies and strategies adopted by the Board. 30

Duties of Board members

187. (1) A member of the Board must—

(a) act honestly in all matters relating to the Ombud Regulatory Council; and

(b) perform his or her functions as a member— 35

(i) in good faith;

(ii) for a proper purpose; and

(iii) with the degree of care and diligence that a reasonable person in the member's position would exercise.

(2) A person who is or was a member of the Board may not use that position, or any information obtained as a member of the Board, to— 40

(a) improperly benefit the person or another person;

(b) cause a detriment to the Ombud Regulatory Council's ability to perform its functions; or

(c) cause a detriment to another person. 45

(3) For the purposes of this section, "benefit" and "detriment" are not limited to financial benefit or detriment.

Delegations

188. (1) The Chief ombud may, in writing—

(a) delegate any of his or her powers or duties in terms of a financial sector law, except the power to delegate contained in this subsection, to a staff member of the Ombud Regulatory Council; and 50

(b) at any time, amend or revoke a delegation made in terms of paragraph (a), subject to any rights that may have accrued.

(2) A delegation in terms of subsection (1) may be to a specific person or to a person holding a specific position. 55

- (3) A delegation in terms this section—
- (a) is subject to the limitations and conditions specified in the delegation; and
 - (b) does not divest the Chief Ombud of responsibility in respect of the delegated power or duty.
- (4) Anything done by a delegate in terms of the delegation must be regarded as having been done by the Ombud Regulatory Council. 5

Staff and resources

- 189.** (1) The Ombud Regulatory Council may, in accordance with applicable law—
- (a) engage persons as employees; or
 - (b) enter into secondment arrangements; 10
 - (c) engage persons on contract otherwise than as employees;
 - (d) enter into contracts;
 - (e) acquire and dispose of property;
 - (f) insure itself against any loss, damage, risk or liability that it may suffer or incur; and 15
 - (g) do anything else necessary for the performance of its functions.
- (2) The Ombud Regulatory Council may not enter into a secondment arrangement in respect of a person, or engage persons as employees or on contract, unless the person and the Ombud Regulatory Council have agreed in writing, on—
- (a) the performance measures that must be used to assess that person’s 20 performance; and
 - (b) the level of performance to be achieved against those measures.

Duties of staff members

- 190.** (1) A person who is or was a staff member of the Ombud Regulatory Council may not use that position or any information obtained as a staff member to— 25
- (a) improperly benefit the person or another person;
 - (b) cause a detriment to the ability of the Ombud Regulatory Council to perform its functions; or
 - (c) cause a detriment to another person.
- (2) For the purposes of this section, “benefit” and “detriment” are not limited to 30 financial benefit or detriment.

Disclosure of interests

- 191.** (1) A member of the Board must disclose, at a meeting of the Board, or in writing to each of the other members, any interest in a matter that is being or will be considered by him or her, whether or not at a meeting of the Board, being an interest that— 35
- (a) the member has; or
 - (b) a person who is a related party to the member has.
- (2) A disclosure in terms of subsection (1) must be given as soon as practicable after the member concerned becomes aware of the interest.
- (3) A member referred to in subsection (1) may not perform a function in relation to the matter concerned unless— 40
- (a) the member has disclosed the interest in accordance with subsection (1); and
 - (b) the other members of the Board have decided that the interest cannot be seen as affecting the member’s proper execution of his or her functions in relation to the matter. 45
- (4) A member of a committee of the Ombud Regulatory Council established in terms of section 51(1)(a)(ii) of the Public Finance Management Act or section 185(1) of this Act must disclose, at a meeting of the committee, or in writing to each of the other members of that committee, any interest in a matter that is being or is intended to be considered by that committee, being an interest that— 50
- (a) the member has; or
 - (b) a person who is a related party to the member has.
- (5) A disclosure in terms of subsection (4) must be given as soon as practicable after the member concerned becomes aware of the interest.

- (6) A person referred to in subsection (1) or (4) may not participate in the consideration of, or decision on, that matter by the Board or the committee, as the case may be, unless—
- (a) the person has disclosed the interest in accordance with subsection (1) or (4); and 5
 - (b) the other members of the Board or that committee have decided that the interest cannot be seen as affecting the member's proper execution of his or her functions in relation to the matter.
- (7) (a) Each member of the Ombud Regulatory Council's staff and each other person involved in the performance of the functions or the exercise of the powers of the Ombud Regulatory Council must make timely, proper and adequate disclosure of their interests, including the interests of a related party, that could reasonably be seen as interests that may affect the proper execution of their functions of office or a delegated power. 10
- (b) The Chief Ombud must ensure that paragraph (a) is complied with.
- (8) For the purposes of this section, it does not matter— 15
- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
 - (b) when the interest was acquired.
- (9) For the purposes of this section, a person does not have to disclose—
- (a) the fact that that person, or a person who is a related party to that person, is— 20
 - (i) an official or employee of the Ombud Regulatory Council; or
 - (ii) a financial customer of a financial institution; or
 - (b) an interest that is not material.
- (10) The Chief ombud must maintain a register of all disclosures made in terms of this section and of all decisions made in terms of this section.

Part 2 25

Recognition of industry ombud schemes

Recognition of industry ombud schemes

- 192.** (1) The Ombud Regulatory Council may, on application by an industry ombud scheme, recognise the industry ombud scheme for the purposes of this Act.
- (2) An application in terms of subsection (1) must— 30
- (a) be in writing, in a form approved or accepted by the Ombud Regulatory Council; and
 - (b) include or be accompanied by—
 - (i) a copy of the governing rules of the industry ombud scheme;
 - (ii) a list of financial institutions that are or shall, on the industry ombud scheme's being recognised, be members of the industry ombud scheme; 35
 - and
 - (iii) any other information required in the form.

Requirement for further information or documents by Ombud Regulatory Council

- 193.** (1) The Ombud Regulatory Council may, by notice in writing, require an applicant for recognition— 40
- (a) to give the Ombud Regulatory Council additional information or documents specified by the Ombud Regulatory Council; and
 - (b) to verify any information given by the applicant in connection with the application in a manner specified by the Ombud Regulatory Council. 45
- (2) The Ombud Regulatory Council need not deal further with the application until the applicant has complied with the notice contemplated in subsection (1).

Determination of applications

- 194.** (1) The Ombud Regulatory Council must determine an application for recognition in terms of section 192 by— 50
- (a) granting the application; or
 - (b) refusing the application.

- (2) The Ombud Regulatory Council must not recognise an industry ombud scheme unless satisfied that—
- (a) a significant number of relevant financial institutions are or shall, on the industry ombud scheme's being recognised, be members of the industry ombud scheme; 5
 - (b) the governing rules of the industry ombud scheme—
 - (i) identify the financial products or financial services to which the industry ombud scheme relates;
 - (ii) make adequate and appropriate provision for making complaints;
 - (iii) are legally binding on the members of the industry ombud scheme, and enforceable by the governing body of the industry ombud scheme; 10
 - (iv) require each member of the industry ombud scheme to comply with, and give effect to, any determination of the ombud made in terms of the industry ombud scheme;
 - (v) require each member of the industry ombud scheme to include in contracts for the provision to financial customers of financial products or financial services, an obligation on the member to comply with the governing rules of the scheme; 15
 - (vi) make adequate provision for monitoring and oversight of the operation of the industry ombud scheme by a committee comprised of persons who are not members of the industry ombud scheme; 20
 - (vii) provide that the terms and conditions, including remuneration and other benefits, of the engagement of the ombud, and any action to terminate that engagement, are subject to approval by that committee; and
 - (viii) otherwise comply with applicable Ombud Regulatory Council rules; 25
 - (c) the scheme has or has available to it sufficient resources and capacity to ensure that it is able to comply with the requirements of financial sector laws in relation to ombuds; and
 - (d) recognising the industry ombud scheme will not be contrary to the interests of financial customers, the financial sector or the public interest. 30
- (3) (a) If the Ombud Regulatory Council has not determined an application within three months after it is made, the Ombud Regulatory Council is taken to have refused the application.
- (b) In working out when the period mentioned in paragraph (a) expires, any period between the Ombud Regulatory Council giving the applicant a notice in terms of section 193 and the requirements in the notice being satisfied is not to be counted. 35

Varying conditions

- 195.** (1) The Ombud Regulatory Council may, by notice to a recognised ombud scheme, remove or vary a condition of recognition, or add a condition.
- (2) A variation takes effect on the date of the notice in terms of subsection (1) or, if the notice specifies a later date, the later date. 40

Suspension of recognition

- 196.** (1) The Ombud Regulatory Council may, by notice to a recognised industry ombud scheme, suspend the recognition of an industry ombud scheme if—
- (a) the industry ombud scheme applies for suspension; 45
 - (b) a condition of recognition has been contravened or not been complied with in a material respect;
 - (c) the industry ombud scheme, the ombuds for the industry ombud scheme or a significant number of the financial institutions that are members of the industry ombud scheme have contravened in a material respect the governing rules of the industry ombud scheme, a provision of a financial sector law or Ombud Regulatory Council rules, relating to ombuds; 50
 - (d) information provided in, or in relation to, an application in relation to the industry ombud scheme was false or misleading, including by omission, in a material respect; 55
 - (e) the industry ombud scheme does not comply with a requirement of this Act;
 - (f) the suspension is necessary to prevent—
 - (i) a serious contravention of a financial sector law; or
 - (ii) financial customers of the licensee from suffering material prejudice; or

- (g) a fee, a levy or an administrative penalty payable by the industry ombud scheme, including any interest, is unpaid and has been unpaid for at least 14 days.
- (2) The Ombud Regulatory Council may at any time revoke the suspension.
- (3) The suspension takes effect on the date of the notice in terms of subsection (1), or a later date specified in the notice. 5
- (4) The suspension does not affect an obligation of the industry ombud scheme that it has in terms of a financial sector law.

Revocation of recognition

- 197.** (1) The Ombud Regulatory Council may, by notice to a recognised industry ombud scheme, revoke the recognition of an industry ombud scheme— 10
- (a) if the industry ombud scheme applies for revocation;
- (b) on any of the bases on which it may suspend recognition, as set out in section 196(1)(b) to (g); or
- (c) if the scheme has ceased to function. 15
- (2) Revocation of recognition takes effect on the date of the notice in terms of subsection (1) or, if the notice specifies a later date, the later date.

Procedure for varying, suspending and revoking recognition

- 198.** (1) (a) Before the Ombud Regulatory Council varies a condition of, or suspends or revokes, the recognition of a recognised industry ombud scheme, it must— 20
- (i) give the industry ombud scheme notice of the proposed action and a statement of the reasons for it; and
- (ii) invite the industry ombud scheme to make submissions on the matter, and give it a reasonable period to do so.
- (b) The period referred to in paragraph (a)(ii) must be at least one month. 25
- (2) The Ombud Regulatory Council need not comply with subsection (1) if the industry ombud scheme has applied for the proposed action to be taken.
- (3) In deciding whether to vary a condition of, or suspend or revoke, recognition, the Ombud Regulatory Council must have regard to all submissions made within the period specified in the notice in terms of subsection (1)(a)(ii). 30
- (4) The Ombud Regulatory Council may take the action without having complied, or complied fully, with subsection (1), if the delay involved in complying, or complying fully, with that subsection in respect of a proposed action is likely to lead to material prejudice to financial customers, prejudicially affect financial stability or defeat the object of the action. 35
- (5) (a) If the Ombud Regulatory Council takes action without having complied, or complied fully, with subsection (1) for the reason set out in subsection (4), the industry ombud scheme must be given a written statement of the reasons why that subsection was not complied with.
- (b) The industry ombud scheme may make submissions to the Ombud Regulatory Council within one month after being provided with the statement. 40
- (c) The Ombud Regulatory Council must have regard to the submissions, and notify the industry ombud scheme, as soon as practicable, whether the Ombud Regulatory Council proposes to amend or revoke the variation, suspension or revocation.

Part 3 45

Powers of Ombud Regulatory Council

Rules of Ombud Regulatory Council

- 199.** (1) The Ombud Regulatory Council may make rules for, or in respect of, ombuds and ombud schemes, aimed at ensuring that financial customers have access to, and are able to use affordable and effective, independent and fair alternative dispute resolution processes for complaints about financial products and financial services. 50
- (2) Ombud rules in terms of subsection (1) may be made on any of the following matters:
- (a) Governing rules of ombud schemes;

- (b) governance of ombud schemes, including in relation to—
 - (i) the composition, membership and operation of governing bodies and of substructures of ombud schemes; and
 - (ii) the roles and responsibilities of governing bodies and their substructures;
 - (c) the qualifications and experience of ombuds; 5
 - (d) the definition and type of complaints to be dealt with by specified ombuds;
 - (e) dispute resolution processes;
 - (f) any matters on which a regulatory instrument may be issued by the Ombud Regulatory Council in terms of a specific financial sector law in so far as it relates to industry ombud schemes and ombuds; 10
 - (g) matters that may in terms of any other provision of this Act be regulated by rules of the Ombud Regulatory Council; and
 - (h) any other matter that is appropriate and necessary for achieving the aim set out in subsection (1).
- (3) A rule of the Ombud Regulatory Council must be consistent with relevant financial sector laws. 15
- (4) A rule of the Ombud Regulatory Council must not interfere with the independence of an ombud or the investigation or determination of a specific complaint.
- (5) The Ombud Regulatory Council must, in developing Ombud Regulatory Council rules, seek to provide for a consistent approach and consistent requirements for all ombud schemes, and promote co-ordination and co-operation between ombud schemes. 20
- (6) Different Ombud Regulatory Council rules may be made for, or in respect of—
- (a) different categories of ombuds and ombud schemes; or
 - (b) different circumstances.
- (7) The Ombud Regulatory Council may, at any time, amend or revoke an Ombud Regulatory Council rule. 25

Directives of Ombud Regulatory Council

- 200.** (1) To the extent that it relates to financial sector ombud schemes, the Ombud Regulatory Council may issue to a person who is an ombud, or to financial sector ombud scheme, a written directive requiring the person to take action specified in the directive, if the person has contravened or is likely to contravene a financial sector law. 30
- (2) A directive issued in terms of subsection (1) must be aimed at ensuring compliance with the financial sector law.
- (3) The Ombud Regulatory Council may not issue a directive that requires a specified person to be removed from a position or role in relation to an ombud scheme unless the person— 35
- (a) has contravened a provision of a financial sector law or a standard relating to ombud schemes, or rule of the Ombud Regulatory Council;
 - (b) has become a disqualified person; or
 - (c) no longer complies with any applicable fit and proper requirements. 40
- (4) Before issuing a directive in terms of this section, the Ombud Regulatory Council must—
- (a) give the person to whom it is proposed to issue the directive a draft of the directive and a statement of the reasons why it is proposed to issue it, including a statement of the relevant facts and circumstances; and 45
 - (b) invite the person to make submissions on the matter, and give it a specified period, which must be reasonable, to do so.
- (5) If the directive requires a person to be removed from the person's position in relation to an ombud scheme, the Ombud Regulatory Council must also—
- (a) give the person a draft of the proposed directive and a statement of the reasons why it is proposed to issue it, including a statement of the relevant facts and circumstances; and 50
 - (b) invite the person to make submissions on the matter within the period specified in terms of subsection (4)(b).
- (6) In deciding whether or not to issue the directive, the Ombud Regulatory Council must take into account all submissions received by the end of the period referred to in subsection (4)(b). 55
- (7) The Ombud Regulatory Council may issue the directive without having complied, or complied fully, with subsections (4) and (5) if the delay involved in complying, or complying fully, with those subsections in respect of a proposed directive is likely to lead to prejudice to financial customers or defeat the object of the directive. 60

- (8) (a) If the Ombud Regulatory Council issues a directive without having complied, or complied fully, with subsections (4) or (5), the person to whom it was issued, and, where subsection (5) applies, the person referred to in that subsection, must be given a written statement of the reasons as to why those subsections were not complied with.
- (b) A person to whom the statement was given may make submissions to the Ombud Regulatory Council within one month after being provided with the statement. 5
- (c) The Ombud Regulatory Council must have regard to the submissions, and notify the person, as soon as practicable, whether the Ombud Regulatory Council proposes to revoke the directive.
- (9) A directive in terms of this section must specify a reasonable period for 10 compliance.
- (10) The Ombud Regulatory Council may at any time revoke a directive in terms of this section by written notice to the person to whom it was issued.
- (11) A person to whom a directive in terms of this section has been issued must 15 comply with the directive.

Enforceable undertakings

- 201.** (1) A person may give the Ombud Regulatory Council, and the Ombud Regulatory Council may accept, a written undertaking concerning that person's future conduct in relation to a financial sector law in so far as it relates to ombud schemes.
- (2) Section 150 applies, with necessary changes required by the context, in relation to 20 an undertaking contemplated in subsection (1), as if the references in that section to "responsible authority" were references to the Ombud Regulatory Council.

Compliance with financial sector laws

- 202.** (1) The Ombud Regulatory Council may commence proceedings against a person in the High Court for— 25
- (a) an order that a person do, or not do, a specified thing in order to ensure compliance with the financial sector law in so far as it relates to ombud schemes; and
- (b) any ancillary order.
- (2) Section 151 applies, with necessary changes required by the context, in relation to 30 the proceeding, as if the references in that section "responsible authority" were references to the Ombud Regulatory Council.

Debarment

- 203.** (1) The Ombud Regulatory Council may make a debarment order in respect of an individual if the individual has— 35
- (a) contravened a financial sector law or a standard in so far as it relates to ombud schemes, or an Ombud Regulatory Council rule;
- (b) contravened an enforceable undertaking accepted by the Ombud Regulatory Council; or
- (c) attempted, or conspired with, aided, abetted, induced, incited or procured 40 another person to contravene a financial sector law in so far as it relates to ombud schemes.
- (2) A debarment order prohibits the individual, for a specified period, as specified in the order, from performing a specified role in relation to an ombud scheme.
- (3) Before making a debarment order in respect of an individual, the Ombud 45 Regulatory Council must—
- (a) give a draft of the order to the individual and to the financial sector regulators, along with reasons for and other relevant information about, the proposed debarment; and
- (b) invite the person to make submissions on the matter, and give the person a 50 reasonable period to do so.
- (4) The period in terms of subsection (3)(b) must be at least one month.
- (5) In deciding whether or not to make debarment order in respect of a person, the Ombud Regulatory Council must take into account at least—
- (a) any submission made by, or made for, the person; and 55
- (b) any advice from a financial sector regulator.

- (6) A debarment order takes effect from—
 (a) the date on which it is served on the individual; or
 (b) if the order specifies a later date, the later date.

(7) A copy of a debarment order in respect of an individual must also be given to each ombud scheme. 5

(8) (a) An individual who is subject to a debarment order may not engage in conduct that directly, or indirectly, contravenes the order.

(b) Without limiting paragraph (a), an individual contravenes that paragraph if the individual enters into an arrangement with another person to engage in the conduct for, or on behalf of, or in accordance with the directions, instructions or wishes of, the individual. 10

(9) An ombud scheme that becomes aware that a debarment order has been made in respect of an individual employed or engaged by the ombud scheme must take all reasonable steps to ensure that the order is given effect to.

Administrative penalties 15

204. Chapter 13 applies in relation to the Ombud Regulatory Council as if—

- (a) references in that Chapter to a financial sector law were references to a financial sector law in so far as it relates to ombud schemes; and
 (b) references to a financial sector regulator were references to the Ombud Regulatory Council. 20

Requests for information

205. (1) (a) The Ombud Regulatory Council may, by written notice to an ombud scheme or an ombud, require these entities to provide specified information or a specified document in their possession or under their control, which is relevant to the Ombud Regulatory Council's assessment of compliance by an ombud scheme or an ombud with— 25

- (i) a financial sector law in so far as it relates to ombuds;
 (ii) an Ombud Regulatory Council rule;
 (iii) a directive issued by the Ombud Regulatory Council in terms of section 200; or
 (iv) an enforceable undertaking accepted by the Ombud Regulatory Council. 30

(b) The Ombud Regulatory Council may require the information or document to be verified as specified in the notice, including by an auditor approved by the Ombud Regulatory Council.

(2) A person that has been given a notice in terms of subsection (1) must comply with the requirements in the notice. 35

Supervisory on-site inspections and investigations

206. (1) Part 3 of Chapter 9 applies in relation to the Ombud Regulatory Council as if—

- (a) references in that Chapter to a financial sector law were references to a financial sector law in so far as it relates to ombud schemes; 40
 (b) references to a financial sector regulator were references to the Ombud Regulatory Council; and
 (c) references to a supervised entity were references an ombud scheme or an ombud.

(2) Despite section 131(2), the purpose of a supervisory on-site inspection of an ombud scheme or an ombud in terms of this section is to check compliance by the ombud scheme or ombud with a financial sector law in so far as it relates to ombuds. 45

(3) Part 4 of Chapter 9 applies in relation to the Ombud Regulatory Council as if—

- (a) references in that Chapter to a financial sector law were references to a financial sector law in so far as it relates to ombud schemes; 50
 (b) section 134(b) were omitted; and
 (c) references to a financial sector regulator were references to the Ombud Regulatory Council.

(4) Part 5 of Chapter 9 applies in relation to supervisory on-site inspections and investigations in terms of this section. 55

Part 4

General provisions

Access to ombud schemes

- 207.** (1) The Ombud Regulatory Council must, as soon as practicable after this Part comes into effect, establish and operate one or more centres to facilitate financial customers' access to appropriate ombuds. 5
- (2) A centre may incorporate a call centre.
- (3) The purpose of a centre is to provide a place, and staff and facilities, to assist financial customers to formulate complaints and to identify for them the ombud appropriate to deal with their complaints. 10

Absence of applicable ombud scheme

- 208.** (1) This section applies in the event that a person wishes to complain about a financial product or a financial service provided or offered by a financial institution, and there is no specific ombud scheme that relates to the relevant kind of financial product or a financial service. 15
- (2) The Ombud Regulatory Council must, in the event that there is no applicable ombud scheme, on application by a person and after consulting a relevant ombud scheme, designate an ombud scheme to deal with the complaint.
- (3) If the Ombud Regulatory Council designates an ombud scheme in terms of subsection (2) to deal with a complaint— 20
- (a) each ombud for the designated ombud scheme—
- (i) has the power and the duty, despite anything in the governing rules of the industry ombud scheme, to deal with the complaint; and
- (ii) must deal with the complaint in the same way as it deals with other complaints to which the ombud scheme relates; and 25
- (b) the governing rules of the ombud scheme, and any contract between the financial institution and a financial customer for the provision of the product or service must be read as including an obligation on the financial institution to comply with the determination of the ombud on the complaint.

Overlaps between ombud schemes 30

- 209.** (1) An ombud of an industry ombud scheme may not deal with a complaint to which a statutory ombud scheme applies, but must refer the complaint to the appropriate statutory ombud scheme unless the ombud for the statutory ombud scheme has declined to deal with the complaint.
- (2) An ombud may not deal with a complaint that has been dealt with by another ombud except on referral by the other ombud. 35

Amendment of governing rules

- 210.** (1) (a) The governing rules of a recognised industry ombud scheme may not be amended without the approval of the Ombud Regulatory Council.
- (b) An amendment without the approval by the Ombud Regulatory Council is void. 40
- (2) (a) Before approving an amendment in terms of this section, the Ombud Regulatory Council must publish—
- (i) a draft of the amendment and a statement explaining the need for and the intended operation of, the governing rule; and
- (ii) a notice— 45
- (aa) stating where the draft and explanatory statement are available;
- (bb) inviting submissions in relation to the draft; and
- (cc) stating where, how and by when submissions are to be made.
- (b) The period allowed for making submissions must be at least one month.
- (3) In deciding whether or not to approve the amendment, the Ombud Regulatory Council must take into account all the submissions that it received by the expiry of the time contemplated in subsection (2)(a)(ii)(cc). 50
- (4) The Ombud Regulatory Council must not approve an amendment unless it is satisfied that to do so assists in achieving the object of this Act set out in section 7.

Time frames

211. Receipt of a complaint by the Ombud Regulatory Council or an ombud suspends any applicable time barring terms, whether in terms of an agreement or any law, or the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period from the receipt of the complaint until the complaint has either been withdrawn, or finally determined. 5

Reporting

212. (1) A financial sector ombud scheme must—

- (a) within six months after the end of each financial year, submit to the Ombud Regulatory Council, in the form and with the content required by the Ombud Regulatory Council, a report on the operation of the financial sector ombud scheme during the financial year, including in relation to—
 - (i) compliance with the financial sector laws in so far as they relate to ombuds;
 - (ii) the complaints that the financial sector ombud scheme is dealing with, and how they are being dealt with; and 15
 - (iii) the conduct of financial institutions that is giving rise to complaints; and
- (b) comply with any request by the Ombud Regulatory Council at any time for any relevant information. 15

(2) The Ombud Regulatory Council must, on request by the Financial Sector Conduct Authority, and may at any time, provide information and reports about the operation of ombud schemes to the Financial Sector Conduct Authority. 20

(3) If, in dealing with a complaint, an ombud becomes aware that there has or may have been a contravention of a financial sector law, the ombud must notify the Financial Sector Conduct Authority of the matter. 25

CHAPTER 15**FINANCIAL SERVICES TRIBUNAL*****Part 1******Interpretation*****Definitions** 30

213. For the purposes of this Chapter—

“decision” means a decision taken by a financial sector regulator or the Ombud Regulatory Council in terms of a financial sector law in relation to a specific person, and includes—

- (a) an omission to take such a decision within the prescribed or a reasonable time, if the applicable financial sector law requires a decision to be taken; 35
- (b) an action taken as a result of such a decision; and
- (c) any omission to take action as a result of such a decision within the prescribed or a reasonable time, if the applicable financial sector law requires the action to be taken; 40

but does not include—

- (d) a decision to conduct a supervisory on-site inspection or an investigation; or
- (e) an assessment of a levy issued to a specific person.

Part 2***Financial Services Tribunal*** 45**Establishment and function of Financial Services Tribunal**

214. (1) The Financial Services Tribunal is hereby established to judicially review decisions of the financial sector regulators and the Ombud Regulatory Council on application by aggrieved persons.

- (2) The Tribunal— 50
 - (a) is independent;

- (b) must be impartial and exercise its powers without fear, favour or prejudice;
- (c) is a tribunal of record; and
- (d) must perform its function in accordance with this Act and the specific financial sector laws.

Applications for review of decisions by Tribunal 5

215. An application by an aggrieved person in terms of section 231 to have a decision reviewed by the Tribunal must—

- (a) be in writing and be lodged in accordance with the rules of the Tribunal;
- (b) set out the grounds on which a review is sought; and
- (c) be submitted— 10
 - (i) if the person requested reasons in terms of section 229, within 30 days after the statement of reasons was given to the person;
 - (ii) if the person first applied for reconsideration of the decision in terms of section 230, within 30 days after the person was notified of the refusal of the application for reconsideration or of the decision taken on reconsideration; or 15
 - (iii) a longer period that the Chairperson of the Tribunal, on application, may allow.

Members of Tribunal

216. (1) The Tribunal consists of as many members, appointed by the Minister, as the Minister may determine. 20

(2) The Tribunal members must include—

- (a) at least two persons who are retired judges, or are persons with suitable expertise and experience in law; and
- (b) at least two other persons with experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures or the financial system. 25

(3) A person may not be appointed to, or hold office as, a Tribunal member if the person—

- (a) is a disqualified person; or 30
- (b) is not a citizen of the Republic or is not ordinarily resident in the Republic.

(4) The Minister must appoint a Tribunal member referred to in subsection (2)(a) as the Chairperson, and may appoint another Tribunal member as Deputy Chairperson.

(5) The Chairperson—

- (a) must preside at meetings of the Tribunal; and 35
- (b) is responsible for managing the work of the Tribunal effectively.

(6) The Deputy Chairperson performs the functions of the Chairperson in the absence of the Chairperson or if for any reason the office of chairperson is vacant.

Term of office and termination of membership

217. (1) A Tribunal member holds office for— 40

- (a) three years from the date of the member's appointment; or
- (b) if a shorter period is specified in the appointment of the Tribunal member, that shorter period.

(2) A Tribunal member may be re-appointed at the expiry of a term.

(3) A person may resign as a Tribunal member by giving at least three months written notice to the Minister, or a shorter period of notice that the Minister may accept. 45

(4) The Minister must terminate a person's appointment as a Tribunal member if the member becomes a disqualified person.

(5) The Minister may terminate a person's appointment as a Tribunal member if—

- (a) the member is unable to perform the functions of office for health or other reasons; or 50
- (b) an independent inquiry established by the Minister has found that the member—
 - (i) has failed in a material way to discharge any of the responsibilities of office; or 55
 - (ii) has acted in a way that is inconsistent with the requirements of continuing to hold the office.

(6) If an independent inquiry has been established in terms of subsection (5)(b) in relation to a member, the Minister may suspend the member from office pending a decision on the removal of the member.

(7) A Tribunal member holds office on terms and conditions, including as to remuneration, not inconsistent with this Act, determined by the Minister. 5

Panel list

218. (1) The Minister must establish and maintain a list of persons who are willing to serve as members of panels of the Tribunal.

(2) The persons must—

(a) have relevant experience in or expert knowledge— 10

(i) of law; or

(ii) of financial products, financial services, financial instruments, market infrastructures or the financial system; and

(b) be a fit and proper person to be included in the panel list.

(3) A person may not be included in the panel list if the person is a disqualified person. 15

(4) The Minister may, every five years, publicly invite persons to apply for inclusion in the panel list, and ensure that the appointed persons serve on an equitable basis.

(5) The Minister—

(a) must remove a person from the panel list—

(i) if the person so requests; or 20

(ii) if the person becomes a disqualified person; and

(b) may, on recommendation of the Chairperson, remove a person from the panel list if the person—

(i) is unable to act as a panel member for health or other reasons;

(ii) has failed in a material way to discharge any of the responsibilities of a panel member; or 25

(iii) has acted in a way that is inconsistent with acting as a panel member.

Constitution of Panels for reviews

219. (1) The Chairperson must constitute a panel of the Tribunal for each application for review. 30

(2) A panel consists of—

(a) a person to preside over the panel, who must be a person referred to in section 216(2)(a) or 218(2)(a); and

(b) two or more persons who are Tribunal members or persons on the panel list.

(3) If, for any reason, a panel member is unable to complete a review, the Chairperson may— 35

(a) replace that member with a person referred to in subsection (2);

(b) direct that the review proceed before the remaining panel members; or

(c) constitute another panel and direct that the review continue or be conducted, as directed by the Chairperson, before that other panel. 40

(4) The panel constituted for a review may exercise any of the powers of the Tribunal relating to a review.

(5) A reference in any other law to the Tribunal must be read as including, where appropriate in the case of a particular review, a reference to the panel constituted for the review. 45

Disclosure of interests

220. (1) If a panel member, or a person who is a related party to a panel member, has an interest in the review for which the panel is constituted, being an interest that could be seen as affecting the member's proper execution of the member's functions in relation to the review, the member must disclose the interest in accordance with subsection (2) and withdraw from the panel. 50

(2) (a) A disclosure in terms of subsection (1) by the Chairperson must be made to the Minister.

(b) A disclosure in terms of subsection (1) by another panel member must be made to the Chairperson. 55

(3) A disclosure in terms of subsection (1) must be made as soon as practicable after the member becomes aware of the interest.

- (4) For the purposes of this section, it does not matter—
- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
 - (b) when the interest was acquired.
- (5) In this section—
“interest” does not include an interest that is not material. 5
- (6) The Chairperson must maintain a register of all disclosures made in terms of this section.

Decisions of panels

221. If the panel members constituted for a review are divided in opinion as to an order to be made, the opinion of the majority of the members prevails, but if they are equally divided in opinion, the opinion of the member presiding over the Panel prevails. 10

Tribunal orders

222. (1) In a review, the Tribunal may—
- (a) make any order provided for in section 8 of the Promotion of Administrative Justice Act; 15
 - (b) in relation to a decision in terms of Part 1 of Chapter 13, also make an order setting aside the decision and substituting the decision of the Tribunal; and
 - (c) make any appropriate order.
- (2) Subsection (1) is subject to any provision of a financial sector law that excludes, restricts or qualifies a right to apply for a review to the Tribunal. 20
- (3) The Tribunal may summarily dismiss a review that is frivolous, vexatious or trivial.
- (4) The Tribunal may, in exceptional circumstances, make an order that a party to a review must pay some or all of the costs reasonably and properly incurred by the other party in connection with the review. 25
- (5) This section does not affect any other right that a person may have.

Operation of decisions not affected by review

223. Neither an application lodged in terms of this Part for a review of a decision or the review proceedings suspend the operation of the decision unless the Tribunal so orders. 30

Rules of Tribunal

224. (1) The Chairperson may make rules, not inconsistent with this Act, in respect of the procedure to be followed in connection with applications for review, and the conduct of a review, and may at any time amend or revoke those rules.
- (2) Tribunal rules, and amendments and revocations of Tribunal rules, must be published. 35

Proceedings of Tribunal

225. (1) In a review before a panel—
- (a) the procedure is, subject to the financial sector laws and the Tribunal rules, determined by the panel; 40
 - (b) the proceedings are to be conducted with as little formality and technicality, and as expeditiously, as the requirements of the financial sector laws and a proper consideration of the matter permit; and
 - (c) any party may be represented by a legal representative.
- (2) The person chairing a panel may give directions to facilitate the conduct of a review before the panel. 45
- (3) A Panel must conduct any hearing it holds in relation to a review in public, but the person presiding over the panel may direct that a person be excluded from a hearing on any ground on which it would be proper to exclude a person from civil proceedings before the High Court. 50
- (4) In a review, the panel is not bound by the rules of evidence, but may, subject to this section, inform itself on any relevant matter in any appropriate way.

- (5) The person presiding at a Panel—
- (a) may, by order, direct a specified person to appear before the Panel at a time and place specified in the order to give evidence, to be questioned or to produce any document; and
 - (b) must administer an oath to or accept an affirmation from any person called to give evidence. 5
- (6) A person giving evidence or information, or producing documents, in relation to a review has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

Other reviews and internal appeals 10

- 226.** (1) This Part does not affect a provision of a specific financial sector law that gives a person a right to apply for a review of, or a right to appeal against, a decision of a person other than a financial sector regulator to the Tribunal, except that—
- (a) any reference in those laws to an appeal, but not to a right to an internal appeal in terms of an internal appeal mechanism that is required to be established by a financial sector regulator in terms of a financial sector law, must read as referring to a review in terms of this Part; and 15
 - (b) this Part must be applied, with the necessary changes required by the context, to reviews in terms of those laws.
- (2) (a) The Financial Sector Conduct Authority must establish an internal appeal mechanism to consider internal appeals of decisions in respect of which the Financial Markets Act and the Financial Advisory and Intermediary Services Act provide for a right to an aggrieved person to appeal a decision to an internal appeal mechanism of the Financial Sector Conduct Authority, and a subsequent right of review to the Tribunal. 20
- (b) An internal appeal must be lodged within 30 days of the person becoming aware of, or when the person ought to have become aware of, a decision, in the manner and on payment of the fees determined by the Financial Sector Conduct Authority in accordance with section 235. 25
- (c) An internal appeal lodged in terms of this subsection does not suspend a decision pending the outcome of the internal appeal, unless the Financial Sector Conduct Authority, on application by a party, directs otherwise. 30

Enforcement of Tribunal orders

- 227.** (1) A party to a review may file with the registrar of a competent court a certified copy of an order made in terms of section 222 if— 35
- (a) no appeal against the making of the order has been lodged with a court by the end of the period for lodging such appeals; or
 - (b) if such an appeal has been lodged, the appeal has been finally disposed of.
- (2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court. 40

Part 3

Reconsideration and review of decisions on application by aggrieved persons

Right to be informed

- 228.** An obligation in a financial sector law to notify a person of a decision taken in relation to that person must be read as including an obligation to notify the person of that person's right— 45
- (a) to request reasons for the decision in terms of section 229;
 - (b) to apply for the decision to be reconsidered in terms of section 230; and
 - (c) to have the decision reviewed in terms of section 231.

Right to reasons for decisions 50

- 229.** (1) A person aggrieved by a decision of a financial sector regulator or the Ombud Regulatory Council and who has not already been given the reasons for the decision may, within 30 days after the person was notified of the decision, request a statement of

the reasons for the decision from the financial sector regulator or the Ombud Regulatory Council, as the case may be.

(2) The regulator or the Ombud Regulatory Council must, within one month after receiving the request contemplated in subsection (1), give the aggrieved person a statement of the reasons for the decision, which must include the material facts on which the decision was based. 5

Right to apply for reconsideration of decisions

230. (1) A person aggrieved by a decision of a financial regulator or the Ombud Regulatory Council may, in writing, on any grounds apply to the financial sector regulator or Ombud Regulatory Council for reconsideration of the decision in accordance with Part 4, subject to section 94(2). 10

(2) The financial sector regulator or the Ombud Regulatory Council is not obliged to reconsider the decision and may either grant or refuse the application.

Right of review by Tribunal

231. (1) A person aggrieved by a decision of a financial sector regulator or the Ombud Regulatory Council may on the grounds that the decision was not lawful, reasonable or procedurally fair apply to the Tribunal for a judicial review of the decision in accordance with Part 4. 15

(2) An application for a review of a decision may be lodged whether or not the application was preceded by an application for reconsideration in terms of section 230, but if the aggrieved person has lodged an application for reconsideration of the decision, no application for a review of the decision may be lodged before the proceedings in terms of Part 4 have been concluded. 20

Part 4

Reconsideration of decisions on application by aggrieved persons 25

Application by aggrieved person

232. (1) An application by an aggrieved person in terms of section 230 to have a decision reconsidered by a financial sector regulator or the Ombud Regulatory Council must—

- (a) be in writing, in a form approved or accepted by the financial sector regulator or the Ombud Regulatory Council; 30
- (b) set out the grounds on which reconsideration is sought;
- (c) include or be accompanied by any information and documents in support of the application or as may be required by the financial sector regulator or the Ombud Regulatory Council; and 35
- (d) be submitted—
 - (i) if the person requested reasons in terms of section 229, within 30 days after the statement of reasons was given to the person; or
 - (ii) in all other cases, within 60 days after the person was notified of the decision. 40

(2) If the financial sector regulator or the Ombud Regulatory Council—

- (a) grants the application, it must inform the applicant and reconsider the decision in accordance with section 233; or
- (b) refuses the application, it must inform the applicant without delay, and provide reasons. 45

Process for reconsideration

233. (1) When reconsidering a decision, the financial sector regulator or Ombud Regulatory Council must follow substantially the same procedure that applied when that decision was initially taken.

(2) The decision may be reconsidered either by the internal organ or official who initially took the decision, or a higher authority within the financial sector regulator or the Ombud Regulatory Council. 50

(3) On reconsideration, a decision must either be confirmed, revoked, altered or substituted.

(4) The financial sector regulator or Ombud Regulatory Council must notify the applicant of its decision in terms of subsection (3) within 14 days after it was taken.

(5) (a) If no decision is taken in terms of subsection (3) or the applicant is for any reason not notified of a decision in terms of subsection (4) within two months from the date of lodging the application for reconsideration, the financial sector regulator or Ombud Regulatory Council is taken to have confirmed the decision in terms of subsection (3). 5

(b) Paragraph (a) does not apply if the financial sector regulator or Ombud Regulatory Council informs the applicant that the decision is still under consideration.

Operation of decisions not affected by reconsideration 10

234. Neither an application lodged in terms of this Part for reconsideration of a decision nor any subsequent reconsideration of the decision suspends the operation of the decision unless the financial sector regulator or the Ombud Regulatory Council so directs.

CHAPTER 16 15

FINANCES, LEVIES AND FEES

Finances, levies and fees

Fees

235. (1) Each levy body may determine in writing fees payable in respect of services rendered by the body in the performance of its functions under this Act and the specific financial sector laws. 20

(2) A levy body that makes a determination in terms of subsection (1) must publish the determination.

(3) The fees contemplated in this Chapter do not constitute a tax as contemplated in section 77 of the Constitution. 25

(4) Fees in respect of services provided to a person by a levy body are payable by the person when the service is provided, or at a later time as agreed to between the levy body and the person.

(5) Interest, at the rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), is payable in respect of the unpaid portion of the amount payable as fees until it is fully paid. 30

Fees amounting to debt

236. (1) An amount payable to a levy body by a person in terms of section 235 is a debt due by the person to the levy body.

(2) A levy body may recover the amount of a debt due in terms of this section by way of a judicial process in a competent court. 35

Application of Chapter to Tribunal

237. The functions of the Tribunal in terms of this Chapter are to be performed by the Chair of the Tribunal.

CHAPTER 17 40

MISCELLANEOUS

Part 1

Information sharing and reporting

Designated authority

238. In this Part, “designated authority” means— 45

(a) the Reserve Bank;

(b) a financial sector regulator;

- (c) the National Credit Regulator;
- (d) the Council for Medical Schemes;
- (e) a market infrastructure, but only in relation to its regulatory or supervisory functions in terms of a financial sector law;
- (f) an organ of state responsible for the regulation, supervision or enforcement of any law; 5
- (g) a body similar to an organ of state referred to in paragraph (f) that is designated in terms of the laws of a foreign country as being responsible for the regulation, supervision or enforcement of legislation;
- (h) an ombud; or 10
- (i) a payment system management body recognised in terms of the National Payment System Act.

Information sharing arrangements

239. (1) (a) Information obtained in the performance of any power or function in terms of a financial sector law, sections 45 or 45B of the Financial Intelligence Centre Act, including personal information as defined in the Protection of Personal Information Act, may only be utilised or disclosed by the financial sector regulators or the Reserve Bank— 15

- (i) in the course of performing functions in terms of, or as enabled by, the financial sector laws or the Financial Intelligence Centre Act; 20
- (ii) for the purposes of legal proceedings or other proceedings;
- (iii) when required to do so by a Court; or
- (iv) if the disclosure is—
 - (aa) for the purposes of warning financial customers against conducting business with a financial institution or other person conducting activities in contravention of the financial sector laws or the Financial Intelligence Centre Act; 25
 - (bb) for the purposes of informing financial customers of actions taken against a financial institution in terms of the financial sector laws or the Financial Intelligence Centre Act; 30
 - (cc) for the purposes of alerting financial customers to activities carried out by a financial institution that a financial sector regulator or the Reserve Bank believes to constitute a risk to financial customers;
 - (dd) in the public interest;
 - (ee) to a designated authority, other than one referred to in paragraph (g) of the definition of “designated authority” in section 238, for the purposes of the achievement of the objective of the designated authority, or to promote or protect financial stability; 35
 - (ff) to a designated authority referred to in paragraph (g) of the definition of “designated authority” in section 238 and is required or permitted by a co-operation agreement referred to in subsection (2)(a)(v), where the designated authority has a material interest in the obtaining or using the information; 40
 - (gg) for the purposes of developing and implementing policies and activities to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial products or financial services; or 45
 - (hh) for the purposes of anti-money laundering and combating the financing of terrorism, and the performance of supervisory functions in accordance with the Financial Intelligence Centre Act.

(b) Information obtained in terms of the Financial Intelligence Centre Act, other than in terms of sections 45 and 45B of that Act, may only be utilised or disclosed in accordance with sections 29, 40 and 41 of that Act. 50

(c) Sections 11(1), 12(1), 15(1), and 18(1) of the Protection of Personal Information Act do not apply to the use and disclosure of information by the financial sector regulators or the Reserve Bank for the purposes referred to in paragraphs (a) or (b). 55

(2) (a) A financial sector regulator or the Reserve Bank, in pursuing the purposes referred to in subsection (1)(a), may—

- (i) liaise with any designated authority on matters of common interest;
- (ii) participate in the proceedings of any designated authority;
- (iii) advise or receive advice from any designated authority; 60

- (iv) prior to taking regulatory action which a financial sector regulator or the Reserve Bank considers material against a financial institution, inform any designated authority that the financial sector regulator or the Reserve Bank, as the case may be, of the pending regulatory action or, where this is not possible, inform the designated authority as soon as possible after taking the regulatory action; and 5
- (v) negotiate and enter into bilateral or multilateral co-operation agreements, including memoranda of understanding, with designated authorities, including designated authorities in whose countries a subsidiary or holding company of a financial institution is incorporated or a branch is situated, to, among other matters— 10
- (aa) co-ordinate and harmonise the reporting and other obligations of financial institutions;
- (bb) provide mechanisms for the exchange of information, including provision requiring or permitting a financial sector regulator, the Reserve Bank or a designated authority— 15
- (AA) to be informed of adverse assessments in respect of financial institutions; or
- (BB) to provide or receive information regarding significant problems that are being experienced within a financial institution;
- (cc) provide procedures for the co-ordination of supervisory activities to facilitate the monitoring of financial institutions, including on an on-going basis; and 20
- (dd) assist any designated authority in regulating and enforcing any laws that the designated authority is responsible for supervising and enforcing, that are similar to a financial sector law or which have an impact on the regulation of the financial sector and financial institutions. 25
- (b) Section 72(1) of the Protection of Personal Information Act does not apply to an agreement referred to in paragraph (a)(v).
- (3) (a) Information may only be disclosed by a financial sector regulator or the Reserve Bank to a designated authority if, before disclosing the information, the financial sector regulator or the Reserve Bank is satisfied that the designated authority that receives the information has proper and effective safeguards in place to protect the information, which safeguards are similar to those provided for in this section. 30
- (b) A financial sector regulator or the Reserve Bank may only consent to information that is provided to a designated authority being made available to third parties only if it is satisfied that the third parties have proper safeguards in place to protect the information received, which safeguards are similar to those provided for in this section. 35
- (c) A financial sector regulator or the Reserve Bank may only request information from a designated authority in connection with the performance of functions and the exercise of powers in terms of the laws referred to in subsection (1). 40
- (d) Information provided on request to a designated authority in terms of this section—
- (i) must only be used by the designated authority for the purpose for which it was requested; and
- (ii) may not be disclosed to a third party without the consent of the designated authority that provided the information. 45
- (e) If, despite paragraph (d), a designated authority is compelled by law to disclose information provided by another designated authority to a third party, the first designated authority must—
- (i) inform that designated authority of the event and the circumstances in which the information shall be made available; and 50
- (ii) use all reasonable means to oppose the compulsion to disclose, and otherwise to protect the information.
- (4) For the purposes of this section, “**information**” does not include aggregate statistical data or information that does not disclose the identity of a person. 55

Reporting by valuers and auditors to financial sector regulators

240. (1) (a) A valuator or auditor of a licensed financial institution, or of a holding company of a financial conglomerate must, without delay, submit a detailed written report to the Prudential Authority, the governing body of the financial institution and, in the case of financial conglomerate, the holding company of the financial institution, 60

about any matter relating to the business of the financial institution or a company within the conglomerate, being a matter—

- (i) which the valuator or auditor becomes aware of in the course of performing functions and duties as valuator or auditor; and
 - (ii) that the valuator or auditor considers—
 - (aa) is causing or is likely to cause the financial institution to be financially unsound;
 - (bb) is contravening or may contravene a financial sector law; or
 - (cc) in the case of an auditor, that it may result in an audit not being completed or may result in a qualified or adverse opinion on accounts.
- (b) An auditor must also submit any report or other document or particulars about the matter contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to the Prudential Authority.
- (2) A valuator or auditor of a licensed financial institution or of a holding company of a financial conglomerate who resigns or whose appointment is terminated must submit to the Prudential Authority—
- (a) a written statement on the reasons for resignation or the reasons that the valuator or auditor believes are the reasons for the termination; and
 - (b) in the case of an auditor, any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, 2005 (Act No. 26 of 2005), that the auditor would, but for the resignation or termination, have had reason to submit.
- (3) (a) The furnishing, in good faith, by a valuator or an auditor of a report or information under subsections (1) or (2) is not a contravention of a law, a breach of a contract or a breach of a code of professional conduct.
- (b) A failure, in good faith, by a valuator or auditor to comply with this section does not confer upon any person a right of action against the valuator or auditor.

Reporting to financial sector regulators

- 241.** (1) A person may report to a financial sector regulator—
- (a) financial difficulties or suspected financial difficulties in a financial institution;
 - (b) a contravention or suspected contravention of a financial sector law in relation to a financial institution; or
 - (c) the involvement or the suspected involvement of a financial institution in financial crime.
- (2) Unless the report was made in bad faith, a person who makes a report in terms of subsection (1) is not—
- (a) criminally liable for making the report; or
 - (b) liable to pay compensation or damages to any person in relation to a loss caused by the report.

Prohibition of victimisation

- 242.** A person may not subject another person to any prejudice in employment, or penalise another person in any way, on the ground that the other person—
- (a) made a report in terms of section 240; or
 - (b) made a report in terms of section 241, even if the report was not required by law.

Protected disclosures

- 243.** Sections 240 and 241 apply in addition to, and do not limit, any other law that provides protection for persons who properly report contraventions of the law.

Part 2

Financial Sector Information Register

Establishment and operation of Financial Sector Information Register

- 244.** The National Treasury must establish and maintain the Financial Sector Information Register in accordance with this Part.

Purpose of Register

245. The purpose of the Register is to provide reliable access to accurate, authoritative and up to date information relating to financial sector laws, Regulations, regulatory instruments and their implementation.

Content of Register

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246. (1) The Register is a database of the documents listed in Schedule 3.

(2) The Register may include other documents that are relevant to the regulation and supervision of the financial sector and the Director-General determines which other documents may be included in the Register.

Keeping of Register

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247. (1) The Register must be kept in an electronic form.

(2) The Register must be kept in a way that facilitates access and searching of the Register by members of the general public.

Requirements for registered documents

248. The Director-General may make a written determination— 15

- (a) specifying requirements for documents that must be, or may be, included in the Register, including requiring persons lodging a document for registration to provide information about the document, to ensure that the Register is useful for persons accessing the Register; and
- (b) specifying procedures for transmitting documents to the National Treasury for registration. 20

Status of Register and judicial notice

249. (1) The Register is, for all purposes, taken to be a complete and accurate record of all financial sector laws and all regulatory instruments that are included in the Register. 25

(2) A compilation of a law or a regulatory instrument that is included in the Register is, unless the contrary is established, taken to be a complete and accurate record of that law or regulatory instrument as amended and in force at the date specified in the compilation.

(3) (a) In any proceedings, proof is not required about the provisions and coming into operation, in whole or in part, of a law or regulatory instrument as it appears in the Register. 30

(b) A court or tribunal may inform itself about those matters in any way it deems fit.

(4) It is presumed, unless the contrary is established—

- (a) that a document that purports to be an extract from the Register is what it purports to be; and 35
- (b) that a regulatory instrument, a copy of which is produced from the Register, was registered on the day and at the time stated in the copy.

Extracts from Register regarding licence status

250. An extract from the Register, in the form determined by, and authenticated as determined by, the Director-General, that shows that, at a specified date, after this Part comes into effect— 40

- (a) a person was or was not licensed under a financial sector law;
- (b) a specified licence was or was not subject to specified conditions;
- (c) a specified licence was, at a specified time, suspended, cancelled or revoked; 45
- or
- (d) a specified financial institution was at a specified time a systemically important financial institution,

is admissible as evidence of the facts and matters stated in it and, unless the contrary is established, is conclusive. 50

Rectification of Register

251. (1) The Director-General may arrange for the Register to be corrected to rectify errors.

(2) If the Register is corrected, the Director-General must annotate relevant records in the Register to explain the nature of the rectification and specify the date and time the rectification was made and the reason for the rectification. 5

Delegations by Director-General

252. (1) The Director-General may, in writing, delegate any power or duty of the Director-General in relation to the Register, except the power of delegation, to a staff member of the National Treasury, and the Director-General may, at any time, amend or revoke a delegation. 10

(2) A delegation may be to a specified person or to the person holding a specified position.

(3) A delegation is subject to the limitations and conditions specified in the delegation.

(4) A delegation does not divest the Director-General of responsibility in respect of the delegated power or duty. 15

(5) Anything done by a delegate in accordance with the delegation is taken to be done by the Director-General.

Part 3

Offences and penalties 20

Duties of members and staff of certain bodies

253. A person who contravenes sections 46(1) or (2), 52, 69(1) or (2) or 74 commits an offence and is liable on conviction to a fine not exceeding R5,000,000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 25

Licensing

254. (1) A person who contravenes section 111(1), (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(2) A licensee who contravenes section 117 commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 30

(3) A licensee who contravenes section 127 commits an offence and is liable on conviction to a fine not exceeding R1,000,000.

Requests for information, supervisory on-site inspections and investigations

255. (1) A supervised entity that contravenes section 130(2) commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 35

(2) A person who contravenes sections 132(1) or (4) or 138(1), (2) or (5) commits an offence and liable on conviction to a fine not exceeding R5,000,000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

(3) A person who contravenes sections 132(2) or (3) or 138(3) or (4) commits an offence and liable on conviction to a fine not exceeding R5,000,000. 40

Enforcement

256 (1) A person that contravenes section 148(1) commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 45

(2) An individual who contravenes subsection 152(4)(a) commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(3) If an individual who is subject to a debarment order contravenes subsection 152(4)(a) by entering into an arrangement referred to in section 152(4)(b), the other party to the arrangement also commits an offence and is liable on conviction to 50

a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, unless the other party did not know and could not reasonably have known that the entering to the arrangement contravened that section.

(4) A person who contravenes subsection 152(5) commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 5

Significant owners

257. A person who contravenes section 157(1) or (2) commits an offence and is liable on conviction to a fine not exceeding 10 per cent of the annual turnover in the Republic of the financial institution referred to in section 157(1) during that financial institution's preceding financial year. 15

Financial conglomerates

258. (1) An eligible financial institution that contravenes section 159(1) commits an offence and is liable on conviction to a fine not exceeding 5 per cent of the eligible financial institution's annual turnover in the Republic during the eligible financial institution's preceding financial year. 15

(2) A holding company of a financial conglomerate who contravenes section 160(4) or 161(3) commits an offence and is liable on conviction to a fine not exceeding 10 per cent of the financial conglomerate's annual turnover in the Republic during the financial conglomerate's preceding financial year. 20

(3) A holding company that contravenes section 164(1) commits an offence and is liable on conviction to a fine not exceeding 10 per cent of the value of the material asset.

(4) If an eligible financial institution contravenes section 159(1), the holding company of the financial institution commits the like offence and is liable on conviction to the like penalty. 25

Administrative penalties

259. A person who contravenes sections 172 by giving an undertaking commits an offence and is liable on conviction to a fine not exceeding twice the maximum amount that would have been payable under the undertaking. 30

Ombud schemes

260. (1) A person who contravenes sections 187(1) or (2) or 190 commits an offence and is liable on conviction to a fine not exceeding R5,000,000.

(2) A person who contravenes section 200(11) commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 35

(3) An individual who contravenes section 203(8) commits an offence and is liable on conviction to a fine not exceeding R5,000,000.

(4) If an individual who is subject to a debarment order in terms of section 203 contravenes subsection 203(8)(a) by entering into an arrangement referred to in section 203(8)(b), the other party to the arrangement also commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, unless it is established that the other party did not know and could not reasonably have known that the entering to the arrangement contravened that section. 40

(5) A financial institution that contravenes section 203(9) commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 45

(6) An individual who contravenes subsection 205(2) commits an offence and is liable on conviction to a fine not exceeding R15,000,000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(7) A person who contravenes section 212(1) commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 50

Reviews

261. (1) A person who contravenes a direction in terms of section 225(5)(a), or refuses, without reasonable excuse, to take an oath or make an affirmation when required to do so as contemplated in section 225(5)(b), commits an offence and is liable on conviction to a fine not exceeding R5,000,000 or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 5

Miscellaneous

262. (1) A person who contravenes section 239 commits an offence and is liable on conviction to a fine not exceeding R5,000,000, or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 10

(2) A valuator or auditor who contravenes section 240 commits an offence and is liable on conviction to a fine not exceeding R5, 000, 000.

(3) A person who contravenes section 242 commits an offence and is liable on conviction to a fine not exceeding R5,000,000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 15

(4) A person who contravenes a condition imposed in terms of section 270 commits an offence and is liable on conviction to a fine not exceeding R5, 000, 000.

False or misleading information

263. (1) A person who provides to a financial sector regulator or the Reserve Bank, in connection with the operation of a financial sector law, information that is false or misleading, including by omission, commits an offence and is liable on conviction to a fine not exceeding R5,000,000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 20

(2) If the person knew or believed, or ought reasonably to have known or believed, that the information was false or misleading, the maximum penalty for the offence is fine not exceeding R10,000,000, or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 25

Accounts and records

264. (1) A person who is required in terms of a financial sector law to keep accounts or records commits an offence if the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate, and is liable on conviction to a fine not exceeding R5,000,000, or imprisonment for a period not exceeding 5 years, or to both a fine and imprisonment. 30

(2) The maximum penalty for an offence in terms of subsection (1) is a fine not exceeding R10,000,000, or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, if— 35

- (a) the person knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;
- (b) intended to deceive or mislead a financial sector regulator or an investigator; 40
or
- (c) intended to hinder or obstruct a financial sector regulator, or an investigator in performing his or her duties in terms of a financial sector law.

False assertion of connection with financial sector regulator

265. A person who, without the consent of the financial sector regulator, applies to a company, body, business or undertaking a name or description that signifies or implies some connection between the company, body, business or undertaking and a financial sector regulator commits an offence and is liable on conviction to a fine not exceeding R5,000,000. 45

Vicarious liability for offences and contraventions 50

266. (1) If a financial institution commits an offence in terms of a financial sector law, each member of the governing body of the financial institution also commits the offence

and is liable on conviction to a fine not exceeding the maximum amount of a fine that may be imposed for the commission of the offence, unless it is established that the member took all reasonably practicable steps to prevent the commission of the offence.

(2) If a key person of a financial institution engages in conduct relating to the provision of financial products or financial services that amounts to a contravention of a financial sector law, the financial institution must be taken also to have engaged in the conduct unless it is established that the financial institution took all reasonably practicable steps to prevent the conduct. 5

Part 4

General matters 10

Complaints

267. A financial sector regulator must, if asked, assist a person to make a complaint to the appropriate ombud about the actions or practices in terms of a financial sector law, of a person in connection with providing financial products or financial services.

Compensation for contraventions of financial sector laws 15

268. A person, including a financial sector regulator, who suffers loss because of a contravention of a financial sector law by another person, may recover the amount of the loss by action in a court of competent jurisdiction against—

- (a) the other person; and
- (b) any person who was knowingly involved in the contravention. 20

Extension of period for compliance

269. (1) A financial sector regulator may, for a valid reason, extend any period for compliance with, or a period prescribed by, a provision of a financial sector law, other than a provision that the financial sector regulator must comply with.

(2) A financial sector regulator may grant an extension in terms of subsection (1) more than once, and may do so either before or after the time for compliance has passed or the period prescribed has ended. 25

Conditions of licences

270. (1) A licence may be given subject to conditions specified in the licence or in the notice of the grant or issue of the licence given to the licensee. 30

(2) A suspension, cancellation or revocation of a licence in terms of a financial sector law may be subject to conditions specified in the notice of the suspension, cancellation or revocation given to the licensee.

(3) Contravention of a condition in terms of subsection (2) does not affect the suspension, cancellation or revocation of the licence. 35

(4) In this section, a reference to a licence must be read as including a reference to a consent, agreement, approval or permission of any kind in terms of a financial sector law.

Exemptions

271. (1) The responsible authority for a financial sector law may, in writing and with the concurrence of the other financial sector regulator, exempt any person or class of persons from a specified provision of the financial sector law, unless it considers that granting the exemption— 40

- (a) will be contrary to the public interest; or
- (b) is contrary to a specific financial sector law or may otherwise prejudice the achievement of the objects of a financial sector law. 45

(2) The responsible authority must publish each exemption.

Requirements for notification and concurrence

272. (1) If this Act provides that a financial sector regulator must notify the other financial sector regulator of a particular matter, the notification is not required if the 50

other regulator has agreed, in a section 77 memorandum of understanding or otherwise, that—

- (a) failure to provide the notice does not prejudice the achievement of its objective; and
- (b) the notification is unnecessary. 5

(2) If this Act provides that a financial sector regulator may not take a particular action without the concurrence of the other financial sector regulator, the concurrence is not required if the other regulator has agreed, in a section 77 memorandum of understanding or otherwise, that—

- (a) action of the relevant kind does not prejudice the achievement of its objective; 10
and
- (b) its concurrence is unnecessary.

(3) If this Act provides that a financial sector regulator may not take a particular action without the concurrence of the Reserve Bank, the concurrence is not required if the Reserve Bank has agreed, in a memorandum of understanding or otherwise, that the concurrence is unnecessary. 15

Arrangements for consultations with stakeholders

273. Each of the financial sector regulators and the Ombud Regulatory Council must establish and give effect to arrangements to facilitate consultation with, and the exchange of information with, relevant stakeholders on matters of mutual interest. 20

Records and entries in books of account admissible in evidence

274. In any proceedings in terms of, or in relation to, a financial sector law, the records and books of account of a financial institution, and of a person who is engaged by a financial institution to perform a control function, are admissible as evidence of the matters, transactions and accounts recorded therein. 25

Immunities

275. The State, the Minister, the Reserve Bank, the Governor and Deputy Governors, a financial sector regulator, a member of the Executive Committee, the Prudential Committee, a member of a subcommittee of the Prudential Authority or the Financial Sector Conduct Authority, a member of the Tribunal, the Ombud Regulatory Council, a member of the Ombud Board, an employee of the State, a board member or officer of the Reserve Bank, a staff member of a financial sector regulator, a staff member of the Reserve Bank, a person appointed by a financial sector regulator or the Reserve Bank to exercise a power or perform a function or duty in terms of a financial sector law is not liable for, or in respect of, any loss or damage suffered or incurred by any person arising from a decision taken or action performed in good faith in the exercise of a function, power or duty in terms of a financial sector law. 35

Notices to licensees

276. (1) A notice in terms of, or relating to, a financial sector law to a person who is or was licensed in terms of a financial sector law must be served on, or given to— 40

- (a) the person; or
- (b) if the person cannot be found after reasonable inquiry, some other person apparently involved in the management or control of a place where the person carries or carried on the licensed activities.

(2) For the purposes of a financial sector law, service in terms of subsection (1)(b) is effective service. 45

Publication requirements in financial sector laws

277. (1) A requirement in terms of a financial sector law to publish a document or information, including a requirement to publish it in the *Gazette*, must be read as a requirement also to publish the document or information in the Register. 50

(2) The document or information may also be published on the website of the person required to publish it, or in other effective ways.

(3) Subsection (1) does not apply in relation to Regulations made by the Minister.

*Part 5**Regulations and Guidelines***Regulations**

- 278.** (1) The Minister may make Regulations to facilitate the implementation of this Act, including Regulations— 5
- (a) that must or may be prescribed in terms of this Act;
 - (b) to provide for other procedural or administrative matters that are necessary to implement the provisions of this Act.
- (2) The Regulations made in terms of this section come into effect on the later day of either— 10
- (a) the date on which the Regulations are published in the Register; or
 - (b) if the Regulations provide that they come into effect on a later date, on that later date.
- (3) A requirement in terms of a financial sector law or the Interpretation Act (Act No. 33 of 1957), to publish Regulations in the *Gazette* must be read as a requirement to also publish the Regulations in the Register. 15
- (4) (a) The Minister may issue guidelines for the disclosure of material interests contemplated in sections 49, 72, 191 and 220 in order to provide guidance to persons who are required to disclose material interests in terms of those sections.
- (b) Guidelines issued in terms of paragraph (a) do not divest persons who are required to disclose a material interest in terms of sections 49, 72, 191 and 220 from their duty to properly apply their minds and disclose all interests that may be material. 20
- (5) Before making Regulations, the Minister must publish—
- (a) a draft of the Regulations;
 - (b) a statement explaining the need for and the intended operation of the Regulations; 25
 - (c) a statement of the expected impact of the Regulations;
 - (d) a notice inviting submissions in relation to the Regulations and stating where, how and by when submissions are to be made.
- (6) The period allowed for making submissions must be at least two months. 30
- (7) If a Minister intends, whether or not as a result of a consultation process, to make the Regulations in a materially different form to the draft Regulations published in terms of subsection (5), the Minister must, before making the Regulations, repeat the procedure referred to in subsection (5).
- (8) The Minister may make Regulations without having complied, or complied fully, with subsection (5) or (7), if the delay involved in complying, or complying fully, with those subsections is likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed Regulations. 35
- (9) As soon as practicable after making the Regulations in terms of subsection (8), the Minister must— 40
- (a) follow a procedure similar to subsection (5); and
 - (b) include in the explanatory statement required in terms of subsection (5), a statement explaining the reasons why the Regulations have been made urgently.
- (10) The Minister must submit to the National Assembly, within 14 days after the Regulations are made— 45
- (a) a copy of the Regulations;
 - (b) a statement explaining the need for and the intended operation of the Regulations; and
 - (c) a statement of the expected impact of the Regulations. 50
- (11) In respect of the Regulations made, the Minister must publish a report of the consultation process undertaken in respect of the Regulations, which must include—
- (a) a general account of the issues raised in submissions; and
 - (b) a response to the issues raised in submissions.

Part 6**Amendments, repeals, transitional and saving provisions****Interpretation**

279. In this Part—

“**Appeal Board**” means the Appeal Board established by section 26A of the Financial Services Board Act; 5

“**Directorate of Market Abuse**” means the Directorate of Market Abuse established by section 12 of the Insider Trading Act, 1998 (Act No. 135 of 1998) and continued in terms of the Securities Services Act, 2004 (Act No. 36 of 2004) and then the Financial Markets Act; 10

“**Enforcement Committee**” means the Enforcement Committee established in terms of section 10A of the Financial Services Board Act or section 97 of the Securities Services Act, 2004 (Act No. 36 of 2004);

“**Financial Services Board**” means the Financial Services Board as defined in the Financial Services Board Act; and 15

“**Financial Services Board Act**” means the Financial Services Board Act, 1990 (Act No. 97 of 1990).

Amendments and repeals

280. The Acts listed in Schedule 4 are amended or repealed as set out in that Schedule.

Transitional provision in relation to medical schemes 20

281. (1) The functions of the Prudential Authority in relation to medical schemes and the associated powers and duties of the Prudential Authority are to be exercised by the Council for Medical Schemes instead of the Prudential Authority.

(2) The functions of the Financial Sector Conduct Authority in relation to medical schemes and the associated powers and duties of the Financial Sector Conduct Authority are to be exercised by the Council for Medical Schemes instead of the Financial Sector Conduct Authority. 25

(3) Subsections (1) and (2) cease to apply on a date determined by the Minister, with the concurrence of the Minister responsible for administering the Medical Schemes Act, by notice in the *Gazette*. 30

Transitional prudential powers of Financial Sector Conduct Authority

282. (1) This section applies for the period of three years from the date on which this Part comes into effect.

(2) The power of the Prudential Authority to make prudential standards, to be complied with by the following financial institutions, with respect to the safety and soundness of those financial institutions and otherwise to achieve the objectives of the Prudential Authority, is to be exercised by the Financial Sector Conduct Authority: 35

(a) Collective investment schemes as defined in section 1(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

(b) pension funds as defined in section 1(1) of the Pension Funds Act; 40

(c) friendly societies as defined in section 1(1) of the Friendly Societies Act.

(3) A prudential standard in terms of subsection (2) may only impose requirements that may be imposed under the specific financial sector law relevant to the financial institution concerned.

(4) The Financial Sector Conduct Authority may exercise its other powers in terms of financial sector laws with respect to the financial institutions referred to in subsection (2) to achieve the objective of the Prudential Authority. 45

(5) Subsection (3) does not affect the powers of the Financial Sector Conduct Authority in respect of a financial institution.

Development and implementation of policy frameworks during transitional period 50

283. (1) During the period of three years from the date on which this Part comes into effect, the National Treasury, in conjunction with the financial sector regulators, must

develop principles for further policy frameworks, not inconsistent with this Act, for the regulation and supervision of financial institutions.

(2) The Minister may, by notice published in the Register, declare principles developed as contemplated in subsection (1).

(3) The financial sector regulators must strive to exercise their powers in terms of financial sector laws in a manner consistent with policy frameworks so declared, but failure to do so does not affect the validity of any action taken by a financial sector regulator. 5

Transfer of assets of Financial Services Board

284. (1) At the date on which this Part comes into effect, the assets and liabilities of the Financial Services Board cease to be assets and liabilities of the Board and become assets and liabilities of the Financial Sector Conduct Authority without any conveyance, transfer or assignment. 10

(2) A person or authority who, in terms of a law or of a trust instrument or in any other way is required to keep or maintain a database in relation to assets or liabilities must, and may without any application or otherwise, record in the database the transfer of the asset or liability in terms of subsection (1). 15

(3) A transfer of an asset in terms of subsection (1) does not give rise to any liability to duty or tax.

(4) (a) The Minister or a person authorised by the Minister for the purposes of this section may certify in writing that a specified asset or liability of the Financial Services Board became an asset or liability of the Financial Sector Conduct Authority on the date on which this Part came into effect. 20

(b) A certificate in terms of paragraph (a) is conclusive proof that a specified asset or liability of the Financial Services Board is an asset or liability of the Financial Sector Conduct Authority. 25

Transfer of staff of Financial Services Board

285. (1) (a) At the date on which this Part comes into effect, the staff of the Financial Services Board must be transferred to the Financial Sector Conduct Authority and the South African Reserve Bank, respectively, in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995). 30

(b) Any reference in section 197 of the Labour Relations Act, 1995 to—

(i) the “old employer” must be read as a reference to the Financial Services Board; and

(ii) the “new employer” must be read as a reference to the Financial Sector Conduct Authority or the South African Reserve Bank, as the case may be, in respect of the staff to be transferred to either of these entities. 35

(c) The agreements referred to in section 197 of the Labour Relations Act, 1995, must address the transfer of the staff of the Financial Services Board to the pension funds of the Financial Sector Conduct Authority and the South African Reserve Bank, respectively. 40

(2) The Financial Sector Conduct Authority, at the date on which this Part comes into effect, becomes liable, on the terms and conditions set out in resolutions of the Financial Services Board, for the liability of the Financial Services Board to subsidise the cost of the contributions payable to a medical scheme registered under the Medical Schemes Act by— 45

(a) person who was employed by the Financial Services Board as at 31 December 1997 and remained continuously so employed until he or she died or retired from the Financial Services Board; or

(b) a person who was the spouse or dependant of a person contemplated in paragraph (a) at the time of the persons’ death or retirement from the Financial Services Board. 50

(3) If the benefit payable to a member in terms of the rules of the Financial Services Board Pension Fund on retirement would have been subject to special tax treatment, the benefit payable to that employee on his or her retirement by the pension fund of the Financial Sector Conduct Authority and the South African Reserve Bank, if applicable, must be subject to the same tax treatment. 55

Annual reports

286. (1) The Prudential Authority must prepare each annual report of a financial sector regulator required by a financial sector law for which it is the responsible authority in respect of the reporting period in which the date on which this Part comes into effect occurs. 5

(2) The Financial Sector Conduct Authority must prepare each annual report of the Financial Services Board or another financial sector regulator required by a financial sector law for which it is the responsible authority for the reporting period in which the date on which this Part comes into effect occurs.

(3) A report in terms of subsection (1) or (2) may be published as part of the first annual report of the Prudential Authority or the Financial Sector Conduct Authority, as the case may be. 10

Inspections and investigations

287. (1) An inspection or investigation in terms of the Banks Act, the Mutual Banks Act, 1993 (Act No. 124 of 1993) Act, the Co-operative Banks Act, 2007 (Act No. 40 of 2007), the Short-term Insurance Act or the Long-term Insurance Act that is pending and not concluded immediately before date on which this Part comes into effect may be continued and concluded by the Prudential Authority in terms of the relevant provisions of this Act. 15

(2) An inspection or investigation in terms of a financial sector law or legislation referred to in the definition of “Financial Services Board legislation” in section 1 of the Financial Services Board Act, other than those referred to in subsection (1), that is pending but not concluded immediately before date on which this Chapter comes into effect may be continued and concluded by the Financial Sector Conduct Authority in terms of the relevant provisions of this Act. 20
25

Co-operation agreements with foreign agencies

288. An arrangement in terms of a financial sector law between a registrar, supervisor or other financial sector regulator and a foreign government agency that is in force on the date on which this Part comes into effect continues in effect as with the substitution of the relevant financial sector regulator for the registrar, supervisor or the other financial sector regulator, but may be amended or terminated in accordance with the terms of the said arrangement. 30

Enforcement Committee and Appeals Board

289. (1) (a) Despite the repeals effected in the terms of this Part—

(i) the Enforcement Committee is to continue to deal with any matter that it was dealing with immediately before the date on which this Part comes into effect; and 35

(ii) a panel of the Appeals Board is to continue to deal with any matter that it was dealing with immediately before that date.

(b) The Enforcement Committee and the panels referred to in paragraph (a)(ii) continue in existence for the purposes of paragraph (a) only. 40

(2) The Financial Sector Conduct Authority must provide administrative and other support to the Enforcement Committee and the panels.

(3) For the purposes of this section, proceedings are instituted if—

(a) in the case of the Enforcement Committee established in terms of section 97 of the Securities Services Act, 2004 (Act No. 36 of 2004), the pleadings envisaged in section 102(1) of that Act have been referred to the Enforcement Committee; 45

(b) in the case of the Enforcement Committee established in terms of section 10A of the Financial Services Board Act, the pleadings envisaged in section 6B(1) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) have been delivered in terms of section 6B(2)(a) of that Act. 50

Right of appeal of Financial Services Board decisions

290. Despite the repeals effected in terms of this Part, section 26 of the Financial Services Board Act continues in effect in respect of decisions made before the date those repeals come into effect, but the appeal contemplated by that section is to be made to the Tribunal. 5

Pending proceedings

291. (1) Despite the repeal of section 9 of the Banks Act in terms of Schedule 4, an application for a review made in terms of that section but not finally determined before the date on which this Part comes into effect may be continued before the board of review, which is to exercise the powers of the Tribunal in relation to the application. 10

(2) The Prudential Authority must be substituted as a party in any pending proceedings, whether in a court, tribunal or before an arbitrator or any other person or body, that have been commenced but not finally determined immediately before the date on which this Part comes into effect, for the Reserve Bank or a registrar in terms of the Banks Act, the Mutual Banks Act, 1993 (Act No. 124 of 1993), the Co-operative Banks Act, 2007 (Act No. 40 of 2007), the Short-Term Insurance Act or the Long-Term Insurance Act. 15

(3) The Financial Sector Conduct Authority must be substituted as a party in any pending proceedings, whether in a court, tribunal or before an arbitrator or any other person or body, that have been commenced but not finally determined immediately before the date on which this Part comes into effect, for the Financial Services Board, the Directorate of Market Abuse or a registrar in terms of a financial sector law other than Banks Act. 20

Savings of approvals, consents, registrations and other acts

292. (1) An authorisation, approval, registration, consent or similar permission given in terms of a financial sector law and in force immediately before the date on which this Part comes into effect remains in force for the purposes of the financial sector law but may be amended or revoked by the responsible authority for the financial sector law in accordance with the financial sector law. 25

(2) Rules made in terms of section 26 of the Financial Advisory and Intermediary Services Act and in force immediately before the date on which this Part comes into effect have effect as Ombud Regulatory Council rules, and may be amended or revoked by the Ombud Regulatory Council in accordance with this Act. 30

(3) A regulatory instrument made or issued in terms of a financial sector law and in force immediately before the date on which this Part comes into effect remains in force for the purposes of the financial sector law but may be amended or revoked by the responsible authority for the financial sector law in accordance with the relevant financial sector law. 35

(4) Regulations made in terms of section 5 of the Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993), and in force on the date on which this Part comes into effect continue in force, but may be amended or repealed by Regulations made in terms of section 5 by the Prudential Authority. 40

(5) An ombud scheme that, immediately before the repeal of the Financial Services Ombuds Schemes Act, 2004 came into effect, was recognised in terms of that Act is deemed to be a recognised industry ombud scheme as if it had been recognised under this Act. 45

Levy

293. (1) Despite the repeal of the Financial Services Board Act in terms of Schedule 4, a levy imposed in terms of section 15A of the Financial Services Board Act continues in force subject to this Act, until the later of— 50

- (a) the end of the financial year next after the financial year in which the repeal takes effect; and
- (b) a time, not later than two years after the end of the financial year next after the financial year in which the repeal takes effect, fixed by the Minister by notice published in the Register. 55

(2) A levy referred to in subsection (1) is, from the date on which this Part takes effect, taken to be a levy for the purposes of this Act and the Levies Act.

Chief Actuary

294. A reference in any Act or subordinate legislation to the Chief Actuary is, after the date on which this Part comes into effect, to be read as a reference to the Prudential Authority. 5

Part 7

Short title and commencement

Short title and commencement

295. (1) This Act is called the Financial Sector Regulation Act, 2015, and comes into effect on a date determined by the Minister by notice in the *Gazette*. 10

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

- (a) different provisions of this Act;
- (b) different provisions of this Act in respect of different categories of financial institutions; and 15
- (c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

(3) Despite subsections (1) and (2), section 111(1) must not come into effect in relation to particular financial products and financial services until principles in relation to those products or services have been declared in terms of section 283. 20

SCHEDULE 1**FINANCIAL SECTOR LAWS***(Section 1(1))*

| | |
|---|----|
| Pension Funds Act, 1956 (Act No. 24 of 1956) | |
| Friendly Societies Act, 1956 (Act No. 25 of 1956) | 5 |
| Banks Act, 1990 (Act No. 94 of 1990) | |
| Financial Services Board Act, 1990 (Act No. 97 of 1990) | |
| Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993) | |
| Mutual Banks Act, 1993 (Act No. 124 of 1993) | |
| Long-term Insurance Act (Act No. 52 of 1998) | 10 |
| Short-term Insurance Act (Act No. 53 of 1998) | |
| 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) | |
| Co-operative Banks Act, 2007 (Act No. 40 of 2007) | 15 |
| Financial Markets Act, 2012 (Act No. 19 of 2012) | |
| Credit Rating Services Act, 2012 (Act No. 24 of 2012) | |

SCHEDULE 2**RESPONSIBLE AUTHORITIES***(Section 5)*

| Financial sector law | Responsible authority |
|---|--|
| Pension Funds Act, 1956 (Act No. 24 of 1956) | Financial Sector Conduct Authority |
| Friendly Societies Act, 1956 (Act No. 25 of 1956) | Financial Sector Conduct Authority |
| Banks Act, 1990 (Act No. 94 of 1990) | Prudential Authority |
| Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993) | Prudential Authority |
| Mutual Banks Act, 1993 (Act No. 124 of 1993) | Prudential Authority |
| Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) | Financial Sector Conduct Authority |
| Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) | Financial Sector Conduct Authority |
| Co-operative Banks Act, 2007 (Act No. 40 of 2007) | Prudential Authority |
| Financial Markets Act, 2012 (Act No. 19 of 2012) | Financial Sector Conduct Authority |
| Credit Rating Services Act, 2012 (Act No. 24 of 2012) | Financial Sector Conduct Authority |
| this Act, the Long-term Insurance Act (Act No. 52 of 1998) and the Short-term Insurance Act (Act No. 53 of 1998), so far as they relate to matters within the objectives of— (a) the Prudential Authority (b) the Financial Sector Conduct Authority | Prudential Authority Financial Sector Conduct Authority |
| A regulatory instrument made by the Prudential Authority | Prudential Authority |
| A regulatory instrument made by the Financial Sector Conduct Authority | Financial Sector Conduct Authority |
| A joint standard, so far as it relates to matters within the objectives of— (a) the Prudential Authority (b) the Financial Sector Conduct Authority | Prudential Authority Financial Sector Conduct Authority |

SCHEDULE 3**DOCUMENTS TO BE PUBLISHED IN REGISTER****(Section 246)**

1. This Act
2. Financial sector laws
3. Regulations made in terms of financial sector laws
4. Regulatory instruments made in terms of financial sector laws
5. Administrative action procedures
6. Guidance notes and binding interpretations issued under Part 1 of Chapter 10
7. Enforceable undertakings
8. Orders of a court under section 151 or 202, other than interlocutory orders
9. Debarment orders
10. Licences (including their terms and the conditions to which they are subject)
11. Notice of variations, suspensions and revocations of licences (including any applicable conditions)
12. Notices in terms of section 122
13. The Panel list
14. Tribunal Rules
15. Decisions of the Tribunal
16. Governing rules of recognised industry ombud schemes
17. The terms of recognition of industry ombud schemes and the conditions of recognition
18. Notice of variations, suspensions and revocations of recognition of industry ombud schemes (including any applicable conditions)
19. Determinations in terms of section 235
20. Exemptions under section 271 (including any applicable conditions)
21. Documents that a financial sector law provides are to be published in the Register
22. Amendments to and revocations of documents referred to in items 1 to 21

SCHEDULE 4

AMENDMENTS AND REPEALS

(Section 280)

| Act No. and year | Short Title | Extent of repeal or amendment |
|--------------------|-------------------------|---|
| Act No. 24 of 1936 | Insolvency Act, 1936 | <p>1. The addition in section 35A(1) in the definition of “market infrastructure” of the following paragraphs:—</p> <p>“(d) a central counterparty as defined in section 1 of that Act and licensed under section 49 of that Act; or</p> <p>(e) a licensed external central counterparty as defined in section 1 of that Act;”.</p> |
| Act No. 24 of 1956 | Pension Funds Act, 1956 | <p>1. Amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “audit-exempt fund” of the following definition:</p> <p>“ ‘Authority’ means the <u>Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the insertion in subsection (1) after the definition of “fair value” of the following definition:</p> <p>“ ‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015;</u>”;</p> <p>(c) by the deletion in subsection (1) of the definition of “Financial Services Board”;</p> <p>(d) by the deletion in subsection (1) of the definition of “prescribed”;</p> <p>(e) by the insertion in subsection (1) after the definition of “publish” of the following definition:</p> <p>“ ‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(f) by the deletion in subsection (1) of the definition of “registrar”;</p> <p>(g) by the insertion in subsection (1) after the definition of “this Act” of the following definition:</p> <p>“ ‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act;</u>” and</p> <p>(h) by the addition of the following subsection:</p> <p>“(3) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> |

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| | | <p>2. The insertion after section 1 of the following section:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) <u>A reference in this Act to the registrar or the Financial Services Board must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) <u>A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</u></p> <p>(4) <u>Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being prescribed must be read as—</u></p> <p>(a) <u>a reference to the matter being prescribed in a prudential standard or a conduct standard; or</u></p> <p>(b) <u>a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p>(5) <u>A reference in this Act to an on-site visit, inspection, or investigation under this Act must be read as a reference to an inspection or investigation in terms of the Financial Sector Regulation Act.</u></p> <p>(6) (a) <u>A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.</u></p> <p>(b) <u>The Authority may also publish the information or document on its web site.</u></p> <p>(7) <u>A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> <p>(8) <u>A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.”</u></p> |

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| | | <p>3. The repeal of section 3.</p> <p>4. Amendment of section 18—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) [The registrar may prescribe criteria for financial soundness, and when] If any return under this Act indicates that a registered fund is not in a sound financial condition as determined in accordance with prudential standards, the [registrar] Authority may, save as provided in section 29, direct the fund to submit a scheme setting out the arrangements which have been made, or which it intends to make, to bring the fund into a financially sound condition within such period, and subject to such conditions, as determined by the [registrar] Authority.”; and</p> <p>(b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:</p> <p>“(a) The [registrar] Authority may at any time, [following an inspection carried out or investigation conducted under section 25, or for any other reason which the registrar may consider] if it is necessary in the interests of the members of a fund, direct that an investigation in terms of section 16 or an audit or both an audit and such investigation be conducted into the financial position of a fund generally or with reference to any financial aspect of the fund.”.</p> <p>5. The amendment of section 19—</p> <p>(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:</p> <p>“A registered fund may, if its rules so permit and subject to [the regulations] prudential standards, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member—”; and</p> <p>(b) by the deletion of subsection (7).</p> <p>6. The repeal of section 25.</p> |

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| | | <p>7. The substitution in section 26 for subsection (1) of the following subsection: “(1) <u>Without limiting what a directive of a financial sector regulator may include, the Authority may, through a directive, [The registrar may, after considering the interests of the members of a fund (or of the several categories of members if there is more than one such category)—</u> (a) declare that a specific practice or method of conducting business is unacceptable, irregular or undesirable and that such fund, administrator or person must refrain from conducting such practice or method of conducting business; or (b)] direct that the rules of [the] a fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if [the results of an inspection or on-site visit under section 25 necessitates amendment of the rules of the fund or if the registrar is of the opinion that] the fund— [(i)](a) is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the fund; [(ii)](b) has failed to act in accordance with the provisions of section 18; or [(iii)](c) is not <u>being</u> managed in accordance with this Act or the rules of the fund.”.</p> <p>8. The insertion in Chapter VA before section 30A of the following section: “Ombud scheme 30AA. <u>The ombud scheme in relation to complaints regulated in terms of this Chapter is declared to be a statutory ombud scheme for the purposes of the Financial Sector Regulation Act.</u>”.</p> <p>9. The substitution in section 30C(1) for the words preceding paragraph (a) of the following words: “The Minister shall[, after consultation with the Financial Services Board,] appoint—”.</p> |

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| | | <p>10. The substitution for section 30D of the following section:</p> <p>“Main object of Adjudicator</p> <p>30D. The main object of the Adjudicator shall be to dispose of complaints lodged in terms of section 30A(3) of this Act, and complaints for which the Adjudicator is designated in terms of section 208 of the <u>Financial Sector Regulation Act</u>, in a procedurally fair, economical and expeditious manner.”.</p> <p>11. The substitution in section 30Q for the words preceding paragraph (a) of the following words: “The Adjudicator may [with the concurrence of the Financial Services Board]—”.</p> <p>12. The substitution in section 30R(1) for paragraph (a) of the following paragraph: (a) funds [provided by the Financial Services Board] accruing to the <u>Adjudicator in terms of legislation</u> on the grounds of a budget submitted to, and approved [of] by, the [Financial Services Board] <u>Minister</u>; and”.</p> <p>13. The substitution in section 30S for the expression “Financial Services Board”, wherever occurring in the section, of the expression “Minister”.</p> <p>14. The substitution in section 30T for subsection (1) of the following subsection: “(1) [Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990),] <u>The Adjudicator</u> is the accounting authority of the Office of the Adjudicator.”.</p> <p>15. The repeal of sections 33, 33A and 34.</p> <p>16. The deletion in section 36 of subsections (1)(bA) and (3).</p> <p>17. The deletion in section 37 of subsections (2) to (5).</p> |

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| | | <p>18. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following item:</p> <p style="padding-left: 40px;">“1A. Relationship between Act and Financial Sector Regulation Act”; and</p> <p>(b) by the insertion after item 30A of the following item:</p> <p style="padding-left: 40px;">“30AA. Ombud scheme”.</p> |
| Act No. 25 of 1956 | Friendly Societies Act, 1956 | <p>1. Amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “assets” of the following definition:</p> <p style="padding-left: 40px;">“‘Authority’ means the <u>Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the insertion in subsection (1) after the definition of “court” of the following definition:</p> <p style="padding-left: 40px;">‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015;</u>”;</p> <p>(c) by the deletion in subsection (1) of the definition of “prescribed”;</p> <p>(d) by the insertion in subsection (1) after the definition of “principal officer” of the following definition:</p> <p style="padding-left: 40px;">“‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(e) by the deletion in subsection (1) of the definition of “registrar”; and</p> <p>(f) by the addition of the following subsection:</p> <p style="padding-left: 40px;"><u>“(3) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.”.</u></p> <p>2. The insertion after section 1 of the following section:</p> <p style="padding-left: 40px;">“Relationship between Act and Financial Sector Regulation Act</p> <p style="padding-left: 80px;">1A. (1) Except as otherwise provided by this Act or the <u>Financial Sector Regulation Act</u>, the powers and duties of the <u>Authority</u> in terms of this Act are in addition to the powers and duties that it has in terms of the <u>Financial Sector Regulation Act</u>.</p> |

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| | | <p>(2) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being prescribed must be read as—</p> <p>(a) a reference to the matter being prescribed in a prudential standard or a conduct standard; or</p> <p>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</p> <p>(3) (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.</p> <p>(b) The Authority may also publish the information or document on its web site.</p> <p>(4) A reference in this Act to a fee prescribed by regulation must be read as a reference to the relevant fee being determined in terms of section 235 of the Financial Sector Regulation Act.</p> <p>(5) The Authority must publish the following in the Register:</p> <p>(a) the registration of a society in terms of this Act and each cancellation of a registration;</p> <p>(b) any exemption or any withdrawal of an exemption in terms of section 36; and</p> <p>(c) the rules of each registered friendly society, and each amendment of those rules.”.</p> <p>3. The substitution in section 3(1) for paragraph (a) of the following paragraph: “(a) which has been established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995. However, such a friendly society shall from time to time furnish the registrar with such statistical information as may be requested by the [Minister] Authority;”.</p> <p>4. The repeal of sections 4 and 32.</p> <p>5. The substitution in section 33 for subsection (1) of the following subsection: “(1) The registrar may, [with the consent of the Minister,] in regard to any registered society, apply to the court for an order in terms of paragraph (c), (d) or (e) of subsection (3), and a registered society may, in regard to itself, apply to</p> |

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| | | <p>the court for an order in terms of paragraph (b), (d) or (e) of that subsection, if the registrar or the society is of the opinion that it is desirable, because the society is not in a sound financial condition or for any other reason, that such an order be made in regard to the society: Provided that a society shall not make such an application except by leave of the court, and the court shall not grant such leave unless the society has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established <i>prima facie</i> the desirability of the order for which it wished to apply.”.</p> <p>6. The repeal of sections 44 and 45.</p> <p>7. The deletion in section 47(1) of paragraphs (6A) and (bC).</p> <p>8. The deletion in section 48 of subsections (2), (3), (4) and (5).</p> <p>9. The substitution for the expression “registrar”, wherever it occurs of the expression “Authority”.</p> <p>10. Amendment of the arrangement of sections by the insertion after item 1 of the following item: “1A. Relationship between Act and Financial Sector Regulation Act”.</p> |
| Act No. 90 of 1989 | South African Reserve Bank Act, 1989 | <p>1. The amendment of section 3 by the addition of the the following subsection, the existing subsection becoming subsection (1): “(2) <u>In addition, the Bank is responsible for protecting and maintaining financial stability as envisaged in the Financial Sector Regulation Act, 2015.</u>”.</p> <p>2. The substitution in section 10(1) for paragraph (v) of the following paragraph: “(v) perform the functions assigned to the Bank by the Banks Act, 1990 (Act No. 94 of 1990), [and] the Mutual Banks Act, 1993 (Act No. 124 of 1993), <u>the Financial Sector Regulation Act, 2015 (Act No. XX of 2015) and other financial sector laws as defined in section 1(1) of the Financial Sector Regulation Act, 2015.</u>”.</p> |

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| Act No. 94 of 1990 | Banks Act, 1990 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “allocated capital and reserve funds” of the following definition:</p> <p>“ ‘Authority’ means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;”;</p> <p>(b) by the deletion in subsection (1) of the definition of “board of review”;</p> <p>(c) by the insertion after the definition of “company” of the following definition:</p> <p>“ ‘conduct standard’ has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;”;</p> <p>(d) by the insertion in subsection (1) after the definition of “fellow subsidiary” of the following definition:</p> <p>“ ‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2015;”;</p> <p>(e) by the deletion in subsection (1) of the definition of “prescribed”;</p> <p>(f) by the insertion in subsection (1) after the definition of “primary unimpaired reserve funds” of the following definition:</p> <p>“ ‘prudential standard’ has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;”;</p> <p>(g) by the insertion in subsection (1) after the definition of “qualifying capital and reserve funds” of the following definition:</p> <p>“ ‘Register’ means the Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;”;</p> <p>(h) by the deletion in subsection (1) of the definition of “Registrar”;</p> <p>(i) by the insertion in subsection (1) after the definition of “tier 2 unimpaired reserve funds” of the following definition:</p> <p>“ ‘Tribunal’ means the Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act;” and</p> <p>(j) by the addition of the following subsection:</p> <p>“(3) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.”.</p> |

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| | | <p data-bbox="775 241 1251 297">2. The insertion after section 1 of the following sections:</p> <p data-bbox="804 327 1251 383">“Relationship between Act and Financial Sector Regulation Act</p> <p data-bbox="804 412 1251 618"><u>1A. (1) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p data-bbox="804 622 1251 790"><u>(2) A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</u></p> <p data-bbox="804 795 1251 963"><u>(3) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in terms of section 90, a reference in this Act to a matter being prescribed must be read as—</u></p> <p data-bbox="804 967 1251 1050"><u>(a) a reference to the matter being prescribed in a prudential standard or a conduct standard; or</u></p> <p data-bbox="804 1055 1251 1171"><u>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p data-bbox="804 1176 1251 1344"><u>(4) (a) Matters in respect of which regulations relating to banks may be prescribed in terms of this Act may also be prescribed in prudential standards or conduct standards prescribed in terms of the Financial Sector Regulation Act.</u></p> <p data-bbox="804 1348 1251 1608"><u>(b) Regulations prescribed in terms of this Act that are in force immediately before the commencement of this subsection continue to be in force, but the Minister may repeal regulations and new requirements may then be prescribed by the Authority in prudential standards or conduct standards prescribed in terms of the Financial Sector Regulation Act.</u></p> <p data-bbox="804 1612 1251 1695"><u>(c) Paragraph (b) does not limit the powers of the Minister in terms of this Act to prescribe regulations.</u></p> <p data-bbox="804 1700 1251 1868"><u>(5) A reference in this Act to an inspection or investigation under a provision of this Act must be read as a reference to an inspection or investigation in terms of the Financial Sector Regulation Act.</u></p> <p data-bbox="804 1872 1251 2040"><u>(6) (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.</u></p> |

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| | | <p><u>(b) The Authority may also publish the information or document on its web site.</u></p> <p><u>(7) A reference in this Act to a prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> <p><u>(8) A reference in this Act to a review of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</u></p> <p><u>(9) The Authority must publish the following in the Register:</u></p> <p><u>(a) each authorisation in terms of section 13 or 18A and each amendment and revocation of an authorisation;</u></p> <p><u>(b) each approval in terms of section 15 and each amendment and revocation of an approval; and</u></p> <p><u>(c) each registration in terms of section 17 and each amendment and revocation of a registration.</u></p> <p>Regulatory instruments</p> <p>1B. <u>For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, the following are regulatory instruments:</u></p> <p><u>(a) A designation and determination in terms of paragraph (e)(cc) of the definition of “the business of a bank” in section 1(1);</u></p> <p><u>(b) a designation in terms of paragraph (e)(dd)(i) of the definition of “the business of a bank” in section 1(1);</u></p> <p><u>(c) a declaration in terms of paragraph (e) of the definition of “the business of a bank” in section 1(1);</u></p> <p><u>(d) a determination in terms of paragraph (e)(ff) of the definition of “the business of a bank” in section 1(1);</u></p> <p><u>(e) a designation or determination in terms of paragraph (e)(gg) of the definition of “the business of a bank” in section 1(1);</u></p> <p><u>(f) a designation in terms of section 2(b)(vii);</u></p> <p><u>(g) a circular in terms of section 52(1A); and</u></p> <p><u>(h) a declaration in terms of section 78(2)(a).”.</u></p> <p>3. The repeal of section 3.</p> <p>4. The deletion in section 4 of subsections (1) and (2).</p> <p>5. The repeal of section 5.</p> |

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| | | <p>6. The deletion in section 6 of subsections (1) and (2).</p> <p>7. The repeal of sections 8, 9 and 10.</p> <p>8. The amendment of section 23—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) The Registrar may subject to the provisions of section 24, in the case of a bank registered as such, [with the consent of the Governor and after consultation with the Minister and] by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if the institution has not conducted any business as a bank during the period of six months commencing on the date on which the institution was registered as a bank.”;</p> <p>(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“The Registrar may, subject to the provisions of section 24, in the case of a bank registered as such, [after consultation with the Minister and] by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if—”; and</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p style="padding-left: 40px;">“(3) The Registrar may, subject to the provisions of section 24, in the case of a bank registered as such, [after consultation with the Minister and] by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct the business of a bank or is no longer in operation.”.</p> <p>9. The substitution in section 52 for subsection (1A) of the following subsection:</p> <p style="padding-left: 40px;">“(1A) Notwithstanding subsection (1), the Registrar may, by [means of a circular contemplated in section 6(4)] <u>notice published in the Register</u>, determine circumstances and conditions in terms whereof an application contemplated in subsection (1) is not required.”.</p> <p>10. The amendment of section 69A—</p> <p>(a) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) A commissioner appointed under subsection (1) and any person or persons appointed under subsec-</p> |

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| | | <p>tion (2) shall for the purpose of their functions in terms of this section have powers and duties in all respects corresponding to the powers and duties conferred or imposed [by sections 4 and 5 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), upon a registrar or an inspector contemplated in the Inspection of Financial Institutions Act, 1998] on an investigator in terms of the <u>Financial Sector Regulation Act</u>: Provided that for the purposes of this section, those powers extend to the associates of the bank.</p> <p>[(a) any reference to an ‘institution’ or a ‘financial institution’ in sections 4 and 5 of the Inspection of Financial Institutions Act, 1998, shall be deemed to be a reference to a bank under curatorship or any of its associates; and</p> <p>(b) any reference to ‘the registrar’ and ‘an inspector’ in sections 4 and 5 of the Inspection of Financial Institutions Act, 1998, shall be deemed to be a reference to the commissioner and any person appointed under subsection (2), respectively.]”; and</p> <p>(b) by the deletion of subsections (5) and (5A).</p> <p>11. The insertion in Chapter VI before section 70 of the following section:</p> <p>“Relationship of Chapter with Financial Sector Regulation Act and prudential standards</p> <p>69B. If any requirements of the <u>Financial Sector Regulation Act</u> are inconsistent with the provisions of this Chapter, the requirements of the <u>Financial Sector Regulation Act</u> prevail.”.</p> <p>12. The deletion in section 90 of subsection (1)(e) and (g).</p> <p>13. The amendment of section 91—</p> <p>(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:</p> <p>“(b) contravenes or fails to comply with a provision of section 7(3), (4) or (5), 34, 35, [37(1),] 38(1), 39, 41, 42(1), 52(1) or (4), 53, 55, 58, 59, 60(5)(a), 60(5)(b), 61(2), 65, 66, 67,</p> |

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| | | <p>70(2), (2A) or (2B), 70A, 72, 73, 75, 76, 77, 78(1) or (3), 79, 80, 84(1A) or 84(2).”.</p> <p>(b) by the deletion in subsection (4) of paragraph (c); and</p> <p>(c) by the deletion of subsections (6), (6A) and (7).</p> <p>14. The repeal of section 91A.</p> <p>15. The substitution for the expression “Registrar” wherever it occurs of the expression “Authority”.</p> <p>16. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following items:</p> <p style="padding-left: 40px;">1A. Relationship between Act and Financial Sector Regulation Act</p> <p style="padding-left: 40px;">1B. Regulatory instruments”; and</p> <p>(b) by the insertion after item 69A of the following item:</p> <p style="padding-left: 40px;">69B. Relationship of Chapter with Financial Sector Regulation Act and prudential standards”.</p> |
| Act No. 97 of 1990 | Financial Services Board Act, 1990 | The repeal of the whole Act. |
| Act No. 8 of 1993 | Financial Supervision of the Road Accident Fund Act, 1993 | <p>The amendment of section 1—</p> <p>(a) by the insertion before the definition of “executive officer” of the following definition:</p> <p style="padding-left: 40px;">“ ‘Authority’ means the <u>Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;</u>”;</p> <p style="padding-left: 40px;">and</p> <p>(b) by the deletion of the definitions of “executive officer” and “Financial Services Board”.</p> |
| Act No. 124 of 1993 | Mutual Banks Act, 1994 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “associate” of the following definition:</p> <p style="padding-left: 40px;">“ ‘Authority’ means the <u>Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the deletion in subsection (1) of the definition of “board of appeal”;</p> <p>(c) by the insertion in subsection (1) after the definition of “company” of the following definition:</p> <p style="padding-left: 40px;">“ ‘conduct standard’ has the same <u>meaning ascribed to it in terms of the Financial Sector Regulation Act;</u>”;</p> <p>(d) by the insertion in subsection (1) after the definition of “executive officer” of the following definition:</p> |

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| | | <p>“ ‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015;</u>”;</p> <p>(e) by the deletion in subsection (1) of the definition of “prescribed”;</p> <p>(f) by the insertion in subsection (1) after the definition of “person” of the following definition: “ ‘prudential standard’ has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act.</u>”;</p> <p>(g) by the insertion in subsection (1) after the definition of “public” of the following definition: “ ‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(h) by the deletion in subsection (1) of the definition of “Registrar”;</p> <p>(i) by the insertion in subsection (1) after the definition of “subsidiary” of the following definition: “ ‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act;</u>” and</p> <p>(j) by the addition of the following subsection: “(3) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of the following sections:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) <u>A reference in this Act to the Registrar must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) <u>A reference in this Act to the Authority determining or publishing a matter by notice in the Gazette must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</u></p> <p>(4) <u>Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in</u></p> |

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| | | <p>terms of section 91, a reference in this Act to a matter being prescribed must be read as—</p> <p><u>(a) a reference to the matter being prescribed in a prudential standard or a conduct standard; or</u></p> <p><u>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p><u>(5) Matters in respect of which regulations relating to mutual banks may be prescribed in terms of this Act may also be prescribed in prudential standards or conduct standards in terms of the Financial Sector Regulation Act.</u></p> <p><u>(6) A reference in this Act to an inspection or investigation under a provision of this Act must be read as a reference to an inspection or investigation in terms of the Financial Sector Regulation Act.</u></p> <p><u>(7) (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.</u></p> <p><u>(b) The Authority may also publish the information or document on its web site.</u></p> <p><u>(8) A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> <p><u>(9) A reference in this Act to a review of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</u></p> <p><u>(10) The Authority must publish the following in the Register:</u></p> <p><u>(a) each authorisation in terms of section 11 and each amendment and revocation of an authorisation;</u></p> <p><u>(b) each registration in terms of section 14 and each amendment and revocation of a registration;</u></p> <p><u>(c) each approval in terms of section 65(3);</u></p> <p><u>(d) each registration in terms of section 66; and</u></p> <p><u>(e) each notice in terms of section 68(2).</u></p> <p>Regulatory instruments</p> <p><u>1B. For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, a declaration in terms of section 59(2) is a regulatory instrument.”.</u></p> |

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| | | <p>3. The repeal of sections 2 and 3.</p> <p>4. The deletion in section 4 of subsections (1) and (2).</p> <p>5. The repeal of sections 6, 7 and 8.</p> <p>6. The amendment of section 21—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank registered as such, [with the consent of the Minister and] by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if the institution has not conducted any business as a mutual bank during the period of six months commencing on the date on which the institution was registered as a mutual bank.”;</p> <p>(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “The Registrar may, subject to the provisions of section 22, in the case of a mutual bank registered as such, [with the consent of the Minister and] by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if—”; and</p> <p>(c) by the substitution for subsection (3) of the following subsection: “(3) The Registrar may, subject to the provisions of section 22, in the case of a mutual bank registered as such, [with the consent of the Minister and] by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct business as a mutual bank or is no longer in operation.”.</p> <p>7. The insertion in Chapter V before section 48 of the following section: “Relationship of this Chapter with Financial Sector Regulation Act and prudential standards <u>47A. If any requirements of the Financial Sector Regulation Act or standards made under that Act are inconsistent with the provisions of this Chapter, the requirements of the Financial Sector</u></p> |

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| | | <p><u>Regulation Act or the prudential standards prevail.”.</u></p> <p>8. The repeal of section 89.</p> <p>9. The deletion in section 91 of subsection (1)(e) and (g).</p> <p>10. The deletion in section 92 of subsections (6) and (7).</p> <p>11. The repeal of section 93.</p> <p>12. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following items:</p> <p> “1A. Relationship between Act and Financial Sector Regulation Act</p> <p> 1B. Regulatory instruments”;</p> <p>(b) by the insertion after item 69A of the following item:</p> <p> “47A. Relationship of Chapter with Financial Sector Regulation Act and prudential standards”.</p> |
| Act No. 52 of 1998 | Long-term Insurance Act, 1998 | <p>1. Amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “auditor” of the following definition:</p> <p> “ ‘Authority’ means—</p> <p> (a) <u>in the case of sections 7, 9 to 17, 19 to 21, 23 to 35, 37 to 43, 56 and 59 to 62, the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;</u></p> <p> (b) <u>in the case of sections 8, 44 to 65, the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act; and</u></p> <p> (c) <u>in the case of sections 3, 4, 18, 22 and 36, either the Prudential Authority or the Financial Sector Conduct Authority, subject to consultation and co-ordination requirements set out in the Financial Sector Regulation Act;”;</u></p> <p>(b) by the deletion in subsection (1) of the definition of “Board”;</p> <p>(c) by the insertion in subsection (1) after the definition of “company” of the following definition:</p> <p> “ ‘conduct standard’ has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;”;</p> <p>(d) by the insertion in subsection (1) after the definition of “financial reporting standards” of the following definition:</p> |

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| | | <p><u>‘Financial Sector Regulation Act’</u> means the <u>Financial Sector Regulation Act, 2015;</u>”;</p> <p>(e) by the deletion in subsection (1) of the definition of “prescribe”;</p> <p>(f) by the insertion in subsection (1) after the definition of “premium“ of the following definition: “<u>‘prudential standard’</u> has the same meaning ascribed to it in terms of <u>section 1(1) of the Financial Sector Regulation Act;</u>”;</p> <p>(g) by the insertion in subsection (1) after the definition of “publish” of the following definition: “<u>‘Register’</u> means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(h) by the deletion in subsection (1) of the definition of “Registrar”;</p> <p>(i) by the insertion in subsection (1) after the definition of “this Act” of the following definition: “<u>‘Tribunal’</u> means the <u>Financial Sector Tribunal established in terms of section 221 of the Financial Sector Regulation Act;</u>” and</p> <p>(j) by the addition of the following subsection: “(3) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of the following sections:</p> <p><u>‘Relationship between Act and Financial Sector Regulation Act</u></p> <p><u>1A.</u> (1) A reference in this Act to the <u>Registrar, but not to the Registrar of Medical Schemes, or a reference to the Board must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided for in this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) A reference in this Act to the <u>Authority determining or publishing a matter by notice in the Gazette must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</u></p> |

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| | | <p>(4) <u>Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being prescribed must be read as—</u></p> <p>(a) <u>a reference to the matter being prescribed in a prudential standard or a conduct standard; or</u></p> <p>(b) <u>a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p>(5) <u>A reference in this Act to an on-site visit, inspection, or investigation under a provision of this Act must be read as a reference to a supervisory on-site inspection or an investigation in terms of the Financial Sector Regulation Act.</u></p> <p>(6) <u>The references in sections 3(3) and 22(3) to an appeal to the board of appeal established by section 26 of the Financial Services Board Act must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</u></p> <p>(7) <u>A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> <p>Regulatory instruments</p> <p>1B. <u>For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, any matter prescribed by the Authority in respect of which notice in the <i>Gazette</i> is specifically required by this Act is a regulatory instrument.”.</u></p> <p>3. <u>The substitution for section 2 of the following section:</u></p> <p>“Exercise of powers and performance of duties by Authority</p> <p>2. (1) <u>The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act.</u></p> <p>(2) <u>The Prudential Authority, in respect of sections 9, 15, 26 and 37 to 43, must act with the concurrence of the Financial Sector Conduct Authority.</u></p> <p>(3) <u>The Prudential Authority or the Financial Sector Conduct Authority, as the case may be, in respect of section 22, must act with the concurrence of the other Authority.”.</u></p> |

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| | | <p>4. The deletion in section 4 of subsections (2), (4) and (8).</p> <p>5. The repeal of section 5.</p> <p>6. The amendment of section 9— (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph: “<u>(b) unless the applicant demonstrates to the satisfaction of the Authority that—</u> (i) <u>it complies and has taken appropriate measures to continue to comply with the governance and risk management framework and financial soundness requirements of this Act;</u> (ii) <u>its directors and managing executives meet the fit and proper requirements; and</u> (iii) <u>any persons that directly or indirectly control or own that applicant within the meaning of section 25 of this Act, meet the fit and proper requirements;</u>”; and (b) by the addition in subsection (3) of the following paragraph: “<u>(cA) if the registration will be contrary to the interests of prospective policyholders or the public interest.</u>”.</p> <p>7. The amendment of section 10 by the insertion after paragraph (f) of the following paragraph: “<u>(fA) relating to the business arrangements of the long-term insurer, including, but not limited to, the outsourcing arrangements that the long-term insurer may enter into;</u>”.</p> <p>8. The amendment of section 11 by the substitution for subsection (1) of the following subsection: “(1) The [Registrar] <u>Authority may, by notice to the long-term insurer, amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the long-term insurer is registered or deemed to be registered—</u> (a) <u>upon application of a long-term insurer and having regard, with the necessary changes required by the context, to section 9(3)(b);</u></p> |

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| | | <p>(aA) <u>when in the public interest or the interests of the policyholders or potential policyholders of the long-term insurer;</u></p> <p>(b) <u>when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 35(2)(a), in relation to a long-term insurer; or</u></p> <p>(c) <u>if a long-term insurer has ceased to enter into certain long-term policies determined by the [Registrar] Authority to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter [by notice to the long-term insurer vary a condition, subject to which the long-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.</u></p> <p>9. The deletion in section 22 of subsection (3).</p> <p>10. The amendment of section 26—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the [Registrar] Authority, acquire or hold shares or any other financial interest in a long-term insurer or a related party of that long-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control <u>within the meaning of section 2(2) of the Companies Act</u>, over that long-term insurer.”;</p> <p>(b) by the substitution, in subsection (2) for paragraphs (a) and (b) of the following paragraphs: “(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to [25] <u>15</u> per cent or more of the total nominal value of all of the</p> |

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| | | <p>issued shares of the long-term insurer concerned;</p> <p>(b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to [25] <u>15</u> per cent or more of all the shares in a specific class of shares issued by the long-term insurer concerned.”;</p> <p>(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: “The approval referred to in subsection (1) or (2)—”;</p> <p>(d) by the insertion in subsection (3) after paragraph (a) of the following paragraph: “<u>(aA)</u> shall not be given if the person does not meet the fit and proper requirements;”;</p> <p>(e) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words: “compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] <u>15</u> per cent of—”; and</p> <p>(f) by the deletion of subsections (5) and (6).</p> <p>11. The deletion in section 62 of subsections (2)(f) and (4)(a)(i).</p> <p>12. The substitution in section 66(1) for paragraph (a) of the following paragraph: “(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section [4(3), (4) or] (5)(a)(i), 22(2) or 27(2);”.</p> <p>13. The substitution in section 67(1) for paragraph (a) of the following paragraph: “(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section [4(2),(3) or (4),] 22(1) or (2), 27(1), 31(1), 35(1) or (2)(a) or 36(2);”.</p> <p>14. The repeal of section 68.</p> <p>15. The amendment of Schedule 1— (a) by the substitution in Item 2(b) for subparagraph (i) of the following subparagraph:</p> |

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| | | <p>“(i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty that <u>complies with criteria [for which the relevant criteria have been] approved by the [Registrar] Authority and any [subject to such] conditions as [he or she] the Authority may determine;</u>” and</p> <p>(b) by the substitution in Item 2(b) for subparagraph (iii) of the following subparagraph:</p> <p>“(iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the [Registrar subject to such conditions as he or she may determine] Authority, which approval may be subject to conditions determined by the Authority.”.</p> <p>16. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following items:</p> <p>“1A. Relationship between Act and Financial Sector Regulation Act 1B. Regulatory instruments”; and</p> <p>(b) by the substitution for item 2 of the following item:</p> <p>“2. Exercise of powers and performance of duties by Authority”.</p> |
| Act No. 53 of 1998 | Short-term Insurance Act, 1998 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “approved reinsurance policy” of the following definition:</p> <p>“‘Authority’ means—</p> <p>(a) <u>in the case of sections 7, 9 to 17, 19 to 20, 22 to 34, 36 to 42, 56 and 59 to 62, the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;</u></p> <p>(b) <u>in the case of sections 8, 43 to 55, the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act; and</u></p> <p>(c) <u>in the case of sections 3, 4, 18, 21, 35, 57, 58 and 63, either the Prudential Authority or the Financial Sector Conduct Authority, subject to consultation and co-ordination requirements set out in the Financial Sector Regulation Act;</u>”;</p> |

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| | | <p>(b) by the deletion in subsection (1) of the definition of “Board”;</p> <p>(c) by the insertion in subsection (1) after the definition of “company” of the following definition: “‘conduct standard’ has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act</u>”;</p> <p>(d) by the insertion in subsection (1) after the definition of “financial reporting standards” of the following definition: “‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015</u>”;</p> <p>(e) by the deletion in subsection (1) of the definition of “Financial Services Board Act”;</p> <p>(f) by the deletion in subsection (1) of the definition of “prescribe”;</p> <p>(g) by the insertion in subsection (1) after the definition of “proportional reinsurance” of the following definition: “‘prudential standard’ has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act</u>”;</p> <p>(h) by the insertion in subsection (1) after the definition of “publish” of the following definition: “‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act</u>”;</p> <p>(i) by the deletion in subsection (1) of the definition of “Registrar”;</p> <p>(j) by the insertion in subsection (1) after the definition of “transportation policy” of the following definition: “‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act</u>”;</p> <p>(k) by the addition of the following subsection: “(3) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of the following sections:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) A reference in this Act to the <u>Registrar, but not the Registrar of</u></p> |

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| | | <p>Medical Schemes, or a reference to the Board, must be read as a reference to the Authority.</p> <p>(2) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</p> <p>(3) A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</p> <p>(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being prescribed must be read as—</p> <p>(a) a reference to the matter being prescribed in a prudential standard or a conduct standard; or</p> <p>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</p> <p>(5) A reference in this Act to an on-site visit, inspection, or investigation under this Act must be read as a reference to a supervisory on-site inspection or an investigation in terms of the Financial Sector Regulation Act.</p> <p>(6) The reference in sections 3(3) and 21(3) to an appeal to the board of appeal established by section 26 of the Financial Services Board Act must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</p> <p>(7) A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.”.</p> <p>Regulatory instruments</p> <p>1B. For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, any matter prescribed by the Authority in respect of which notice in the <i>Gazette</i> is specifically required by this Act is a regulatory instrument.”.</p> |

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| | | <p>3. The substitution for section 2 of the following section:</p> <p>“Exercise of powers and performance of duties by Authority</p> <p>2. (1) <u>The Authority, in fulfilling its responsibility for implementing this Act, must exercise its powers and perform its duties in terms of this Act subject to the Financial Sector Regulation Act.</u></p> <p>(2) <u>The Prudential Authority, in respect of sections 9, 15, 25 and 36 to 42, must act with the concurrence of the Financial Sector Conduct Authority.</u></p> <p>(3) <u>The Prudential Authority or the Financial Sector Conduct Authority, as the case may be, in respect of section 21, must act with the concurrence of the other Authority.”.</u></p> <p>4. The deletion in section 4 of subsections (2), (4) and (8).</p> <p>5. The repeal of section 5.</p> <p>6. The amendment of section 9—</p> <p>(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:</p> <p>“<u>(b) unless the applicant demonstrates to the satisfaction of the Authority that—</u></p> <p>(i) <u>it complies and has taken appropriate measures to continue to comply with the governance and risk management framework and financial soundness requirements of this Act;</u></p> <p>(ii) <u>its directors and managing executives meet the fit and proper requirements; and</u></p> <p>(iii) <u>any persons that directly or indirectly control or own that applicant within the meaning of section 25 meet the fit and proper requirements.” and</u></p> <p>(b) by the addition in subsection (3) of the following paragraph:</p> <p>“<u>(cA) if registration will be contrary to the interests of prospective policyholders or the public interest.”.</u></p> <p>7. The amendment of section 10 by the insertion after paragraph (f) of the following paragraph:</p> <p>“<u>(fA) relating to the business arrangements of the short-term insurer, including, but not limited to, the</u></p> |

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| | | <p style="text-align: center;"><u>outsourcing arrangements that the short-term insurer may enter into;</u>”.</p> <p>8. The amendment of section 11 by the substitution for subsection (1) of the following subsection: “(1) The [Registrar] Authority may, by notice to the short-term insurer, amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the short-term insurer is registered or deemed to be registered—</p> <p>(a) upon application of a short-term insurer and having regard, with the necessary changes required by the context, to section 9(3)(b);</p> <p>(aA) <u>when in the public interest or the interests of the policyholders or potential policyholders of the short-term insurer;</u></p> <p>(b) when acting in accordance with section 12(2) or (3)₂ or when giving an authorisation in accordance with section 34(2)(a)₂ in relation to a short-term insurer; or</p> <p>(c) if a short-term insurer has ceased to enter into certain short-term policies determined by the [Registrar] Authority to an extent which no longer justifies its continued registration in respect of those policies, and the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter [,by notice to the short-term insurer vary a condition, subject to which the short-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.</p> <p>9. The deletion in section 21 of subsection (3).</p> <p>10. The amendment of section 25—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) Subject to this section, no person shall, directly or indirectly, and without the prior approval of the [Registrar] Authority, acquire or hold shares or any other financial interest in a short-term insurer or a related party of that short-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control <u>within the meaning of section 2(2) of the Companies Act</u> over that short-term insurer.”;</p> |

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| | | <p>(b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:</p> <p>“(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to [25] 15 per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned;</p> <p>(b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to [25] 15 per cent or more of all the shares in a specific class of shares issued by the short-term insurer concerned.”;</p> <p>(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>“The approval referred to in subsection (1) or (2)—”;</p> <p>(d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:</p> <p>“(aA) shall not be given if the person does not meet the fit and proper requirements;”;</p> <p>(e) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:</p> <p>“compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] 15 per cent of—”;</p> <p>(f) by the deletion of subsections (5) and (6).</p> <p>11. The amendment of section 55 by the deletion of subsections (2)(f) and 4(a)(i).</p> |

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| | | <p>12. The amendment of section 65 by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section [4(2), (3) or (4),] 21(1) or (2), 26(1), 34(2)(a) or 35(2);”.</p> <p>13. The repeal of section 66.</p> <p>14. The amendment of Schedule 1— (a) by the substitution in item 2(b) for subparagraph (i) of the following subparagraph: “(i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty <u>that complies with criteria [for which the relevant criteria have been] approved by the [Registrar] Authority and any [subject to such] conditions as [he or she] the Authority may determine;</u>” and (b) by the substitution in item 2(b) for subparagraph (iii) of the following subparagraph: “(iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the [Registrar subject to such conditions as he or she may determine] <u>Authority, which approval may be subject to conditions determined by the Authority.</u>”.</p> <p>15. The amendment of Schedule 3 by the substitution in item 6(3) for paragraph (c) of the following paragraph: “(c) subject to the conditions [he or she] that <u>the Authority</u> may determine.”.</p> <p>16. Amendment of the arrangement of sections— (a) by the insertion after item 1 of the following items: “1A. Relationship between Act and Financial Sector Regulation Act 1B. Regulatory instruments”; and (b) by the substitution for item 2 of the following item: “2. Exercise of powers and performance of duties by Authority”.</p> |

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| Act No. 80 of 1998 | Inspection of Financial Institutions Act, 1998 | The repeal of the whole Act. |
| Act No. 28 of 2001 | Financial Institutions (Protection of Funds) Act, 2001 | <p>1. The amendment of section 1—</p> <p>(a) by the deletion of the definitions of “administrative sanction” and “applicant”;</p> <p>(b) by the insertion before the definition of “Companies Act” of the following definition: “‘Authority’ means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;”;</p> <p>(c) by the deletion of the definitions of “board”, “determination”, “director-ate” and “enforcement committee”;</p> <p>(d) by the insertion after the definition of “financial institution” of the following definition: “‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2015;”;</p> <p>(e) by the substitution for the definition of “law” of the following definition: “‘law’, for the purposes of section 5A means—</p> <p>(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</p> <p>(b) this Act;</p> <p>(c) the Pension Funds Act, 1956 (Act No. 24 of 1956);</p> <p>(d) the Friendly Societies Act, 1956 (Act No. 25 of 1956);</p> <p>(e) the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);</p> <p>(f) the Financial Markets Act, 2012 (Act No. 19 of 2012);</p> <p>(g) the Long-term Insurance Act, 1998 (Act No. 52 of 1998);</p> <p>(h) the Short-term Insurance Act, 1998 (Act No. 53 of 1998);</p> <p>(i) the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);</p> <p>(j) the Credit Rating Services Act, 2012 (Act No. 24 of 2012);</p> <p>(k) the Banks Act, 1990 (Act No. 94 of 1990);</p> <p>(l) the Mutual Banks Act, 1993 (Act No. 124 of 1993);</p> <p>(m) the Co-operative Banks Act, 2007 (Act No. 40 of 2007);</p> <p>(n) the Companies Act, 2008 (Act No. 71 of 2008);</p> <p>(o) the Close Corporations Act, 1984 (Act No. 69 of 1984);</p> <p>(p) the Trust Property Control Act, 1988 (Act No. 57 of 1988);</p> |

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| | | <p>(q) <u>the Medical Schemes Act, 1998 (Act No. 131 of 1998); and including any subordinate legislation, enactment or measure made under these Acts;</u>”;</p> <p>(f) substitution for the definition of “registrar” of the following definition: “registrar” means—</p> <p>(a) <u>the Authority [the registrar as defined in any of the Acts referred to in paragraph (a) of the definition of “financial institution” in section 1 of the Financial Services Board Act, 1990;</u></p> <p>(b) <u>the executive officer defined in section 1 of the Financial Services Board Act, 1990];</u> or</p> <p>[(c)](b) <u>[except for the purposes of sections 6A to 6I,] the registrar of medical schemes referred to in section 1 of the Medical Schemes Act, 1998;”;</u></p> <p>(g) by the deletion of the definition of “respondent”; and</p> <p>(h) by the addition in section 1 of the following subsection, the existing section becoming subsection (1): “(2) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The repeal of section 4A.</p> <p>3. The amendment of section 5—</p> <p>(a) by the substitution in subsection (5) for paragraph (e) of the following paragraph: “(e) <u>the costs incurred by the registrar in respect of an inspection of the affairs of the institution [concerned] that was conducted in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998) prior to its repeal, or a supervisory on-site inspection or investigation in terms of the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the substitution, in subsection (5) for subsection (7) of the following subsection: “(7) <u>The curator of an institution must furnish the registrar [of the institution concerned] with such [reports or] information concerning the affairs of that institution as the registrar may require.</u>”.</p> |

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| Act No. 38 of 2001 | Financial Intelligence Centre Act, 2001 | <p>4. The repeal of sections 6, 7 and 9.</p> <p>1. The substitution for section 45E(2) and (3) of the following subsection respectively:</p> <p>“(2) The members of the Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act, 2015 are the members of the appeal board.</p> <p>(3) Proceedings before the appeal board are to be conducted and determined in accordance with Chapter 15 of the Financial Sector Regulation Act, 2015.”.</p> <p>2. The deletion of section 45E (4) to (10).</p> |
| Act No. 37 of 2002 | Financial Advisory and Intermediary Services Act, 2002 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “authorised financial services provider” of the following definition:</p> <p>“ ‘Authority’ means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;</p> <p>(b) by the deletion in subsection (1) of the definitions of “Board” and “board of appeal”;</p> <p>(c) by the insertion after the definition of “financial product” of the following definition:</p> <p>“ ‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2015;”;</p> <p>(d) by the deletion in subsection (1) of the definition of “Financial Services Board Act”;</p> <p>(e) by the insertion in subsection (1) in the definition of “financial product” after paragraph (g) of the following paragraph:</p> <p>“(gA) an investment, subscription, contribution, or commitment in a pooled fund;”;</p> <p>(f) by the substitution in subsection (1) in the definition of “financial product” for paragraph (j) of the following paragraph:</p> <p>“(j) any financial product issued by any foreign product supplier [and marketed in the Republic] and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraph (a) to (i), inclusive;”;</p> <p>(g) by the substitution in subsection (1) for the definition of “fit and proper person requirements” of the following definition:</p> |

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| | | <p>“ ‘fit and proper person requirements’ means the requirements [published under] referred to in section 6A;”;</p> <p>(h) by the substitution in subsection (1) for the definition of “intermediary service” of the following definition:</p> <p>“ ‘intermediary service’ means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person [for or on behalf of a client or product supplier]—</p> <p>(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product [with a product supplier]; or</p> <p>(b) with a view to—</p> <p>(i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, <u>conducting a valuation, keeping in safe custody, maintaining or servicing a financial product</u> [purchased by a client from a product supplier or in which the client has invested];</p> <p>(ii) collecting or accounting for premiums or other moneys payable by the client [to a product supplier] in respect of a financial product; or</p> <p>(iii) receiving, submitting [or], <u>processing or settling the claims of a client</u> [against a product supplier] in respect of a financial product;”;</p> <p>(i) by the deletion in subsection (1) of the definition of “official web site”;</p> <p>(j) by the insertion in subsection (1) after the definition of “Ombud” of the following definition:</p> <p>“ ‘Ombud Regulatory Council’ <u>means the council established in terms of section 173 of the Financial Sector Regulation Act;</u>”;</p> <p>(k) by the insertion in subsection (1) after the definition of “person” of the following definition:</p> <p>“ ‘pooled fund’ means a <u>collective investment undertaking, including investment compartments of a collective investment undertaking, constituted in any legal form, including</u></p> |

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| | | <p>in terms of a contract, by means of a trust, or in terms of statute, which—</p> <p><u>(a) raises capital from one or more investors 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 investors; and</u></p> <p><u>(b) does not require approval as a collective investment scheme in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);”;</u></p> <p>(l) by the insertion in subsection (1) after the definition of “publish” of the following definition: “Register” means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(m) by the deletion in subsection (1) of the definition of “registrar”;</p> <p>(n) by the insertion in subsection (1) after definition of “this Act” of the following definition: “Tribunal” means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act;</u>”;</p> <p>(o) by the deletion of subsection 1(3)(b)(ii); and</p> <p>(p) by the addition of the following subsection: “(7) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the <u>Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 before Chapter 1 of the following section:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) A reference in this Act to the <u>Board or the registrar must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> |

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| | | <p>(3) A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</p> <p>(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed, a reference in this Act to a matter being prescribed must be read as—</p> <p>(a) a reference to the matter being prescribed in a standard; or</p> <p>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</p> <p>(5) (a) A reference in this Act to an on-site visit, inspection, or investigation under a provision of this Act must be read as a reference to a supervisory on-site inspection or an investigation in terms of the Financial Sector Regulation Act.</p> <p>(6) (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.</p> <p>(b) The Authority may also publish the information or document on its web site.</p> <p>(7) A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</p> <p>(8) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</p> <p>(9) For the purposes of this section, “standard” has the same meaning ascribed to it in terms of the Financial Sector Regulation Act.</p> <p>Regulatory instruments</p> <p>1B. For the purposes of the definition of “regulatory instrument” in section 1 of the Financial Sector Regulation Act, fit and proper requirements determined in terms of section 6A, codes of conduct drafted under section 15 and criteria and guidelines for the approval of compliance officers determined under section 17(2) are regulatory instruments.”.</p> |

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| | | <p>3. The repeal of section 2.</p> <p>4. The substitution in section 3(2)(b) for subparagraph (i) of the following subparagraph: “(i) the fee payable [in terms of this Act]; and”.</p> <p>5. The deletion in section 4 of subsections (1), (5) and (6).</p> <p>6. The substitution for section 6 of the following section: “Delegations</p> <p>6. (1) The Authority may, in writing, delegate to any person a power or duty conferred upon the Authority under this Act in respect of any matter relating to a standard referred to in section 6A(2)(a), (b) and (e).</p> <p>(2) The Authority must, where the delegation is to a person other than a staff member of the Authority, be satisfied that the person has sufficient financial, management, human resources and experience necessary for performing the delegated power or duty.</p> <p>(3) A delegation is subject to the limitations and conditions specified in the delegation.</p> <p>(4) A delegation does not divest the Authority of responsibility in respect of the delegated power or duty and anything done by a delegate in accordance with a delegation is deemed to be done by the Authority.</p> <p>(5) A delegation made under this section may be amended or revoked, subject to any rights that may have accrued.”.</p> <p>7. The amendment of section 6A—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “[The registrar, for purposes of this Act, by notice in the Gazette—] A conduct standard for or in respect of financial service providers or representatives may be made on any of the following matters:”;</p> <p>(b) by the insertion after paragraph (a) of the following paragraph: “(aA) may classify representatives into different categories; and”; and</p> <p>(c) by the deletion of subsection (4).</p> |

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| | | <p>8. The amendment of section 9(1)—</p> <p>(a) by the substitution for paragraphs (c) and (d) of the following paragraphs:</p> <p>“(c) has failed to comply with any other provision of this Act or <u>any requirement under the Financial Sector Regulation Act, including a standard;</u></p> <p>(d) <u>[is liable for payment of] has failed to pay a levy [under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), a penalty under section 41(2) and (3) or an administrative sanction under section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, penalty or administrative sanction], an administrative penalty, or [and] any interest in respect thereof; and</u></p> <p>(b) by the substitution for paragraph (f) of the following paragraph:</p> <p>“(f) has failed to comply with a <u>regulator’s [any] directive [issued under this Act]; or</u>”.</p> <p>9. The substitution in section 13 for subsection (3) of the following subsection:</p> <p>“(3) [The] <u>An authorised financial services provider must—</u></p> <p>(a) <u>maintain a register of representatives, and key individuals of [such] those representatives, which must be regularly updated and be available to the [registrar] Authority for reference or inspection purposes[.]; and</u></p> <p>(b) <u>within five days after being informed by the Authority of the debarment of a representative or key individual by the Authority, remove the name of that representative or key individual from the register referred to in paragraph (a).</u>”.</p> <p>10. The substitution for section 14 of the following section:</p> <p>“Debarment of representatives</p> <p>14. (1) <u>An authorised financial services provider must debar a person who is or was, as the case may be—</u></p> <p>(a) <u>a representative of the financial services provider; or</u></p> <p>(b) <u>the key individual of such representative,</u></p> |

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| | | <p>from rendering financial services if satisfied on the basis of available facts and information that the person—</p> <p>(i) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or</p> <p>(ii) has contravened or failed to comply with any provision of this Act in a material manner; and</p> <p>the reasons for debarment occurred and became known to the financial services provider whilst the person was a representative of the provider.</p> <p>(2) Before effecting a debarment in terms of subsection (1), the provider must ensure that the debarment process is lawful, reasonable and procedurally fair by following the process set out in subsection (3).</p> <p>(3) A financial services provider must—</p> <p>(a) before debarring a person—</p> <p>(i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons thereof and any terms attached to the debarment, including, in relation to uncompleted business, any measures stipulated for the protection of the interests of clients;</p> <p>(ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and</p> <p>(iii) give the person a reasonable opportunity to make a submission in response;</p> <p>(b) consider any response contemplated in paragraph (a)(iii), and may thereafter decide to debar or not to debar the person; and</p> <p>(c) immediately notify the person in writing of—</p> <p>(i) the financial services provider's decision;</p> <p>(ii) the grounds and reasons for such decision;</p> <p>(iii) a right of appeal to an internal appeal mechanism established by the Authority, and a subsequent right of review of the decision of the Authority to the Tribunal;</p> <p>(iv) the period within which the internal appeal proceedings to the Authority, or review proceedings to the Tribunal, must be instituted; and</p> |

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| | | <p>(v) <u>any other formal requirements in respect of the proceedings for the internal appeal to the Authority or the review to the Tribunal.</u></p> <p>(4) <u>Where the debarment has been effected as contemplated in subsection (1), the financial services provider must—</u></p> <p>(a) <u>immediately withdraw any authority which may still exist for the person to act on behalf of the financial services provider;</u></p> <p>(b) <u>where applicable, remove the name of the debarred person from the register referred to in section 13(3);</u></p> <p>(c) <u>immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any uncompleted business of the debarred person is properly attended to;</u></p> <p>(d) <u>in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and</u></p> <p>(e) <u>with the notification referred to in paragraph (d), provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require.</u></p> <p>(5) <u>A debarment in terms of subsection (1) that is proposed to be undertaken in respect of a person who no longer is a representative of the financial services provider, must be commenced without undue delay from the date of the financial services provider becoming aware of the reasons for debarment, and not longer than three months from that date.</u></p> <p>(6) <u>For the purposes of debarring a person as contemplated in subsection (1), the financial services provider must have regard to information regarding the conduct of the person as furnished by the Authority, the Ombud or any other interested person.</u></p> <p>(7) <u>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 registrar 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.</u></p> |

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| | | <p>(8) <u>A debarment effected in terms of this section prevails and must be reacted upon by the Authority as contemplated by this section, unless the debarment is set aside in an appropriate internal appeal or review in terms of subsection (3)(c)(iii), as the case may be.</u></p> <p>(9) <u>A person debarred in terms of subsection (1) may not render financial services or act as a representative or key individual of a representative of any financial services provider, unless the person has complied with the requirements referred to in section 13(1)(b)(ii) for the reappointment of a debarred person as a representative or key individual of a representative.”.</u></p> <p>11. The repeal of section 14A.</p> <p>12. The insertion after section 20 of the following section:</p> <p>“Ombud scheme</p> <p>20A. <u>The scheme in relation to complaints implemented by this Part is declared to be a statutory ombud scheme for the purposes of the Financial Sector Regulation Act.”.</u></p> <p>13. The amendment of section 20 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) <u>The objective of the Ombud is to consider and dispose of complaints under this Act, and complaints for which the Adjudicator is designated in terms of section 208 of the Financial Sector Regulation Act, in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to—</u></p> <p>(a) <u>the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and</u></p> <p>(b) <u>the provisions of this Act and the Financial Sector Regulation Act.”.</u></p> <p>14. The substitution in section 21 for the expression “Board”, wherever it occurs in the section of the expression “Minister”.</p> <p>15. The amendment of section 22(1) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(a) funds [provided by the Board] <u>accruing to the Ombud in terms of legislation on the basis of a budget</u></p> |

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| | | <p>submitted by the Ombud to the [Board] Minister and approved by the latter; and”.</p> <p>16. The amendment of section 23 by the substitution for subsection (1) of the following subsection: “(1) [Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990),] The Ombud is the accounting authority of the Office.”.</p> <p>17. The repeal of section 26.</p> <p>18. The substitution for section 32 of the following section: “Promotion of client education by [registrar] Ombud Regulatory Council</p> <p>32. The [registrar] Ombud Regulatory Council may take any steps conducive to client education and the promotion of awareness of the nature and availability of the Ombud and other enforcement measures established by or in terms of this Act, including arrangements with the Ombud, representative bodies of the financial services industry, client and consumer bodies, or product suppliers and authorised financial services providers and their representatives to assist in the disclosure of information to the general public on matters dealt with in this Act.”.</p> <p>19. The repeal of section 34.</p> <p>20. The deletion in section 35(1) of paragraphs (b), (c) and (d).</p> <p>21. The substitution for section 39 of the following section: “Right of review and internal appeal</p> <p>39. (a) Any person who feels aggrieved by any decision [by the registrar or the Ombud] of the Authority [under] in terms of this Act which affects that person, may [appeal to the board of appeal established by section 26(1) of the Financial Services Board Act, in respect of which appeal the said section 26 applies with the necessary changes] apply for the review of that decision to the Tribunal in terms of the Financial Sector Regulation Act.</p> |

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| | | <p><u>(b) Any person aggrieved by a decision of a financial services provider to debar that person in terms of section 14 may appeal the decision to an internal appeal mechanism established by the Authority, and subsequently may apply for the review of the decision to the Tribunal.”.</u></p> <p>22. The repeal of sections 41 and 44.</p> <p>23. The amendment of section 45—</p> <p>(a) by the deletion in subsection (1) of paragraph (a)(ii); and</p> <p>(b) by the insertion after subsection (1) of the following subsection:</p> <p>“(1A) The provisions of this Act do not apply to the—</p> <p>(a) performing of the activities referred to in paragraph (b)(ii) and (iii) of the definition of “intermediary service” by a product supplier—</p> <p>(i) who is authorised under a particular law to conduct business as a financial institution; and</p> <p>(ii) where the rendering of such service is regulated under such law; and</p> <p>(b) rendering of financial services by a manager as defined in section 1 of the Collective Investment Schemes Control Act, 2002, to the extent that the rendering of financial services is regulated under that Act.</p> <p>(1B) The exemption referred to in—</p> <p>(a) subsection (1A)(a) does not apply to a person to whom the product supplier has delegated or outsourced the activity, or any part of the activity, contemplated in paragraph (a) and where the person is not an employee of the product supplier; and</p> <p>(b) subsection (1A)(b) does not apply to an authorised agent as defined in section 1 of the Collective Investment Schemes Control Act, 2002.”.</p> <p>24. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following items:</p> <p>“1A. Relationship between Act and Financial Sector Regulation Act</p> <p>1B. Regulatory instruments”;</p> |

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| | | <p>(b) by the substitution for item 6 of the following item: “6. Delegations”;</p> <p>(c) by the insertion after item 20 of the following item: “20A. Ombud scheme”; and</p> <p>(d) by the substitution for item 39 of the following item: “39. Right of <u>review and internal appeal</u>”.</p> |
| Act No. 45 of 2002 | Collective Investment Schemes Control Act, 2002 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion after the definition of “authorised agent” of the following definition: “ ‘Authority’ means the <u>Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act</u>;”;</p> <p>(b) by the deletion of the definition of “Board”;</p> <p>(c) by the insertion after the definition of “exchange securities” of the following definition: “ Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015</u>;”;</p> <p>(d) by the deletion of the definitions of “official website” and “prescribed”;</p> <p>(e) by the insertion after the definition of “publish” of the following definition: “ ‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act</u>;”;</p> <p>(f) by the deletion of the definition of “registrar”;</p> <p>(g) by the insertion after the definition of “this Act” of the following definition: “ ‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act</u>;” and</p> <p>(h) by the addition in section 1 of the following subsection, the existing section becoming subsection (1): “(2) Unless the context otherwise <u>indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of—</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) A reference in this Act to the <u>registrar must be read as a reference to the Authority.</u>”.</p> |

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| | | <p>(2) Except as otherwise provided by <u>this Act or the Financial Sector Regulation Act</u>, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the <u>Financial Sector Regulation Act</u>.</p> <p>(3) A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</p> <p>(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed, a reference in this Act to a matter being prescribed must be read as—</p> <p>(a) a reference to the matter being prescribed in a standard; or</p> <p>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</p> <p>(5) (a) A reference in this Act to an on-site visit, inspection, or investigation under a provision of this Act must be read as a reference to a supervisory on-site inspection or an investigation in terms of the <u>Financial Sector Regulation Act</u>.</p> <p>(6) (a) A reference in this Act to the Authority announcing or publishing information or a document on a website must be read as a reference to the Authority publishing the information or document in the Register.</p> <p>(b) The Authority may also publish the information or document on its website.</p> <p>(7) A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 235 of the <u>Financial Sector Regulation Act</u>.</p> <p>(8) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the <u>Financial Sector Regulation Act</u>.</p> <p>(9) For the purposes of this section, “standard” has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act</u>.”.</p> <p>3. The repeal of sections 7 and 14.</p> <p>4. The amendment of section 15—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> |

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| | | <p>“If [the registrar, after an on-site visit or inspection under section 14, considers on reasonable grounds that] it is in the interests of the investors of a collective investment scheme or of members of the public [so require], the [registrar] Authority may—”;</p> <p>(b) by the deletion in subsection (1) of the proviso to paragraph (f); and</p> <p>(c) by the substitution in subsection (1) for paragraph (j) of the following paragraph:</p> <p>“(j) if a manager fails to comply with a written request, direction or directive by the [registrar] Authority under this Act or the Financial Sector Regulation Act, do or cause to be done all that a manager was required to do in terms of the request, direction or directive of the [registrar] Authority.”.</p> <p>5. The amendment of section 15A—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) if deemed reasonably necessary in the interests of investors, at that time or at any time thereafter, and notwithstanding any steps already taken by the [registrar in accordance with paragraph (a) or (b) or any other provision of this Act, act in accordance with section 15] Authority.”; and</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) For the purposes of this section, “financial soundness requirement” means any requirement or limitation referred to in sections 85 to 89 inclusive, sections 91 to 96, inclusive, and section 105 and includes any other financial requirements imposed under this Act <u>or by a standard</u>.”.</p> <p>6. The repeal of sections 15B, 18, 22, 23 and 24.</p> <p>7. The substitution in sections 63 and 66 for the expression “Minister” wherever it occurs, of the expression “Authority”.</p> <p>8. The amendment of section 112—</p> <p>(a) by the deletion of subsection (3); and</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> |

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| | | <p>“(4) Any delegation under subsection (1)[,] or (2)(a) [or (3)(a)] does not prohibit the exercise of the power in question by the Minister, association or [registrar] Authority, as the case may be.”.</p> <p>9. The amendment of section 114 by the deletion of subsections (3)(d) and (6).</p> <p>10. The amendment of section 115 by the substitution for paragraph (c) of the following paragraph: “(c) fails to comply with any direction, requirement, notice, rule or regulation under any provision of this Act or the <u>Financial Sector Regulation Act</u>,”.</p> <p>11. Amendment of the arrangement of sections by the insertion after item 1 of the following item: “1A. Relationship between Act and <u>Financial Sector Regulation Act</u>”.</p> |
| Act No. 37 of 2004 | Financial Services Ombud Schemes Act, 2004 | The repeal of the whole Act. |
| Act No. 40 of 2007 | Co-operative Banks Act, 2007 | <p>1. Amendment of section 1—</p> <p>(a) by the deletion of the definition of “appeal board”;</p> <p>(b) by the insertion after the definition of “Agency” of the following definition: “ ‘Authority’ means the <u>Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act</u>;”;</p> <p>(c) by the insertion after the definition of “business plan” of the following definition: “ ‘conduct standard’ has the same meaning ascribed to it in terms of <u>the Financial Sector Regulation Act</u>;”;</p> <p>(d) by the insertion after the definition of “executive officer” of the following definition: “ ‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015</u>;”;</p> <p>(e) by the insertion after the definition of “Fund” of the following definition: “ ‘joint standard’ has the same meaning ascribed to it in terms of <u>the Financial Sector Regulation Act</u>;”;</p> <p>(f) by the deletion of the definition of “prescribed”;</p> <p>(g) by the insertion after the definition of “proposed co-operative bank” of the following definition:</p> |

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| | | <p>“ ‘prudential standard’ has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act</u>.”;</p> <p>(h) by the insertion after the definition of “Public Finance Management Act” of the following definition: “ ‘Register’ means the <u>Financial Sector Information Register</u> referred to in section 244 of the <u>Financial Sector Regulation Act</u>.”;</p> <p>(i) by the deletion of the definition of “supervisor”;</p> <p>(j) by the insertion after the definition of “this Act” of the following definition: “ ‘Tribunal’ means the <u>Financial Sector Tribunal</u> established in terms of section 214 of the <u>Financial Sector Regulation Act</u>.”; and</p> <p>(k) by the addition in section 1 of the following subsection, the existing section becoming subsection (1): “(2) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of the following section:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) <u>A reference in this Act to the supervisor must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) <u>A reference in this Act to the Authority or the Agency determining or publishing a matter by notice in the Gazette must be read as including a reference to the Authority or the Agency determining or publishing the matter by notice published in the Register.</u></p> <p>(4) <u>Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in terms of section 86, or permits a matter to be prescribed by the Agency, including in a rule in terms of section 57, a reference in this Act to a matter being prescribed must be read as—</u></p> |

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| | | <p><u>(a) a reference to the matter being prescribed in a prudential standard or a conduct standard; or</u></p> <p><u>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p><u>(5) Matters in respect of which regulations relating to co-operative banks may be prescribed in terms of this Act may also be prescribed in prudential standards or conduct standards in terms of the Financial Sector Regulation Act.</u></p> <p><u>(6) A reference to rules made by the Authority in terms of section 46 must be read as a reference to prudential or joint standards.</u></p> <p><u>(7) (a) A reference to an inspection in section 47, must be read as a reference to a supervisory on-site inspection or an investigation in terms of Chapter 9 of the Financial Sector Regulation Act.</u></p> <p><u>(b) The reference in section 47(1)(b) to powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), must be read as a reference to powers and duties conferred upon the Authority in terms of Chapter 9 of the Financial Sector Regulation Act.</u></p> <p><u>(c) A reference to an investigation by the Agency or the Minister in terms of section 73 must not be read as a reference to an investigation in terms of the Financial Sector Regulation Act.</u></p> <p><u>(8) (a) A reference in this Act to the Authority or the Agency announcing or publishing information or a document on a website must be read as a reference to the Authority or the Agency publishing the information or document in the Register.</u></p> <p><u>(b) The Authority or the Agency may also publish the information or document on its website.</u></p> <p><u>(9) (a) A reference in this Act to a prescribed fee, other than a reference to a fee prescribed by the Agency, must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> <p><u>(b) The Agency, when determining a fee in terms of this Act, must comply with the requirements of section 235 of the Financial Sector Regulation Act.</u></p> <p><u>(10) A reference in this Act to a review of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</u></p> |

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| | | <p>(11) (a) <u>The Authority must publish the following in the Register—</u></p> <p>(i) <u>each registration in terms of section 8 and each amendment, suspension and revocation of a registration; and</u></p> <p>(ii) <u>each conversion of registration in terms of section 28.</u></p> <p>(b) <u>The Agency must publish the following in the Register—</u></p> <p>(i) <u>each registration in terms of section 33, and each cancellation or suspension of registration; and</u></p> <p>(ii) <u>each accreditation in terms of section 38, and each cancellation or suspension of accreditation.</u></p> <p>Regulatory instruments</p> <p>1B. <u>For the purposes of the definition of “regulatory instrument” in section 1(1) of the Financial Sector Regulation Act, the following are regulatory instruments:</u></p> <p>(a) <u>existing rules made in terms of section 46 and standards made in terms of section 46 subsequent to the date on which this section comes into effect; and</u></p> <p>(b) <u>rules made by the Agency in terms of section 57.</u></p> <p>3. The amendment of section 2 by the substitution in paragraph (c) for subparagraph (ii) of the following subparagraph: “(ii) the [establishment of supervisors to ensure] appropriate and effective regulation and supervision of co-operative banks, and [to protect] the protection of members and the public interest; and”.</p> <p>4. The repeal of sections 41, 43 and 44.</p> <p>5. The amendment of section 46—</p> <p>(a) by the substitution for the heading of the following heading: “Power to make [rules] standards”;</p> <p>(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “<u>A prudential, conduct or joint standard for or in respect of co-operative banks may be made on any of the following matters:</u>”; and</p> <p>(c) by the deletion of subsections (3) and (4).</p> <p>6. The repeal of sections 75 and 76.</p> |

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| | | <p>7. The substitution for section 82 of the following section:</p> <p>“Fair administrative action</p> <p>82. [Any] Where decision or other step of an administrative nature taken by the supervisor [,] or the Agency [or appeal board] that affects the rights of another person, the supervisor [,] or the Agency [or appeal board] must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless another fair administrative procedure has been provided for in this Act.”.</p> <p>8. The substitution for section 85 of the following section:</p> <p>“Indemnity</p> <p>85. Neither the supervisor[,], or the Agency [or appeal board] or any board member or employee or managing director thereof, nor a committee of the Agency or any member thereof incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent.”.</p> <p>9. The substitution for section 87 of the following section:</p> <p>“Powers of Minister</p> <p>87. The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make regulations and the power to appoint the members of the Agency [or appeal board] to the Director-General or any other official of the National Treasury.”.</p> <p>10. Amendment of the arrangement of sections by the insertion after item 1 of the following items:</p> <p>“1A. Relationship between Act and Financial Sector Regulation Act 1B. Regulatory instruments”.</p> |
| Act No. 19 of 2012 | Financial Markets Act, 2012 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “authorised user” of the following definition:</p> <p>“ ‘Authority’ means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;”;</p> <p>(b) by the deletion in subsection (1) of the definition of “appeal board”;</p> |

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| | | <p>(c) by the deletion in subsection (1) of the definition of “board”;</p> <p>(d) by the insertion in subsection (1) after the definition of “bank” of the following definition: “‘central counterparty’ means an <u>independent clearing house that—</u> <u>(a) interposes itself between counterparties to transactions in securities, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts; and</u> <u>(b) becomes a counterparty to trades with market participants through novation, an open offer system or through a legally binding agreement;”;</u></p> <p>(e) by the substitution in subsection (1) for the definition of “clearing house directive” of the following definition: “‘clearing house directive’ means a directive issued by a licensed independent clearing house <u>or a licensed central counterparty in accordance with its rules;”;</u></p> <p>(f) by the substitution in subsection (1) for the definition of “clearing house rules” of the following definition: “‘clearing house rules’ means the rules made by a licensed independent clearing house <u>or a licensed central counterparty in accordance with this Act;”;</u></p> <p>(g) by the substitution in subsection (1) for paragraph (b) of the definition of “clearing member” of the following paragraph: “(b) in relation to a licensed independent clearing house <u>or a licensed central counterparty</u>, a person authorised by that independent clearing house to perform clearing services or settlement services or both clearing services and settlement services in terms of the clearing house rules;”;</p> <p>(h) by the insertion in subsection (1) after the definition of “Companies Act” of the following definition: “‘conduct standard’ has the same meaning ascribed to it in terms of <u>the Financial Sector Regulations Act;”;</u></p> <p>(i) by the deletion in subsection (1) of the definitions of “directorate” and “enforcement committee”;</p> <p>(j) by the insertion in subsection (1) after the definition of “external authorised user” of the following definition:</p> |

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| | | <p>“ ‘external central counterparty’ means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a central counterparty as set out in this Act and who is subject to the laws of a country other than the Republic, which laws—</p> <p>(a) establish a regulatory framework equivalent to that established by this Act; and</p> <p>(b) are supervised by a supervisory authority;”;</p> <p>(k) by the insertion in subsection (1) after the definition of “Financial Intelligence Centre Act” of the following definition: “ ‘financial sector laws’ has the same meaning ascribed to it in terms of the Financial Sector Regulation Act; ‘Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2015;”;</p> <p>(l) by the deletion in subsection (1) of the definition of “Financial Services Board Act”;</p> <p>(m) by the substitution in subsection (1) for the definition of “independent clearing house” of the following definition: “ ‘independent clearing house’ means a clearing house that clears transactions in securities on behalf of any person in accordance with its clearing house rules, and authorises and supervises its clearing members in accordance with its clearing house rules;”;</p> <p>(n) by the insertion in subsection (1) after the definition of “issuer” of the following definition: “ ‘joint standard’ has the same meaning ascribed to it in terms of the Financial Sector Regulation Act;”;</p> <p>(o) by the insertion in subsection (1) after the definition of “juristic person” of the following definition: “ ‘licensed central counterparty’ means a central counterparty licensed under section 49;”;</p> <p>(p) by the insertion in subsection (1) after the definition of “licensed exchange” of the following definition: “ ‘licensed external central counterparty’ means an external central counterparty licensed under section 49A;”;</p> |

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| | | <p>(q) by the addition in subsection (1) in the definition of “market infrastructure” of the following paragraph: “<u>(e) a licensed central counterparty;</u>”;</p> <p>(r) by the deletion in subsection (1) of the definition of “official website”;</p> <p>(s) by the substitution in subsection (1) for the definition of “participant” of the following definition: “‘participant’ means a person authorised by a licensed central securities depository to perform custody and administration services or settlement services or both, in terms of the [central securities] depository rules, and includes an external participant, where appropriate;”;</p> <p>(t) by the insertion in subsection (1) after the definition of “participant” of the following definitions: “‘prescribed’ means <u>prescribed by the Minister by regulations, or by a conduct standard or a joint standard made by the Authority, as set out in this Act;</u>”;</p> <p>(u) by the deletion in subsection (1) of the definitions of “prescribed by the Minister” and “prescribed by the registrar”;</p> <p>(v) by the insertion in subsection (1) after the definition of “prescribed” of the following definitions: “‘Prudential Authority’ means the <u>authority established in terms of section 32 of the Financial Sector Regulation Act;</u> ‘prudential standard’ has the same meaning ascribed to it in terms of <u>the Financial Sector Regulation Act;</u> ‘recognised external market infrastructure’ means an external market infrastructure that is recognised in <u>terms of section 6A;</u> ‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(w) by the deletion in subsection (1) of the definition of “registrar”;</p> <p>(x) by the substitution in subsection (1) for the definition of “regulated person” of the following definition: “‘regulated person’ means— (a) a licensed central <u>counterparty;</u> [(a)](b) a licensed central securities depository; [(b)](c) a licensed clearing house; [(c)](d) a licensed exchange; [(d)](e) a licensed trade repository; [(e)](f) an authorised user;</p> |

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| | | <p> <u>[(f)](g)</u> a clearing member; <u>[(g)](h)</u> a nominee; <u>[(h)](i)</u> a participant; <u>[(i)](j)</u> except for the purposes of section 3(6), sections 74 and 75, sections 89 to 92, and sections 100 to 103, an issuer; or <u>[(j)](k)</u> any other person [pre-scribed by the Minister in terms of section 5] <u>specified in the regulations for this purpose;</u>”; (y) by the substitution in subsection (1) in paragraph (a) of the definition of “securities“ for subparagraph (v) of the following subparagraph: “(v) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the [Registrar of Collective Investment Schemes] <u>Authority in terms of section 65 of that Act; and</u>”; (z) by the substitution in subsection (1) in paragraph (c) of the definition of “settle” for subparagraph (ii) of the following subparagraph: “(ii) the parties have appointed a licensed independent clearing house, a <u>licensed central counterparty</u> or a licensed central securities depository to settle a transaction, in which case it has the meaning assigned in paragraph (a);”; (zA) by the insertion in subsection (1) after the definition of “transfer” of the following definition: “‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 221 of the Financial Sector Regulation Act;</u>”; and (zB) by the addition of the following subsection: “(4) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”. 2. The substitution for subsection (3) of the following subsection: “(3) Where in this Act any supervisory authority is required to take a decision in consultation with the [registrar] </p> |

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| | | <p><u>Authority, such decision requires the concurrence of the [registrar] Authority.”.</u></p> <p>3. The insertion after section 1 of the following section:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) <u>A reference in this Act to the registrar must be read as a reference to the Authority.</u></p> <p>(2) <u>Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) <u>A reference in this Act to the Authority determining or publishing a matter by notice in the Gazette must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</u></p> <p>(4) <u>Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being prescribed must be read as—</u></p> <p>(a) <u>a reference to the matter being prescribed in a prudential standard, a conduct standard, or, where specified, a joint standard; or</u></p> <p>(b) <u>otherwise, a reference to the Authority determining the matter in writing and registering the determination in the Register.</u></p> <p>(5) <u>A reference in this Act to an on-site visit, inspection, or investigation under a provision of this Act, must be read as a reference to a supervisory on-site inspection or an investigation in terms of the Financial Sector Regulation Act.</u></p> <p>(6) (a) <u>A reference in this Act to the Authority announcing or publishing information or a document on a website must be read as a reference to the Authority publishing the information or document in the Register.</u></p> <p>(b) <u>The Authority may also publish the information or document on its website.</u></p> <p>(7) <u>A reference in this Act to a determined or prescribed fee, must be read as a reference to the relevant fee determined in terms of section 235 of the Financial Sector Regulation Act.</u></p> |

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| | | <p>(8) A reference in this Act to an appeal of a decision of the Authority to the appeal board must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.</p> <p>(9) For the purposes of the Financial Sector Regulation Act, the following are regulatory instruments:</p> <p>(a) Directives issued by the Authority under section 6(4)(b)(i); and</p> <p>(b) a code of conduct in terms of section 74.”.</p> <p>4. The amendment of section 3—</p> <p>(a) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Despite any other law, [other than the Financial Intelligence Centre Act,] if there is an inconsistency between any provision of this Act and a provision of any other national legislation, <u>except the Financial Intelligence Centre Act and the Financial Sector Regulation Act,</u> this Act prevails.”; and</p> <p>(b) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) Despite any other law, if other national legislation confers a power on or imposes a duty upon an organ of state, <u>other than the South African Reserve Bank or the Prudential Authority,</u> in respect of a matter regulated under this Act, that power or duty must be exercised or performed in consultation with the [registrar] Authority, and any decision taken in accordance with that power or duty must be taken with the approval of the [registrar] Authority.”.</p> <p>5. The amendment of section 4—</p> <p>(a) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs:</p> <p>“(e) act as a clearing member unless authorised by a licensed exchange [or], a licensed independent clearing house or a <u>licensed central counterparty,</u> as the case may be;</p> <p>(f) act as a nominee unless that person is approved under section 76 <u>or under standards prescribed under the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A person who is not—</p> <p>(a) licensed as an exchange, a central securities depository, a trade</p> |

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| | | <p>repository [or], a clearing house or a <u>central counterparty</u>;</p> <p>(b) a participant;</p> <p>(c) an authorised user;</p> <p>(d) a clearing member;</p> <p>(e) an approved nominee; or</p> <p>(f) an issuer of listed securities, may not purport to be an exchange, central securities depository, trade repository, clearing house, <u>central counterparty</u>, participant, authorised user, clearing member, approved nominee or issuer of listed securities, as the case may be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and an exchange, a central securities depository, trade repository, clearing house, <u>central counterparty</u>, participant, authorised user or clearing member, as the case may be, where in fact no such connection exists.”;</p> <p>and</p> <p>(c) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) A clearing member may only provide the clearing services or settlement services for which it is authorised by a licensed exchange [or], licensed independent clearing house, or <u>licensed central counterparty</u>, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.”.</p> <p>6. The amendment in section 5 for paragraphs (b) and (c) of the following paragraphs:</p> <p>“(b) a category of regulated persons, other than those specifically regulated under this Act, if the securities services <u>provided and the functions and duties exercised</u>, whether in relation to listed or unlisted securities, [provided] by persons in such category, are not already regulated under this Act, and if, in the opinion of the Minister, it would further the objects of the Act in section 2 to regulate persons in such categories;</p> <p>(c) the securities services that may be provided and the functions and duties that may be exercised by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, <u>external</u></p> |

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| | | <p><u>central counterparty, external clearing member or external trade repository, as the case may be.</u>”.</p> <p>7. The amendment of section 6:</p> <p>(a) by the deletion of subsections (1) and (2);</p> <p>(b) by substitution in subsection (3) for the words preceding paragraph (a) of the following words— <u>“In performing [those] its functions in terms of this Act, the Authority—”</u>;</p> <p>(c) by the substitution in subsection (3) for paragraph (k) of the following paragraph: <u>“(k) may issue [guidelines] guidance notes and binding interpretations on the application and interpretation of this Act;”</u>;</p> <p>(d) by the substitution in subsection (3) for paragraph (n) of the following paragraph: <u>“(n) must inform the Minister and the Governor of any matter that in the opinion of the [registrar] Authority may pose systemic risk [to the financial markets; and]”</u>;</p> <p>(e) by the substitution in subsection (3) for paragraph (o) of the following paragraph: <u>“(o) may conduct a supervisory on-site inspection under Chapter 9 of the Financial Sector Regulation Act; and”</u>;</p> <p>(f) by the addition in subsection (3) of the following paragraph: <u>“(p) may conduct an investigation under Chapter 9 of the Financial Sector Regulation Act.”</u>;</p> <p>(g) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: <u>“The [registrar] Authority may, in accordance with the requirements prescribed by the Minister under section 5(1)(a), in conduct standards for, or in respect of, securities services—”</u>;</p> <p>(h) by the substitution in subsection (7) for paragraph (d) of the following paragraph: <u>“(d) prescribe conditions and requirements in terms of which securities services in respect of specified types of unlisted securities may be provided, including[, but not limited to,] the manner in which clearing and settlement of such securities must take place;”</u>;</p> |

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| | | <p>(i) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words: “In relation to the persons in the category prescribed [by the Minister under] in terms of section 5(1)(b), [the registrar] a <u>conduct standard</u> may—”;</p> <p>(j) by the substitution in subsection (8) for paragraph (b) of the following paragraph: “(b) prescribe conditions and requirements for the provision of securities services by such persons, including[, but not limited to,] prescribing a code of conduct and imposing reporting requirements;”;</p> <p>(k) by the substitution in subsection (8) for paragraph (d) of the following paragraph: “(d) prohibit such persons from providing securities services or undertaking any activities which may frustrate the objects of this Act or the <u>Financial Sector Regulation Act.</u>”; and</p> <p>(l) by the addition of the following subsection: “(9) <u>In relation to the securities services that may be provided by, and the functions and duties that may be exercised by an external authorised user, external exchange, external participant, external central securities depository, external clearing house, external central counterparty, external clearing member or external trade repository, as the case may be, as prescribed by the Minister under section 5(1)(c), the Authority may prescribe in joint standards criteria for the authorisation, recognition, licensing or exemption of those persons in the Republic.</u>”.</p> <p>8. The insertion after section 6 of the following sections:</p> <p>“Criteria for recognition of external market infrastructures</p> <p>6A. (1) <u>Regulations or joint standards may prescribe criteria for the recognition of external market infrastructures, taking into consideration the following factors:</u></p> <p>(a) <u>International standards;</u></p> <p>(b) <u>the type and size of market infrastructure;</u></p> <p>(c) <u>the functions or duties or the securities services prescribed by the Minister in terms of section 5(1)(c);</u></p> |

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| | | <p><u>(d) the impact of the activities of the market infrastructure on the South African financial system;</u></p> <p><u>(e) the degree of systemic risk posed by the activities of the market infrastructure; and</u></p> <p><u>(f) any other factors that the Minister, the Authority or the Prudential Authority deem, as the case may be, relevant.</u></p> <p><u>(2) The Authority and the Prudential Authority may jointly recognise an external market infrastructure that has applied for recognition to exercise those functions or duties or provide those securities services as prescribed by the Minister in terms of section 5(1)(c) , only after—</u></p> <p><u>(a) the Authority and the Prudential Authority are satisfied that the applicant is, in the foreign country, subject to regulation and supervision equivalent to that provided for in the financial sector laws;</u></p> <p><u>(b) assessing the external market infrastructure against the regulations or joint standards referred to in subsection (1)(a); and</u></p> <p><u>(c) supervisory co-operation arrangements have been entered into pursuant to section 6C .</u></p> <p><u>(3) The Authority must notify the external market infrastructure that has applied for recognition of its decision, within six months of receiving the application.</u></p> <p><u>(4) In addition to the requirements in terms of section 6C, the Authority and the Prudential Authority must regularly assess whether a recognised market infrastructure complies with the conditions set out in section 6A.</u></p> <p><u>(5) (a) In respect of regulations that may be prescribed in terms of subsection (1), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority and the Prudential Authority in joint or conduct standards in terms of the Financial Sector Regulation Act.</u></p> <p><u>(b) Paragraph (a) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1).</u></p> <p><u>(c) The Authority and the Prudential Authority may prescribe joint standards in terms of subsection (1) to address any matters that are not prescribed in regulations, or to provide detail that is additional to, but not inconsistent with, regulations prescribed by the Minister in terms of subsection (1).</u></p> |

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| | | <p data-bbox="804 237 1110 264">Withdrawal of recognition</p> <p data-bbox="804 300 1241 443"><u>6B.</u> The Authority and the Prudential Authority may withdraw the recognition of an external market infrastructure where the conditions set out in section 6A are no longer met.</p> <p data-bbox="804 474 1102 501">Principles of co-operation</p> <p data-bbox="804 533 1251 734"><u>6C.</u> (1) The Authority, the Prudential Authority and the South African Reserve Bank must enter into supervisory co-operation arrangements with the relevant supervisory authorities of any external market infrastructure recognised in terms of section 6A.</p> <p data-bbox="804 734 1241 824">(2) Supervisory co-operation arrangements referred to in subsection (1) must at least specify—</p> <p data-bbox="804 824 1251 1084"><u>(a)</u> the mechanism for the exchange of information between the Authority, the Prudential Authority and the South African Reserve Bank and the supervisory authorities of the foreign countries concerned, including access to all information requested by the Authority regarding a recognised external market infrastructure;</p> <p data-bbox="804 1084 1251 1375"><u>(b)</u> the mechanism for prompt notification to the Authority, the Prudential Authority and the South African Reserve Bank where the supervisory authority of the foreign country deems an external market infrastructure which it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;</p> <p data-bbox="804 1375 1241 1576"><u>(c)</u> the procedures concerning the co-ordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border on-site visits of a regulated entity;</p> <p data-bbox="804 1576 1251 1890"><u>(d)</u> the processes the parties 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 such information in accordance with the terms of existing memoranda of understanding for enforcement co-operation;</p> <p data-bbox="804 1890 1251 2018"><u>(e)</u> procedures for co-operation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or</p> |

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| | | <p>obtaining information from a regulated entity and its directors or senior management; and</p> <p>(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.</p> <p>(3) Supervisory authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must—</p> <p>(a) establish and maintain appropriate confidential safeguards to protect all non-public supervisory information obtained from another supervisory authority;</p> <p>(b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors;</p> <p>(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;</p> <p>(d) co-operate in the day-to-day and routine oversight of internationally-active regulated entities;</p> <p>(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;</p> <p>(f) design mechanisms for supervisory co-operation to provide information both for routine supervisory purposes and during periods of crisis; and</p> <p>(g) undertake ongoing and <i>ad hoc</i> staff communications regarding globally-active regulated entities as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.”.</p> <p>9. The amendment of section 7—</p> <p>(a) by the substitution in subsection (3) for paragraph (a) of the following subsection:</p> <p>“(a) be made in the manner and contain the information prescribed by the [registrar] Authority;”;</p> <p>(b) by the substitution in subsection (3)(c) for subparagraphs (iv) and (v) of the following subparagraphs:</p> |

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| | | <p>“(iv) such information in respect of members of the controlling body of the applicant as may be prescribed by the [registrar] Authority;</p> <p>(v) the application fee [prescribed by the registrar] <u>determined in terms of the Financial Sector Regulation Act;</u>”;</p> <p>(c) by the substitution in subsection (4)(b) for subparagraphs (ii) and (iii) of the following subparagraphs:</p> <p>“(ii) [where] <u>that the proposed exchange rules and listing requirements [may be inspected by] are available on the website of the Authority for comments from members of the public; and</u></p> <p>(iii) <u>the period within, and the process by, which objections to the application or rules and listing requirements may be lodged with the [registrar] Authority;</u>”;</p> <p>(d) by the addition in subsection (4) of the following paragraph:</p> <p>“(c) <u>The Authority must publish the proposed exchange rules and listing requirements referred to in paragraph (b)(ii) on the website of the Authority.</u>”.</p> <p>10. The amendment of section 8—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) <u>demonstrate that the fit and proper requirements prescribed [by the registrar] in the relevant joint standards are met by the applicant, or the licensed exchange, as the case may be, its directors and senior management;</u>”;</p> <p>(b) by the addition of the following subsection:</p> <p>“(3) (a) <u>Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.</u></p> <p>(b) <u>In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority in joint or conduct standards made by the Authority in terms of the Financial Sector Regulation Act.</u></p> |

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| | | <p><u>(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).</u></p> <p><u>(d) Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct or joint standards prescribed by the Authority.”.</u></p> <p>11. The amendment of section 10—</p> <p>(a) by the substitution in subsection (2) for paragraph (f) of the following paragraph:</p> <p>“(f) must, as soon as it becomes aware [thereof], inform the [registrar] Authority of any matter that it reasonably believes may [pose systemic risk to the financial markets] give rise to, or increase systemic risk;”; and</p> <p>(b) by the substitution in subsection (2)(i) for subparagraph (ii) of the following subparagraph:</p> <p>“(ii) may appoint [an associated or independent] a clearing house licensed under Chapter V to clear or settle transactions or both clear and settle transactions on behalf of the exchange;”.</p> <p>12. The amendment of section 17(4) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(4) (a) Subject to section 5(1)(c) and (2) and the requirements prescribed [by the registrar] in joint standards, the exchange rules may provide for the approval of external authorised users to be authorised users of the exchange.”.</p> <p>13. The amendment of section 25(2) by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“The [registrar] Authority may[,]<u>prescribe standards</u> in respect of [a report] reports referred to in subsection (1)[, prescribe] <u>specifying—</u>”.</p> <p>14. The amendment of section 27—</p> <p>(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:</p> <p>“(a) be made in the manner and contain the information prescribed by the [registrar] Authority;”;</p> |

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| | | <p>(b) by the substitution in subsection (3)(c) for subparagraphs (iii) and (iv) of the following paragraphs:</p> <p>“(iii) such information in respect of members of the controlling body of the applicant as may be prescribed by the [registrar] Authority;</p> <p>(iv) the application fee [prescribed by the registrar] determined in terms of the Financial Sector Regulation Act;”;</p> <p>(c) by the addition in subsection (4) of the following paragraph:</p> <p>“(c) <u>The Authority must publish the proposed depository rules referred to in paragraph (b)(ii) on its website.</u>”.</p> <p>15. The amendment of section 28—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) demonstrate that the fit and proper requirements prescribed [by the registrar] in the relevant joint standards are met by the applicant, or the central securities depository, as the case may be, its directors and senior management;”;</p> <p>(b) by the addition of the following subsection:</p> <p>“(3) (a) <u>Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.</u></p> <p>(b) <u>In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority in joint or conduct standards made by the Authority in terms of the Financial Sector Regulation Act.</u></p> <p>(c) <u>Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).</u></p> <p>(d) <u>Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct or joint standards prescribed by the Authority.</u>”.</p> <p>16. The amendment of section 30(2) by the substitution for paragraph (h) of the following paragraph:</p> |

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| | | <p>“(h) must, as soon as it becomes aware [thereof], inform the [registrar] Authority of any matter that it reasonably believes may [pose systemic risk to the financial markets] give rise to, or increase, systemic risk;”.</p> <p>17. The amendment of section 33(1) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “<u>An issuer may convert certificated securities to uncertificated securities, and may, subject to subsection (2), issue uncertificated securities despite any contrary provision in—</u>”.</p> <p>18. The amendment of section 35(4) by the substitution for paragraph (a) of the following paragraph: “(4) (a) Subject to section 5(1)(c) and (2) and requirements prescribed [by the registrar] in conduct standards, the depository rules may provide for the approval of external participants to be participants of the central securities depository.”.</p> <p>19. The amendment of section 36 by the substitution for subsection (1) of the following subsection: “(1) The [registrar] Authority may [direct] determine that any securities held by a central securities depository in its central securities account must, unless they are bearer instruments, money market securities or recorded in an uncertificated securities register in accordance with section 50 of the Companies Act and the depository rules, be registered in the name of that central securities depository or its wholly owned subsidiary, as defined in section 1 of the Companies Act, and approved by the [registrar] Authority.”.</p> <p>20. The amendment of section 47— (a) by the insertion after subsection (1) of the following subsections: “(1A) <u>Subject to the regulations prescribed by the Minister, a central counterparty must be licensed under section 49.</u> (1B) <u>Subject to section 5(1)(c) and (2), an external central counterparty must be licensed under section 49A, unless it is exempted from having to be licensed under section 49B</u>”;</p> |

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| | | <p>(b) by the substitution in subsection (3)(c) for subparagraph (iii) of the following subparagraph: “(iii) the application fee [pre-scribed by the registrar] <u>determined in terms of the Financial Sector Regulation Act</u>”;</p> <p>(c) by the substitution in subsection (3)(c) for subparagraph (v) of the following subparagraph: “(v) in relation to an application for an independent clearing house licence <u>or a central counterparty licence</u>, a copy of the proposed clearing house rules that must comply with section 53; and”;</p> <p>(d) by the substitution in subsection (4)(b) for subparagraph (ii) of the following subparagraph: “(ii) in relation to an independent clearing house <u>or a central counterparty</u>, [where] <u>that the proposed clearing house rules [may be inspected by] are available on the Authority’s website for comments from members of the public</u>; and”;</p> <p>(e) by the addition in subsection (4) of the following paragraph: “(c) <u>The Authority must publish the proposed clearing house rules referred to in paragraph (b)(ii) on its website.</u>”.</p> <p>21. The amendment of section 48—</p> <p>(a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs: “(c) demonstrate that the fit and proper requirements prescribed [by the registrar] <u>in the relevant joint standards</u> are met by the applicant, [or] <u>the licensed clearing house or the licensed central counterparty</u>, as the case may be, its directors and senior management;</p> <p>(d) <u>comply with the requirements prescribed [by the registrar] in the conduct standards for the clearing or settlement of transactions in securities, or both</u>”;</p> <p>(b) by the substitution in subsection (1) for paragraph (h) of the following paragraph: “(h) in relation to an applicant for an independent clearing house licence, <u>a central counterparty</u></p> |

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| | | <p>licence, [or] a licensed independent clearing house or a licensed central counterparty, have made arrangements for the efficient and effective supervision of clearing members so as to ensure compliance with the clearing house rules and clearing house directives and this Act.”;</p> <p>(c) by the insertion after subsection (1) of the following subsection: “(1A) Subject to subsection (1) and the regulations prescribed by the Minister, a central counterparty must—</p> <p>(a) implement a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;</p> <p>(b) collect and manage collateral held for the due performance of the obligations of clearing members or clients of clearing members;</p> <p>(c) establish and maintain a default fund to mitigate the risk should there be a default by a clearing member and to ensure, where possible, that the obligations of that clearing member continue to be fulfilled;</p> <p>(d) supply initial capital as prescribed, including the appropriate buffer;</p> <p>(e) have a clearly defined default waterfall where the obligations of the defaulting clearing member, other clearing members and the central counterparty are legally and clearly managed;</p> <p>(f) provide for portability in the case of default of a clearing member; and</p> <p>(g) provide the necessary infrastructure, resources and governance to facilitate its post trade management functions and, in the event of default of one or more of the clearing members—</p> <p>(i) ensure sufficient risk policies, procedures and processes; and</p> <p>(ii) have sound internal controls for robust transaction processing and management.”;</p> <p>and</p> |

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| | | <p>(e) by the addition of the following subsection:</p> <p>“(3) (a) <u>Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.</u></p> <p>(b) <u>In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority in joint or conduct standards made by the Authority in terms of the Financial Sector Regulation Act.</u></p> <p>(c) <u>Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).</u></p> <p>(d) <u>Requirements prescribed in terms of subsection (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct or joint standards prescribed by the Authority.”.</u></p> <p>22. The amendment of section 49 by the insertion after subsection (1) of the following subsection:</p> <p>“(1A) <u>Subject to the regulations or joint standards, the Authority may, after consideration of any objection received as a result of the notice referred to in section 47(4) and subject to the conditions which the Authority may consider appropriate, grant a central counterparty licence to perform the functions referred to in section 50, if—</u></p> <p>(a) <u>the applicant complies with the relevant requirements of this Act; and</u></p> <p>(b) <u>the objects of this Act referred to in section 2 will be furthered by the granting of the licence.”.</u></p> <p>23. The insertion after section 49 of the following sections:</p> <p>“Licensing of external central counterparty</p> <p>49A. (1) <u>An external central counterparty may apply to the Authority for a licence to exercise functions or duties, or provide securities services as prescribed by the Minister in terms of section 5(1)(c) and (2).</u></p> <p>(2) <u>An application for an external central counterparty licence must—</u></p> <p>(a) <u>be made in the manner and contain information determined by the Authority;</u></p> |

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| | | <p><u>(b) be accompanied by a copy of the proposed rules;</u></p> <p><u>(c) the application fee determined in terms of the Financial Sector Regulation Act; and</u></p> <p><u>(d) be supplemented by any additional information that the Authority may reasonably require.</u></p> <p><u>(3) (a) The Authority must publish a notice of an application for a licence in two national newspapers at the expense of the applicant and on its website.</u></p> <p><u>(b) The notice must state—</u></p> <p><u>(i) the name of the applicant; and</u></p> <p><u>(ii) the availability of the operating rules of the external central counterparty on the Authority’s website, for members of the public.</u></p> <p><u>(4) Subject to regulations or joint standards prescribed in terms of section 6(9), the Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, grant an external central counterparty a licence, if—</u></p> <p><u>(a) the applicant is recognised in terms of section 6A;</u></p> <p><u>(b) the applicant is either—</u></p> <p><u>(i) a company as defined in section 1(1) of the Companies Act; or</u></p> <p><u>(ii) an external company as defined in section 1(1) of the Companies Act that is registered as required by section 23 of that Act;</u></p> <p><u>(c) the applicant is subject to an appropriate regulatory and oversight regime in the foreign country by the relevant supervisory authorities;</u></p> <p><u>(d) the applicant undertakes to co-operate and share information with the Authority, the Prudential Authority and the South African Reserve Bank to assist with the performance of functions and the exercise of powers in terms of financial sector laws; and</u></p> <p><u>(e) the objects of this Act referred to in section 2 will be furthered by the granting of the licence.</u></p> <p><u>(5) A licensed external central counterparty must comply with the relevant requirements of this Act and any other terms and conditions of the licence.</u></p> <p><u>(6) The licence granted in terms of subsection (4) must specify those functions or duties or securities services that may be provided by the external central counterparty and the securities in respect of which those functions or securities services may be performed.</u></p> |

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| | | <p>Exemption from having to be licensed as an external central counterparty</p> <p>49B. (1) Despite section 49A, an external central counterparty may submit an application to the Authority in terms of this section for an exemption from the requirement to be licensed in terms of this Act.</p> <p>(2) The Authority must publish a notice of the application in two national newspapers at the expense of the applicant and on its website.</p> <p>(3) Subject to regulations or joint standards prescribed in terms of section 6(9), the Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, grant an external central counterparty an exemption if—</p> <p>(a) the applicant is recognised in terms of section 6A;</p> <p>(b) the applicant is subject to an appropriate regulatory and oversight regime in the foreign country by the relevant supervisory authorities;</p> <p>(c) the applicant undertakes to co-operate and share information with the Authority, the Prudential Authority and the South African Reserve Bank to assist with the performance of functions and the exercise of powers in terms of financial sector laws; and</p> <p>(d) granting of the exemption will not compromise the objects of this Act referred to in section 2.</p> <p>(4) An external central counterparty that has been granted an exemption in terms of this section must comply with any terms and conditions of the exemption.</p> <p>(5) The Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, withdraw an exemption where the conditions set out in this section are no longer met.</p> <p>(6) The Authority must publish a notice of the exemption and any withdrawal of an exemption in terms of this section in the <i>Gazette</i> and on the Authority's website, and the Authority must submit in Parliament a copy of the published exemption and any withdrawal of an exemption.”.</p> <p>24. The amendment of section 50—</p> <p>(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> |

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| | | <p>“(b) must, as soon as it becomes aware thereof, inform the [registrar] Authority of any matter that it reasonably believes may [pose systemic risk to the financial markets] <u>give rise to, or increase, systemic risk;</u>”;</p> <p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: “A licensed independent clearing house <u>or a licensed central counterparty</u>, in addition to the functions referred to in subsection (2)—”; and</p> <p>(c) by the insertion after subsection (3) of the following subsection: “(3A) A licensed central counterparty, in addition to the functions referred to in subsections (1), (2) and (3), must— (a) <u>interpose itself between counterparties to transactions in securities through the process of novation, legally binding agreement or open offer system;</u> (b) <u>manage and process the transactions between the execution and fulfilment of legal obligations between counterparties and clients;</u> and (c) <u>facilitate its post-trade management functions.</u>”.</p> <p>25. The amendment of section 53—</p> <p>(a) by the substitution in subsection (2) for paragraph (u) of the following paragraph: “(u) for the administration of securities and funds held for own account or on behalf of a client by a clearing member, including the settlement of unsettled transactions, under insolvency proceedings in respect of that clearing member; and”;</p> <p>(b) by the addition in subsection (2) of the following paragraph: “(bb) <u>in the case of a central counterparty, for the default procedures to be followed, including close-out procedures, in the event of a default of a clearing member;</u>”;</p> <p>and</p> <p>(c) by the substitution in subsection (4) for paragraph (a) of the following subsection: “(a) Subject to section 5(1)(c) and (2) and the requirements prescribed [by the registrar; the]</p> |

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| | | <p>in conduct standards, clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house.”.</p> <p>26. The amendment of section 54—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) [Subject to the regulations prescribed by the Minister, a] A trade repository must be licensed under section 56.”;</p> <p>(b) by the insertion after subsection (1) of the following subsection: “(1A) <u>Subject to section 5(1)(c) and (2), an external trade repository must be licensed under section 56A.</u>”;</p> <p>(c) by the substitution in subsection (3) for paragraph (a) of the following subsection: “(a) be made in the manner and contain the information prescribed by the [registrar] Authority; and</p> <p>(d) by the substitution in subsection (3)(c) for subparagraphs (ii) and (iii) of the following subparagraphs: “(ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the [registrar] Authority; (iii) the application fee [prescribed by the registrar] determined in terms of the Financial Sector Regulation Act;”.</p> <p>27. The amendment of section 55—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) demonstrate that the fit and proper requirements prescribed [by the registrar] in the relevant joint standards are met by the applicant, its directors and senior management;” and</p> <p>(b) by the substitution for subsection (2) of the following subsection: “(2) The [registrar] Authority may [— (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary;</p> |

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| | | <p>(b)] take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto [; and</p> <p>(c) prescribe any of the requirements referred to in subsection (1) in greater detail]; and</p> <p>(c) by the addition of the following subsection:</p> <p>“(3) (a) <u>Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.</u></p> <p>(b) <u>In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority in joint or conduct standards made by the Authority in terms of the Financial Sector Regulation Act.</u></p> <p>(c) <u>Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).</u></p> <p>(d) <u>Requirements prescribed in terms of (1)(c) or (2)(c) before the commencement of this subsection may be amended or repealed by conduct or joint standards prescribed by the Authority.”.</u></p> <p>28. The amendment of section 56 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to subsection (2) [and regulations prescribed by the Minister], the [registrar] Authority may, after consideration of any objection received as a result of the notice referred to in section 54(4), and subject to the conditions which the registrar may consider appropriate, grant a trade repository a licence to perform the duties referred to in section 57.”.</p> <p>29. The insertion after section 56 of the following section:</p> <p>“Licensing of external trade repository</p> <p>56A. (1) <u>An external trade repository may apply to the Authority for a trade repository licence to perform duties or</u></p> |

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| | | <p>provide services as prescribed by the Minister in terms of section 5(1)(c) and (2).</p> <p>(2) An application for a trade repository licence must—</p> <p>(a) be made in the manner and contain the information determined by the Authority;</p> <p>(b) be accompanied by the application fee determined in terms of the Financial Sector Regulation Act; and</p> <p>(c) be supplemented by any additional information that the Authority may reasonably require.</p> <p>(3) (a) The Authority must publish a notice of an application for an external trade repository licence in two national newspapers, at the expense of the applicant, and on the website of the Authority.</p> <p>(b) The notice referred to in paragraph (a) must state—</p> <p>(i) the name of the applicant; and</p> <p>(ii) the period within, and the process by, which objections to the application may be lodged with the Authority.</p> <p>(4) Subject to regulations or joint standards prescribed in terms of section 6(9), the Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, grant an external trade repository a licence, if—</p> <p>(a) the applicant is recognised in terms of section 6A;</p> <p>(b) the applicant undertakes to co-operate and share information with the Authority, the Prudential Authority and the South African Reserve Bank to assist with the performance of functions and the exercise of powers in terms of financial sector laws; and</p> <p>(c) the objects of this Act referred to in section 2 will be furthered by the granting of the licence.</p> <p>(5) A licensed external trade repository must comply with the relevant requirements of this Act and any other terms and conditions of the licence.</p> <p>(6) The trade repository licence granted in terms of subsection (4) must specify the services that may be provided by the trade repository and the securities in respect of which those services may be provided.”.</p> <p>30. The amendment of section 57—</p> <p>(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p>“(b) make [the] information [prescribed by the registrar] prescribed by the Authority in</p> |

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| | | <p><u>joint standards made in conjunction with the Prudential Authority and the South African Reserve Bank, available to the [registrar] Authority, the Prudential Authority, the South African Reserve Bank, other relevant supervisory authorities and other persons, subject to the requirements prescribed by the [registrar] Authority in joint standards made in conjunction with the Prudential Authority or the South African Reserve Bank under section 58 [regarding] as to the manner, form, and frequency of disclosure;”</u>; and</p> <p>(b) by the substitution for subsection (3) of the following subsection: “(3) The [registrar] joint standards may prescribe [additional] duties additional to those referred to in subsection (2) [in greater detail].”.</p> <p>31. The amendment of section 58 by the addition of the following subsection, the existing section becoming subsection(1): “(2) (a) <u>Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.</u> (b) <u>In respect of regulations prescribed in terms of subsection (1), the Minister may repeal regulations, and new requirements may then be prescribed by the Authority in joint or conduct standards by the Authority in terms of the Financial Sector Regulation Act.</u> (c) <u>Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1).</u> (d) <u>Requirements other than those that were prescribed in regulations referred to in paragraph (b), that were prescribed in terms of subsection (1) before the commencement of this subsection, may be amended or repealed by conduct or joint standards prescribed by the Authority.”.</u></p> <p>32. The substitution for section 59 of the following section: “Annual assessment 59. The [registrar] Authority must annually assess, and where applicable, consult the Prudential Authority, whether a licensed market infrastructure—</p> |

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| | | <p>(a) complies with this Act [and the rules of the market infrastructure];</p> <p>(b) where applicable, complies with directives, and with requests, conditions or requirements of the [registrar] Authority in terms of [this Act] a financial sector law; or</p> <p>(c) where applicable, gives effect to decisions of the [appeal board in terms of section 105] Tribunal.”.</p> <p>33. The amendment of section 60—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “<u>The [registrar] Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, cancel or suspend a licence if—</u>”;</p> <p>(b) by the substitution in subsection (1)(a) for subparagraphs (ii) and (iii) of the following subparagraphs: “(ii) comply with a directive, request, condition or requirement of the [registrar] Authority in terms of this Act; or (iii) give effect to a decision of the [appeal board in terms of section 105] Tribunal.”;</p> <p>(c) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words: “(b) after an [inspection] investigation in terms of [section 95] Chapter 9 of the Financial Sector Regulation Act [of] into the affairs of the market infrastructure, the [registrar] Authority is satisfied on reasonable grounds that the manner in which it is operated is—”; and</p> <p>(d) by the substitution in subsection 1(b) for subparagraph (i) of the following subparagraph: “(i) not in the best interests of clearing members of independent clearing houses or of central counterparties, authorised users or participants, or users or members of the market infrastructure, as the case may be, and their clients; or”.</p> <p>34. The amendment of section 61—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) A market infrastructure may not conduct any additional business</p> |

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| | | <p><u>[which may introduce] if to do so would create or increase systemic risk.”;</u></p> <p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: <u>“The [registrar] Authority may, if [the registrar is of the opinion] it considers that [the] a business, function or service referred to in subsection [(1)] (2) may—”;</u></p> <p>(c) by the substitution for the words following paragraph (b) of the following words: <u>“[prohibit or lay down requirements in respect of the] after consultation with the Prudential Authority, make a determination specifying requirements in relation to the market infrastructure carrying on of such business, function or service.”; and</u></p> <p>(d) by the insertion after subsection (3) of the following subsection: <u>“(3A) The Authority may not make a determination in terms of subsection (3) in respect of a particular market infrastructure unless—</u> <u>(a) a draft of the determination has been given to the market infrastructure;</u> <u>(b) the market infrastructure has had a reasonable period of at least 14 days, to make submissions to the Authority about the matter; and</u> <u>(c) the Authority had regard to all submissions made to it in deciding whether or not to make the determination.</u> <u>(3B) If the Authority considers on reasonable grounds that it is necessary to make the determination urgently, it may do so without having complied, or complied fully, with subsection (3A).”;</u> and</p> <p>(e) by the substitution for subsection (4) of the following subsection: <u>“(4) The Authority must, within 14 days after making a determination in terms of subsection (3), give the market infrastructure a statement of its reasons for making a determination in terms of subsection (3), and a statement of the material facts on which the decision to make the determination was made.”.</u></p> <p>35. The substitution in section 62 for paragraph (b) of the following paragraph: <u>“(b) an annual assessment, [in the manner prescribed by the registrar] in accordance with any determinations made by the Authority, of the</u></p> |

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| | | <p>arrangements referred to in [sub-paragraph] paragraph (a), the results of which must be published.”.</p> <p>36. The amendment of section 63—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) An exchange, central securities depository, [or] independent clearing house or central <u>counterparty</u> which is not a public company or a private company as defined in section 1 of the Companies Act, may convert to a public company or private company with the approval of the [registrar] Authority and subject to [the conditions that the registrar may prescribe] requirements imposed by the Authority.”;</p> <p>(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph: “(c) the continued corporate existence of the exchange, central securities depository, [or] independent clearing house or <u>central counterparty</u> from the date on which it was first licensed [by the registrar] in terms of this Act is unaffected and any actions of the exchange, central securities depository, [or] independent clearing house or <u>central counterparty</u> before its conversion remain effectual;”; and</p> <p>(c) by the substitution in subsection (2) for paragraph (k) of the following paragraph: “(k) the licence of the exchange, central securities depository, [or] independent clearing house or <u>central counterparty</u>, remains vested in the company if the company complies with all the requirements of this Act in respect of an exchange, central securities depository, [or] independent clearing house or <u>central counterparty</u>.”.</p> <p>37. The amendment of section 65 by the substitution for subsection (2) of the following subsection: “(2) The members of the controlling body of a market infrastructure owe a fiduciary duty and a <u>duty</u> of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.”.</p> |

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| | | <p>38. The amendment of section 66—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) does not meet the fit and proper requirements prescribed [by the registrar] in the relevant joint standards.”; and</p> <p>(b) by the deletion of subsections (8) and (9).</p> <p>39. The amendment of section 67—</p> <p>(a) by the substitution for subsections (3) and (4) of the following subsections, respectively: “(3) A person may not, without the prior approval of the [registrar] Authority, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the market infrastructure. (4) A person may not, without the prior approval of the [registrar] Authority, acquire shares or any other interest in a market infrastructure in excess of that approved under subsection (3) [but not exceeding 49 per cent.]”;</p> <p>(b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words: [The] An approval referred to in subsection (3), (4) or (5)—”;</p> <p>(c) by the substitution in subsection (6) for paragraph (a) of the following paragraph: “(a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the [registrar] Authority.”;</p> <p>(d) by the substitution in subsection (6)(c) for subparagraph (ii) of the following subparagraph: “(ii) for a minimum period, not exceeding 12 months, that the [registrar] Authority or the Minister, as the case may be, may determine.”;</p> <p>(e) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: “If the [registrar] Authority or the Minister, as the case may be, is satisfied on reasonable grounds that the</p> |

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| | | <p>retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure, the [registrar] Authority or the Minister, as the case may be, may apply to the court in whose area of jurisdiction the main office of the market infrastructure is situated, for an order—”;</p> <p>(f) by the substitution in subsection (7) for paragraph (a) of the following paragraph:</p> <p>“(a) compelling that person to reduce, within a period determined by the court, the shareholding or other interests in the market infrastructure to a shareholding with a total nominal value not exceeding [15 or 49 per cent]—</p> <p>(i) <u>in a case where subsection (3) applies, 15 per cent; or</u></p> <p>(ii) <u>49 per cent, [as the case may be,]</u></p> <p>of the total nominal value of all the issued shares of the market infrastructure; and”;</p> <p>(g) by the substitution for subsection (8) of the following subsection:</p> <p>“(8) An application referred to in [subsections] subsection (3), (4) or (5) must be made in the manner and form prescribed by the [registrar] Authority.”.</p> <p>41. The amendment of section 68—</p> <p>(a) by the deletion of subsection (3); and</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) A market infrastructure [or the registrar, as the case may be,] is not divested or relieved of a function delegated or assigned under subsections (1) and (2), and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.”.</p> <p>42. The substitution for section 69 of the following section:</p> <p>“Report to [registrar] Authority</p> <p>69. Within four months after the financial year-end of a market infrastructure, that market infrastructure must submit to the [registrar] Authority an annual report containing the details [prescribed by the registrar] determined in joint standards and audited annual financial statements that fairly present the</p> |

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| | | <p>financial affairs and status of the market infrastructure.”.</p> <p>43. Amendment of section 71 by the insertion after subsection (1) of the following subsection: “(1A) <u>Rules that are made by a market infrastructure may not contradict any regulation, conduct standard, prudential standard, or joint standard issued in term of this Act, the Financial Sector Regulation Act, or another financial sector law as defined in section 1(1) of the Financial Sector Regulation Act.</u>”.</p> <p>44. The amendment of section 74 by the substitution for subsection (1) of the following subsection: “(1) [The registrar may in an appropriate consultative manner prescribe a code of conduct] <u>The Authority may prescribe conduct standards for—</u> [(i)](a) <u>authorised users, participants or clearing members of independent clearing houses or central counterparties; or</u> [(ii)](b) <u>any other regulated person, where the required standard of conduct is not prescribed or determined in another law or [code of conduct] conduct standard, and a [code of conduct] conduct standard is necessary or expedient for the achievement of the objects of this Act.</u>”.</p> <p>45. The amendment of section 76— (a) by the substitution for subsection (2) of the following subsection: “(2) The criteria for the approval of a nominee of an authorised user or a participant must be equivalent to that [applied by the registrar when approving a nominee under subsection (3)] <u>prescribed by the Authority in conduct standards under the Financial Sector Regulation Act for nominees.</u>”; and (b) by the substitution for subsection (3) of the following subsection: “(3) (a) <u>A nominee that is not approved as a nominee in terms of subsection (1) must—</u> (i) <u>be approved by the Authority;</u> <u>and</u> (ii) <u>comply with the conduct standards prescribed by the Authority under the Financial Sector Regulation Act.</u> (b) <u>The Authority must maintain a list of all nominees approved under this section.</u>”.</p> |

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| | | <p>46. The amendment of section 77—</p> <p>(a) by the deletion of the definition of “claims officer”;</p> <p>(b) by the substitution in the definition of “inside information” for paragraph (b) of the following paragraph: “(b) if it were made public, would be likely to have a material effect on the price or value of any security listed on a regulated market or of any <u>derivative instruments related to such security</u>”; and</p> <p>(c) by the substitution in the definition of “insider” in paragraph (a) for subparagraph (i) of the following subparagraph: “(i) being a director, employee or shareholder of an issuer of securities listed on a regulated market or an issuer of a <u>derivative instrument related to such security to which the inside information relates</u>; or”.</p> <p>47. The amendment of section 78—</p> <p>(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, or in <u>derivative instruments related to such security</u>, commits an offence.”;</p> <p>(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: “(a) An insider who knows that he or she has inside information and who deals, directly or indirectly or through an agent for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, or in <u>derivative instruments related to such security</u>, commits an offence.”;</p> <p>(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: “(a) Any person who deals for an insider directly or indirectly or through an agent in the securities listed on a regulated market to which the inside information possessed by the insider relates or which are likely</p> |

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| | | <p>to be affected by it, <u>or in derivative instruments related to such security</u>, who knew that such person is an insider, commits an offence.”;</p> <p>(d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:</p> <p>“(b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market <u>or trading with a derivative instrument related to such security</u> and that he or she at the same time disclosed that the information was inside information.”; and</p> <p>(e) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, <u>or in derivative instruments related to such security</u>, commits an offence.”.</p> <p>48. The amendment of section 82—</p> <p>(a) by the substitution for the expression “Enforcement Committee” of the expression “Authority” whenever it occurs in this section;</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Any amount recovered by the [board] <u>Authority</u> as a result of the proceedings contemplated in this section must be deposited by the [board] <u>Authority</u> directly into a specially designated trust account and—</p> <p>(a) the [board] <u>Authority</u> is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (5);</p> |

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| | | <p>(b) the balance, if any, must be distributed by the [claims officer] Authority to the claimants referred to in subsection (5) in accordance with subsection (6); and</p> <p>(c) any amount not paid out in terms of paragraph (b) accrues to the [board] Authority.”;</p> <p>(c) by the substitution in subsection (5) for paragraph (a) of the following paragraph:</p> <p>“(a) submit claims to the [director] Authority within 90 days from the date of publication of a notice in one national newspaper or on [the official] its website inviting persons who are affected by the dealings referred to in section 78(1) to (5) to submit their claims; and”;</p> <p>(d) by the substitution in subsection (5)(b) for the words preceding subparagraph (i) of the following words:</p> <p>“prove to the reasonable satisfaction of the [claims officer] Authority that—”.</p> <p>49. The substitution for section 83 of the following section:</p> <p>“Attachments and interdicts</p> <p>83. On application by the [board] Authority, a court may in relation to any matter referred to in Chapter X grant an interdict or order the attachment of assets or evidence to prevent their concealment, removal, dissipation or destruction.”.</p> <p>50. The substitution for section 84 of the following section:</p> <p>“Additional powers of Authority</p> <p>84. (1) <u>In addition to its other powers, the Authority has the following powers—</u></p> <p>(a) <u>to investigate any matter relating to an offence or contravention referred to in sections 78, 80 and 81, including insider trading in terms of the Insider Trading Act, 1998 (Act No. 135 of 1998), and the offences referred to in Chapter VIII of the Securities Services Act, 2004 (Act No. 36 of 2004), committed before the repeal of those Acts;</u></p> <p>(b) <u>at the request of a supervisory authority, to investigate or assist that supervisory authority in an investigation into possible offences similar</u></p> |

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| | | <p>to those referred to in paragraph (a) under laws of a country other than the Republic that the supervisory authority administers;</p> <p>(c) <u>institute such proceedings as are contemplated in this Chapter;</u></p> <p>(d) <u>to prosecute an offence in any court competent to try an offence in terms of this Chapter, if the Director of Public Prosecutions declines to prosecute the offence, and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to the said prosecution;</u></p> <p>(e) <u>by notice on the Authority’s website or by means of any other appropriate public media, publish—</u></p> <p>(i) <u>the status and outcome of an investigation conducted in terms of this Chapter; and</u></p> <p>(ii) <u>the details of an investigation if disclosure is in the public interest;</u></p> <p>(f) <u>after consultation with the relevant regulated markets in the Republic, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter; and</u></p> <p>(g) <u>to delegate the power to investigate an alleged contravention of this Chapter to any fit and proper person, subject to conditions that the Authority may determine.</u></p> <p><u>(2) A reference to the Insider Trading Directorate or the directorate in any law must, unless clearly inappropriate, be construed as a reference to the Authority.”.</u></p> <p>50. The insertion after section 84 of the following section:</p> <p>“Conduct standards for securities services</p> <p>84A. <u>A conduct standard for, or in respect of, securities services may prescribe requirements in relation to the administration of this Chapter.”.</u></p> <p>51. The repeal of sections 85 and 86.</p> <p>52. The substitution for section 88 of the following section:</p> |

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| | | <p data-bbox="804 237 1241 293">“Confidentiality and sharing of information</p> <p data-bbox="804 327 1246 965">88. The [directorate] Authority may share information concerning any matter dealt with in terms of this Chapter with the [institutions which have nominated persons to the directorate, the] Take-over Regulation Panel [,] established by section 196 of the Companies Act, the South African Reserve Bank, the Independent Regulatory Board for Auditors constituted in terms of the Auditing Profession Act, [a licensed exchange, a licensed central securities depository, or a licensed independent clearing house] a market infrastructure, the Financial Intelligence Centre established by the Financial Intelligence Centre Act, the National Treasury, the Minister and the persons, inside the Republic or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses.”.</p> <p data-bbox="778 999 1203 1084">53. The amendment in section 90 for paragraphs (a) and (b) of the following paragraphs, respectively:</p> <p data-bbox="804 1088 1241 1375">“(a) maintain on a continual basis the accounting records prescribed [by the registrar] in joint standards and prepare annual financial statements that conform with the financial reporting standards prescribed under the Companies Act and contain the information that may be prescribed [by the registrar] in joint standards;</p> <p data-bbox="804 1379 1241 1637">(b) cause such accounting records and annual financial statements to be audited by an auditor appointed under section 89, within a period prescribed [by the registrar] in joint standards or such later date as the [registrar] Authority may allow on application by a regulated person; and”.</p> <p data-bbox="778 1671 1235 1756">54. The amendment of section 91(2) by the substitution for paragraph (b) of the following paragraph:</p> <p data-bbox="804 1760 1246 1899">“(b) on the matters prescribed [by the registrar, including matters relating to the nominees of those regulated persons] in conduct standards.”.</p> |

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| | | <p>55. The substitution for section 94 of the following section:</p> <p>“General powers of [registrar] Authority</p> <p>94. (1) If the [registrar] Authority receives a complaint, charge or allegation that a person (hereinafter referred to as the respondent) who provides securities services (whether the respondent is licensed or authorised in terms of this Act or not) is contravening or is failing to comply with any provision of this Act, or if the [registrar] Authority has reason to believe that such a contravention or failure is taking place, the [registrar] Authority may investigate the matter [by directing that respondent in writing to—</p> <p>(i) provide the registrar with any information, document or record reasonably required by the registrar about such services;</p> <p>(ii) appear before the registrar at a specified time and place] in terms of the Financial Sector Regulation Act.</p> <p>(2) [Despite any contrary law, the registrar may, if] The power of the Authority to give a regulator’s directive in terms of the Financial Sector Regulation Act extends to giving such a directive in respect of an advertisement, brochure or other document relating to securities that is [misleading or] for any reason objectionable [, direct that the advertisement, brochure or other document not be published or the publication thereof be stopped or that such amendments as the registrar considers necessary be effected].”.</p> <p>56. The repeal of section 95.</p> <p>57. The amendment of section 96—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Powers of [registrar] Authority after supervisory on-site [visit or] inspection or investigation”;</p> <p>(b) by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“After [an] supervisory on-site [visit or] inspection or an investigation has been conducted [under section 95] in terms of Chapter 9 of the Financial Sector Regulation Act, the [registrar] Authority may, in order to achieve the objects of this Act referred to in section 2—”;</p> |

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| | | <p>(c) by the substitution for paragraph (c) of the following paragraph: “(c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the <u>supervisory on-site [visit or] inspection or investigation</u>[: Provided that the registrar may not make an order contemplated in section 6D (2) (b) of the Financial Institutions (Protection of Funds) Act.];”.</p> <p>58. The repeal of section 97.</p> <p>59. The amendment of section 98 by the addition of the following subsection: “(5) <u>This section does not affect Part 5 of Chapter 10 of the Financial Sector Regulation Act.</u>”.</p> <p>60. The repeal of section 99.</p> <p>61. The amendment of section 105— (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) the [registrar] <u>Authority</u> under a power conferred or a duty imposed upon the [registrar] <u>Authority</u> by or under this Act or the <u>Financial Sector Regulation Act</u>;”;</p> <p>(b) by the deletion in subsection (1) of paragraph (j);</p> <p>(c) by the substitution in subsection (1) for the words following paragraph (j) of the following words: “<u>may appeal the decision to an internal appeal mechanism established by the Authority, and after the completion of the internal appeal process, may lodge an application for judicial review to the Tribunal in terms of Part 3 of Chapter 15 of the Financial Sector Regulation Act.</u>”;</p> <p>and</p> <p>(d) by the deletion of subsection (2).</p> <p>62. The amendment of section 110— (a) by the substitution for subsection (4) of the following subsection: “(4) [Sections 84 and 85 apply] <u>Chapter 17 of the Financial Sector Regulation Act applies to any investigation of alleged non-compliance with or offences under the Securi-</u></p> |

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|------------------|-------------|---|
| | | <p>ties Services Act, 2004, instituted after its repeal by this Act.”; and</p> <p>(b) by the addition of the following subsection:</p> <p>“(6) <u>With effect from a date prescribed by the Minister, a licensed clearing house performing the functions of a central counterparty must be licensed as a central counterparty under section 49 and comply with the requirements set out in this Act.</u>”.</p> <p>63. The substitution for the expression “registrar”, wherever it occurs of the expression “Authority”.</p> <p>64. Amendment of the arrangement of sections—</p> <p>(a) by the insertion after item 1 of the following item:</p> <p>“1A. <u>Relationship between Act and Financial Sector Regulation Act</u>”;</p> <p>(b) by the insertion after item 6 of the following items:</p> <p>“6A. <u>Criteria for recognition of external market infrastructures.</u> 6B. <u>Withdrawal of recognition.</u> 6C. <u>Principles of co-operation</u>”;</p> <p>(c) by the insertion after item 49 of the following items:</p> <p>“49A. <u>Licensing of external central counterparty.</u> 49B. <u>Exemption from having to be licensed as an external central counterparty</u>”;</p> <p>(d) by the insertion after item 56 of the following item:</p> <p>“56A. <u>Licensing of external trade repository</u>”;</p> <p>(e) by the substitution for item 84 of the following item:</p> <p>“84. <u>Additional powers of Authority</u>”;</p> <p>(f) by the insertion after item 84 of the following:</p> <p>84A. <u>Conduct standards for securities services</u>”; and</p> <p>(g) by the substitution for item 96 of the following item:</p> <p>“96. <u>Powers of [registrar] Authority after supervisory on-site [visit or] inspection or investigation</u>”.</p> |

| Act No. and year | Short Title | Extent of repeal or amendment |
|--------------------|----------------------------------|---|
| Act No. 24 of 2012 | Credit Rating Services Act, 2012 | <p>1. The amendment of section 1—</p> <p>(a) by the insertion in subsection (1) after the definition of “associate” of the following definition: “‘Authority’ means the <u>Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;</u>”;</p> <p>(b) by the insertion in subsection (1) after the definition of “Companies Act” of the following definition: “‘conduct standard’ has the same meaning ascribed to it in terms of the <u>Financial Sector Regulation Act;</u>”;</p> <p>(c) by the deletion in subsection (1) of the definition of “deputy registrar”;</p> <p>(d) by the insertion in subsection (1) after the definition of “external credit rating agency” of the following definition: “‘Financial Sector Regulation Act’ means the <u>Financial Sector Regulation Act, 2015;</u>”;</p> <p>(e) by the deletion in subsection (1) of the definitions of “Financial Services Board Act”, “FSB official website” and “prescribe”;</p> <p>(f) by the insertion in subsection (1) after the definition of “rating category” of the following definition: “‘Register’ means the <u>Financial Sector Information Register referred to in section 244 of the Financial Sector Regulation Act;</u>”;</p> <p>(g) by the deletion in subsection (1) of the definition of “registrar”;</p> <p>(h) by the insertion in subsection (1) after the definition of “this Act” of the following definition: “‘Tribunal’ means the <u>Financial Sector Tribunal established in terms of section 214 of the Financial Sector Regulation Act;</u>” and</p> <p>(i) by the addition of the following subsection: “(7) <u>Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.</u>”.</p> <p>2. The insertion after section 1 of the following section:</p> <p>“Relationship between Act and Financial Sector Regulation Act</p> <p>1A. (1) <u>A reference in this Act to the registrar must be read as a reference to the Authority.</u></p> |

| Act No. and year | Short Title | Extent of repeal or amendment |
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| | | <p>(2) Except as otherwise provided by <u>this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.</u></p> <p>(3) A reference in this Act to the Authority determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.</p> <p>(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed, a reference in this Act to a matter being prescribed must be read as—</p> <p>(a) a reference to the matter being prescribed in a conduct standard; or</p> <p>(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.</p> <p>(5) A reference in this Act to a supervisory on-site inspection or an investigation under a provision of this Act must be read as a reference to an inspection or investigation in terms of the Financial Sector Regulation Act.</p> <p>(6) (a) A reference in this Act to the Authority announcing or publishing information or a document on a website must be read as a reference to the Authority publishing the information or document in the Register.</p> <p>(b) The Authority may also publish the information or document on its website.</p> <p>(7) A reference in this Act to a prescribed fee must be read as a reference to the relevant fee determined in terms of section 232 of the Financial Sector Regulation Act</p> <p>(8) A reference in this Act to a review of a decision of the Authority must be read as a reference to a review of the decision by the Tribunal in terms of the Financial Sector Regulation Act.”.</p> <p>3. The amendment of section 5(1) by the substitution for paragraph (e) of the following paragraph: “(e) the application fee prescribed [by the registrar]; and”.</p> <p>4. The repeal of sections 21 and 22.</p> <p>5. The deletion in section 23(1) of paragraph (h).</p> |

| Act No. and year | Short Title | Extent of repeal or amendment |
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| | | <p>6. The amendment of section 24—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “<u>A conduct standard for or in respect of credit rating agencies may be made on any of the following matters:</u>”; and</p> <p>(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “The [rules] <u>conduct standards</u> contemplated in subsection (1) may—”.</p> <p>7. The deletion in section 24 of subsections (3) and (4).</p> <p>8. The repeal of sections 25, 26, 27, 28, 30, 31 and 33.</p> <p>9. The deletion in section 34 of subsection (2).</p> <p>10. Amendment of the arrangement of sections by the insertion after item 1 of the following item: “1A. Relationship between Act and Financial Sector Regulation Act”.</p> |

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SECTOR REGULATION BILL

1. BACKGROUND TO THE BILL

- 1.1 In December 2013, Cabinet approved the establishment of two regulators: a Prudential Authority within the South African Reserve Bank (“Reserve Bank”) to supervise the safety and soundness of banks, insurance companies and other financial institutions, and the Financial Sector Conduct Authority to supervise how financial services firms conduct their business and treat customers. This followed earlier approval in July 2011 for a shift to a Twin Peaks approach to financial regulation, including the role of the Reserve Bank in overseeing financial stability.
- 1.2 The draft Financial Sector Regulation Bill (“the Bill”) was approved by Cabinet on 4 December, 2013 for publication for public comment. The Bill was substantially revised after carefully considering comments received during the public comment process. The Bill was published again for public comment in December 2014. This version of the Bill was finalised after consideration of the comments received during the second public comment process.
- 1.3 Twin Peaks is a comprehensive and complete system for regulating the financial sector, prioritising the customer and protecting their funds. It represents a decisive shift away from a fragmented regulatory approach.
- 1.4 The Twin Peaks model of financial regulation is designed to underpin a comprehensive regulatory system, with two main aims:
 - to strengthen financial stability and the soundness of financial institutions, by creating a dedicated Prudential Authority; and
 - to protect financial customers and ensure that they are treated fairly by financial institutions, by creating a dedicated Financial Sector Conduct Authority.
- 1.5 In addition to the two regulators, the approach establishes a harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), a review mechanism and consumer education. This “single system” supports regulatory consistency, and reduces the scope for regulatory arbitrage or “forum shopping”. It also makes it easier for any customer experiencing a problem, as the customer is often confused about where to complain when experiencing unfair treatment from a financial institution.
- 1.6 Within this system, the Reserve Bank oversees financial stability within a policy framework agreed with the Minister of Finance.
- 1.7 The Bill aims to improve the structure of regulation of the financial services sector, by ensuring more consistent and complete regulation, including for market conduct. It will give the Financial Sector Conduct Authority and the Prudential Authority jurisdiction over all financial institutions, and will provide them with a range of supervisory tools to fulfil their mandates.
- 1.8 Given the scale of the transformation in regulating the financial sector, the Twin Peaks system will be implemented in two stages. The first stage establishes the regulators and a uniform system and standards, with existing sub-sectoral (or activity-based) laws (for example on insurance and banking) remaining in place. In the second stage, the focus will be to streamline the current activity-based legislation (separate for banking, insurance, credit, pensions, etc.) into consolidated legislation, to reduce the scope for regulatory arbitrage.

2. OBJECT OF THE BILL

2.1 The object of the Bill is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes—

- financial stability;
- the safety and soundness of financial institutions;
- the fair treatment and protection of financial customers;
- the efficiency and integrity of the financial system;
- the prevention of financial crime;
- financial inclusion; and
- confidence in the financial system.

2.2 Key matters addressed in the Bill:

2.2.1 Financial stability and the management of systemic events

2.2.1.1 The Bill explicitly confers on the Reserve Bank the mandate to protect and enhance financial stability, and if a systemic event has adversely affected financial stability, to restore and maintain financial stability.

2.2.1.2 The Reserve Bank must monitor and keep under review the strengths and weaknesses of the financial system; and any risks to financial stability, and the nature and extent of those risks, including systemic risks and any other risks contemplated in matters raised by members of the Financial Stability Oversight Committee or reported to the Reserve Bank by the Prudential Authority, the Financial Sector Conduct Authority (“the financial sector regulators”) the National Credit Regulator, or the Financial Intelligence Centre.

2.2.1.3 The Reserve Bank must take steps to mitigate risks to financial stability, including advising the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and any organ of state, of tools to use and measures to take to mitigate those risks.

2.2.1.4 The Reserve Bank must regularly assess the observance of principles developed by international standards setting bodies for market infrastructures in the Republic and report its findings to the financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre.

2.2.1.5 The Governor of the Reserve Bank is empowered to determine, after consultation with the Minister of Finance, that an event or circumstance, or a combination of events or circumstances, is a systemic event.

2.2.1.6 The Reserve Bank must take all practicable steps to prevent a systemic event from occurring, and if a systemic event has occurred or is imminent, to mitigate as soon as practicable the adverse effects on financial stability, and manage the systemic event and its effects.

- 2.2.1.7 The Governor must ensure that the Minister of Finance is informed and kept abreast of steps being taken to address a systemic event, and the Minister must approve any actions taken that may have an impact on public finances or the cost of borrowing, or that will or may create a future financial commitment of the Republic or a contingent liability of the Republic.
- 2.2.1.8 If the Governor has determined that a systemic event has occurred or is imminent, each financial sector regulator, the National Credit Regulator and the Financial Intelligence Centre must provide the Reserve Bank with any information in the regulator's possession that may be relevant to managing the effects of the systemic event, including information on any actual or potential impact on public finances, and consult the Governor before exercising any of their powers in a way that may affect measures that are being or are proposed to be taken to manage the systemic event or the effects of the systemic event.
- 2.2.1.9 The Governor may issue directives to financial sector regulators and the National Credit Regulator, which may—
- (a) require the financial sector regulator, the National Credit Regulator or the Financial Intelligence Centre to provide the Reserve Bank with information in the regulator's possession, or available to the regulator, that is specified in the directive; and
 - (b) include requirements as to the exercise of the powers of the financial sector regulator, the National Credit Regulator or the Financial Intelligence Centres, so as to assist the Reserve Bank in complying with the Reserve Bank's obligations under clause 14 and the object of this Bill, which may include measures aimed at supporting the restructuring, resolution or winding up of any financial institution; preventing or reducing the spread of risk, weakness or disruption through the financial system; and increasing the resilience of financial institutions to risk, weakness or disruption.
- 2.2.1.10 Other organs of state exercising powers with respect to the financial system may not, without the approval of the Minister, acting in consultation with the Cabinet member responsible for that organ of state, exercise its powers in a way that will be inconsistent with a decision or action taken by the Governor or the Reserve Bank to manage that systemic event or the effects of that systemic event.
- 2.2.1.11 The Financial Stability Oversight Committee is established, which will to support the Reserve Bank in performing the Reserve Bank's functions in relation to financial stability, and foster collaboration and co-ordination of action among and between the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank in relation to matters relating to financial stability.
- 2.2.1.12 The Financial Stability Oversight Committee will—
- (a) provide a forum for representatives of the Reserve Bank and of each of the financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre to be informed, and to exchange views, about the activities of the Reserve Bank and the regulators relating to financial stability;
 - (b) advise the Governor on the designation of systemically important financial institutions;

- (c) advise the Minister and the Reserve Bank on actions to be taken to promote financial stability, including matters relating to crisis management and prevention; and
- (d) make recommendations to relevant organs of state that are appropriate for them to take to assist in managing or preventing risks to financial stability; and
- (e) perform any other function conferred on it in terms of legislation.

2.2.1.13 The Financial Stability Oversight Committee will be assisted by the Financial Sector Contingency Forum, comprised of representatives from the relevant industry bodies, the financial sector regulators, the National Credit Regulator, and other relevant organs of state and any other entities or bodies determined by the chairperson of the Forum.

2.2.1.14 A duty is placed on the financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre to—

- (a) co-operate and collaborate with the Reserve Bank, and with each other, to maintain, protect and enhance financial stability,
- (b) provide assistance and information to the Reserve Bank and the Financial Stability Oversight Committee in the performance of the functions of those bodies with respect to financial stability that the Reserve Bank or the Committee may reasonably request; and
- (c) promptly report to the Reserve Bank any matter of which the regulator becomes aware that poses or may pose a risk to financial stability; and
- (d) gather information from or about financial institutions that concerns financial stability.

2.2.1.15 The financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank are mandated to enter into one or more Memoranda of Understanding with the Reserve Bank specifying how they will co-operate and collaborate with, and provide assistance to, each other and otherwise perform their roles, and comply with their duties, relating to financial stability.

2.2.1.16 The Reserve Bank must, when acting in terms of its financial stability mandate, and when exercising its powers in terms of the Bill, take into consideration:

- (a) views expressed and the information reported by the financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre; and
- (b) the recommendations of the Financial Stability Oversight Committee.

2.2.2 Establishment of Financial Sector Regulators

2.2.2.1 The Bill establishes two new financial sector regulators, the Prudential Authority and the Financial Sector Conduct Authority (“the financial sector regulators”).

2.2.2.2 The Prudential Authority’s objective is to—

- (a) promote and enhance the safety and soundness of financial institutions that provide financial products;
- (b) promote and enhance the safety and soundness of market infrastructures;

- (c) protect financial customers against the risk that those financial institutions may fail to meet their obligations; and
- (d) assist in maintaining financial stability.

2.2.3 The Financial Services Board will be disestablished, and the new Financial Sector Conduct Authority will be established, with the objective to—

- (a) enhance and support the efficiency and integrity of the financial system; and
- (b) protect financial customers by—
 - (i) promoting that financial institutions treat financial customers fairly; and
 - (ii) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy; and
 - (iii) assist in maintaining financial stability.

2.2.4 Co-operation and collaboration between the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank

2.2.4.1 The Bill places obligations of co-operation and collaboration on the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank, who must for this purpose—

- (a) generally assist and support each other in pursuing their objectives in terms of the financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;
- (b) inform each other about, and share information about, matters of common interest;
- (c) strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges; and
- (d) co-ordinate, to the extent appropriate, actions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act, including in relation to—
 - (i) standards and other regulatory instruments, including similar instruments provided for in terms of the National Credit Act and the Financial Intelligence Centre Act;
 - (ii) licensing;
 - (iii) routine on-site inspections and investigations;
 - (iv) actions to enforce financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;
 - (v) information sharing;
 - (vi) recovery and resolution; and
 - (vii) reporting by financial institutions (including statutory reporting and data collection measures);
 - (viii) minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;
 - (ix) agree on attendance at relevant international forums; and
 - (x) develop, to the extent that is appropriate, consistent policy positions, including for the purpose of presentation and negotiation at relevant South African and international forums.

2.2.4.2 The financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank must enter into one or more memoranda of understanding address-

ing how they will fulfil their obligations to co-operate and collaborate with each other. The financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre may provide for the delegation of powers between themselves.

2.2.4.3 A Financial System Council of Regulators is established, to facilitate consultation, co-operation and where appropriate, consistency of action, between the institutions represented on the Council by providing a forum for senior representatives of those institutions to discuss, and inform themselves about, matters of common interest.

2.2.4.4 A Financial Sector Inter-ministerial Council is established, to facilitate co-operation and collaboration between Cabinet members administering legislation relevant to the regulation and supervision of the financial sector, by providing a forum for discussion and consideration of matters of common interest.

2.2.5 Maintaining and enhancing prudential regulation and supervision

The new approach to prudential regulation seeks to create an effective legal and regulatory environment that ensures that financial institutions are capable of complying with their undertakings to participate in the financial system, including the maintenance of a sound financial position. Enhanced monitoring and supervision powers will promote compliance with applicable financial sector laws, which is necessary for the proper identification and mitigation of systemic risks.

2.2.6 Maintaining and enhancing market conduct regulation and supervision

The comprehensive and rigorous market conduct reporting and supervision requirements created under the new regulatory framework will ensure that consumers of financial products and financial services are not vulnerable and exploited, by introducing measures for the identification, detection and reporting of unfair treatment to customers, including financial awareness and financial literacy among South Africans. These measures will ensure that the efficiency and integrity of final markets is protected and enhanced, contribute to the maintenance of financial stability, promote financial inclusion, and assist in combating financial crime.

2.2.7 Operational independence and governance

The Bill will provide an appropriate governance framework that ensures operational independence, organisational effectiveness and adaptability of the new statutory structures and institutional frameworks including accountability mechanisms to enhance transparency and fairness.

2.2.8 Administrative action procedures and administrative action committees

The Bill permits the financial sector regulators to adopt administrative action procedures, setting out how administrative actions will be taken in terms of financial sector laws. They may also each establish an administrative action committee, to consider and make recommendations to the regulator on administrative actions that are referred to it by the regulator. The reconsideration of decisions by the financial sector regulators in specified circumstances is provided for.

2.2.9 Standards for financial products and services

- 2.2.9.1 An important mechanism for enhancing both the prudential and market conduct regulation of financial products and services is the provision for the Prudential Authority to issue prudential standards, the Financial Sector Conduct Authority to issue market conduct standards, and for the Prudential Authority and the Financial Sector Conduct Authority to be able, where they deem appropriate, to issue joint standards, in accordance with a consistent, specified procedure.
- 2.2.9.2 The Prudential Authority and the Financial Sector Conduct Authority may not make a standard that imposes requirements on providers of payment services, or a standard aimed at assisting in maintaining financial stability, without the concurrence of the Reserve Bank.
- 2.2.9.3 Going forward, the issuing of standards will largely replace the diversity of instruments that are currently issued in terms of financial sector laws, which will promote clarity and standardisation in relation to regulatory action.

2.2.10 Supervision of financial conglomerates

Another very important mechanism in the Bill that will enhance both prudential and market conduct regulation and supervision, is that a framework for the supervision for financial conglomerates is provided for.

2.2.11 Enforcement mechanisms

- 2.2.11.1 The Bill provides important enforcement mechanisms for the financial sector regulators.
- 2.2.11.2 The Bill contains detailed provisions enabling the regulators to gather information, and carry out supervisory on-site inspections and investigations, which are vital tools for the supervision and enforcement of the financial sector laws by the financial sector regulators.
- 2.2.11.3 The financial sector regulators may issue guidance notices and binding rulings.
- 2.2.11.4 The financial sector regulators are empowered to issue directives in order to ensure compliance and to prevent or stop non-compliance with the financial sector laws.
- 2.2.11.5 The regulators may also enter into enforceable undertakings with a licensed financial institution, in terms of which the financial institution voluntarily agrees to comply with the terms of the undertaking. The financial sector regulators are also empowered to issue administrative penalties, and to enter into leniency agreements with a person in exchange for that person's co-operation in an investigation or proceedings.
- 2.2.11.6 The financial sector regulators may issue debarment orders to individuals who have contravened the financial sector laws or an enforceable undertaking; attempted or conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law in a material respect; or contravened in a material respect a law of a foreign country that corresponds to the financial sector law.

2.2.11.7 A debarment order prohibits the individual, for a specified period, as specified in the order, from providing, or being involved in the provision of, specified financial products or financial services, generally or in circumstances specified in the order; acting as a key person of a financial institution; or providing specified services to a financial institution, whether under outsourcing arrangements or otherwise.

2.2.11.8 The financial sector regulators may also apply to court for orders to ensure compliance with the financial sector laws.

2.2.12. Ombuds

The Financial Sector Ombud Schemes Regulatory Council (“the Ombud Regulatory Council”) is established to provide for the regulation of ombud schemes, and the Ombud Regulatory Council is provided with necessary powers to enable the appropriate regulation of ombud schemes. A person with a complaint regarding a financial product or a financial service in terms of the Bill will have access to either an applicable ombud scheme, or to an ombud scheme designated to handle the complaint by the Ombud Regulatory Council.

2.2.13. Reviews and reconsideration of decisions

A Financial Services Tribunal (“Tribunal”) is established, which is mandated to adjudicate on applications for reviews of decisions taken by the financial sector regulators or the Ombud Regulatory Council. Provision for the reconsideration of decisions in specified circumstances is also provided for.

3. SUMMARY OF THE BILL

3.1 **Chapter 1** of the Bill deals with the Interpretation, Object of the Act, Administration of the Act and the application of other legislation, as follows:

- (a) **Part 1** (clauses 1-6), sets out definitions and clarifies certain matters to assist with the interpretation of the Act.
- (b) **Clause 2** defines “financial product”, and empowers the Minister in regulations to designate as a financial product any facility or arrangement that is not regulated in terms of a specific financial sector law if—
 - (i) doing so will further the object of the Bill; and
 - (ii) the facility or arrangement is one through which, or through the acquisition of which, a person conducts one or more of the following activities:
 - (aa) Lending;
 - (bb) making a financial investment;
 - (cc) managing financial risk.
- (c) **Clause 3** defines “financial service”, and empowers the Minister in relations to designate as a financial service any facility or arrangement that is not regulated in terms of a specific financial sector law if—
 - (i) doing so will further the object of the Bill; and
 - (ii) doing so will further the object of the Bill set out in clause 7; and
 - (iii) the service relates to—
 - (aa) a financial product, a foreign financial product, a financial instrument or a market infrastructure; or
 - (bb) an arrangement that is in substance an arrangement for lending, making a financial investment or managing financial risk, all as contemplated in clause 2(2) to (4).
- (d) **Part 2** (clauses 7-8) sets out the Object of the Act, and specifies that the Minister of Finance is responsible for the administration of the Act.
- (e) **Part 3** (clauses 9-10) deals with the application of the Act in relation to other legislation.

- 3.2. **Chapter 2** of the Bill addresses financial stability, as follows:
- (a) **Part 1** (clauses 11 to 13) explicitly defines the Reserve Bank’s responsibility, functions and powers in relation to financial stability, and its duty to monitor and mitigate risks to financial stability. It also provides for the publication of the financial stability review.
 - (b) **Part 2** (clauses 14—19) addresses the critical concerns of managing systemic risks and systemic events.
 - (c) **Part 3** (clauses 20-24) provides for the establishment of the Financial Stability Oversight Committee, its composition, membership and functioning.
 - (d) **Part 4** (clause 25), provides for the establishment of the Financial Sector Contingency Forum, to assist the Financial Stability Oversight Committee in its functions.
 - (e) **Part 5** (clauses 26 — 28) addresses the duties of the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and other organs of state in maintaining financial stability.
 - (f) **Part 6** (clauses 29-31) deals with systemically important financial institutions. Clause 29 deals with the designation of systemically important financial institutions, and the Governor is empowered to designate financial institutions as being systemically important. Clauses 30 and 31 provide for powers in relation to systemically important financial institutions. The Reserve Bank is empowered, after consulting with the Prudential Authority, to instruct the prudential authority impose, either through directives or prudential standards additional prudential requirements on those institutions that have been designated as being systemically important. The winding-up, business rescue, amalgamations and mergers, and compromise arrangements of systemically important financial institutions are also briefly dealt with.
- 3.3. **Chapter 3** provides for the establishment of the Prudential Authority, as follows:
- (a) **Part 1** (clauses 32 to 34), provides for the establishment of the Prudential Authority, and describes the objective and the functions of the Prudential Authority.
 - (b) **Part 2** (clauses 35 to 49) deals with the governance of the Prudential Authority, including setting out the governance objectives of the Authority, establishing the post of the Chief Executive Officer and the Prudential Committee.
 - (c) **Part 3** (clauses 50 to 55) addresses the staffing, resources and financial management of the Prudential Authority.
- 3.4. **Chapter 4** provides for the establishment of the Financial Sector Conduct Authority, as follows:
- (a) **Part 1** (clauses 56 to 58) provides for the establishment of the Financial Sector Conduct Authority, and describes the objective and the functions of the Financial Sector Conduct Authority.
 - (b) **Part 2** (clauses 59 to 72) deals with, the governance of the Financial Sector Conduct Authority, including setting out the governance objectives of the Financial Sector Conduct Authority, establishing the posts of the Commissioner and Deputy Commissioners, and the Executive Committee.
 - (c) **Part 3** (clauses 73-75) addresses the staffing, resources and financial management of the Authority.
- 3.5 **Chapter 5** addresses the vital need for co-operation and collaboration between the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre, the Reserve Bank, and with other organs of state, as follows:
- (a) **Part 1** (clauses 76 to 78), places obligations of co-operation and collaboration on the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank, and they are required to enter into one or more memoranda of understanding addressing how they will fulfil their obligations to co-operate and

collaborate with each other. The financial sector regulators, the National Credit Regulator and the Financial Intelligence Centre may provide for the delegation of powers between themselves.

- (b) **Part 2** (clauses 79 to 82) provides for the establishment of the Financial System Council for Regulators, and its functioning. The Financial System Council for Regulators is established to facilitate co-operation and collaboration and where appropriate, consistency of action, between the institutions represented on the Financial System Council for Regulators by providing a forum for senior representatives of those institutions to discuss, and inform themselves about, matters of common interest.
- (c) **Part 3** (clauses 83—86), provides for the establishment of the Financial Sector Inter-Ministerial Council to facilitate co-operation and collaboration between Cabinet members administering legislation relevant to regulation and supervision of the financial sector by providing a forum for discussion and consideration of matters of common interest.

3.6. **Chapter 6** addresses administrative actions, as follows:

- (a) **Part 1** (clauses 87-90) empowers the financial sector regulators to establish administrative action committees, provides for their functioning and also provides for the application of the Chapter to the Ombud Regulatory Council.
- (b) **Part 2** (clauses 91-95) deals with administrative actions. Clause 91 addresses the application of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 200) to administrative action taken by financial sector regulators. Clause 92 empowers the financial sector regulators to make administrative action procedures, and clause 93 sets out the processes that must be followed for determining, reviewing and amending administrative action procedures. Clause 94 provides that the financial sector regulators may reconsider decisions in certain specified circumstances. Clause 95 provides for interpretation.

3.7. **Chapter 7** provides for making regulatory instruments, as follows:

- (a) **Part 1** (clauses 96-104) specifies requirements for making regulatory instruments. Consultation requirements are set out, and a process is provided for regulatory instruments to be made in situations of urgency. Reports on consultation processes are required. The consultation processes stipulated do not preclude additional consultation processes being undertaken by the financial sector regulators. The commencement of regulatory instruments is provided for.
- (b) **Part 2** (clauses 105 to 110) deals with standards for Financial Products and Financial Services. The Prudential Authority is empowered to make prudential standards, and the Financial Sector Conduct Authority is empowered to make conduct standards in relation to financial products and financial services. The regulators may also make joint standards if they determine that it is appropriate. The Prudential Authority and the Financial Sector Conduct Authority may not make a standard that imposes requirements on providers of payment services, or a standard aimed at assisting in maintaining financial stability, without the concurrence of the Reserve Bank.

3.8. **Chapter 8** deals with licensing, as follows:

- (a) **Part 1**, clause 111, provides that no person may provide, as a business or part of a business, a financial product, financial service or market infrastructure except in accordance with a licence in terms of a specific financial sector law, or if no specific financial sector law provides for such a licence, in accordance with a licence issued in terms of this Act.
- (b) A person may not provide, as a business or part of a business, a financial product designated in terms of clause 2, or a financial service designated in terms of clause 3, except in accordance with a licence in terms of the licensing Chapter.
- (c) **Part 2** (clauses 112-124) sets out licensing requirements for licenses for financial products designated in terms of clause 2, financial services

designated in terms of clause 3, and holding companies of financial conglomerates who are required to be licensed in terms of clause 160.

- (d) **Part 3** (clauses 125-128) contains provisions that relate to all licenses issued in terms of the financial sector laws. Clause 126 provides that the responsible authority who is the responsible authority in terms of a financial sector law may not issue, vary, suspend or revoke a licence or grant an exemption in terms of clause 271 unless the other financial sector regulator has concurred, and if the action relates to or affects a systemically important financial institution, the Reserve Bank has also concurred.

3.9. **Chapter 9** deals with information gathering, supervisory on-site inspections and investigations, and will replace provisions currently contained in the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), and the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), as follows:

- (a) **Part 1** (clause 129) provides that the provisions of this Chapter are applicable to the Prudential Authority, Financial Sector Conduct Authority and the Council for Medical Schemes.
- (b) **Part 2** (clause 130) deals with information gathering, and empowers the Prudential Authority, the Financial Sector Conduct Authority, and the Council for Medical Schemes to make information requests to supervised entities.
- (c) **Part 3** (clauses 131-132) empowers the financial sector regulators and the Council for Medical Schemes to conduct supervisory on-site inspections, examine and make extracts of business documents and question persons who may have information relevant to the inspection. Provision is made, if it appears to the financial sector regulator or the Council for Medical Schemes that there has been a contravention of a financial sector law or that a contravention is likely to occur, for a directive to be issued prohibiting the destruction or removal of a business document, or for the removal of business document to prevent another person from removing, concealing, destroying or otherwise interfering with the document. Clause 132 provides for an offence for interfering with the conduct of a supervisory on-site inspection.
- (d) **Part 4** (clauses 133-138) deals with investigations, and provides for the appointment of investigators and persons to assist investigators. It specifies that an investigation may be carried out when a financial sector regulator or the Council for Medical Schemes suspects that there has been a contravention of a financial sector law or the Medical Schemes Act, 1998 (Act No. 131 of 1998), or to comply with a request made by a foreign requesting authority in terms of clause 239. This Part also provides powers to investigators to question persons and require the production of documents, and to enter and search premises. It also deals with obtaining warrants for searches, and provides for an offence for interfering with an investigation.
- (e) **Part 5** (clause 139) provides certain protections for persons during questioning.

3.10 **Chapter 10** provides important enforcement powers to the financial sector regulators, as follows:

- (a) **Part 1** (clauses 140-141) provides for the issue of guidance notices and binding interpretations by the financial sector regulators. Clause 140 empowers the financial sector regulators to issue non-binding guidance notices on the application of the financial sector laws. Clause 141 provides for the issuing of binding interpretations on the application of specified provisions of the financial sector laws.
- (b) **Part 2** (clauses 142-149) empowers the financial sector regulators to issue regulator's directives. The Prudential Authority and the Financial Sector Conduct Authority are each empowered to issue directives in relation to specified matters.
- (c) A period to comply with a directive is specified. The financial sector regulators are empowered to revoke directives. A financial institution,

key person, representative or contractor to which a directive has been issued must comply with the directive. The power to issue directives in terms of this Bill applies in addition to the powers to issue directives that are provided for in other financial sector laws.

- (d) **Part 3** (clause 150) provides for the acceptance by a responsible authority for a financial sector law (which is the financial sector regulator that is designated in Schedule 2 of the Bill as being the responsible authority for that financial sector law) of an enforceable undertaking in relation to future conduct that may be engaged in by person that is regulated by the financial sector law. An enforceable undertaking is a legal instrument that is enforceable by the authority in a court. An enforceable undertaking may include an undertaking to provide specified redress to financial customers. An enforceable undertaking may be varied or withdrawn if the responsible authority agrees. If an enforceable undertaking is breached, the responsible authority may suspend or cancel the licence of the person.
- (e) **Part 4** (clause 151) empowers the financial sector regulators to institute proceedings in order to enforce compliance with a financial sector law. The financial sector regulator must publish court orders that are obtained.
- (f) **Part 5** (clauses 152 -153) empowers the financial sector regulators to make debarment orders in respect of a person for contraventions of financial sector laws, enforceable undertakings, as well as in respect of attempting, conspiring, aiding and abetting, inducing, inciting or procuring another person to contravene a financial sector law, or contravening a law of a foreign country that corresponds to a financial sector law.
- (g) **Part 6** (clause 154) empowers a responsible authority for a financial sector law to enter into leniency agreements, in exchange for a person's co-operation in investigations or in proceedings relating to a contravention of a financial sector law, which may provide that the responsible authority will not impose an administrative penalty.

3.11 **Chapter 11** addresses significant owners of financial institutions. Clause 155 defines who is a significant owner. Criteria for the determination of persons to be designated as significant financial owners, include, but are not limited to, the percentage of issued share capital, the securities held, the control exercised and the person's ability to influence the strategy of a financial institution. Clause 156 provides for the declaration of a significant owner of a financial institution by a responsible authority. Clause 157 provides that a person may not enter into an arrangement in respect of an eligible financial institution, a manager of a collective investment scheme, or a financial institution prescribed in regulations, that results or would result in the person, alone or together with a related or interrelated person, becoming a significant owner, of the institution without the approval of the responsible authority for the financial sector law in terms of which the institution is required to be licensed. Similarly, a person may not enter into an arrangement with those types of financial institutions that results or would result in an increase or reduction of the extent of the ability of the person, alone or together with a related or interrelated person, to control or influence the business or strategy of the institution, without the approval of the responsible authority for the financial sector law in terms of which the institution is required to be licensed.

3.12 **Chapter 12** provides for a framework for the supervision of financial conglomerates, an important area that is not currently well addressed in the financial sector legislation, as follows:

- (a) **Clause 158** empowers the Prudential Authority, after having consulted the Financial Sector Conduct Authority, to designate members of a group of companies, as defined in section 1 of the Companies Act, as a financial conglomerate. A financial conglomerate that is designated must include both an eligible financial institution and a holding company of the eligible financial institution, but it does not have to include all the members of a group of companies.

- (b) **Clause 159** requires an eligible financial institution that becomes a member of a group of companies to notify the Prudential Authority within 14 days after it becomes a member of a group of companies.
- (c) **Clause 160** empowers the Prudential Authority to require the holding company of a financial conglomerate to be licensed.
- (d) **Clause 161** empowers the Prudential Authority to require the holding company of a financial conglomerate to be non-operating.
- (e) **Clause 162** empowers the Prudential Authority to make prudential standards for financial conglomerates.
- (f) **Clause 163** empowers the Prudential Authority to issue directives to the holding company of a financial conglomerate imposing requirements on the holding company to manage and otherwise mitigate risks to the prudent management or financial soundness of an eligible financial institution in the conglomerate arising from other members of the conglomerate. A directive may also be issued with respect to restructuring the conglomerate in accordance with a plan submitted to the Authority within a period agreed by the Authority, and approved by the Authority. The power of the Financial Sector Conduct Authority may issue a directive to the holding company of a financial conglomerate requiring the holding company to ensure that a financial institution in the conglomerate complies with a financial sector law for which the Financial Sector Conduct Authority is the responsible authority.
- (g) **Clause 164** provides that a holding company of a financial conglomerate may not acquire or dispose of a material asset as defined in prudential standards made for this section without the approval of the Prudential Authority, and may not acquire or dispose of any other asset without having notified the Prudential Authority.

3.13 **Chapter 13** provides for the imposition of administrative penalties by a responsible authority. Clause 165 stipulates criteria for the imposition of administrative penalties. Clause 166 provides for the potential for an agreement to be made for payment of the penalties by instalments. Clause 167 provides for the imposition of interest. Clause 168 provides for the enforcement of administrative penalties. Clause 169 provides for the application of funds received from administrative penalties. Clause 170 provides that when determining the sentence to impose on a person convicted of an offence in terms of a financial sector law, a Court must take into account any administrative penalty order in respect of the same set of facts. Clause 171 provides that the responsible authority may remit some or all of an administrative penalty. Clause 172 prohibits indemnification in respect of administrative penalties.

3.14 **Chapter 14** provides for the regulation of Ombuds. It expands and broadens what is currently provided in the Financial Services Ombud Schemes Act, 2004 and incorporates ombud schemes as an important component of the financial sector regulatory framework established by the Bill. This Chapter provides, as follows:

- (a) **Part 1** (clauses 173 — 191) provides in clause 173 for the establishment of the Financial Sector Ombud Schemes Regulatory Council (“the Ombud Regulatory Council”). In terms of clause 174, the objective of the Ombud Regulatory Council is to assist in ensuring that financial customers have access to and are able to use affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial products and financial services. The functions of the Ombud Regulatory Council are set out in clause 175, and the governance, staffing, and resources of the Ombud Regulatory Council are dealt with in the rest of that Part.
- (b) **Part 2** (clauses 192-198) sets out requirements for the recognition of industry ombud schemes, and for the suspension or revocation of that recognition.
- (c) **Part 3** (clauses 199-206) empowers the Ombud Regulatory Council to make rules, issue directives, accept enforceable undertakings, apply to court to ensure compliance with financial sector laws, issue debarment

orders and administrative penalties, make information requests, and conduct supervisory on-site visits and inspections.

- (d) **Part 4** (clauses 207 — 212) provides for general provisions relating to Ombud Schemes, including access to ombud schemes, the determination of an ombud scheme when there is no applicable ombud scheme, and addressing instances where there may be overlapping jurisdiction between ombud schemes. It is also required that the rules of an ombud scheme may not be amended without the approval of the Ombud Regulatory Council.

3.15 **Chapter 15** addresses the reconsideration and review of decisions, as follows:

- (a) **Part 1** (clause 213) provides for a definition of “decision” for the purposes of the Chapter.
- (b) **Part 2** (clauses 214-227) provides for the establishment of the Tribunal and sets out its membership, terms and conditions of appointment and disclosure of interests. It also provides for the constitution of Panels of the Tribunal to consider decide applications for the review of decisions. An application for a review of a decision or the review proceedings do not suspend the operation of the decision unless the Tribunal makes an order that the operation of the decision is suspended. The orders that the Tribunal may make are specified, and the rules and procedures for proceedings of the Tribunal are provided for.
- (c) **Part 3** (clauses 228-231) provides for the reconsideration of decisions on application by aggrieved persons.
- (d) **Part 4** (clauses 232-234) addresses the right of persons to be informed of decisions, the right to reasons for decisions, the right to reconsideration of decisions, and the right to review of decisions.

3.16 **Chapter 16** deals with finances, levies and fees.

3.17 **Chapter 17** deals with various miscellaneous matters, as follows:

- (a) **Part 1** (clauses 238-243) deals with information sharing and reporting. It provides a framework for information sharing by the financial sector regulators. It mandates the reporting by auditors or actuaries to the financial sector regulators, who in the performance of their duties, become aware of a matter that has or is likely to have adverse effects on the financial condition of a financial institution. Provision is made for complaints to be made to the financial sector regulators. Disclosures by persons who properly report contraventions of the financial sector laws are afforded legal protection and may not be victimised.
- (b) **Part 2** (clauses 244-252) provides for the establishment of the Financial Sector Information Register, that will be managed by the National Treasury, with a view to providing financial institutions, financial customers and the general public with reliable access to accurate and up to date information relating to financial sector laws, regulatory instruments and their implementation.
- (c) **Part 3** (clauses 253-266) contains certain offence provisions, including but not limited to, offences relating to investigations and onsite inspections, offences relating to enforcement, offences applicable to significant owners and eligible financial institutions, ombud schemes, and reviews.
- (d) **Part 4** (clauses 267-279) covers general matters. It provides that the financial sector regulators must if requested assist a person to make a complaint to an appropriate ombud. It provides that a person who suffers a loss as a result of a contravention of a financial sector law may recover the loss in a court action. A financial sector regulator may extend timeframes specified in a financial sector law, and may issue exemptions to persons or a category of persons from compliance with a provision of a financial sector law, provided that specified requirements are met. Licences may be made subject to conditions. It is provided that the financial sector regulators may, in terms of the Memorandum of Understanding that they are required to enter into, agree in specified instances that notification and concurrence requirements in terms of the

Act may not necessarily need to be adhered to. The financial sector regulator and the Ombud Regulatory Council must establish and give effect to arrangements to facilitate consultation with, and the exchange of information with, relevant stakeholders on matters of mutual interest. The provision of notices to licensees and publication requirements in terms of financial sector laws are dealt with. The Minister of Finance is empowered to make regulations in terms of the Bill. There is also a provision dealing with immunities.

- (e) **Part 5** (clauses 280-295) deals with amendments, repeals and transitional and saving provisions.
- (f) **Part 6** (clause 296) provides for the short title and commencement.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury worked with the Financial Services Board and the Reserve Bank preparing the Bill. Previous drafts of the Bill were published for public comments in December 2013 and December 2014. Comments received on Bill from the relevant stakeholders and industry participants have been considered, and where appropriate, addressed in the finalised Bill.

5. FINANCIAL IMPLICATIONS FOR THE STATE

There are no significant financial implications envisaged for the fiscus, as the financial sector regulators will be funded through fees and levies imposed on financial institutions.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 7.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 7.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 7.5 The main object of the Bill is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes—
 - financial stability;

- the safety and soundness of financial institutions;
- the fair treatment and protection of financial customers;
- the efficiency and integrity of the financial system;
- the prevention of financial crime;
- financial inclusion; and
- confidence in the financial system.

- 7.6 In order to achieve its objects the Bill establishes the two new financial sector regulators, the Prudential Authority and the Financial Sector Conduct Authority.
- 7.7 The main objective of the Prudential Authority is to promote and enhance the safety and soundness of financial institutions that provide financial products and promote and enhance the safety and soundness of market infrastructures.
- 7.8 The main objective of the Financial Sector Conduct Authority is to enhance and support the efficiency and integrity of the financial system, to protect financial customers and to promote fair treatment of financial customers by financial institutions.
- 7.9 The Bill provides for, and ensures that there is, co-operation and collaboration between the financial sector regulators, the National Credit Regulator, the Financial Intelligence Centre and the Reserve Bank.
- 7.10 The Bill enhances and maintains prudential regulation and supervision; enhances and maintains market conduct regulation and supervision; maintains standards for financial products and services; the supervision of financial conglomerates; provides important enforcement mechanisms for the financial sector regulators.
- 7.11 The Ombud Regulatory Council is established to provide for the regulation of ombud schemes. The Ombud Council is provided with necessary powers to enable the appropriate regulation of ombud schemes, in order to resolve complaints by financial customers regarding a financial product or a financial service.
- 7.12 A Financial Services Tribunal is established and it is mandated to adjudicate on applications for reviews of decisions taken by the financial sector regulators or the Ombud Regulatory Council.
- 7.13 The Bill also contains consequential amendments in respect of various relevant Acts of Parliament in order to align these Acts with the envisaged Financial Sector Regulation Bill.
- 7.14 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 7.15 In the view of the State Law Advisers, the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 7.16 The State Law Advisers are therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

- 7.17 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.