

South Africa

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

Act 28 of 2001

Legislation as at 1 April 2018

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## South Africa

# Financial Institutions (Protection of Funds) Act, 2001

## Act 28 of 2001

Published in Government Gazette 22857 on 23 November 2001

**Assented to on 12 November 2001**

**Commenced on 23 November 2001**

*[This is the version of this document as it was from 1 April 2018 to 31 May 2023.]*

*[Amended by [Financial Services Laws General Amendment Act, 2008 \(Act 22 of 2008\)](#) on 1 November 2008]*

*[Amended by [Financial Markets Act, 2012 \(Act 19 of 2012\)](#) on 3 June 2013]*

*[Amended by [Financial Services Laws General Amendment Act, 2013 \(Act 45 of 2013\)](#) on 28 February 2014]*

*[Amended by [Financial Sector Regulation Act, 2017 \(Act 9 of 2017\)](#) on 1 April 2018]*

(English text signed by the President.)

## ACT

To provide for, and consolidate the laws relating to, the investment, safe custody and administration of funds and trust property by financial institutions; to enable the registrar to protect such funds and trust property; to repeal the Financial Institutions (Investment of Funds) Act, 1984 ([Act No. 39 of 1984](#)); to improve the enforcement powers of the registrar; and to provide for matters incidental thereto.

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

### Introductory provisions

#### 1. Definitions

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

"**administrative sanction**" *[definition of "administrative sanction" inserted by section 41(a) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]*

"**applicant**" *[definition of "applicant" inserted by section 41(a) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]*

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

*[definition of "Authority" inserted by section 290 of [Act 9 of 2017](#)]*

"**board**" *[definition of "board" inserted by section 41(a) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]*

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

*[definition of "Companies Act" inserted by section 156(a) of [Act 45 of 2013](#)]*

"**company**" includes a close corporation referred to in the Close Corporations Act, 1984 ([Act No. 69 of 1984](#));

"**contravention**" includes any non-compliance with any law;

*[definition of "contravention" inserted by section 41(b) of [Act 22 of 2008](#)]*

**"determination"** [definition of "determination" inserted by section 41(b) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]

**"directorate"** [definition of "directorate" inserted by section 41(b) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]

**"enforcement committee"** [definition of "enforcement committee" inserted by section 41(b) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]

**"financial institution"** [definition of "financial institution" deleted by section 290 of [Act 9 of 2017](#)]

**"Financial Sector Regulation Act"** means the Financial Sector Regulation Act, 2017;

[definition of "Financial Sector Regulation Act" inserted by section 290 of [Act 9 of 2017](#)]

**"institution"**, for the purposes of sections 5, 6, 9 and 10, means—

- (a) a financial institution;
- (b) any person, partnership, company or trust in which, or in the business of which, a financial institution or an unregistered person has or had a direct or indirect interest;
- (c) any person, partnership, company or trust which has or had a direct or indirect interest in a financial institution or unregistered person, or in the business of a financial institution or an unregistered person;
- (d) a participating employer in a pension fund organisation;
- (e) any person, partnership, company or trust that controls, manages or administers the affairs or part of the affairs of a financial institution or an unregistered person; or
- (f) any unregistered person;

**"law"**, for the purposes of section 5A, means—

- (a) this Act;
- (b) the Pension Funds Act, 1956 ([Act No. 24 of 1956](#));
- (c) the Friendly Societies Act, 1956 ([Act No. 25 of 1956](#));
- (d) the Close Corporations Act, 1984 ([Act No. 69 of 1984](#));
- (e) the Trust Property Control Act, 1988 ([Act No. 57 of 1988](#));
- (f) the Banks Act, 1990 ([Act No. 94 of 1990](#));
- (g) the Mutual Banks Act, 1993 ([Act No. 124 of 1993](#));
- (h) the Long-term Insurance Act, 1998 ([Act No. 52 of 1998](#));
- (i) the Short-term Insurance Act, 1998 ([Act No. 53 of 1998](#));
- (j) the Medical Schemes Act, 1998 ([Act No. 131 of 1998](#));
- (k) the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#));
- (l) the Financial Advisory and Intermediary Services Act, 2002 ([Act No. 37 of 2002](#));
- (m) the Collective Investment Schemes Control Act, 2002 ([Act No. 45 of 2002](#));
- (n) the Co-operative Banks Act, 2007 ([Act No. 40 of 2007](#));
- (o) the Companies Act, 2008 ([Act No. 71 of 2008](#));
- (p) the Financial Markets Act, 2012 ([Act No. 19 of 2012](#));

(q) the Credit Rating Services Act, 2012 ([Act No. 24 of 2012](#));

including any subordinate legislation, enactment or regulatory instrument made under these Acts;

*[definition of "law" inserted by section 41(c) of [Act 22 of 2008](#), amended by section 156 of [Act 45 of 2013](#) and substituted by section 290 of [Act 9 of 2017](#)]*

"**nominee company**" means a company, controlled by a financial institution, which—

(a) is incorporated under the provisions of the Companies Act;

*[paragraph (a) substituted by section 156(e) of [Act 45 of 2013](#)]*

(b) has as a special condition contemplated in section 15(2) of the Companies Act the requirement to act as nominee for, or representative of, any person in the holding of any property in trust for such person or persons;

*[paragraph (b) substituted by section 156(e) of [Act 45 of 2013](#)]*

(c) is precluded as a special condition in its Memorandum of Incorporation from incurring any liabilities other than to the persons on whose behalf it holds assets, to the extent of their respective rights to, and interest in, such assets; and

*[paragraph (c) substituted by section 156(e) of [Act 45 of 2013](#)]*

(d) has entered into an irrevocable written agreement with a financial institution which controls the company, and in terms of which such financial institution has undertaken to pay all the expenses of, and incidental to, its formation, operations and liquidation;

"**official web site**" means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 ([Act No. 25 of 2002](#)), set up by the board;

*[definition of "official web site" inserted by section 156(f) of [Act 45 of 2013](#)]*

"**person**" includes any institution, partnership or trust;

*[definition of "person" inserted by section 41(d) of [Act 22 of 2008](#)]*

"**registrar**" means—

(a) the Authority; or

(b) the registrar of medical schemes referred to in section 1 of the Medical Schemes Act, 1998;

*[definition of "registrar" amended by section 41(e) of [Act 22 of 2008](#) and substituted by section 290 of [Act 9 of 2017](#)]*

"**respondent**" *[definition of "respondent" inserted by section 41(f) of [Act 22 of 2008](#) and deleted by section 290 of [Act 9 of 2017](#)]*

"**trust property**" means any corporeal or incorporeal, movable or immovable asset invested, held, kept in safe custody, controlled, administered or alienated by any person, partnership, company or trust for, or on behalf of, another person, partnership, company or trust, and such other person, partnership, company or trust is hereinafter referred to as the principal;

"**unregistered person**" means any person, partnership, company or trust not registered, approved or otherwise authorised by the registrar under a relevant law to carry on the business of a financial institution, but who or which carries on such business or a business corresponding to a business normally carried on by a financial institution.

*[subsection (1), previously unnumbered, numbered by section 290 of [Act 9 of 2017](#)]*

(2) 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.

*[subsection (2) added by section 290 of [Act 9 of 2017](#)]*

## Chapter 1

### Funds and trust property held by financial institutions

#### 2. Duties of persons dealing with funds of, and with trust property controlled by, financial institutions

A financial institution or nominee company, or director, member, partner, official, employee or agent of the financial institution or nominee company, who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property—

- (a) must, with regard to such funds, observe the utmost good faith and exercise proper care and diligence;
- (b) must, with regard to the trust property and the terms of the instrument or agreement by which the trust or agency in question has been created, observe the utmost good faith and exercise the care and diligence required of a trustee in the exercise or discharge of his or her powers and duties; and
- (c) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for any person to the prejudice of the financial institution or principal concerned.

*[paragraph (c) substituted by section 157(b) of [Act 45 of 2013](#)]*

*[section 2 amended by section 157(a) of [Act 45 of 2013](#)]*

#### 3. Declaration of interest

- (1) A director, member, partner, official, employee or agent of a financial institution or of a nominee company who takes part in a decision to invest any of the funds of the financial institution or any trust property in a company or other undertaking in which he or she has a direct or indirect financial interest, must declare that interest in writing to the board of management or other governing body of the financial institution or nominee company, indicating the nature and extent of such interest, before such decision is made.
- (2) For the purposes of subsection (1), 'invest' includes—
  - (a) the purchase of shares in a company, or of an interest in a close corporation or partnership;
  - (b) the granting of a secured or unsecured loan,
  - (c) acquiring a financial interest in an agreement or other matter in which the financial institution or nominee company has a material interest.

*[paragraph (c) added by section 158 of [Act 45 of 2013](#)]*

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

#### 4. Investment of trust property

- (1) A financial institution or nominee company, or director, member, partner, official, employee or agent of a financial institution or nominee company which administers trust property under any instrument or agreement may not cause such trust property to be invested otherwise than in a manner directed in, or required by, such instrument or agreement.

*[subsection (1) substituted by section 159(a) of [Act 45 of 2013](#)]*

- (2) In the absence of a direction or requirement referred to in subsection (1), a financial institution or nominee company, or director, member, partner, official, employee or agent of the financial

institution or nominee company, may not cause any trust property to be invested otherwise than in the name of—

- (a) the principal concerned;
- (b) the financial institution in its capacity as administrator, trustee, curator or agent; or
- (c) a nominee company.

*[subsection (2) amended by section 159(b) of [Act 45 of 2013](#)]*

- (3) (a) Despite subsections (1) and (2)—
    - (i) where the Memorandum of Incorporation of a company has as a special condition under section [15\(2\)](#) of the Companies Act which prohibits the registration of its shares or debentures in the name of—
      - (aa) a trust;
      - (bb) a financial institution in its capacity as administrator, trustee or curator; or
      - (cc) any nominee; and

*[subparagraph (i) amended by section 159(c) of [Act 45 of 2013](#)]*

    - (ii) where such shares or debentures form part of trust property administered by a financial institution,  
those shares or debentures must be registered in the name of a director, member, partner or manager of that financial institution.
  - (b) The director, member, partner or manager must hold those shares or debentures in a fiduciary capacity on behalf of the principal concerned.
  - (c) Prior to the registration of any shares or debentures in the name of a director, member, partner or manager as contemplated in paragraph (a), the financial institution concerned must furnish security to the satisfaction of the Master of the High Court, if such security has not already been furnished in terms of the Trust Property Control Act, 1988 ([Act No. 57 of 1988](#)).
- (4) A financial institution must keep trust property separate from assets belonging to that institution, and must in its books of account clearly indicate the trust property as being property belonging to a specified principal.
- (5) Despite anything to the contrary in any law or the common law, trust property invested, held, kept in safe custody, controlled or administered by a financial institution or a nominee company under no circumstances forms part of the assets or funds of the financial institution or such nominee company.
- (6) This section also applies in a case where a financial institution invests, holds, keeps in safe custody, controls, administers or alienates trust property under any instrument or agreement jointly with another person.

## Chapter 1A On-site visits

*[Chapter 1A inserted by section 160 of [Act 45 of 2013](#)]*

### 4A. \*\*\*

*[section 4A inserted by section 160 of [Act 45 of 2013](#) and repealed by section 290 of [Act 9 of 2017](#)]*

## Chapter 2 Enforcement

### 5. Appointment of curator

- (1) The registrar may, on an *ex parte* basis, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.
- [subsection (1) substituted by section 161(a) of [Act 45 of 2013](#)]*
- (2) Upon an application in terms of subsection (1) the court may—
- (a) on good cause shown, provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution on such conditions and for such a period as the court deems fit; and
- [paragraph (a) substituted by section 161(b) of [Act 45 of 2013](#)]*
- (b) simultaneously grant a rule *nisi* calling upon the institution and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.
- (3) On application by the registrar or the institution the court may anticipate the return day if not less than 48 hours' notice of such application has been given to the other party.
- [subsection (3) substituted by section 161(c) of [Act 45 of 2013](#)]*
- (4) If at the hearing pursuant to the rule *nisi* the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.
- (5) The court may, for the purposes of a provisional appointment in terms of subsection (2)(a) or a final appointment in terms of subsection (4), make an order with regard to—
- (a) the suspension of legal or foreclosure proceedings against the institution for the duration of the curatorship;
- (aA) the authority of the curator to investigate the affairs of the institution or any associated entity;
- (b) the powers and duties of the curator;
- (c) the remuneration of the curator;
- (d) the costs relating to any application made by the registrar;
- (e) the costs incurred by the registrar in respect of an inspection of the affairs of the institution 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;
- [paragraph (e) substituted by section 290 of [Act 9 of 2017](#)]*
- (eA) the method of service or publication of the order; or
- (f) any other matter which the court deems necessary.
- [subsection (5) substituted by section 161(d) of [Act 45 of 2013](#)]*
- (6) The curator acts under the control of the registrar who made the application under subsection (1) and in accordance with guidelines prescribed by the registrar by notice in the *Gazette*, and the



curator may apply to that registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution.

*[subsection (6) substituted by section 161(e) of Act 45 of 2013]*

- (7) The curator of an institution must furnish the registrar with such reports or information concerning the affairs of that institution as the registrar may require.

*[subsection (7) substituted by section 161(e) of Act 45 of 2013 and by section 290 of Act 9 of 2017]*

- (8) (a) Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.
- (b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of such application to the registrar or the curator, as the case may be, and the registrar or curator is entitled to be heard at such application.

*[paragraph (b) substituted by section 161(f) of Act 45 of 2013]*

- (9) The court may, on good cause shown, cancel the appointment of the curator at any time.
- (10) Despite subsections (1) to (9), the registrar may on good cause, by agreement with an institution and without the intervention of the court, appoint a curator for the purpose set out in subsection (1).

*[subsection (10) added by section 161(g) of Act 45 of 2013]*

- (11) The terms of the appointment contemplated in subsection (10) must be set out in a letter of appointment issued by the registrar to the curator and—
- (a) must include—
- (i) the powers and duties of the curator; and
  - (ii) the remuneration of the curator; and
- (b) may include any other matter agreed upon between the registrar and the institution.

*[subsection (11) added by section 161(g) of Act 45 of 2013]*

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

*[subsection (12) added by section 161(g) of Act 45 of 2013]*

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

*[subsection (13) added by section 161(g) of Act 45 of 2013]*

- (14) An appointment in terms of subsection (10) lapses—

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

*[subsection (14) added by section 161(g) of Act 45 of 2013]*

## 5A. Statutory management

- (1) Despite any other law, the registrar may, by agreement with a financial institution and without the intervention of a court, appoint a statutory manager for that financial institution, if it appears that—
  - (a) the financial institution—
    - (i) has in a material respect failed to comply with a law;
    - (ii) is likely to be in an unsound financial position; or
    - (iii) is maladministered; and
  - (b) it is advisable to appoint a statutory manager in order to protect—
    - (i) the interests of the clients of the financial institution;
    - (ii) the safety and soundness of financial institutions in general; or
    - (iii) the stability, fairness, efficiency and orderliness of the financial system.
- (2) An appointment under subsection (1) takes effect immediately, but the registrar must, as soon as practicable, after the appointment and in any event within 30 days after the appointment, apply to the High Court for an order confirming the appointment.
- (3) On hearing the application in terms of subsection (2), the court must confirm the appointment, unless satisfied that the grounds for making the appointment no longer exist.
- (4) The statutory manager of a financial institution—
  - (a) must be allowed full access to the accounting records, financial statements and other information relating to the affairs of the financial institution;
  - (b) must participate in the management of the affairs of the financial institution with its executive directors or managers: Provided that where there is disagreement between the statutory manager and the executive directors of the financial institution, the statutory manager shall take the final decision; and
  - (c) is entitled to receive such remuneration from the institution as the Court may order.
- (5) (a) The statutory manager of a financial institution and the financial institution must manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, report to the registrar and indicate what steps should be taken to ensure that the financial institution—
  - (i) complies with the law;
  - (ii) becomes financially sound; and
  - (iii) is properly administered.
- (b) If the statutory manager considers that it is not practicable to take steps in terms of paragraph (a), he or she must report to the registrar and must indicate—
  - (i) whether steps should be taken to transfer the financial services business or a part thereof of the financial institution to an appropriate person and, if so, on what terms; or
  - (ii) whether the financial institution should be wound up or placed under curatorship.
- (6) The statutory manager of a financial institution and the financial institution must comply with directives issued by the registrar from time to time in relation to the statutory manager's functions

and report to the registrar should the statutory manager be hindered in giving effect to any such directives.

- (7) The statutory manager of a financial institution and the financial institution may, after giving notice to the registrar, at any time apply to the court for directions.
- (8) The registrar may at any time apply to the court to—
  - (a) terminate the statutory management; or
  - (b) remove a statutory manager from office and, subject to subsection (2), to confirm the appointment of a replacement.
- (9) The statutory manager of a financial institution is not liable for loss suffered by the financial institution unless it is established that the loss was caused by the statutory manager's fraud, dishonesty or wilful failure to comply with the law.
- (10) The provisions of this section must not be construed as limiting any of the powers of the registrar under section 5.

*[section 5A inserted by section 162 of [Act 45 of 2013](#)]*

## 6. Powers of Registrar

- (1) The registrar may institute proceedings in the High Court having jurisdiction in order to—
  - (a) discharge any duty or responsibility imposed on the registrar in terms of any law;
  - (b) compel any institution to comply with any law or to cease contravening a law;
  - (c) compel any institution to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law;  
*[paragraph (c) substituted by section 163(a) of [Act 45 of 2013](#)]*
  - (d) obtain a declaratory order relating to any law or the business of an institution;  
*[paragraph (d) substituted by section 163(a) of [Act 45 of 2013](#)]*
  - (e) prevent the concealment, removal, dissipation or destruction of assets or evidence thereof by any institution;  
*[paragraph (e) added by section 163(b) of [Act 45 of 2013](#)]*
  - (f) seize and remove the assets of an institution for safe custody pending the exercising of such other legal remedy as may be available to the registrar.  
*[paragraph (f) added by section 163(b) of [Act 45 of 2013](#)]*
- (2) For the purpose of ensuring compliance with a law, or if the registrar has reason to believe that an institution is contravening or failing to comply with, or has contravened or failed to comply with, any provision of a law, the registrar may—
  - (a) by notice direct that institution to—
    - (i) furnish the registrar within a specified period with any specified information or documents in the possession or under the control of that institution and which relate to the matter of such contravention or failure;
    - (ii) appear before the registrar at a specified time and place for questioning by the registrar in connection with such matter;
    - (iii) make arrangements to the satisfaction of the registrar for the discharge of all or any part of that institution's obligations in terms of such law; or

- (b) if it appears that prejudice has occurred or might occur as a result of such contravention or failure to comply, by notice prohibit such institution from continuing business or dealing with trust property pending an application to court by the registrar as contemplated in section 5, or pending the exercising of such other legal remedy as may be available to the registrar.

*[subsection (2) substituted by section 163(c) of Act 45 of 2013]*

- (3) (a) If the registrar has reason to believe that a person has contravened a law, or has failed to comply with a request, directive or instruction made, issued or given by the registrar under such law, the registrar may publish a statement to that effect in such manner as the registrar considers appropriate.
- (b) Before publishing a statement, the registrar must give the person concerned a notice warning it of the proposed publication of such statement, the reason therefor and the proposed date of publication.
- (c) The person concerned may before the proposed date of publication of the statement make representations to the registrar concerning the proposed action.
- (d) If the registrar thereafter decides to publish the statement, the registrar must, without delay, give the person concerned a notice which sets out the terms of the statement to be published.
- (4) *[subsection (4) deleted by section 42 of Act 22 of 2008, inserted by section 163(d) of Act 45 of 2013 and repealed by section 290 of Act 9 of 2017]*
- (5) *[subsection (5) repealed by section 290 of Act 9 of 2017]*
- (6) (a) The notification of anything done by the registrar may be by notice on the official web site.
- (b) Notification under paragraph (a) does not affect any obligation of the registrar to publish by notice in the Gazette.

*[subsection (6) added by section 163(e) of Act 45 of 2013]*

*[section 6 amended by Act 22 of 2008 and by Act 45 of 2013]*

**6A. \*\*\***

*[section 6A inserted by section 43 of Act 22 of 2008, amended by section 111 of Act 19 of 2012 and by section 164 of Act 45 of 2013, and repealed by section 290 of Act 9 of 2017]*

**6B. \*\*\***

*[section 6B inserted by section 43 of Act 22 of 2008, amended by section 165 of Act 45 of 2013, and repealed by section 290 of Act 9 of 2017]*

**6C. \*\*\***

*[section 6C inserted by section 43 of Act 22 of 2008, amended by section 166 of Act 45 of 2013, and repealed by section 290 of Act 9 of 2017]*

**6D. \*\*\***

*[section 6D inserted by section 43 of Act 22 of 2008, amended by section 111 of Act 19 of 2012 and by section 167 of Act 45 of 2013, and repealed by section 290 of Act 9 of 2017]*

**6E. \*\*\***

*[section 6E inserted by section 43 of [Act 22 of 2008](#), amended by section 168 of [Act 45 of 2013](#), and repealed by section 290 of [Act 9 of 2017](#)]*

**6F. \*\*\***

*[section 6F inserted by section 43 of [Act 22 of 2008](#), amended by section 169 of [Act 45 of 2013](#), and repealed by section 290 of [Act 9 of 2017](#)]*

**6G. \*\*\***

*[section 6G inserted by section 43 of [Act 22 of 2008](#), and repealed by section 290 of [Act 9 of 2017](#)]*

**6H. \*\*\***

*[section 6H inserted by section 43 of [Act 22 of 2008](#), substituted by section 111 of [Act 19 of 2012](#), amended by section 170 of [Act 45 of 2013](#), and repealed by section 290 of [Act 9 of 2017](#)]*

**6I. \*\*\***

*[section 6I inserted by section 43 of [Act 22 of 2008](#) and repealed by section 290 of [Act 9 of 2017](#)]*

**7. \*\*\***

*[section 7 amended by section 44 of [Act 22 of 2008](#) and by section 171 of [Act 45 of 2013](#), and repealed by section 290 of [Act 9 of 2017](#)]*

**8. \*\*\***

*[section 8 deleted by section 111 of [Act 19 of 2012](#) and repealed by section 172 of [Act 45 of 2013](#)]*

**9. \*\*\***

*[section 9 repealed by section 290 of [Act 9 of 2017](#)]*

**9A. \*\*\***

*[section 9A inserted by section 173 of [Act 45 of 2013](#) and repealed by section 290 of [Act 9 of 2017](#)]*

**10. Offences**

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

*[subsection (1) substituted by section 174 of [Act 45 of 2013](#)]*

- (2) A court may, in addition to any penalty it may impose in terms of subsection (1), order that such person—
- (a) pay the institution or principal concerned any profit he or she made; and
  - (b) compensate the institution or principal concerned for any damage suffered, as a result of the contravention or failure.

- (3) A court may, in addition to any penalty imposed in terms of subsection (1) and an order made in terms of subsection (2), order that such person may not serve as a director, member, partner or manager of any financial institution for such period as the court may deem fit.

## 11. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule, subject to the provisions of section 13.

## 12. Status of footnote

- (1) The footnote in section 1 has been inserted for ease of reference to the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 ([Act No. 97 of 1990](#)).
- (2) The footnote is not part of this Act and does not have the force of law.

## 13. Transitional provision

Anything done or deemed to have been done under any provision of a law repealed by section 11 and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

## 14. Short title

This Act is called the Financial Institutions (Protection of Funds) Act, 2001.

**Schedule**  
**Laws repealed**

Number and year of law	Short title	Extent of repeal
<a href="#">Act No. 39 of 1984</a>	Financial Institutions (Investment of Funds) Act, 1984	The whole
<a href="#">Act No. 6 of 1987</a>	Financial Institutions Amendment Act, 1987	Sections 14, 15, 16 and 17
<a href="#">Act No. 51 of 1988</a>	Financial Institutions Amendment Act, 1988	Section 23
<a href="#">Act No. 55 of 1989</a>	Financial Markets Control Act, 1989	First item of Schedule
<a href="#">Act No. 83 of 1992</a>	Financial Institutions Amendment Act, 1992	Section 33
<a href="#">Act No. 104 of 1993</a>	Financial Institutions Second Amendment Act, 1993	Section 55
<a href="#">Act No. 22 of 1997</a>	Financial Institutions Amendment Act, 1997	Sections 1, 2 and 3