South Africa

Financial Sector Regulation Act, 2017

Act 9 of 2017

Legislation as at 22 August 2017

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Financial Sector Regulation Act, 2017
Contents

Chapter 1 – Interpretation, object and administration of Act ... 3
Part 1 – Interpretation ... 3
1. Definitions ... 3
2. Financial products ... 15
3. Financial services ... 16
4. Financial stability ... 17
5. Responsible authorities ... 17
6. Financial institutions that are juristic persons ... 18
Part 2 – Object and administration of Act ... 18
7. Object of Act ... 18
8. Administration of Act ... 18
Part 3 – Application of other legislation ... 18
9. Inconsistencies between Act and other financial sector laws ... 18
10. Application of other legislation ... 19
Chapter 2 – Financial stability ... 19
Part 1 – Powers and functions of Reserve Bank ... 19
11. Responsibility for financial stability ... 19
12. Monitoring of risks by Reserve Bank ... 19
13. Financial stability review ... 20
Part 2 – Managing systemic events and risks in relation to systemic events ... 20
14. Determination of systemic events ... 20
15. Functions of Reserve Bank in relation to systemic events ... 21
16. Information to Minister ... 21
17. Responsibilities of financial sector regulators ... 22
18. Directives to financial sector regulators ... 22
19. Exercise of powers by other organs of state ... 22
Part 3 – Financial Stability Oversight Committee ... 22
20. Establishment of Financial Stability Oversight Committee ... 22
21. Functions of Financial Stability Oversight Committee ... 23
22. Membership ... 23
23. Administrative support by Reserve Bank ... 23
24. Meetings and procedure ... 24
Part 4 – Financial Sector Contingency Forum ... 24
25. Financial Sector Contingency Forum ... 24

Part 5 – Roles of financial sector regulators and other organs of state in maintaining financial stability 25
26. Co-operation among Reserve Bank and financial sector regulators in relation to financial stability 25
27. Memoranda of understanding relating to financial stability 25
28. Roles of other organs of state in relation to financial stability 25
Part 6 – Systemically important financial institutions 26
29. Designation of systemically important financial institutions 26
30. Prudential standards and regulator's directives in respect of systemically important financial institutions 27
31. Winding-up and similar steps in respect of systemically important financial institutions 27
Chapter 3 – Prudential Authority 28
Part 1 – Establishment, objective and functions 28
32. Establishment 28
33. Objective 28
34. Functions 28
Part 2 – Governance 29
35. Overall governance objective 29
36. Appointment of Chief Executive Officer 29
37. Role of Chief Executive Officer 29
38. Term of office of Chief Executive Officer 30
39. Removal of Chief Executive Officer 30
40. Acting Chief Executive Officer 30
41. Establishment of Prudential Committee 30
42. Role of Prudential Committee 31
43. Meetings of Prudential Committee 31
44. Decisions of Prudential Committee 32
45. Governance and other subcommittees 32
46. Duties of members of Prudential Committee and members of subcommittees 33
47. Regulatory strategy 33
48. Delegations 34
49. Disclosure of interests 35
Part 3 – Staff, resources and financial management 36
50. Staff and resources 36
51. Resources provided by Reserve Bank 36
52. Duties of staff members 36
53. Financial management duties of Chief Executive Officer 37

54. Information by Chief Executive Officer 37
55. Annual reports and financial accounts 38
Chapter 4 – Financial Sector Conduct Authority 38
Part 1 – Establishment, objective and functions 38
56. Establishment 38
57. Objective 38
58. Functions 38
Part 2 – Governance 40
59. Overall governance objective 40
60. Establishment and role of Executive Committee 40
61. Commissioner and Deputy Commissioners 40
62. Roles of Commissioner and Deputy Commissioners 41
63. Terms of office 41
64. Service conditions 41
65. Removal from office 42
66. Meetings of Executive Committee 42
67. Decisions of Executive Committee 43
68. Governance and other subcommittees 43
69. Duties of Commissioner, Deputy Commissioners and other subcommittee members 44
70. Regulatory strategy 44
71. Delegations 46
72. Disclosure of interests 47
Part 3 – Staff and resources 48
73. Staff and resources 48
74. Duties of staff members 48
75. Information by Commissioner 48
Chapter 5 – Co-operation and collaboration 49
Part 1 – Co-operation and collaboration 49
76. Co-operation and collaboration between financial sector regulators and Reserve Bank 49
77. Memoranda of understanding 49
78. Other organs of state 50
Part 2 – Financial System Council of Regulators 50
79. Financial System Council of Regulators 50
80. Meetings 51
81. Working groups and subcommittees 51

82. Support for Financial System Council of Regulators ... 51
Part 3 – Financial Sector Inter-Ministerial Council ... 52
83. Financial Sector Inter-Ministerial Council ... 52
84. Meetings ... 52
85. Protection for financial customers in terms of financial sector laws, National Credit Act and Consumer Protection Act ... 52
86. Independent evaluation of effectiveness of co-operation and collaboration ... 52
Chapter 6 – Administrative actions ... 53
Part 1 – Administrative action committees ... 53
87. Establishment and membership ... 53
88. Terms of membership ... 53
89. Meetings ... 54
90. Application of Part to Ombud Council ... 54
Part 2 – Administrative justice ... 54
91. Applicability of Promotion of Administrative Justice Act to administrative action by financial sector regulators ... 54
92. Procedures for specific administrative action in terms of Act ... 54
93. Processes for determining or amending administrative action procedures ... 55
94. Review of administrative action procedures ... 55
95. Revocation of decisions ... 55
96. Interpretation ... 56
Chapter 7 – Regulatory instruments ... 56
Part 1 – Regulatory instruments ... 56
97. Interpretation ... 56
98. Process for making regulatory instruments ... 56
99. Substantially different regulatory instrument ... 57
100. Urgent regulatory instruments ... 57
101. Part does not limit other consultation ... 57
102. Making, publication and commencement of regulatory instruments ... 57
103. Submission of regulatory instruments to Parliament ... 58
104. Reports on consultation processes ... 58
Part 2 – Standards ... 58
105. Prudential standards ... 58
106. Conduct standards ... 59
107. Joint standards ... 60
108. Additional matters for making standards ... 60

109. Standards requiring concurrence of Reserve Bank ... 61
110. General ... 61
Chapter 8 – Licensing ... 62
Part 1 – Licensing requirements ... 62
111. Licence requirement in respect of providers of financial products and financial services, and market infrastructures ... 62
Part 2 – Licences required in terms of section 111(1)(b) or (2) or section 162 ... 62
112. Interpretation ... 62
113. Power to grant licences ... 63
114. Request for further information or documents by responsible authority ... 63
115. Relevant matters for application for licence ... 63
116. Determination of applications ... 63
117. Reporting obligations of licensee ... 64
118. Licences not transferable ... 64
119. Variation of licences ... 64
120. Suspension of licences ... 64
121. Revocation of licences ... 65
122. Continuation of licensed activity despite suspension or revocation of licence ... 66
123. Procedure for varying, suspending and revoking licences ... 66
124. Applications for licences ... 66
Part 3 – Provisions relating to all licences under financial sector laws ... 67
125. Application ... 67
126. Concurrence of financial sector regulators on licensing matters ... 67
127. Compulsory disclosure of licences ... 67
128. Publication ... 67
Chapter 9 – Information gathering, supervisory on-site inspections and investigations ... 68
Part 1 – Application and interpretation ... 68
129. Application and interpretation of Chapter ... 68
130. Legal professional privilege ... 68
Part 2 – Information gathering ... 68
131. Information gathering ... 68
Part 3 – Supervisory on-site inspections ... 69
132. Powers to conduct supervisory on-site inspections ... 69
133. Interference with supervisory on-site inspections ... 70
Part 4 – Investigations ... 71

134. Investigators ... 71
135. Powers to conduct investigations ... 71
136. Powers of investigators to question and require production of documents or other items ... 71
137. Powers of investigators to enter and search premises ... 72
138. Warrants ... 74
139. Interference with investigations ... 75
Part 5 – Protections ... 75
140. Protections ... 75
Chapter 10 – Enforcement ... 76
Part 1 – Guidance notices and interpretation rulings ... 76
141. Guidance notices ... 76
142. Interpretation rulings ... 76
Part 2 – Directives by financial sector regulators ... 77
143. Directives by Prudential Authority ... 77
144. Directives by Financial Sector Conduct Authority ... 78
145. Removal of person from position ... 80
146. Consultation requirements ... 80
147. Period for compliance ... 81
148. Revoking directives ... 81
149. Compliance with directives ... 81
150. Application and interpretation ... 81
Part 3 – Enforceable undertakings ... 81
151. Enforceable undertakings ... 81
Part 4 – Court orders ... 82
152. Compliance with financial sector laws ... 82
Part 5 – Debarment ... 83
153. Debarment ... 83
154. Consultation requirements ... 84
155. Where person cannot be located ... 84
Part 6 – Leniency agreements ... 84
156. Leniency agreements ... 84
Chapter 11 – Significant owners ... 85
Part 1 – Significant owners ... 85
157. Significant owners ... 85
158. Approvals and notifications relating to significant owners ... 86

159. Standards in respect of, and regulator's directives to, significant owners 87
Chapter 12 – Financial conglomerates 88
160. Designation of financial conglomerates 88
161. Notification by eligible financial institution 89
162. Licensing requirements for holding companies of financial conglomerates 89
163. Non-operating holding companies of financial conglomerates 90
164. Standards for financial conglomerates 90
165. Directives to holding companies 91
166. Approval and prior notification of acquisitions and disposals 91
Chapter 13 – Administrative penalties 92
167. Administrative penalties 92
168. Payment 93
169. Interest 93
170. Enforcement 93
171. Application of amounts paid as administrative penalties 94
172. Administrative penalty taken into account in sentencing 94
173. Remission of administrative penalties 94
174. Prohibition of indemnity for administrative penalties 94
Chapter 14 – Ombuds 94
Part 1 – Ombud Council 94
175. Ombud Council 94
176. Objective 94
177. Functions of Ombud Council 95
178. Overall governance objective 95
179. Board of Ombud Council 95
180. Appointment of Board members 95
181. Terms of office of Board members 96
182. Service conditions of Board members 96
183. Removal of Board members 96
184. Role of Board 97
185. Meetings of Board 97
186. Decisions of Board 97
187. Governance and other committees of Ombud Council 98
188. Chief Ombud 98
189. Duties of Board members 99

190. Delegations 99
191. Staff and resources 100
192. Duties of staff members 100
193. Disclosure of interests 100
Part 2 – Recognition of industry Ombud schemes 101
194. Recognition of industry Ombud schemes 101
195. Requirement for further information or documents by Ombud Council 102
196. Determination of applications 102
197. Varying conditions 103
198. Suspension of recognition 103
199. Revocation of recognition 103
200. Procedure for varying, suspending and revoking recognition 104
Part 3 – Powers of Ombud Council 104
201. Ombud Council rules 104
202. Directives of Ombud Council 105
203. Enforceable undertakings 106
204. Compliance with financial sector laws 107
205. Debarment 107
206. Administrative penalties 108
207. Requests for information 108
208. Supervisory on-site inspections and investigations 108
Part 4 – General provisions 109
209. Access to ombud schemes 109
210. Restrictions on financial institutions in relation to ombud schemes 109
211. Applicable ombud schemes 109
212. Overlaps between ombud schemes 110
213. Collaboration between ombuds and ombud schemes 110
214. Governing rules of recognised industry ombud scheme 110
215. Obligation to comply with governing rules of recognised industry ombud schemes 111
216. Suspension of time barring terms 111
217. Reporting 111
Chapter 15 – Financial Services Tribunal 112
Part 1 – Interpretation 112
218. Definitions 112
Part 2 – Financial Services Tribunal 113

219. Establishment and function of Financial Services Tribunal 113
220. Members of Tribunal 113
221. Term of office and termination of membership 114
222. Staff and resources 114
223. Duties of staff members 115
224. Panels of Tribunal 115
225. Panel list 115
226. Disclosure of interests 116
227. Tribunal rules 116
Part 3 – Right to reasons for decisions 117
228. Right to be informed 117
229. Right to reasons for decisions 117
Part 4 – Reconsideration of decisions 117
230. Applications for reconsideration of decisions 117
231. Decision of Tribunal not suspended 117
232. Proceedings for reconsideration of decisions 117
233. Decisions of panels 118
234. Tribunal orders 118
235. Judicial review of Tribunal orders 118
236. Enforcement of Tribunal orders 119
Chapter 16 – Fees, levies and finances 119
Part 1 – Fees and levies 119
237. Fees and levies 119
238. Fees and levies to be debts 119
239. Budget, fees and levies proposals 119
240. Consultation requirements 120
241. Determinations of information required for assessment of levy 120
242. Assessments of levy 121
243. Payment of fee or levy by instalments 121
244. Interest on late or non-payment of fees and levies 121
245. Exemption from fee 122
246. Management of fees and levies 122
Part 2 – Finances 122
247. Finances of financial sector bodies 122
Part 3 – Budgeting, accounting, auditing and financial reporting 123

248. Budgeting, accounting, auditing and financial reporting 123
Part 4 – Application of Chapter to Tribunal 124
249. Application of Chapter to Tribunal 124
Chapter 17 – Miscellaneous 124
Part 1 – Information sharing and reporting 124
250. Designated authority 124
251. Information sharing 125
252. Reporting by auditors to financial sector regulators 127
253. Reporting to financial sector regulators 128
254. Prohibition of victimisation 128
255. Protected disclosures 128
Part 2 – Financial Sector Information Register 128
256. Establishment and operation of Financial Sector Information Register 128
257. Purpose of Register 128
258. Content of Register 129
259. Keeping of Register 129
260. Requirements for registered documents 129
261. Status of Register and judicial notice 129
262. Extracts from Register regarding licence status 129
263. Rectification of Register 130
264. Delegations by Director-General 130
Part 3 – Offences and penalties 130
265. Duties of members and staff of certain bodies 130
266. Licensing 130
267. Requests for information, supervisory on-site inspections and investigations 130
268. Enforcement 131
269. Administrative penalties 131
270. Ombud schemes 131
271. Proceedings in Tribunal 132
272. Miscellaneous 132
273. False or misleading information 133
274. Accounts and records 133
275. False assertion of connection with financial sector regulator 133
276. Liability in relation to juristic persons 133
Part 4 – General matters 134

277. Complaints 134
278. Compensation for contraventions of financial sector laws 134
279. Extension of period for compliance 134
280. Conditions of licences 134
281. Exemptions 134
282. Requirements for notification and concurrence 135
283. Arrangements for engagements with stakeholders 135
284. Records and entries in books of account admissible in evidence 135
285. Immunities 135
286. Notices to licensees 135
287. Publication requirements in financial sector laws 136
Part 5 – Regulations and guidelines 136
288. Regulations and guidelines 136
Part 6 – Amendments, repeals, transitional and saving provisions 138
289. Interpretation 138
290. Amendments and repeals 138
291. Transitional provision in relation to medical schemes 138
292. Transitional prudential powers of Financial Sector Conduct Authority 138
293. Transfer of assets and liabilities of Financial Services Board 139
294. Transfer of staff of Financial Services Board 139
295. Annual reports 140
296. Inspections and investigations 140
297. Co-operation agreements with foreign agencies 140
298. Enforcement Committee and Appeal Board 141
299. Right of appeal of Financial Services Board decisions 141
300. Pending proceedings 141
301. Savings of approvals, consents, registrations and other acts 141
302. Levy 142
303. Chief Actuary 142
304. Additional transitional arrangements 142
Part 7 – Short title and commencement 143
305. Short title and commencement 143
Schedule 3 146
Schedule 2 144
Schedule 4 147

South Africa

Financial Sector Regulation Act, 2017

Act 9 of 2017

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Assented to on 21 August 2017

There are multiple commencements

Provisions	Status
Unknown provisions	commenced on 9 February 2018 by Government Notice R99 of 2018. *Note: See Schedule 4 for details of provisions that commenced on this date*
Unknown provisions	commenced on 28 March 2018.
Chapter 1, Part 1, section 2–6; Part 2 (section 7–8); Part 3 (section 9–10); Chapter 2 (section 11–31); Chapter 3 (section 32–55); Chapter 4 (section 56–75); Chapter 5, Part 1 (section 76–78); Part 2 (section 79–82); Chapter 6, Part 1, section 87–89; Part 2 (section 91–96); Chapter 8, Part 1, section 111(1)(a), 111(2), 111(3), 111(4), 111(5), 111(6), 111(7); Part 2 (section 112–124); Part 3 (section 125–128); Chapter 9 (section 129–140); Chapter 10 (section 141–156); Chapter 13 (section 167–174); Chapter 15 (section 218–236); Chapter 17, Part 1 (section 250–255); Part 3, section 265, section 266–268, section 271–276; Part 4, section 277–286; Part 6, section 289, section 291–300, section 301(1), 301(3), 301(5), section 303	commenced on 1 April 2018.
Unknown provisions	commenced on 7 May 2018. *Note: See Schedule 4 for details of provisions that commenced on this date*
Unknown provisions	commenced on 1 August 2018. *Note: See Schedule 4 for details of provisions that commenced on this date*
Chapter 17, Part 6, section 290	commenced on 28 September 2018. *Note: See Schedule 4 for details regarding the dates of commencement of section 290*
Chapter 6, Part 1, section 90; Chapter 17, Part 3, section 270; Part 6, section 301(2), 301(6), 301(7)	commenced on 1 October 2018.
Chapter 11 (section 157–159)	commenced on 1 January 2019.
Chapter 12 (section 160–166)	commenced on 1 March 2019.
Unknown provisions	commenced on 18 March 2019. *Note: See Schedule 4 for details of provisions that commenced on this date*
Unknown provisions	commenced on 1 April 2019. *Note: See Schedule 4 for details of provisions that commenced on this date*

Chapter 14 (section 175–217)	commenced on 1 November 2020.
Unknown provisions	commenced on 31 May 2021. *Note: See Schedule 4 for details of provisions that commenced on this date*
Chapter 16 (section 237–249); Chapter 17, Part 6, section 302	commenced on 1 April 2022.
Chapter 1, Part 1, section 1; Chapter 5, Part 3 (section 83–86); Chapter 7 (section 97–110); Chapter 8, Part 1, section 111(1)(b); Chapter 17, Part 2 (section 256–264); Part 3, section 269; Part 4, section 287; Part 5 (section 288); Part 6, section 301(4), section 304; Part 7 (section 305)	**not yet commenced**.

[This is the version of this document as it was from 22 August 2017 to 30 June 2018.]

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, the Financial Intelligence Centre 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 provide for the protection and promotion of rights in the financial sector as set out in the Constitution; to establish the Ombud Council and confer powers on it in relation to ombud schemes; to provide for coverage of financial product and financial service providers by appropriate ombud schemes; to establish the Financial Services Tribunal as an independent tribunal and to confer on it powers to reconsider decisions by financial sector regulators, the Ombud 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.

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

Chapter 1
Interpretation, object and administration of Act

Part 1 – Interpretation

1. Definitions

(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;

"**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 167;

"**Banks Act**" means the Banks Act, 1990 (Act No. 94 of 1990);

"**benchmark**" means any index—

(a) by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined; or

(b) that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;

"**business document**" means a document held by a person in connection with carrying on a business;

"**business premises**" means premises, including a building or a part of a building, 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 220(4), and includes a person acting as the Chairperson;

"**Chief Executive Officer**" means the Chief Executive Officer of the Prudential Authority appointed in terms of section 36(1), and includes a person acting as the Chief Executive Officer;

"**Chief Ombud**" means a person appointed as the Chief Ombud of the Ombud Council in terms of section 188;

"**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;

"**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);

"**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);

"**contractor**" means a person with whom a financial institution has entered into an outsourcing arrangement but does not include an independent contractor as described in the definition of "staff member";

"**control function**" means each of the following:

(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;

"**Court**" means a Superior Court as defined in section 1 of the Superior Courts Act, 2013 (Act No. 10 of 2013);

"**credit**" has the same meaning ascribed to it in section 1 of the National Credit Act;

"**credit agreement**" has the same meaning ascribed to it in section 1 of the National Credit Act;

"**debarment order**" means an order made in terms of section 153 or 205;

"**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;

"**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;

(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;

(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;

(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 section 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;

(h) is or has been convicted of any other offence committed after the Constitution came into effect, where the penalty imposed for the offence is or was imprisonment without the option of a fine;

(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 Care Act, 2002 (Act No. 17 of 2002);

"**document**" includes —

(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;

"**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;

(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 151 or 203

"**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 160;

"**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);

(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 —

(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;

"**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

(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) a debt instrument such as a debenture or a bond, but not a credit agreement;

(d) money market securities as defined in section 1(1) of the Financial Markets Act;

(e) a derivative instrument as defined in section 1(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);

"**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);

"**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 body**" means each of the following:

(a) The Prudential Authority;

(b) the Financial Sector Conduct Authority;

(c) the Tribunal;

(d) the Ombud Council;

(e) the Office of the Pension Funds Adjudicator; and

(f) the Office of the Ombud for Financial Services Providers;

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

"**Financial sector law**" means—

(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;

"**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

(d) the Financial Intelligence Centre, but only in respect of Parts 2, 3 and 5 of Chapter 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;

"**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;

"**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;

"**foreign financial instrument**" means an instrument provided outside the Republic, or provided by a person outside the Republic, that is similar to, or corresponds to, a financial instrument;

"**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);

"**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 —

(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;

(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 body of persons that oversees the affairs of the ombud scheme;

"**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;

"**holding company**" means a holding company as defined in section 1 of the Companies Act, being a company incorporated in the Republic;

"**index**" means any figure—

(a) that is published or made available to the public; and

(b) that is regularly determined—

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

(ii) on the basis of the value of one or more underlying assets or prices, and any derivative thereof; and

(c) is determined to be an index for this purpose by the Financial Sector Conduct Authority;

"**industry ombud scheme**" means an arrangement with the following characteristics:

(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 financial institutions that are members of the ombud scheme; 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;

"**Inter-Ministerial Council**" means the Financial Sector Inter-Ministerial Council established in terms of section 83(1);

"**interpretation ruling**" means a statement in terms of section 142;

"**inter-related**" has the same meaning ascribed to it in terms of section 1 of the Companies Act;

"**investigator**" means a person appointed as an investigator in terms of section 134;

"**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;

(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

(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;

(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;

(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

(f) the head of a function of 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 156;

"**levy**" means a levy imposed by a financial sector body in terms of legislation that empowers the imposition of a levy, and includes interest payable on an unpaid levy;

"**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. 10 of 1998);

"**market infrastructure**" means each of the following, as they are defined in section 1(1) of the Financial Markets Act:

(a) A central counterparty;

(b) a central securities depository;

(c) a clearing house;

(d) an exchange; and

(e) a trade repository;

"**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);

"**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;

(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 a recognised industry ombud scheme, of mediating or resolving complaints to which the scheme applies;

"**Ombud Board**" means the Board of the Ombud Council established in terms of section 179(1);

"**Ombud Council**" means the Ombud Council established in terms of section 175;

"**Ombud Council rule**" means a rule made by the Ombud Council in terms of section 201;

"**ombud scheme**" means —

(a) an industry ombud scheme; or

(b) a statutory ombud scheme;

"**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 a financial institution and another person for the provision to or for the financial institution of any of the following:

(a) A control function;

(b) a function that a financial sector law requires to be performed or requires to be performed in a particular way or by a particular person; and

(c) a function that is integral to the nature of a financial product or financial service that the financial institution provides, or is integral to the nature of the market infrastructure,

but does not include—

(i) a contract of employment between the financial institution and a person referred to in paragraph (a) or (b) of the definition of "staff member"; or

(ii) an arrangement between a financial institution and a person for the person to act as a representative of the financial institution;

"**panel**" means a panel of the Tribunal constituted in terms of section 224;

"**panel list**" means the list referred to in section 225;

"**panel member**" means a member of a panel;

"**party**", to proceedings on a reconsideration of a decision by the Tribunal, means—

(a) the person who applied for the reconsideration; and

(b) the decision-maker that made the decision;

"**payment service**" means a service provided to a financial customer to facilitate payments to, or from, the financial customer;

"**payment system**" has the same meaning ascribed to it in terms of section 1 of the National Payment System Act;

"**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;

"**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);

"**provision of a benchmark**" includes —

(a) administering the arrangements for determining a benchmark;

(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and

(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;

"**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);

"**qualifying stake**" means, in respect of a financial institution that—

(a) is a company, that a person, directly or indirectly, alone or together with a related or inter-related person—

(i) holds at least 15% of the issued shares of the financial institution;

(ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the financial institution;

(iii) has the ability to dispose of or control the disposal of at least 15% of the financial institution's securities; or

(iv) 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 inter-related person—

(aa) holding at least 15% of the securities of the financial institution;

(bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the financial institution; or

(cc) having the ability to dispose of or direct the disposal of at least 15% of the financial institution's securities;

(b) is a close corporation, that a person, directly or indirectly, alone or together with a related or inter-related person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;

(c) is a trust, that a person has, directly or indirectly, alone or together with a related or inter-related person—

(i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;

(ii) the power to appoint at least 15% of the trustees; or

(iii) the power to appoint or change any beneficiaries of the trust;

"**recognised industry ombud scheme**" means an industry ombud scheme that is recognised in terms of section 194;

"**Regulation**" means a Regulation made in terms of section 288;

"**regulator's directive**" means a directive issued by a financial sector regulator in terms of section 143, 144 or 159;

"**regulatory instrument**" means each of the following:

(a) A prudential standard;

(b) a conduct standard;

(c) a joint standard;

(d) an Ombud Council rule;

(e) a determination of fees in terms of section 237(1)(a);

(f) an instrument identified as a regulatory instrument in a financial sector law; and

(g) an instrument amending or revoking an instrument referred to in paragraphs (a) to (f);

"**related party**", in relation to a person (the "first person"), 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 256;

"**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;

"**Reserve Bank Act**" means the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

"**responsible authority**", for a financial sector law, means the responsible authority for the financial sector law as defined in section 5;

"**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;

"**service provided by a market infrastructure**" means business conducted or a function or duty performed by a market infrastructure in terms of the Financial Markets Act, and "services provided by market infrastructures" has a similar meaning;

"**Short-term Insurance Act**" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

"**significant owner**", of a financial institution, means a significant owner of the institution as described in section 157;

"**special levy**" means a levy imposed as a special levy by a financial sector body in terms of legislation that empowers the imposition of a levy;

"**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);

(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;

"**standard**" means any of the following:

(a) A prudential standard;

(b) a conduct standard; and

(c) a joint standard;

"**statutory ombud**" means each of the following:

(a) The Adjudicator as defined in section 1(1) of the Pension Funds Act;

(b) the Ombud for Financial Services Providers as defined in section 1(1) of the Financial Advisory and Intermediary Services Act; and

(c) a person declared by a specific financial sector law to be a statutory ombud;

"**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

(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, or services provided by a market infrastructure;

"**systemically important financial institution**" means a financial institution designated in terms of section 29;

"**taxable income**" has the same meaning ascribed to it in terms of section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

"**this Act**" includes the Regulations and regulatory instruments made in terms of this Act;

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

"**Tribunal**" means the Financial Services Tribunal established in terms of section 219 (1);

"**Tribunal member**" means a member of the Tribunal referred to in section 220;

"**Tribunal rules**" means rules made in terms of section 227;

"**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

"**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.

(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.

2. Financial products

(1) In this Act "financial product" means —

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

(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

(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;

(g) except for the purposes of Chapter 4 and section 106, the provision of credit provided in terms of a credit agreement regulated in terms of the National Credit Act;

(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

(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—

(a) doing so will 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

(iii) managing financial risk.

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

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

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

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

(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 the designated product.

3. Financial services

(1) In this Act "financial service" means —

(a) any of the following activities conducted in the Republic in relation to a financial product, a foreign financial product, a financial instrument, or a foreign financial instrument:

(i) Offering, promoting, marketing or distributing;

(ii) providing advice, recommendations or guidance;

(iii) operating or managing;

(iv) providing administration services;

(b) dealing or making a market in the Republic in a financial product, a foreign financial product, a financial instrument or a foreign financial instrument;

(c) a payment service;

(d) securities services;

(e) an intermediary service as defined in section 1(1) of the Financial Advisory and Intermediary Services Act;

(f) a service related to the buying and selling of foreign exchange;

(g) a service related to the provision of credit, including a debt collection service, but excluding the services of—

(i) a debt counsellor registered in terms of section 44 of the National Credit Act who provides the services of a debt counsellor as contemplated in that Act;

(ii) a payment distribution agent as defined in section 1 of the National Credit Act; or

(iii) an alternative dispute resolution agent, as defined in section 1 of the National Credit Act;

(h) a service provided to a financial institution through an outsourcing arrangement;

(i) any other service provided by a financial institution, being a service regulated by a specific financial sector law; and

(j) a service designated by the Regulations for this section as a financial service.

(2) A service provided by a market infrastructure is not a financial service unless designated by Regulations in terms of subsection (3).

(3) If doing so will further the object of this Act set out in section 7, the Regulations may designate as a financial service—

(a) any service that is not regulated in terms of a specific financial sector law if the service, that is provided in the Republic, relates to—

(i) a financial product, a foreign financial product, a financial instrument or a foreign financial instrument;

(ii) an arrangement that is in substance an arrangement for lending, making a financial investment or managing financial risk, all as contemplated in section 2(2) to (4); or

(iii) the provision of a benchmark or index; or

(b) a service provided by a market infrastructure.

(4) For the purposes of subsection (1)(b) 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) the buying or selling of the securities or interests for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business;

"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 transactions 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 designated financial service.

4. Financial stability

(1) For the purposes of this Act, "financial stability" means that—

(a) financial institutions generally provide financial products and financial services, and market infrastructures generally perform their functions and duties in terms of financial sector laws, without interruption;

(b) financial institutions are capable of continuing to provide financial products and financial services, and market infrastructures are capable of continuing to perform their functions and duties in terms of financial sector laws, 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, and the ability of market infrastructures to continue to perform their functions and duties in terms of financial sector laws, 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.

5. Responsible authorities

(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) Despite subsection (1) and sections 2(5) and 3(5), 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.

6. Financial institutions that are juristic persons

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

7. Object of Act

(1) 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;

(g) transformation of the financial sector; and

(h) confidence in the financial system.

(2) When seeking to achieve the object of this Act, the Reserve Bank and the financial sector regulators must not be constrained from achieving their objectives and responsibilities as set out in sections 11, 33 and 57.

8. Administration of Act

The Minister is responsible for the administration of this Act.

Part 3 – Application of other legislation

9. Inconsistencies between Act and other financial sector laws

(1) In the event of any inconsistency between a provision of this Act, other than a Regulation or a regulatory instrument made under this Act, and a provision of another Act that is a financial sector law, the provision of this Act prevails.

(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.

10. Application of other legislation

(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

(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, 1998 (Act No. 89 of 1998) applies, 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.

(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 applies, 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.

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

Chapter 2
Financial stability

Part 1 – Powers and functions of Reserve Bank

11. Responsibility for financial stability

(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—

(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 organs of state exercising powers that affect aspects of the economy.

12. Monitoring of risks by Reserve Bank

The Reserve Bank must—

(a) monitor and keep under review—

(i) the strengths and weaknesses of the financial system; and

(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;

(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.

13. Financial stability review

(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".

(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;

(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.

(3) Information which, if published may materially increase the possibility of a systemic event, only needs to be published in a financial stability review after the risk of a systemic event subsides, or has been addressed.

(4) The Reserve Bank must—

(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;

(b) publish the review, after having taken into account any comments that may have been received in terms of paragraph (a); and

(c) table a copy of the review in Parliament.

Part 2 – Managing systemic events and risks in relation to systemic events

14. Determination of systemic events

(1) The Governor may, after having consulted the Minister, determine that a specified event or circumstance, or a specified combination of events or circumstances, is a systemic event.

(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.

(4) The Governor may, after having consulted the Minister, determine that a specified systemic event has occurred or is imminent.

(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

(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, in respect of a determination made in terms of subsection (1) or (4), and any amendment or revocation of such a determination—

(a) table the determination, or the amendment or revocation of the determination, in Parliament; and

(b) publish the determination, or the amendment or revocation of the determination, on the Reserve Bank's website.

15. Functions of Reserve Bank in relation to systemic events

(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—

(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—

(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.

16. Information to Minister

(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.

(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—

(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.

17. Responsibilities of financial sector regulators

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 regulator, which may be relevant for the Bank to manage the systemic event or the effects of the systemic event; and

(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.

18. Directives to financial sector regulators

(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.

(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;

(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 the directive.

19. Exercise of powers by other organs of state

(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 a part 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.

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

(3) Subsection (1) does not apply to the financial sector regulators.

Part 3 – Financial Stability Oversight Committee

20. Establishment of Financial Stability Oversight Committee

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

(2) The primary objectives of the Financial Stability Oversight Committee are to—

(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.

21. Functions of Financial Stability Oversight Committee

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;

(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—

(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

(e) any other function conferred on it in terms of applicable legislation.

22. Membership

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

(a) The Governor;

(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) a maximum of three additional persons appointed by the Governor.

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

23. Administrative support by Reserve Bank

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

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

24. Meetings and procedure

(1) The Financial Stability Oversight Committee must meet at least every six months.

(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.

(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.

(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.

(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.

(7) The Financial Stability Oversight 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 Financial Stability Oversight Committee, the person chairing a meeting has a casting vote in addition to a deliberative vote.

Part 4 – Financial Sector Contingency Forum

25. Financial Sector Contingency Forum

(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—

(a) the identification of potential risks 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—

(a) a Deputy Governor designated by the Governor, which Deputy Governor 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

(d) representatives of financial sector industry bodies and any other relevant person, as the Chairperson may determine.

(4) The Financial Sector Contingency Forum must meet at least every six months.

(5) The Financial Sector Contingency Forum must be convened and must function in accordance with procedures determined by the Governor.

(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

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

(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;

(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;

(c) promptly report to the Reserve Bank any matter of which the financial sector 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) 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.

27. Memoranda of understanding relating to financial stability

(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 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) 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.

(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.

28. Roles of other organs of state in relation to financial stability

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.

Part 6 – Systemically important financial institutions

29. Designation of systemically important financial institutions

(1) (a) The Governor may, by written notice to a financial institution, designate the institution as a systemically important financial institution.

(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 notice of the proposed designation and a statement of the reasons why the designation is proposed, and invite the Committee to provide advice on the proposal within a specified reasonable period; and

(b) if, after considering the Committee's advice, the Governor proposes to designate the financial institution in terms of subsection (1), 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:

(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 that the financial institution provides or, in the case of a market infrastructure, the market infrastructure;

(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.

(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 a 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.

(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.

(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, revoke a designation made in terms of this section.

(7) A designation, and the revocation of a designation, in terms of this section must be published.

30. Prudential standards and regulator's directives in respect of systemically important financial institutions

(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 prudential standards or regulator's directives, requirements applicable to one or more specific systemically important financial institutions or to such institutions generally in relation to any of the following matters:

(a) Solvency measures and capital requirements, which may include requirements in relation to counter-cyclical capital buffers;

(b) leverage ratios;

(c) liquidity;

(d) organisational structures;

(e) risk management arrangements, including guarantee arrangements;

(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 or regulator's directive may be made that is prescribed by Regulations made for this section on the recommendation of the Governor.

(2) The Prudential Authority may make prudential standards or issue regulator's directives 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 prudential standard made or a regulator's directive issued in terms of subsection (2), and the effect of those steps.

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

(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 concurrence of the Reserve Bank:

(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;

(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 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

(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 concurrence is void.

Chapter 3
Prudential Authority

Part 1 – Establishment, objective and functions

32. Establishment

(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.

33. Objective

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;

(c) protect financial customers against the risk that those financial institutions may fail to meet their obligations; and

(d) assist in maintaining financial stability.

34. Functions

(1) In order to achieve its objective, the Prudential Authority must—

(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 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;

(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

(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—

(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—

(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 circumstances in the Republic.

(5) The Prudential Authority must perform its functions without fear, favour or prejudice.

Part 2 – Governance

35. Overall governance objective

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.

36. Appointment of Chief Executive Officer

(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.

(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 will 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.

(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.

37. Role of Chief Executive Officer

(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.

38. Term of office of Chief Executive Officer

(1) A person appointed 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; 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;

(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.

39. Removal of Chief Executive Officer

(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, with the concurrence of the Minister, remove the Chief Executive Officer from office if an independent inquiry, 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);

(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 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.

(5) If the Chief Executive Officer is removed from office in terms of subsection (2), the Minister must, within 30 days, submit the report and findings of the independent inquiry to the National Assembly.

40. Acting Chief Executive Officer

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.

41. Establishment of Prudential Committee

(1) A committee called the Prudential Committee is hereby established for the Prudential Authority.

(2) The Prudential Committee consists of the Governor, the Chief Executive Officer and the other Deputy Governors.

42. Role of Prudential Committee

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;

(ii) delegating powers of the Prudential Authority to the Financial Sector Conduct Authority in terms of a section 77 memorandum of understanding;

(iii) adopting the regulatory strategy of the Prudential Authority, and any amendment to the strategy;

(iv) adopting the administrative action procedures of the Prudential Authority, and any amendment to those procedures;

(v) appointing members of subcommittees of the Prudential Authority required or permitted by a law, and giving directions regarding the conduct of the work of any subcommittee;

(vi) making prudential standards, joint standards and other regulatory instruments in terms of financial sector laws;

(vii) making determinations of fees in terms of financial sector laws; and

(viii) any other matter assigned in terms of a financial sector law to the Prudential Committee.

43. Meetings of Prudential Committee

(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.

(2) Meetings of the Prudential Committee are held at times and, except where subsection (1)(b) applies, at places determined by the Governor.

(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 other than the Chief Executive Officer, who is nominated by the Governor, or selected in accordance with a procedure determined by the Governor, chairs the meeting.

(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.

(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 determined by the Chief Executive Officer.

44. Decisions of Prudential Committee

(1) (a) A proposal before a meeting of the Prudential Committee becomes a decision of the committee if a majority of the members present, or regarded as being present, and voting on 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.

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

45. Governance and other subcommittees

(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 for the Prudential Authority, with functions that the Prudential 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.

46. Duties of members of Prudential Committee and members of subcommittees

(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) impede the Prudential Authority's ability to perform its functions; or

(c) cause improper detriment to another person.

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

47. Regulatory strategy

(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.

(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;

(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 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 giving effect to section 34(4).

(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—

(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 Prudential 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 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.

(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

(b) publish the regulatory strategy and each amendment.

48. Delegations

(1) The Prudential Committee may, in writing—

(a) delegate any power or duty referred to in section 42(b)(viii) to the Chief Executive Officer or another staff member of the Prudential Authority; and

(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;

(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

(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 in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.

(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, but a revocation does not affect any rights or liabilities accrued because of the acts of the delegate.

(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.

(7) This section does not affect a power under a specific financial sector law to delegate a power of the Prudential Authority.

49. Disclosure of interests

(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 or subcommittee, any interest in any matter that is being 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) 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 —

(i) the member has disclosed the interest as required by subsection (1); and

(ii) the other members of the Prudential Committee or subcommittee have decided that the interest does not affect the proper execution of that member's functions in relation to the matter.

(b) Any consideration of, or decision on, a matter which does not comply with paragraph (a) is void and must be reconsidered or decided without the member present.

(4) (a) Each member of the Prudential Authority's staff and each person to whom a power or function 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 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 —

(i) an official or employee of the Reserve Bank; or

(ii) a financial customer of a financial institution; or

(b) an interest that is not material.

(7) A failure by a person to disclose a material interest in accordance with this section and any guidelines that may be prescribed by the Minister in terms of section 288(3) constitutes—

(a) a breach of the duties in section 46 or 52, whichever section is applicable to the person; and

(b) an offence in terms of section 265.

(8) When a person has failed to disclose a material interest in terms of this section, the Prudential Committee must publish a notice on the Prudential Authority's website that a failure to disclose a material interest occurred, which notice must include the details of the failure.

(9) 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

50. Staff and resources

(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.

51. Resources provided by Reserve Bank

(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.

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

52. Duties of staff members

(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) impede the Prudential Authority's ability to perform its functions; or

(c) cause improper detriment to another person.

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

53. Financial management duties of Chief Executive Officer

The Chief Executive Officer must—

(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 levies legislation;

(b) exercise the utmost care to protect the assets and records of the Prudential Authority;

(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;

(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;

(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—

(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;

(h) manage and safeguard 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

(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.

54. Information by Chief Executive Officer

(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.

(2) Subsection (1) does not require or permit the provision of information about persons identifiable from the information.

55. Annual reports and financial accounts

(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;

(b) prepare financial accounts for the Prudential Authority for each financial year which will form part of the annual report of the Reserve Bank; and

(c) submit to the Minister, within five months after the end of each financial year, for tabling in the National Assembly an annual report on the activities of the Prudential Authority during that financial year, including particulars of any matters that may be prescribed by Regulation for this section.

(2) The financial accounts of the Prudential Authority referred to in subsection (1)(b)—

(a) must be disclosed in the annual report of the Reserve Bank in a manner that reflects the direct costs that accrue to the Prudential Authority; and

(b) may be disclosed in the form of an annexure to the annual report of the Reserve Bank.

Chapter 4
Financial Sector Conduct Authority

Part 1 – Establishment, objective and functions

56. Establishment

(1) The Financial Sector Conduct Authority is hereby established, as a juristic person.

(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.

57. Objective

The objective of the Financial Sector Conduct Authority is to—

(a) enhance and support the efficiency and integrity of financial markets; 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 and the ability of financial customers and potential financial customers to make sound financial decisions; and

(c) assist in maintaining financial stability.

58. Functions

(1) In order to achieve its objective, the Financial Sector Conduct Authority must—

(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;

(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;

(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;

(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

(j) formulate and implement strategies and programs for financial education for the general public.

(2) In relation to a financial institution that is a credit provider regulated in terms of the National Credit Act, the Financial Sector Conduct Authority may, in addition to regulating and supervising the financial institution in respect of the financial services that the financial institution provides, and notwithstanding section 2(1)(g), regulate and supervise the financial institution's conduct in relation to the provision of credit under a credit agreement only in respect of those matters referred to in section 108.

(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.

(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.

(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

(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.

Part 2 – Governance

59. Overall governance objective

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

60. Establishment and role of Executive Committee

(1) A committee called the Executive Committee is hereby established for the Financial Sector Conduct Authority.

(2) The Executive Committee consists of the commissioner and the deputy commissioners.

(3) 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

(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;

(ii) delegating powers of the Financial Sector Conduct Authority to the Prudential Authority in terms of a section 77 memorandum of understanding;

(iii) adopting the regulatory strategy of the Financial Sector Conduct Authority, and any amendments to the strategy;

(iv) adopting the administrative action procedures of the Financial Sector Conduct Authority, and any amendments to those procedures;

(v) 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;

(vi) making conduct standards, joint standards and other regulatory instruments in terms of financial sector laws for which it is the responsible authority;

(vii) granting, varying, suspending and revoking licences in terms of a financial sector law;

(viii) making determinations of fees in terms of financial sector laws;

(ix) any other matter assigned in terms of a financial sector law to the Executive Committee.

61. Commissioner and Deputy Commissioners

(1) The Minister must appoint a person who is fit and proper and has appropriate expertise in the financial sector as the Commissioner of the Financial Sector Conduct Authority.

(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 must be prescribed by Regulation.

(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.

(6) A person may not be appointed or hold office as Commissioner or Deputy Commissioner if the person—

(a) is a disqualified person; or

(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

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

62. Roles of Commissioner and Deputy Commissioners

(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(3)(b), must perform the functions of the Financial Sector Conduct Authority, including exercising the powers and carrying out the duties associated with those functions.

(2) The roles of the Deputy Commissioners are determined by the Executive Committee.

(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.

63. Terms of office

(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;

(b) is, at the expiry of that term, 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

(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 the Minister proposes to re-appoint that person as Commissioner or Deputy Commissioner, as the case may be.

64. Service conditions

(1) Subject to this Act, the Commissioner and the Deputy Commissioners hold office on the terms and conditions determined in writing by the Minister.

(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.

65. Removal from office

(1) The Minister must, subject to due process, remove the Commissioner from office if the Commissioner becomes a disqualified person.

(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—

(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

(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—

(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

(d) has acted in a way that is inconsistent with 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.

(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.

(8) If the Commissioner or a Deputy Commissioner is removed from office in terms of this section, the Minister must, within 30 days, submit the report and findings of the independent inquiry to the National Assembly.

66. Meetings of Executive Committee

(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.

(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.

(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.

(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, the Financial Intelligence Centre, the Council for Medical Schemes or the National Credit Regulator, to attend the meeting, but a person who is invited has no right to vote at the meeting.

(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 Executive Committee are kept in a manner determined by the Commissioner.

67. Decisions of Executive Committee

(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.

(2) The Executive Committee may, in accordance with procedures determined by it, 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—

(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.

68. Governance and other subcommittees

(1) The Director-General must establish—

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

(b) a subcommittee 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.

(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).

(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 subcommittee established in terms of this section.

(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 terms and conditions, including terms regarding remuneration, determined by the Director-General or the Executive Committee, as the case may be, who established the subcommittee.

(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 procedures, subject to any directions of the Director-General or the Executive Committee, as the case may be, who established the subcommittee.

(7) The Commissioner must ensure that minutes of each meeting of each subcommittee established in terms of this section are kept in a manner determined by the Executive Committee.

69. Duties of Commissioner, Deputy Commissioners and other subcommittee members

(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—

(a) act honestly in all matters relating to the Financial Sector Conduct 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 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—

(a) improperly benefit himself or herself or another person;

(b) impede the Financial Sector Conduct Authority's ability to perform its functions; or

(c) cause improper detriment to another person.

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

70. Regulatory strategy

(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 its objective and the performance of its regulatory and supervisory functions.

(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

(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 giving effect to section 58.

(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, to 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 have regard to 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.

71. Delegations

(1) The Executive Committee may, in writing—

(a) delegate any power or duty of, or delegated to, the Financial Sector Conduct Authority in terms of a financial sector law to the Commissioner or a Deputy Commissioner, except—

(i) the power to delegate contained in this subsection; and

(ii) the powers referred to in section 60(3)(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 by a section 77 memorandum of understanding in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.

(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, but a revocation does not affect any rights or liabilities accrued because of the acts of the delegate.

(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.

72. Disclosure of interests

(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 interest in any 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) A member referred to in subsection (1) may not perform a function in relation to the matter concerned unless—

(i) the member has disclosed the interest as required by subsection (1); and

(ii) the other members of the Executive Committee have decided that the interest does not affect the proper execution of the member's functions in relation to the matter.

(b) Any consideration of, or decision on, a matter which does not comply with paragraph (a) is void and must be reconsidered or decided without the member present.

(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) of this Act 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 who is a related party to the person 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 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 does not affect the 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 to whom a power or function of the Financial Sector Conduct 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 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 section.

Part 3 – Staff and resources

73. Staff and resources

(1) The Financial Sector Conduct Authority may, in accordance with applicable law—

(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;

(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—

(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.

74. Duties of staff members

(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 himself or herself or another person;

(b) impede the Financial Sector Conduct Authority's ability to perform its functions; or

(c) cause improper detriment to another person.

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

75. Information by Commissioner

(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 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.

Chapter 5
Co-operation and collaboration

Part 1 – Co-operation and collaboration

76. Co-operation and collaboration between financial sector regulators and Reserve Bank

(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—

(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.

77. Memoranda of understanding

(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 a 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 in terms of this section and each amendment thereof.

78. Other organs of state

(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

79. Financial System Council of Regulators

(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.

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

(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;

(e) the Commissioner;

(f) the Chief Executive Officer of the National Credit Regulator;

(g) the Registrar of Medical Schemes;

(h) the Director of the Financial Intelligence Centre;

(i) the Commissioner of the National Consumer Commission;

(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.

80. Meetings

(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.

(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 it.

81. Working groups and subcommittees

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

(a) Enforcement and financial crime;

(b) financial stability and resolution;

(c) policy and legislation;

(d) standard-setting;

(e) financial sector outcomes;

(f) financial inclusion;

(g) transformation of the financial sector; and

(h) 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.

82. Support for Financial System Council of Regulators

(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 – Financial Sector Inter-Ministerial Council

83. Financial Sector Inter-Ministerial Council

(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.

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

(a) the Minister;

(b) the Cabinet members responsible for consumer protection and consumer credit matters;

(c) the Cabinet member responsible for health; and

(d) the Cabinet member responsible for economic development.

84. Meetings

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

(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.

(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 it.

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

(1) The Cabinet members responsible for consumer protection and consumer credit matters may request the Inter-Ministerial Council to consider whether or not a provision in a financial sector law, or in a proposed financial sector law, Regulation or regulatory instrument, 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.

(2) The Inter-Ministerial Council—

(a) must comply with the request; and

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

86. Independent evaluation of effectiveness of co-operation and collaboration

(1) (a) The Inter-Ministerial Council must, as soon as practicable following the expiration of the six month period described in section 77(1), commission an independent evaluation of the

establishment of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

(b) The Inter-Ministerial Council must, every two years after the initial independent evaluation referred to in paragraph (a), commission an independent evaluation of the effectiveness of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

(2) An evaluation in terms of this section must at least contain an analysis and evaluation of the memoranda of understanding required in terms of section 77, the outcome of any and all consultations in terms of section 78, and compliance with those sections.

(3) The Inter-Ministerial Council may on its own initiative, or at the request of a financial sector regulator, at any time commission 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.

(4) When a financial sector regulator makes a request for an evaluation, the Inter-Ministerial Council must consider the request and the concerns raised in the request regarding the effectiveness of co-operation and collaboration, and, if the Council rejects the request, provide the financial sector regulator that made the request with the reasons for rejecting the request.

(5) Any evaluation commissioned by the Inter-Ministerial Council in terms of this section must be tabled in Parliament immediately following the Council's consideration of the evaluation, and must be accompanied by a report from the Council on the evaluation's contents.

Chapter 6
Administrative actions

Part 1 – Administrative action committees

87. Establishment and membership

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

(2) The members of an administrative action committee —

(a) must include—

(i) a retired judge; or

(ii) an advocate or attorney with at least 10 years relevant legal experience; and

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

(3) A person referred to in subsection (2)(a) must be appointed as chairperson of an administrative action committee.

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

88. Terms of membership

(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 a period not exceeding five years, and on the terms, including terms regarding remuneration, determined by the financial sector regulator.

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

(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

(c) has acted in a way that is inconsistent with 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.

89. Meetings

(1) A meeting of an administrative action committee—

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

(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.

(3) The financial sector regulator must ensure that written minutes of each meeting of its administrative action committee are kept in a manner determined by the financial sector regulator.

90. Application of Part to Ombud Council

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

Part 2 – Administrative justice

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

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.

92. Procedures for specific administrative action in terms of Act

(1) A financial sector regulator may, by notice in the Register, determine procedures for administrative action to be taken by it in terms of a financial sector law, which procedures 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

(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 and different circumstances.

93. Processes for determining or amending administrative action procedures

(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;

(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.

(2) If a financial sector regulator intends to make an administrative action procedure or amendment that is materially different in form from the draft procedure or amendment that was previously published in terms of subsection (1), the regulator must, before making the procedure or amendment, repeat the process referred to in subsection (1).

94. Review of administrative action procedures

A financial sector regulator must review its administrative action procedures at least once every three years.

95. Revocation of decisions

(1) A financial sector regulator may, by notice to a person in relation to whom the regulator made a decision in terms of a financial sector law (or, if more than one such person, all of them), revoke the decision if—

(a) the decision was made as a result of fraud or illegality;

(b) the information on which the decision was made was inaccurate or incomplete and the financial sector regulator would not have made the decision if it had had accurate and complete information; or

(c) the decision is, for any reason, invalid.

(2) A revocation of a decision in terms of subsection (1) has effect from the date on which the revoked decision was made.

(3) A financial sector regulator may not take action in terms of subsection (1) —

(a) if the action would adversely affect the existing or accrued rights of any person (except the person in relation to whom the regulator made the decision); or

(b) if—

(i) the financial sector regulator has been notified that an application to the Tribunal or a court in relation to the decision will be made; or

(ii) proceedings have commenced in the Tribunal or a court in relation to the decision.

(4) Before a financial sector regulator takes action in terms of subsection (1), it must—

(a) notify its intention to do so to the person in relation to whom the regulator made a decision; and

(b) give the person a reasonable period, of at least 14 days, to make submissions to the regulator.

(5) In determining whether to take action in terms of subsection (1), the financial sector regulator must take into account all the submissions received during the period referred to in subsection (4)(b).

96. Interpretation

In this Part "financial sector regulator" includes the Ombud Council.

Chapter 7
Regulatory instruments

Part 1 – Regulatory instruments

97. Interpretation

In this Part, "maker", in relation to a regulatory instrument, means the person that proposes to make the regulatory instrument.

98. Process for making regulatory instruments

(1) A regulatory instrument must not be made unless the maker—

(a) has published—

(i) a draft of the regulatory instrument;

(ii) a statement explaining the need for and the intended operation of the regulatory instrument;

(iii) a statement of the expected impact of the regulatory instrument; and

(iv) a notice inviting submissions in relation to the regulatory instrument and stating where, how and by when submissions are to be made; and

(b) has, once submissions referred to in paragraph (a)(iv) have been received and considered, submitted the regulatory instrument to Parliament in terms of section 103(1).

(2) The period allowed for making submissions referred to in subsection (1)(a)(iv) must be at least six weeks.

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

(a) the other financial sector regulator, the Reserve Bank, the National Credit Regulator, the Council for Medical Schemes and the Director-General; and

(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 Council, the maker must, when complying with subsection (1)(a), provide a copy of the documents referred to in that subsection to the financial sector regulators, the Council for Medical Schemes, the National Credit Regulator and the Director-General.

99. Substantially different regulatory instrument

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 98, the maker must, before making the regulatory instrument, repeat the process referred to in section 98.

100. Urgent regulatory instruments

(1) If the maker of a regulatory instrument determines that compliance with section 98 or 99 is likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed regulatory instrument, the maker must before making the instrument—

(a) publish—

(i) a draft of the regulatory instrument and a statement explaining the need for and the intended operation of the regulatory instrument;

(ii) a notice inviting submissions in relation to the regulatory instrument and stating where, how and by when submissions are to be made; and

(iii) a statement of the reasons why the delay involved in complying with sections 98 and 99 is considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed regulatory instrument; and

(b) submit the regulatory instrument to Parliament in terms of section 103(2).

(2) The period allowed for making submissions in terms of subsection (1)(a)(ii) must be at least seven days.

(3) A maker must, after making an instrument pursuant to subsection (1), as soon as possible, but not later than within 30 days of making the instrument—

(a) submit to Parliament a report of the consultation process, which report must include a general account of the issues raised in the submissions and a response to the issues raised in the submissions.

(b) if the maker is a financial sector regulator, provide a copy of the documents referred to in paragraph (a) to—

(i) the other financial sector regulator, the Reserve Bank, the National Credit Regulator, the Council for Medical Schemes and the Director-General; and

(ii) 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.

(c) if the maker is the Ombud Council, provide a copy of the documents referred to in that subsection to the financial sector regulators, the National Credit Regulator and the Director-General.

101. Part does not limit other consultation

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.

102. Making, publication and commencement of regulatory instruments

(1) In deciding whether to make a regulatory instrument, the maker must take into account all submissions received by the expiry of the period referred to in section 98(2) or 100(2) and any deliberations of Parliament.

(2) A regulatory instrument must be published in the Register after it is made.

(3) A regulatory instrument comes into effect—

(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 date.

103. Submission of regulatory instruments to Parliament

(1) Before making a regulatory instrument in terms of section 98 or 99, the maker of the regulatory instrument must submit the regulatory instrument to Parliament, for a period of at least 30 days while Parliament is in session, together with—

(a) the documents mentioned in section 98(1)(a); and

(b) a report on the consultation process referred to in section 104.

(2) Before making a regulatory instrument in terms of section 100, the maker of the regulatory instrument must submit to Parliament, whether in session or not, the documents mentioned in section 100(1)(a) for a period of at least seven days (which period may run concurrently with the seven days referred to in section 100(2)).

104. Reports on consultation processes

(1) With each regulatory instrument, the maker must publish a consultation report.

(2) A consultation report must include—

(a) a general account of the issues raised in the submissions made during the consultation; and

(b) a response to the issues raised in the submissions.

(3) If the maker did not comply with section 98 or 99 for the reason stated in section 100, the consultation report must be published 30 days after the instrument was made and the report must include a statement of the reasons why the delay involved in complying, or complying fully, with sections 98 and 99 was considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the regulatory instrument.

Part 2 – Standards

105. Prudential standards

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

(a) financial institutions that provide financial products or securities services;

(b) financial institutions that are market infrastructures; and

(c) key persons of such financial institutions.

(2) A prudential standard must be aimed at one or more of the following:

(a) Ensuring the safety and soundness of those financial institutions;

(b) reducing the risk that those financial institutions and key persons engage in conduct that amounts to, or contributes to, financial crime; and

(c) assisting in maintaining financial stability.

(3) Without limiting subsection (1), a prudential standard may be made on any of the following matters:

(a) Financial soundness requirements, including requirements in relation to capital adequacy, minimum liquidity and minimum asset quality;

(b) matters on which a regulatory instrument may be made by the Prudential Authority in terms of a specific financial sector law;

(c) 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

(d) any other matter that is appropriate and necessary for achieving any of the aims set out in subsection (2).

106. Conduct standards

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

(a) financial institutions;

(b) representatives of financial institutions;

(c) key persons of financial institutions; and

(d) contractors.

(2) A conduct standard must be aimed at one or more of the following:

(a) Ensuring the efficiency and integrity of financial markets;

(b) ensuring that financial institutions and representatives treat financial customers fairly;

(c) ensuring that financial education programs, or other activities promoting financial literacy are appropriate;

(d) reducing the risk that financial institutions, representatives, key persons and contractors engage in conduct that is or contributes to financial crime; and

(e) assisting in maintaining financial stability.

(3) Without limiting subsections (1) and (2), a conduct standard 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—

(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;

(iii) the resolution of complaints and disputes concerning those products and services, including redress;

(iv) the disclosure of information to financial customers; and

(v) principles, guiding processes and procedures for the refusal, withdrawal or closure of a financial product or a financial service by a financial institution in respect of one or more financial customers, taking into consideration relevant international standards

and practices, and subject to the requirements of any other financial sector law or the Financial Intelligence Centre Act, including—

(aa) disclosures to be made to the financial customer; and

(bb) reporting of any refusal, withdrawal or closure to a financial sector regulator;

(d) the design, suitability, implementation, monitoring and evaluation of financial education programs, or other initiatives promoting financial literacy;

(e) matters on which a regulatory instrument may be made by the Financial Sector Conduct Authority in terms of a specific financial sector law;

(f) matters that may in terms of any other provision of this Act be regulated by conduct standards; and

(g) any other matter that is appropriate and necessary for achieving any of the aims set out in subsection (2).

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

(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.

(5) (a) In relation to a credit provider regulated in terms of the National Credit Act, a conduct standard may only be made in relation to a financial service provided in relation to a credit agreement and matters provided for in section 108.

(b) A conduct standard referred to in paragraph (a) may only be made after consultation with the National Credit Regulator.

107. Joint standards

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.

108. Additional matters for making standards

(1) To achieve the respective objectives of the financial sector regulators as set out in sections 33 and 57, the standards referred to in sections 105, 106 or 107 may be made on any of the following additional matters:

(a) Fit and proper person requirements, including in relation to—

(i) personal character qualities of honesty and integrity;

(ii) competence, including experience, qualifications and knowledge; and

(iii) financial standing;

(b) governance, including in relation to—

(i) the composition, membership and operation of governing bodies and of substructures of governing bodies; and

(ii) the roles and responsibilities of governing bodies and their substructures;

(c) 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;

(d) the appointment, duties, responsibilities, remuneration, reward, incentive schemes and, subject to applicable labour legislation, the suspension and dismissal of, key persons;

(e) the operation of, and operational requirements for, financial institutions;

(f) financial management, including—

(i) accounting, actuarial and auditing requirements;

(ii) asset, debt, transaction, acquisition and disposal management; and

(iii) financial statements, updates on financial position, and public reporting and disclosures;

(g) risk management and internal control requirements;

(h) the control functions of financial institutions, including the outsourcing of control functions;

(i) record-keeping and data management by financial institutions and representatives;

(j) reporting by financial institutions and representatives to a financial sector regulator;

(k) outsourcing by financial institutions;

(l) insurance arrangements, including reinsurance, of financial institutions;

(m) the amalgamation, merger, acquisition, disposal and dissolution of financial institutions;

(n) recovery, resolution and business continuity of financial institutions;

(o) requirements for identifying and managing conflicts of interest;

(p) requirements for the safekeeping of assets, including requirements pertaining to the approval and supervision of nominees and custodians.

(2) A standard may—

(a) provide for a financial sector regulator or the Reserve Bank to make determinations, in accordance with procedures defined in a standard, for the purposes of the standard; and

(b) impose requirements for approval by a financial sector regulator in respect of specified matters.

(3) A standard made by a financial sector regulator may amend or revoke another standard made by the financial sector regulator.

109. Standards requiring concurrence of Reserve Bank

(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.

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

110. General

(1) Different standards may be made for, or in respect of—

(a) different categories of financial institutions, representatives, contractors or key persons; or

(b) different circumstances.

(2) A standard may be made applicable to existing actions, activities, transactions, policies and appointments.

(3) A standard must be published on the maker's website.

Chapter 8
Licensing

Part 1 – Licensing requirements

111. Licence requirement in respect of providers of financial products and financial services, and market infrastructures

(1) A person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except—

(a) in accordance with a licence in terms of a specific financial sector law, the National Credit Act or the National Payment System 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.

(3) Subsections (1) and (2) only apply to a contractor if a responsible authority specifically, in a standard, requires that contractor to be licensed.

(4) A person may not describe or hold itself 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.

(5) 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.

(6) For the purposes of subsections (4) and (5), a person whose licence has been suspended or revoked is not licensed.

(7) 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 infrastructures.

Part 2 – Licences required in terms of section 111(1)(b) or (2) or section 162

112. Interpretation

In this Part—

"**application**" means an application for a licence required in terms of section 111(1)(b) or (2) or section 162;

"**licence**" means a licence required in terms of section 111(1)(b) or (2) or section 162;

"**licensee**" means a person licensed in terms of section 111(1)(b) or (2) or section 162.

113. Power to grant licences

(1) The responsible authority may, on application, grant a licence.

(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—

(i) required in the form; or

(ii) required by the responsible authority.

114. Request for further information or documents by responsible authority

(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

(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.

115. Relevant matters for application for licence

The matters to be taken into account in relation to an application for a licence include—

(a) the objective of the responsible authority as set out in section 33 or 57;

(b) the financial and other resources of and available to the applicant;

(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.

116. Determination of applications

(1) The responsible authority to which an application for a licence has been made must determine the application by—

(a) granting the application and issuing a licence to the applicant; or

(b) refusing the application and notifying the applicant accordingly.

(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

(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) The responsible authority must determine an application as contemplated in subsection (1) and notify the applicant within three months after the application is made.

(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.

117. Reporting obligations of licensee

(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, in a material way—

(i) a financial sector law;

(ii) a regulator's directive or a directive in terms of section 202;

(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;

(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.

(3) Information that is reported in terms of this section is not admissible in evidence in any criminal proceedings, except in criminal proceedings for perjury.

118. Licences not transferable

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

119. Variation of licences

(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 objective of the responsible authority as set out in section 33 or 57.

(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, financial services or financial customers to which the licence relates.

(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.

120. Suspension of licences

(1) The responsible authority that issued a licence may, by notice to the licensee, suspend the licence, for the period specified in the notice, if—

(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 way;

(c) the licensee has contravened in a material way—

(i) a financial sector law;

(ii) a prudential standard, a conduct standard or a joint standard;

(iii) a regulator's directive or a directive in terms of section 202;

(iv) an enforceable undertaking;

(v) an order of a court made in terms of a financial sector law; or

(vi) a decision of the Tribunal;

(d) the licensee has in a foreign country contravened in a material way 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 way;

(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 30 days.

(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.

(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.

121. Revocation of licences

(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;

(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) if 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—

(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 the date of the notice in terms of subsection (1) or, if a later date is specified in the notice, the later date.

122. Continuation of licensed activity despite suspension or revocation of licence

(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.

(2) Conditions in terms of subsection (1) must be aimed at—

(a) ensuring that financial customers of the licensee are treated fairly; or

(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 or 162.

123. Procedure for varying, suspending and revoking licences

(1) (a) Before the responsible authority varies, suspends or revokes a licence, it must—

(i) give the licensee notice of the proposed action and a statement of the reasons for it; and

(ii) invite the licensee 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.

(c) The responsible authority need not comply with paragraph (a) if the licensee has applied for the proposed action to be taken.

(2) 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)(a)(ii).

(3) If the delay involved in complying, or complying fully, with subsection (1)(a) 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 that subsection.

(4) (a) If the responsible authority takes action without having complied, or complied fully, with subsection (1)(a) for the reason set out in subsection (3), the responsible authority must give the licensee 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.

(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.

124. Applications for licences

(1) The responsible authority may, in writing, determine procedures and requirements for applications.

(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;

(c) an applicant's financial capacity;

(d) fit and proper person requirements; and

(e) an applicant's operational, management, 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).

Part 3 – Provisions relating to all licences under financial sector laws

125. Application

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

126. Concurrence of financial sector regulators on licensing matters

(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.

(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 281.

127. Compulsory disclosure of licences

(1) A licensed financial institution must comply with the applicable requirements of a prudential standard, a conduct standard and a joint standard in relation to the identification of relevant licences under financial sector laws in business documentation, including advertisements and other promotional material.

(2) A licensed financial institution must make its licence or a copy of its licence available at no cost to any person on request.

128. Publication

(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.

Chapter 9
Information gathering, supervisory on-site inspections and investigations

Part 1 – Application and interpretation

129. Application and interpretation of Chapter

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

(2) The Council for Medical Schemes may exercise powers in terms of this Chapter in respect of powers and functions set out in the Medical Schemes Act, and powers and functions granted to it in this Act.

(3) In relation to the exercise of the powers in terms of this Chapter by the Council for Medical Schemes in respect of a medical scheme, a reference in this Chapter to—

(a) a financial sector regulator or the responsible authority must be read as including a reference to the Council for Medical Schemes;

(b) the head of a financial sector regulator must be read as including a reference to the Registrar of Medical Schemes appointed in terms of section 18 of the Medical Schemes Act;

(c) a financial sector law must be read as including a reference to regulatory instruments and to the Medical Schemes Act; and

(d) 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.

130. Legal professional privilege

(1) (a) A person does not have to answer a question asked, or comply with a requirement to produce a document or information, in terms of this Chapter to the extent that the person is entitled to claim legal professional privilege in relation to the answer, contents of the document or the information.

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

(2) Subsection (1) does not limit any right of a person.

Part 2 – Information gathering

131. Information gathering

(1) (a) The responsible authority for a financial sector law may, by written notice to any person, request the person to provide specified information or a specified document in the possession of, or under the control of, the person that is relevant to assisting the responsible authority to perform its functions in terms of a financial sector law.

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

(2) (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 by a supervised entity with, or risk of contraventions by a supervised entity of—

(i) a financial sector law;

(ii) a regulator's directive issued by the responsible 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.

(c) A supervised entity that has been given a notice in terms of paragraph (a) or (b) 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

132. Powers to conduct supervisory on-site inspections

(1) A financial sector regulator may conduct a supervisory on-site inspection at the business premises of a supervised entity with prior notification to the supervised entity and, if the business premises of a supervised entity is a private residence, with the prior agreement of—

(a) the person apparently in control of the business reasonably believed to be conducted at the private residence; and

(b) the occupant of the private residence or the part of the private residence to be inspected.

(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, a regulator's directive issued by the financial sector regulator 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) A financial sector regulator may determine the time and place of a supervisory on-site inspection, provided that the supervisory on-site inspection must be done at a reasonable time within ordinary business hours.

(b) A financial sector regulator must conduct a supervisory on-site inspection with strict regard to—

(i) an affected person's right to—

(aa) dignity;

(bb) freedom and security;

(cc) privacy; and

(dd) other constitutional rights; and

(ii) decency and good order as the circumstances require, in particular by—

(aa) conducting the supervisory on-site inspection discreetly and with due decorum;

(bb) causing as little disturbance as possible; and

(cc) concluding the supervisory on-site inspection as soon as possible.

(4) (a) An official of a financial sector regulator, when conducting a supervisory on-site inspection, may do any of the following:

(i) Request any person who has a specified business document that is relevant to the inspection in his, her or its possession or under his, her or its control to produce that document and examine, make extracts from and copy any business document on the premises;

(ii) question any person on the premises to find out information relevant to the inspection;

(iii) give the supervised entity 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 supervised entity or the person apparently in control of the premises to ensure that no person removes from the premises, or conceals, destroys or otherwise interferes with, any 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) A directive in terms of paragraph (a)(iii) or (v)(aa) is effective if given to a person apparently in control of the premises.

(c) The financial sector regulator must ensure that the person apparently in control of the premises is given a written receipt for the business documents taken as mentioned in paragraph (a) (v) (bb).

(d) 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 business document is no longer necessary to achieve the object of a financial sector law.

(e) 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.

133. Interference with supervisory on-site inspections

A person may not intentionally or negligently interfere with or hinder the conduct of a supervisory on-site inspection.

Part 4 – Investigations

134. Investigators

(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) A person appointed as an investigator must —

(a) not be a disqualified person;

(b) not have any conflict of interest in respect of the subject matter of the investigation; and

(c) have appropriate skills and expertise.

(3) 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.

135. Powers to conduct investigations

(1) 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, if the financial sector regulator—

(a) reasonably suspects that a person may have contravened, may be contravening or may be about to contravene, a financial sector law for which the financial sector regulator is the responsible authority; or

(b) reasonably believes that an investigation is necessary to achieve the objects referred to in section 251(3)(e) pursuant to a request by a designated authority in terms of a bilateral or multilateral agreement or memorandum of understanding contemplated in that section.

(2) The responsible authority may investigate any matter relating to an offence or contravention referred to in sections 78, 80 and 81 of the Financial Markets Act, 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.

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

(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;

(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—

(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;

(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 item produced to an investigator as required in terms of this paragraph;

(vi) take possession of, and retain, any document or item produced to an investigator as required in terms of this paragraph; 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.

(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) Subject to paragraph (d), 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—

(i) retention of the document or item is no longer necessary to achieve the object of the investigation; or

(ii) all proceedings arising out of the investigation have been finally disposed of.

(d) A document or item need not be returned to the person who produced it if —

(i) the document or item has been handed over to a designated authority; or

(ii) it is not in the best interest of the public or any member or members of the public for the document or item to be returned.

(e) 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 is entitled to have a legal practitioner present at the questioning to assist the person.

137. Powers of investigators to enter and search premises

(1) An investigator may, for the purposes of conducting an investigation, do any of the following:

(a) Enter any premises —

(i) with the prior consent of—

(aa) in the case of a private residence, the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or

(bb) in the case of any other premises, the person apparently in control of the premises,

after informing that person that—

(AA) granting consent will enable the investigator to enter the premises and for the investigator to subsequently search the premises as referred to in paragraph (b) or (c), and to do anything contemplated in subsection (6); and

(BB) he or she is under no obligation to admit the investigator in the absence of a warrant; or

(ii) without prior consent and without prior notice to any person—

(aa) if the entry is authorised by a warrant; or

(bb) with the prior authority of the head of a financial sector regulator or a senior staff member of the financial sector regulator delegated to perform the function, if the head of a financial sector regulator or senior staff member on reasonable grounds believes that—

(AA) a warrant will be issued under section 138(1) if applied for;

(BB) the delay in obtaining the warrant is likely to defeat the purpose for which entry of the premises is sought; and

(CC) it is necessary to enter the premises to conduct the investigation and search the premises as referred to in paragraph (b) or (c), and to do anything contemplated in subsection (6);

(b) if the investigation is one referred to in section 135(1)(a), search the premises for evidence of a contravention of a financial sector law; or

(c) if the investigation is one referred to in section 135(1)(b), search the premises pursuant to the request, subject to section 251.

(2) The authority of an investigator in terms of subsection (1)(a) to enter a premises also provides authority for the investigator to subsequently search the premises as referred to in subsection (1)(b) or (c), and to do anything contemplated in subsection (6).

(3) An investigator exercising powers in terms of this section must do so with strict regard to—

(a) an affected person's right to—

(i) dignity;

(ii) freedom and security;

(iii) privacy; and

(iv) other constitutional rights; and

(b) decency and good order as the circumstances require, in particular by—

(i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;

(ii) conducting the search discreetly and with due decorum;

(iii) causing as little disturbance as possible; and

(iv) concluding the search as soon as possible.

(4) An entry or search of premises in terms of this Part must be done, at a reasonable time within ordinary business hours,—

(a) unless the warrant authorising it expressly authorises entry at night; or

(b) in the case of a search contemplated in subsection (1)(a)(ii)(bb), if the investigator on reasonable grounds believes that the purpose for which the entry and search is sought, is likely to be defeated by a delay, as close to ordinary business hours as the circumstances reasonably permit.

(5) 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 134.

(6) (a) While on the 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 or be relevant to the request;

(ii) examine, make extracts from and copy any document on 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;

(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

(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

(vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.

(b) An investigator must give the person apparently in charge of the premises a written receipt for documents or items taken as mentioned in paragraph (a)(vii).

(c) Subject to paragraph (d), 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—

(i) retention of the document or item is no longer necessary to achieve the object of the investigation; or

(ii) all proceedings arising out the investigation have been finally disposed of.

(d) A document or item need not be returned to the person who produced it if —

(i) the document or item has been handed over to a designated authority; or

(ii) it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.

(e) 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.

(7) An investigator, and any person assisting an investigator as mentioned in subsection (5), may use reasonable force to exercise any power in terms of this section.

138. Warrants

(1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of this Part on application by an investigator.

(b) The judge or magistrate may issue a warrant in terms of this section—

(i) on written application by the investigator setting out under oath or affirmation why it is necessary to enter and investigate the premises; and

(ii) if it appears to the magistrate or judge from the information under oath or affirmation that—

(aa) in the case of an investigation under section 135(1)(a), that—

(AA) there are reasonable grounds for suspecting that a contravention of a financial sector law has occurred, may be occurring or may be about to occur;

(BB) entry and investigation of the premises are likely to yield information pertaining to the contravention; and

(CC) entry and investigation of those premises is reasonably necessary for the purposes of the investigation;

(bb) in the case of an investigation under section 135(1)(b), that there are reasonable grounds to believe that the investigation is necessary to comply with a request referred to in that section.

(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—

(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 on the premises; and

(b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

139. Interference with investigations

(1) A person may not intentionally or negligently interfere with or hinder the conduct of an investigation.

(2) Subject to section 140, 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.

(3) Subject to section 140, 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 an investigator in connection with the conduct of an investigation.

(5) 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.

Part 5 – Protections

140. Protections

(1) (a) A person who is questioned, or required to produce a document or information, during a supervisory on-site inspection contemplated in section 132, or by an investigator in terms of Part 4 of this Chapter, whether in response to a notice contemplated in section 136, or when an investigator is exercising the powers contemplated in section 137(6)(a)(iii) to (v), may object to answering the question or to producing the document or the information on

the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) On such an objection, the official of the financial sector regulator conducting the supervisory on-site inspection or the investigator may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

(c) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (b), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 273 based on the false or misleading nature of the answer.

(2) An official of the financial sector regulator conducting a supervisory on-site inspection or an investigator must inform the person of the right to object in terms of this section at the commencement of the supervisory on-site inspection or the investigation.

Chapter 10
Enforcement

Part 1 – Guidance notices and interpretation rulings

141. Guidance notices

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

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

142. Interpretation rulings

(1) The responsible authority for a financial sector law may publish a statement (an "interpretation ruling") regarding the interpretation or application of a specified provision of that law, in circumstances specified in the statement.

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

(3) The responsible authority must interpret and apply the provision of the financial sector law to which the interpretation ruling relates in accordance with the interpretation ruling.

(4) An interpretation ruling ceases to be effective if—

(a) a provision of the financial sector law that was the subject of the interpretation ruling is repealed or amended in a manner that materially affects the interpretation ruling, in which case the interpretation ruling 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 interpretation ruling is based, in which case the interpretation ruling will cease to be effective from the date of judgment unless—

(i) the decision is under appeal;

(ii) the decision is fact-specific and the general interpretation upon which the interpretation ruling was based is unaffected; or

(iii) the reference to the interpretation upon which the interpretation ruling was based did not form a part of the reasoning on which the judgment of the court was based.

(5) The responsible authority that issues an interpretation ruling may amend or revoke the interpretation ruling if it is necessary to do so because of a judicial decision or a change in the law.

(6) An interpretation ruling ceases to be effective upon the occurrence of any of the circumstances described in subsection (4), whether or not the responsible authority publishes a notice of withdrawal or modification of the interpretation ruling.

(7) Before the responsible authority issues an interpretation ruling, it must publish—

(a) a draft of the proposed interpretation ruling; 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.

(8) The responsible authority is not obliged to comply with subsection (7) in relation to an amendment to, or a revocation of, an interpretation ruling.

(9) The responsible authority that issues an interpretation ruling must publish it.

Part 2 – Directives by financial sector regulators

143. Directives by Prudential Authority

(1) The Prudential Authority may issue to either of the following persons:

(a) A financial institution that provides a financial product or securities services, or that is a market infrastructure; and

(b) a key person of a financial institution,

a written directive requiring the person to take action specified in the directive if—

(i) the financial institution 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; or

(ii) the financial institution or key person of a financial institution—

(aa) has contravened or is likely to contravene a financial sector law for which the Prudential Authority is the responsible authority;

(bb) has not complied with an enforceable undertaking accepted by the Prudential Authority;

(cc) is involved or is likely to be involved in financial crime; or

(dd) 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—

(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 under a financial sector law or in relation to a financial product or financial service that it provides or offers to provide;

(b) has not complied with an enforceable undertaking accepted by the Prudential Authority;

(c) has contravened or is likely to contravene a financial sector law;

(d) is involved or is likely to be involved in financial crime; or

(e) is causing or contributing to instability in the financial system, or is likely to do so.

(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) ensuring that the financial institution or the directed person complies with the enforceable undertaking that was accepted by the Prudential Authority;

(c) stopping the financial institution or company from contravening applicable financial sector laws, or reducing the risk of such contraventions;

(d) stopping the financial institution or company from being involved in financial crime, and reducing the risk that it may be so involved;

(e) reducing the risk that a systemic event may occur; or

(f) remedying the effects of a contravention of a financial sector law or the person's 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)(ii)(dd) unless it has been directed in terms of section 18 to do so or with the concurrence of the Reserve Bank.

(5) Action that may be specified in a directive in terms of subsection (1) includes the following:

(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;

(c) removing a person from a specified position or function in or in relation to the financial institution;

(d) the financial institution not paying a dividend or a specified bonus or performance payment;

(e) the financial institution not entering into a specific transaction or undertaking a specific obligation, contingent or otherwise;

(f) the financial institution remedying the effects of a contravention of a financial sector law.

(6) In addition to its powers to issue regulator's directives, if a person is engaging, or is proposing to engage, in conduct that contravenes a financial sector law for which the Prudential Authority is the responsible authority, the Prudential Authority may issue a written directive to the person requiring the person to cease engaging, or not to engage, in the conduct.

144. Directives by Financial Sector Conduct Authority

(1) The Financial Sector Conduct Authority may issue to a financial institution a written directive requiring the financial institution to take action specified in the directive if—

(a) the financial institution is conducting its business in a way that poses a material risk to the efficiency and integrity of financial markets;

(b) the financial institution's treatment of its financial customers is such that the institution will not be able to comply with its obligations in relation to the fair treatment of financial customers;

(c) the financial institution is providing financial education in a manner that is not in accordance with relevant conduct standards;

(d) the financial institution or a key person, representative or contractor of the financial institution—

(i) has contravened or is likely to contravene a financial sector law for which the Financial Sector Conduct Authority is the responsible authority;

(ii) has not complied with an enforceable undertaking accepted by the Financial Sector Conduct Authority;

(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 Financial Sector Conduct Authority may issue to a key person, a representative or a contractor of a financial institution (in this section, a "directed person") a written directive requiring the directed person to take action specified in the directive if the financial institution or the directed person—

(a) has contravened or is likely to contravene a financial sector law for which the Financial Sector Conduct Authority is the responsible authority;

(b) has not complied with an enforceable undertaking accepted by the Financial Sector Conduct Authority;

(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.

(3) A directive in terms of subsection (1) or (2) must be aimed at achieving the objective of the Financial Sector Conduct Authority set out in section 57 and—

(a) stopping the financial institution or the directed person from contravening applicable financial sector laws, or reducing the risk of such contraventions;

(b) ensuring that the financial institution or the directed person complies with the enforceable undertaking that was accepted by the Financial Sector Conduct Authority;

(c) stopping the financial institution or the directed person 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

(e) remedying the effects of a contravention of a financial sector law or the person's involvement in financial crime.

(4) The Financial Sector Conduct Authority may not issue a directive on the basis set out in subsection (1)(d)(iv) unless it has been directed in terms of section 18 to do so or with the concurrence of the Reserve Bank.

(5) Action that may be specified in a directive in terms of subsection (1) includes the following:

(a) The financial institution ceasing offering or providing a specific financial product or financial service;

(b) the financial institution modifying a specific financial product or financial service or the terms on which it is provided;

(c) removing a person from a specified position or function in or in relation to the financial institution;

(d) the financial institution not paying a specified bonus or performance payment; and

(e) the financial institution remedying the effects of a contravention of a financial sector law.

(6) The Financial Sector Conduct Authority may not issue a directive in terms of subsection (5)(a) or (b) to a systemically important financial institution without the concurrence of the Prudential Authority.

(7) Action that may be specified in a directive in terms of subsection (2) must be aimed at achieving the objective of the Financial Sector Conduct Authority and ensuring that the key person, representative or contractor performs its function in compliance with the applicable financial sector laws.

(8) In addition to its powers to issue regulator's directives, if a person is engaging, or is proposing to engage, in conduct that contravenes a financial sector law for which the Financial Sector Conduct Authority is the responsible authority, the Financial Sector Conduct Authority may issue a written directive to the person requiring the person to cease engaging, or not to engage, in the conduct.

145. Removal of person from position

A financial sector regulator may not issue a directive in terms of this Part that requires the removal of a person from a specified position or function in or in relation to the financial institution unless the person —

(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—

(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 person requirements.

146. Consultation requirements

(1) Before issuing a regulator's directive in terms of this Part, the financial sector regulator must—

(a) give the financial institution or person to whom it is proposed to issue the directive 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 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 removing a person from a specified position or function in or in relation to the financial institution, the financial sector regulator 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

(b) invite the person to make submissions on the matter within the period specified in terms of subsection (1)(b).

(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) or (2) (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 prejudice 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 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 person referred to in that subsection must be given a written statement of the reasons why those subsections were not complied with.

(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.

147. Period for compliance

A regulator's directive must specify a reasonable period for compliance, where applicable.

148. Revoking directives

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

149. Compliance with directives

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

(2) the high court may, on application by a party to a contract with a financial institution, other than the financial institution, make an order relating to the effect of a directive in terms of this part on the contract.

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

(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.

150. Application and interpretation

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

151. Enforceable undertakings

(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 enforceable by the responsible authority as contemplated in this Act.

(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.

(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.

(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:

(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.

(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 in relation to the making of the order have been commenced by the end of the period for lodging such appeals; or

(ii) if such proceedings have been commenced, they have 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

152. Compliance with financial sector laws

(1) The responsible authority for a financial sector law may commence proceedings against a person in the High Court for an order to ensure compliance with the financial sector law.

(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

(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.

Part 5 – Debarment

153. Debarment

(1) The responsible authority for a financial sector law may make a debarment order in respect of a natural person if the person has—

(a) contravened a financial sector law in a material way;

(b) contravened in a material way 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 way; or

(d) contravened in a material way a law of a foreign country that corresponds to a financial sector law.

(2) A debarment order prohibits the natural person, for the period specified in the debarment order, from—

(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.

(3) A debarment order in respect of a natural person takes effect from—

(a) the date on which it is served on the person; or

(b) if the order specifies a later date, the later date.

(4) (a) A natural person who is subject to a debarment order may not engage in conduct that, directly or indirectly, contravenes the debarment order.

(b) Without limiting paragraph (a), a natural person who is subject to a debarment order contravenes that paragraph if the natural person 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 natural person who is subject to the debarment order.

(5) A licensed financial institution that becomes aware that a debarment order has been made in respect of a natural person 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 that made a debarment order may, by order and on application by the debarred natural person—

(a) reduce the period of the debarment order; or

(b) revoke the debarment order.

(7) The responsible authority must publish each debarment order, and each order under subsection (6), that it makes.

154. Consultation requirements

(1) Before making a debarment order in respect of a natural person, the responsible authority must—

(a) give a draft of the debarment order to the person and to the other financial sector regulator, 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 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 a natural person, the responsible authority must take into account at least—

(a) any submission made by, or on behalf of, the person; and

(b) any advice from the other financial sector regulator.

155. Where person cannot be located

If a responsible authority after taking all reasonable steps, including through electronic means, cannot locate a person to be given a document or information under section 154 or a debarment order, delivering the document or information to the person's last known e-mail or physical business or residential address will be sufficient.

Part 6 – Leniency agreements

156. Leniency agreements

(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.

(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—

(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.

(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, by notice to the person with whom it entered into the agreement, terminate the agreement—

(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.

Chapter 11
Significant owners

Part 1 – Significant owners

157. Significant owners

(1) Subject to subsections (3) and (4), a person is a significant owner of a financial institution if the person, directly or indirectly, alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of the financial institution.

(2) Without limiting subsection (1), a person has the ability referred to in that subsection if—

(a) the person, directly or indirectly, alone or together with a related or inter-related person, has the power to appoint 15% of the members of the governing body of the financial institution;

(b) the consent of the person, alone or together with a related or inter-related person, is required for the appointment of 15% of the members of a governing body of the financial institution; or

(c) the person, directly or indirectly, alone or together with a related or inter-related person, holds a qualifying stake in the financial institution.

(3) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, significant owners of a financial institution.

(4) (a) A financial sector regulator may, with the concurrence of the other financial sector regulator and on application, declare a person not to be a significant owner of—

(i) an eligible financial institution;

(ii) the manager of a collective investment scheme; or

(iii) a financial institution prescribed in terms of Regulations made for the purposes of this paragraph.

(b) A financial sector regulator may not make a declaration or give its concurrence to a declaration in terms of paragraph (a), unless the financial sector regulator is satisfied that—

(i) the declaration will not prejudice the achievement of the financial sector regulator's objective as set out in either section 33 or 57; and

(ii) it is not necessary to apply the requirements of this Chapter to the person.

(c) A financial sector regulator may, with the concurrence of the other financial sector regulator, revoke a declaration that it made in terms of paragraph (a).

(d) Before a financial sector regulator revokes a declaration that was made in terms of paragraph (a), the financial sector regulator must—

(i) give the person who has been declared not to be a significant owner a notice of the proposed action and a statement of the reasons for it; and

(ii) invite the person to make submissions on the matter, and give the person a reasonable period to do so.

(e) The period referred to in paragraph (d)(ii) must be at least one month.

(f) In deciding whether to revoke a declaration, the financial sector regulators must take into account all submissions made within the period specified in the notice in terms of paragraph (d)(ii).

(g) If the delay involved in complying, or complying fully, with paragraph (d) in respect of a proposed revocation is likely to prejudice financial customers, prejudicially affect financial stability or defeat the object of the revocation, the financial sector regulators may revoke the declaration without having complied, or complied fully, with that paragraph.

(h) If the financial sector regulators revoke a declaration in terms of paragraph (a) without having complied, or complied fully, with paragraph (d) for the reason set out in paragraph (g), they must give the person a written statement of the reasons why paragraph (d) was not complied with.

(i) The person may make submissions to the financial sector regulator within one month after being provided with the statement.

(j) The financial sector regulators must consider the submissions, and notify the person, as soon as practicable, whether they propose to make another declaration in terms of paragraph (a) in relation to the person and the financial institution.

(k) A declaration, and a revocation of a declaration, in terms of this subsection must be published.

158. Approvals and notifications relating to significant owners

(1) For the purposes of this section, a financial institution refers only to —

(a) an eligible financial institution;

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

(c) a financial institution prescribed in Regulations made for the purposes of this section.

(2) A person may not effect any arrangement that will result in the person, alone or together with a related or inter-related person, becoming a significant owner of a financial institution, without the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed.

(3) A significant owner of a financial institution—

(a) which has been designated as a systemically important financial institution, may not, without having obtained the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, effect any arrangement that will result in the person, alone or together with a related or inter-related person, ceasing to be a significant owner of the financial institution; and

(b) which has not been designated as a systemically important financial institution, may not, without prior notification to the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, effect any arrangement that will result in the person, alone or together with a related or inter-related person, ceasing to be a significant owner of the financial institution.

(4) A person may not effect any arrangement that will result in the person, alone or together with a related or inter-related person, increasing or decreasing the extent of the ability of the person,

alone or together with a related or inter-related person, to control or influence materially the business or strategy of the financial institution—

(a) without having obtained the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, if the responsible authority on granting of an approval referred to in subsection (2), required its prior written approval of any such increase or decrease; or

(b) without the prior notification to the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, if the responsible authority on granting of an approval referred to in subsection (2), did not require its prior written approval of any such increase or decrease.

(5) An arrangement referred to in subsection (2), (3) or (4) need not involve the acquisition of, or disposition of, shares or other interests or property.

(6) If a person enters into an arrangement in contravention of subsection (2), (3) or (4), the arrangement, in so far as it has an effect mentioned in the relevant subsection, is void.

(7) An approval in terms of subsection (2), (3) or (4) may not be given unless the responsible authority is satisfied that—

(a) the person becoming a significant owner, or the arrangement, or any increase or decrease in the extent of the ability of the significant owner to control or influence the business or strategy of the financial institution will not prejudicially affect or is not likely to affect the prudent management and the financial soundness of the financial institution; and

(b) the person meets and is reasonably likely to continue to meet applicable fit and proper person requirements.

(8) The Financial Sector Conduct Authority may not give approval in terms of subsection (2) or (4) in respect of an eligible financial institution that is a market infrastructure without the concurrence of the Prudential Authority and the Reserve Bank.

(9) A prudential standard, a conduct standard or a joint standard may prescribe procedures in respect of applications for approvals and notifications in terms of this section.

(10) 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.

159. Standards in respect of, and regulator's directives to, significant owners

(1) In addition to the powers in Part 2 of Chapter 7 to make standards,—

(a) a financial sector regulator must make standards, that must be complied with by significant owners of financial institutions, with respect to fit and proper person requirements, including in relation to—

(i) personal character qualities of honesty and integrity;

(ii) competence, including experience, qualifications and knowledge; and

(iii) financial standing; and

(b) the financial sector regulators must make joint standards specifying what constitutes, "an increase or a decrease in the extent of the ability of the person, alone or together with a related or inter-related person, to control or influence materially the business or strategy of the financial institution", as referred to in section 157(1) and section 158(4).

(2) (a) A financial sector regulator 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 regulator is the responsible authority.

(b) A directive in terms of paragraph (a) must be aimed at stopping the institution from contravening the financial sector law, or reducing the risk of such a contravention.

(3) In addition to subsection (2), a financial sector regulator may issue a directive to a significant owner of a financial institution, and to the financial institution, requiring them—

(a) to prepare and submit to the financial sector regulator a plan that is satisfactory to the financial sector regulator, under which the significant owner will, within a period that is acceptable to the financial sector regulator, cease to be a significant owner of the financial institution; and

(b) on the financial sector regulator's approval of the plan, to implement the plan.

Chapter 12
Financial conglomerates

160. Designation of financial conglomerates

(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.

(3) Without detracting from section 3(3) and (4) of the Promotion of Administrative Justice Act, and despite section 3(5) of that Act, before designating members of a group of companies as a financial conglomerate in terms of subsection (1), the Prudential Authority must—

(a) give the holding company of the eligible financial institution notice of the proposed designation and a statement of the purpose of and the reasons why the designation is proposed; and

(b) invite the holding company to make submissions on the matter, and give a reasonable period to do so.

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

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

(6) In deciding whether to designate members of a group of companies as a financial conglomerate in terms of subsection (1), the Prudential Authority must take into account all relevant considerations, including at least the following:

(a) The risk to effective prudential supervision of the eligible financial institution from the structure of the group of companies;

(b) submissions made by or for the holding company; and

(c) any other matters that may be prescribed by Regulation.

(7) The Prudential Authority may designate members of a group of companies as a financial conglomerate in terms of subsection (1) without having complied, or complied fully, with subsection (3) if it is reasonable and justifiable in the circumstances as contemplated in section 3(4)(a) and (b) of the Promotion of Administrative Justice Act and 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 designation.

(8) (a) If the Prudential Authority designates members of a group of companies as a financial conglomerate in terms of subsection (1) without having complied, or complied fully, with subsection (3), the holding company of the designated financial conglomerate must be given a written statement of the reasons why that subsection was not complied with.

(b) The holding company may make submissions to the Prudential Authority within one month after being provided with the statement.

(c) The Prudential Authority must have regard to the submissions, and notify the holding company, as soon as practicable, whether the Prudential Authority proposes to amend or revoke the designation.

(9) The Prudential Authority must continually reassess designations made, or any decision not to make a designation, in terms of subsection (1), and consider making a designation or reconsider the terms of any designation made if the Prudential Authority becomes aware of a change in the risk profile of the members of a group of companies or a designated financial conglomerate.

(10) (a) Without detracting from section 3(3) and (4) of the Promotion of Administrative Justice Act, and despite section 3(5) of that Act, the Prudential Authority may amend or revoke a designation in terms of subsection (1) by notice to—

(i) the holding company of a financial conglomerate; and

(ii) any companies that are not currently designated as part of a financial conglomerate, but which it is proposed to include as part of a currently designated financial conglomerate.

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the purpose of and the reasons why the amendment to or revocation of the designation is proposed; and

(ii) invite the entities referred to in paragraph (a) to make submissions on the matter, and give a reasonable period to do so.

(11) The Prudential Authority must publish each designation made in terms of this section, and each amendment and revocation of a designation.

161. Notification by eligible financial institution

(1) An eligible financial institution must, within 30 days of becoming part of a group of companies, notify the Prudential Authority of that event.

(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.

(3) If an eligible financial institution contravenes subsection (1), the holding company of the financial institution commits the same contravention.

162. Licensing requirements for holding companies of financial conglomerates

(1) (a) 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.

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the purpose of and the reasons why the requirement for the holding company to be licensed is proposed; and

(ii) invite the holding company to make submissions on the matter, and give a reasonable period to do so.

(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.

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

(5) (a) If—

(i) the Prudential Authority gives a holding company a notice in terms of subsection (1); or

(ii) a holding company is licensed in terms of a financial sector law,

each other member of the group of companies in the financial conglomerate, including the eligible financial institution, must, on demand by the holding company, provide any information to the holding company that is needed to enable the holding company to comply with its obligations in terms of this Act or a specific financial sector law.

(b) To give effect to paragraph (a), a holding company of a financial conglomerate must impose binding corporate rules on, or enter into a binding agreement with, members of the conglomerate, that includes terms regarding the processing of information, including personal information, within the financial conglomerate.

163. Non-operating holding companies of financial conglomerates

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

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the purpose of and the reasons why the requirement for the holding company to be a non-operating company is proposed; and

(ii) invite the holding company to make submissions on the matter, and give a reasonable period to do so.

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

(3) In deciding whether to impose a requirement that a holding company be a non-operating company in terms of subsection (1), the Prudential Authority must take into account all relevant considerations, including at least the following:

(a) The risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate;

(b) submissions made by or for the holding company; and

(c) any other matters that may be prescribed by Regulation.

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

164. Standards for financial conglomerates

(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.

(2) In addition to the matters referred to in sections 105 and 108, 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 of financial conglomerates;

(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 an eligible financial institution arising from the other members of the financial conglomerate.

(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.

165. Directives to holding companies

(1) The power of the Prudential Authority to issue a directive in terms of section 143 extends to issuing a directive 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.

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

(b) The Prudential Authority may only issue a directive imposing requirements with respect to restructuring the financial conglomerate if the Authority is objectively satisfied that another type of directive will not achieve the result sought to be attained by requiring restructuring of the financial conglomerate.

(c) In deciding whether to issue a directive imposing requirements with respect to restructuring the financial conglomerate, the Prudential Authority must take into account all relevant considerations, including at least the following:

(i) The extent to which the existing structure of the financial conglomerate is hindering or is likely to hinder the effective supervision of the financial conglomerate concerned;

(ii) whether the restructuring of the financial conglomerate is reasonably necessary and appropriate to remedy impediments to the effective supervision of the financial conglomerate; and

(iii) submissions made by or for the holding company.

(3) The power of the Financial Sector Conduct Authority to issue a directive in terms of section 144 extends to issuing 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.

166. Approval and prior notification of acquisitions and disposals

(1) (a) 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.

(b) A prudential standard made under this subsection must clearly identify what constitutes a material asset.

(2) The Prudential Authority may not give an approval in terms of subsection (1), unless the Authority is satisfied that the acquisition or disposal will not prejudicially affect—

(a) the prudent management and the financial soundness of an eligible financial institution within the financial conglomerate;

(b) the ability of the Prudential Authority to determine —

(i) how the different types of business of the financial conglomerate are conducted;

(ii) the risks of the financial conglomerate and each person that is part of that financial conglomerate; or

(iii) the manner in which the governance framework is organised and conducted for the financial conglomerate.

(3) (a) If the Prudential Authority contemplates refusing to grant approval of an acquisition or disposal referred to in subsection (1), prior to taking a decision, the Prudential Authority must notify the holding company of the proposed refusal to grant approval.

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the reasons for the refusal to grant approval; and

(ii) invite the holding company to make submissions on the matter, and give a reasonable period to do so.

(4) In deciding whether to grant or refuse a request for approval in terms of subsection (1), the Prudential Authority must take into account all relevant considerations, including at least the following:

(a) Whether the acquisition or disposal will not prejudicially affect the matters referred to in subsection (2); and

(b) submissions made in relation to the application for approval, including any submissions made in response to a request for submissions referred to in subsection (3).

(5) An acquisition or disposal in contravention of subsection (1) is void.

Chapter 13
Administrative penalties

167. Administrative penalties

(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, if the person—

(a) has contravened a financial sector law; or

(b) has contravened an enforceable undertaking accepted by the responsible authority.

(2) In determining an appropriate administrative penalty for particular conduct—

(a) the matters that the responsible authority must have regard to include the following:

(i) The need to deter such conduct;

(ii) the degree to which the person has co-operated with a financial sector regulator in relation to the contravention; and

(iii) any submissions by, or on behalf of, the person that is relevant to the matter, including mitigating factors referred to in those submissions; and

(b) without limiting paragraph (a), the matters that the responsible authority may have regard to include the following:

(i) The nature, duration, seriousness and extent of the contravention;

(ii) any loss or damage suffered by any person as a result of the conduct;

(iii) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct;

(iv) whether the person has previously contravened a financial sector law;

(v) the effect of the conduct on the financial system and financial stability;

(vi) the effect of the proposed penalty on financial stability;

(vii) the extent to which the conduct was deliberate or reckless.

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

(4) 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.

(5) 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).

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

168. Payment

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

169. Interest

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.

170. Enforcement

(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—

(i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal's decision, has been lodged by the end of the period for making such applications; or

(ii) if such an application has been made, proceedings on the application have 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.

171. Application of amounts paid as administrative penalties

All amounts recovered by a responsible authority as administrative penalties must be applied—

(a) first, to reimburse the responsible authority for its costs and expenses reasonably and properly incurred in connection with the relevant contravention, making the order and enforcing it; and

(b) then, the balance after applying the amount in accordance with paragraph (a) must be paid into the National Revenue Fund.

172. Administrative penalty taken into account in sentencing

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.

173. Remission of administrative penalties

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 administrative penalty, and all or some of the interest payable in terms of section 169.

174. Prohibition of indemnity for administrative penalties

(1) Except in circumstances prescribed by a joint standard, 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.

(2) An undertaking in terms of subsection (1) is void.

Chapter 14
Ombuds

Part 1 – Ombud Council

175. Ombud Council

(1) The Ombud Council is hereby established.

(2) The Ombud Council is a juristic person.

(3) The Ombud 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 Council is the accounting authority of the Ombud Council for the purposes of that Act.

176. Objective

The objective of the Ombud 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 institutions in relation to financial products, financial services, and services provided by market infrastructures.

177. Functions of Ombud Council

(1) In order to achieve its objective, the Ombud 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;

(c) strive to protect the independence and impartiality of ombuds;

(d) promote public awareness of ombuds and ombud schemes 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;

(g) resolve, in accordance with this Act, overlaps of the jurisdictional 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

(i) support financial inclusion.

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

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

178. Overall governance objective

The Ombud Council must—

(a) manage its affairs in an efficient and effective way; and

(b) establish and implement appropriate and effective governance systems and processes.

179. Board of Ombud Council

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

(2) The Board consists of—

(a) the Chief Ombud;

(b) the Commissioner; 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.

180. Appointment of Board members

(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.

(b) The Commissioner and the Chief Ombud 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, a member of the Board if the person is —

(a) an ombud;

(b) a member of the governing body or staff of an ombud scheme;

(c) a member of the staff of the Ombud Council;

(d) a disqualified person;

(e) not ordinarily resident in the Republic; or

(f) engaged in—

(i) the business of a financial institution; or

(ii) the provision of financial products or financial services to financial customers.

181. Terms of office of Board members

(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

(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.

(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.

182. Service conditions of Board members

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.

183. Removal of Board members

(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—

(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 continuing to hold the office.

(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.

(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.

184. Role of Board

The Board must—

(a) generally oversee the management and administration of the Ombud Council in order to ensure that it is efficient and effective;

(b) appoint members of committees of the Ombud Council required or permitted by a law, and give directions regarding the conduct of the work of any committee;

(c) make determinations of fees in terms of a financial sector law;

(d) keep the Minister informed of—

(i) compliance by ombud schemes with the financial sector laws in so far as they relate to ombud schemes;

(ii) trends in the nature of complaints and issues raised in complaints that ombud schemes are dealing with, and how those types of issues and complaints are being dealt with; and

(iii) the conduct of financial institutions that is giving rise to complaints to ombud schemes;

(e) keep the financial sector regulators informed of the conduct of financial institutions that is giving rise to complaints to ombud schemes; and

(f) address any other matter assigned in terms of a financial sector law to the Board.

185. Meetings of Board

(1) (a) The Board must meet on a quarterly basis or 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 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.

(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.

(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.

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

186. Decisions of Board

(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.

(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.

(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.

187. Governance and other committees of Ombud Council

(1) The Board must establish—

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

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

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

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

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

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

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

188. Chief Ombud

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

(a) the performance measures that must be used to assess the 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 Council.

(3) The Chief Ombud—

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

(b) must perform the functions of the Ombud Council, except those mentioned in section 184(b) and (c), including exercising the powers and carrying out the duties associated with those functions.

(4) (a) The Chief Ombud must convene meetings of the ombuds on a regular basis, but at least four times a year, to discuss the effective operation of the ombuds system.

(b) The Chief Ombud, or, in the absence of the Chief Ombud, a person appointed by the Chief Ombud, chairs meetings of the ombuds;

(c) If three ombuds request the Chief Ombud in writing to convene a meeting of the Ombud Council, a meeting of the ombuds must be convened.

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

189. Duties of Board members

(1) A member of the Board must—

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

(b) perform his or her functions 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 was a member of the Board may not use that position, or any information obtained as a member of the Board, to—

(a) improperly benefit himself, herself or another person;

(b) impede the Ombud Council's ability to perform its functions; or

(c) cause improper detriment to another person.

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

190. Delegations

(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 Council; and

(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.

(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 Council.

191. Staff and resources

(1) The Ombud Council may, in accordance with applicable law—

(a) engage persons as employees;

(b) enter into secondment arrangements;

(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

(g) do anything else necessary for the performance of its functions.

(2) The Ombud 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 Council have agreed in writing, on—

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

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

192. Duties of staff members

(1) A person who is or was a staff member of the Ombud Council may not use that position or any information obtained as a staff member to—

(a) improperly benefit himself, herself or another person;

(b) impede the Ombud Council's ability to perform its functions; or

(c) cause improper detriment to another person.

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

193. Disclosure of interests

(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—

(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 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.

(4) A member of a committee of the Ombud Council established in terms of section 51(1)(a)(ii) of the Public Finance Management Act or section 187(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—

(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

(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 Council's staff and each other person involved in the performance of the functions or the exercise of the powers of the Ombud 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.

(b) The Chief Ombud 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 Ombud 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 – Recognition of industry Ombud schemes

194. Recognition of industry Ombud schemes

(1) The ombud 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—

(a) be in writing, in a form approved or accepted by the Ombud 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 shall be members of the industry ombud scheme should it be recognised; and

(iii) any other information required in the form.

195. Requirement for further information or documents by Ombud Council

(1) The Ombud Council may, by notice in writing, require an applicant for recognition—

(a) to give the Ombud Council additional information or documents specified by the Ombud Council; and

(b) to verify any information given by the applicant in connection with the application in a manner specified by the Ombud Council.

(2) The Ombud Council need not deal further with the application until the applicant has complied with the notice contemplated in subsection (1).

196. Determination of applications

(1) The Ombud Council must determine an application for recognition in terms of section 194 by—

(a) granting the application and notifying the applicant accordingly; or

(b) refusing the application and notifying the applicant accordingly.

(2) The Ombud Council may grant an application for recognition subject to conditions specified by the Ombud Council.

(3) The Ombud Council must not recognise an industry ombud scheme unless satisfied that—

(a) a significant number of relevant financial institutions shall be members of the industry ombud scheme, should it be recognised;

(b) the governing rules of the industry ombud scheme—

(i) identify the financial products or financial services to which the industry ombud scheme relates, or in the case of a market infrastructure, the services that it provides;

(ii) require the members of the industry ombud scheme to inform financial customers about the scheme and how to contact and complain to the scheme, at the frequency agreed by the scheme for its members;

(iii) make adequate and appropriate provision for making complaints;

(iv) are legally binding on the members of the industry ombud scheme, and enforceable by the governing body of the industry ombud scheme;

(v) 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;

(vi) make adequate provision for monitoring and oversight of the operation of the industry ombud scheme, including in respect of the terms and conditions of the engagement of the ombud, including remuneration and other benefits, and any action to terminate that engagement;

(vii) require the ombud to apply, where appropriate, principles of equity when dealing with a complaint; and

(viii) otherwise comply with applicable Ombud Council rules;

(c) the ombud 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 ombud schemes and any conditions that may be specified in terms of subsection (2); and

(d) recognising the industry ombud scheme will not be contrary to the interests of financial customers, the financial sector or the public interest.

(4) (a) The Ombud Council must determine an application as contemplated in subsection (1) within three months after it is made.

(b) In working out when the period mentioned in paragraph (a) expires, any period between the Ombud Council giving the applicant a notice in terms of section 195 and the requirements in the notice being satisfied is not to be counted.

197. Varying conditions

(1) The Ombud Council may, by notice to a recognised industry 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.

198. Suspension of recognition

(1) The Ombud Council may, by notice to a recognised industry ombud scheme, suspend the recognition of the scheme if—

(a) the industry ombud scheme applies for suspension;

(b) a condition of recognition has been contravened or not been complied with in a material way;

(c) the industry ombud scheme, an ombud 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 way the governing rules of the industry ombud scheme, a provision of a financial sector law relating to ombuds or Ombud Council rules;

(d) information provided in, or in relation to, an application to the Ombud Council in relation to the industry ombud scheme was false or misleading, including by omission, in a material way;

(e) the industry ombud scheme is not complying 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 members of the industry ombud scheme 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 30 days after it is due.

(2) The Ombud Council may at any time revoke the suspension.

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

(4) A suspension does not affect an obligation of the industry ombud scheme that it has in terms of a financial sector law, including an obligation to report a matter to the Ombud Council.

199. Revocation of recognition

(1) The Ombud Council may, by notice to a recognised industry ombud scheme, revoke the recognition of an industry ombud scheme —

(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 198(1)(b) to (g); or

(c) if the scheme has ceased to function.

(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.

200. Procedure for varying, suspending and revoking recognition

(1) (a) Before the Ombud Council varies a condition of, or suspends or revokes, the recognition of a recognised industry ombud scheme, it must—

(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.

(2) The Ombud 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 Council must have regard to all submissions made within the period specified in the notice in terms of subsection (1)(a)(ii).

(4) The Ombud 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 or defeat the object of the action.

(5) (a) If the Ombud 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 Council within one month after being provided with the statement.

(c) The Ombud Council must have regard to the submissions, and notify the industry ombud scheme, as soon as practicable, whether the Ombud Council proposes to amend or revoke the variation, suspension or revocation.

Part 3 – Powers of Ombud Council

201. Ombud Council rules

(1) The Ombud 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 institutions in relation to financial products, financial services, and services provided by market infrastructures.

(2) Ombud Council 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, including fit and proper person requirements for ombuds and for members of governing bodies of industry ombud schemes;

(d) the definition and type of complaints to be dealt with by specified ombud schemes;

(e) dispute resolution processes;

(f) any matters on which a regulatory instrument may be issued by the Ombud Council in terms of a specific financial sector law in so far as it relates to ombud schemes and ombuds;

(g) matters that may in terms of any other provision of this Act be regulated by rules of the Ombud Council; and

(h) any other matter that is appropriate and necessary for achieving the aim set out in subsection (1).

(3) An Ombud Council rule must not be inconsistent with relevant financial sector laws.

(4) An Ombud Council rule must not interfere with the independence of an ombud or the investigation or determination of a specific complaint.

(5) The Ombud Council must, in developing Ombud Council rules —

(a) seek to provide for a consistent approach and consistent requirements for all ombud schemes, promote the efficiency and cost-effectiveness of ombud schemes, and promote co-ordination and co-operation between ombud schemes; and

(b) take into account differences in the nature and complexity of complaints heard by different ombud schemes.

(6) Different Ombud Council rules may be made for, or in respect of—

(a) different categories of ombuds and ombud schemes; and

(b) different circumstances.

(7) (a) The Ombud Council may, on application from an ombud scheme, exempt that ombud scheme from an Ombud Council rule for a specified period of time, provided that the Ombud Council is satisfied that the intended outcome of the rule will still be met.

(b) Any such exemption may be subject to conditions set by the Ombud Council.

(8) An Ombud Council rule may amend or revoke another Ombud Council rule.

202. Directives of Ombud Council

(1) The Ombud Council may issue to a person who is an ombud, or to an 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 in so far as it relates to ombud schemes.

(2) A directive issued in terms of subsection (1) must be aimed at achieving the objective of the Ombud Council set out in section 176 and stopping the ombud or ombud scheme from contravening applicable financial sector laws in so far as they relate to ombud schemes, or reducing the risk of such contraventions.

(3) The Ombud Council may not issue a directive that requires a specified person to be removed from a position or function in relation to an ombud scheme unless the person—

(a) has contravened a provision of a financial sector law or an Ombud Council rule;

(b) has become a disqualified person; or

(c) no longer complies with applicable fit and proper person requirements.

(4) Before issuing a directive in terms of this section, the Ombud Council must—

(a) give the person to whom it is proposed to issue the directive a draft of the proposed directive and a statement of the reasons why the Ombud Council proposes issuing it, including a statement of the relevant facts and circumstances; and

(b) invite the person to make submissions on the matter, and give the person 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 or function in relation to an ombud scheme, the Ombud Council must also—

(a) give the person a draft of the proposed directive and a statement of the reasons why the Ombud Council proposes issuing it, including a statement of the relevant facts and circumstances; and

(b) invite the person to make submissions on the matter within the period specified in terms of subsection (4)(b).

(6) In deciding whether to issue the directive, the Ombud Council must take into account all submissions received by the end of the period referred to in subsection (4) (b).

(7) If the delay involved in complying, or complying fully, with subsections (4) and (5) in respect of a proposed directive is likely to lead to prejudice to financial customers or defeat the object of the directive, the Ombud Council may issue the directive without having complied, or complied fully, with those subsections.

(8) (a) If the Ombud Council issues a directive without having complied, or complied fully, with subsection (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 why those subsections were not complied with.

(b) A person to whom the statement was given in terms of paragraph (a) may make submissions to the Ombud Council within one month after being given the statement.

(c) The Ombud Council must consider the submissions, and notify the person, as soon as practicable, whether the Ombud Council proposes to revoke the directive.

(9) A directive in terms of this section must specify a reasonable period for compliance.

(10) The Ombud 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 comply with the directive.

203. Enforceable undertakings

(1) An ombud scheme may give the Ombud Council, and the Ombud Council may accept, a written undertaking concerning the ombud scheme's future conduct in relation to a financial sector law in so far as it relates to ombud schemes.

(2) Section 151 applies, with necessary changes required by the context, in relation to an undertaking contemplated in subsection (1), as if the references in that section to "responsible authority" were references to the Ombud Council.

204. Compliance with financial sector laws

(1) The Ombud Council may commence proceedings against an ombud scheme in the High Court for an order to ensure compliance with the financial sector law in so far as it relates to ombud schemes.

(2) Section 152 applies, with necessary changes required by the context, in relation to the proceeding, as if the references in that section "responsible authority" were references to the Ombud Council.

205. Debarment

(1) The Ombud Council may make a debarment order in respect of a natural person if the person has —

(a) contravened a financial sector law in so far as it relates to ombud schemes, or an Ombud Council rule;

(b) attempted, or conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law in so far as it relates to ombud schemes.

(2) A debarment order prohibits the person, 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 a person, the Ombud Council must—

(a) give a draft of the order to the person 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 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 a debarment order in respect of a person, the Ombud Council must take into account at least—

(a) any submission made by, or made for, the person; and

(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 person; or

(b) if the order specifies a later date, the later date.

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

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

(b) Without limiting paragraph (a), a person contravenes that paragraph if the person 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 person.

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

206. Administrative penalties

(1) Chapter 13 applies in relation to the Ombud Council as if references in that Chapter—

(a) to a financial sector law were references to a financial sector law in so far as it relates to ombud schemes; and

(b) to a financial sector regulator were references to the Ombud Council.

(2) Despite subsection (1), the Ombud Council may impose an administrative penalty only on an ombud scheme, a member of the governing body of an ombud scheme, or an ombud.

207. Requests for information

(1) (a) The Ombud Council may, by written notice, require an ombud scheme or an ombud to provide specified information or a specified document in the possession or under the control of the person to whom the notice is given, being information or a document which is relevant to the Ombud Council's assessment of compliance by an ombud scheme or an ombud with—

(i) a financial sector law in so far as it relates to ombuds;

(ii) an Ombud Council rule;

(iii) a directive issued by the Ombud Council in terms of section 202; or

(iv) an enforceable undertaking accepted by the Ombud Council.

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

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

208. Supervisory on-site inspections and investigations

(1) Part 3 of Chapter 9 applies in relation to the Ombud 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;

(b) references to a financial sector regulator were references to the Ombud Council; and

(c) references to a supervised entity were references to an ombud scheme or an ombud.

(2) Despite section 132(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.

(3) Part 4 of Chapter 9 applies in relation to the Ombud 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;

(b) section 135(1)(b) were omitted; and

(c) references to a financial sector regulator were references to the Ombud Council.

(4) Section 140 applies in relation to the Ombud Council exercising powers in terms of this section as it applies in relation to the financial sector regulators.

Part 4 – General provisions

209. Access to ombud schemes

(1) The Ombud 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.

(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.

210. Restrictions on financial institutions in relation to ombud schemes

(1) A financial institution may not describe any internal procedure it has for dealing with or resolving complaints made to it by financial customers as an ombud scheme, or a person that deals with or resolves such complaints as an ombud.

(2) A financial institution must disclose to its financial customers applicable ombud schemes, and how to contact and submit complaints to those schemes, in accordance with ombud council rules that may be issued in this regard.

(3) (a) A financial institution may not require or invite a financial customer to make a complaint to an—

(i) ombud, unless the person so charged with this function is part of a recognised industry ombud scheme or a statutory ombud scheme; or

(ii) ombud scheme, unless the ombud scheme concerned is a recognised industry ombud scheme or a statutory ombud scheme.

(b) A requirement or invitation contrary to paragraph (a) is void.

(4) An ombud scheme may not describe or hold itself out as being a recognised industry ombud scheme in terms of this Part unless it is so recognised.

(5) An ombud scheme may not permit another person to identify it as a recognised industry ombud scheme in terms of this Part, unless it is so recognised.

(6) For the purposes of subsections (3), (4) and (5), an ombud scheme whose recognition has been suspended or revoked is not recognised.

211. Applicable ombud schemes

(1) (a) If there is no recognised industry ombud scheme or statutory ombud scheme that makes provision for the resolution of complaints about financial products or financial services of a particular kind, the Ombud Council may, after consulting relevant ombud schemes, designate an ombud scheme, or two or more ombud schemes, to deal with and resolve complaints about products or services of that kind.

(b) If the Ombud Council designates two or more ombud schemes in terms of paragraph (a), it must also determine the elements of the complaint to be dealt with and resolved by each of the designated schemes.

(c) The Ombud Council may so designate an ombud scheme on its own initiative or on application by the scheme or a financial institution that provides or proposes to provide financial products or financial services of that kind.

(2) If the Ombud Council designates an ombud scheme in terms of subsection (1) to deal with and resolve complaints about financial products or financial services of a particular kind—

(a) each ombud for the designated ombud scheme —

(i) has the power and the duty, despite anything in any Act or the governing rules of the ombud scheme, to deal with and resolve complaints about the products or services, in accordance with the designation; and

(ii) must deal with and resolve those complaints in the same way as it deals with and resolves other complaints to which the ombud scheme relates; and

(b) the governing rules of the ombud scheme must be read as including an obligation on the financial institution to comply with the determination of the ombud on those complaints.

(3) If a financial institution provides financial products and financial services and there is a recognised industry ombud scheme that provides for the resolution of complaints about financial products or financial services of that kind, the financial institution must be a member of that industry ombud scheme.

212. Overlaps between ombud schemes

(1) 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 statutory ombud scheme has declined to deal with the complaint.

(2) An ombud scheme may not deal with a complaint that has been dealt with by another ombud scheme unless —

(a) the complaint is referred to it by the other ombud scheme; or

(b) the Ombud Council has designated both schemes in terms of section 211(1) to deal with and resolve complaints of the relevant kind and each scheme is dealing with the elements of the complaint in accordance with the applicable determination in terms of section 211(1)(b).

213. Collaboration between ombuds and ombud schemes

The ombud schemes, and the ombuds, must cooperate and collaborate with each other regarding complaints about financial institutions in relation to financial products and financial services, including by developing processes and procedures to jointly hear and determine complaints, on their own initiative or as may be required by Ombud Council rules.

214. Governing rules of recognised industry ombud scheme

(1) Before the Ombud Council can recognise an industry ombud scheme in terms of section 194, the Ombud Council must—

(a) publish—

(i) a draft of the governing rules or amendments to the governing rules;

(ii) a statement explaining the need for and the intended operation of the governing rules or the amendment to the governing rules;

(iii) a statement of the expected impact of the governing rules or the amendment to the governing rules; and

(iv) a notice inviting submissions in relation to the rules or amendment to the governing rules and stating where, how and by when submissions are to be made; and

(b) submit the draft governing rules to the Financial Sector Conduct Authority.

(2) The period allowed for making submissions on the governing rules or amendments to the governing rules in terms of subsection (1) must be at least 30 days.

(3) (a) The governing rules of a recognised industry ombud scheme must be approved by and may not be amended without the approval of the Ombud Council.

(b) Governing rules or amendments to governing rules that are adopted by a recognised industry ombud scheme without the approval by the Ombud Council are void.

(4) The Ombud Council must not approve governing rules or an amendment to governing rules unless it is satisfied that to do so assists in achieving the object of this Act as set out in section 7.

215. Obligation to comply with governing rules of recognised industry ombud schemes

(1) A financial institution that is a member of a recognised industry ombud scheme must comply with the governing rules of the scheme.

(2) Without limiting any other right that a financial customer of a financial institution that is a member of a recognised industry ombud scheme may have, the financial customer may enforce the obligation in subsection (1) in relation to a financial product or a financial service as if the obligation were a provision of the contract in terms of which the financial product or financial service was provided to the financial customer.

216. Suspension of time barring terms

Receipt of a complaint by a financial sector regulator, the Ombud 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.

217. Reporting

(1) An ombud scheme must—

(a) within six months after the end of each financial year, submit to the Ombud Council, in the form and with the content required by the Ombud Council, a report on the operation of the ombud scheme during the financial year, including in relation to—

(i) compliance with the financial sector laws in so far as they relate to ombud schemes;

(ii) the complaints that the ombud scheme is dealing with, and how they are being dealt with; and

(iii) the conduct of financial institutions that is giving rise to complaints; and

(b) comply with any request by the Ombud Council at any time for information about the operation of the ombud scheme, trends in and implications of the conduct of financial institutions observed by the ombud scheme, and any other relevant information.

(2) Each of the following must, on request by the Financial Sector Conduct Authority, and may at any time, provide information and reports to the Financial Sector Conduct Authority about the operation of ombud schemes and trends in and implications of the conduct of financial institutions observed by it:

(a) The Ombud Council;

(b) a statutory ombud scheme;

(c) a recognised industry ombud scheme.

(3) If, in dealing with a complaint, an ombud becomes aware that there has or may have been—

(a) a contravention of a financial sector law in a material way by a financial institution; or

(b) an activity or action by a financial institution that has an effect on financial customers other than the complainant,

the ombud must report the details of the matter, including the identity of the financial institution concerned, to the Financial Sector Conduct Authority.

(4) (a) The Ombud Council must provide the Minister of Finance and the National Treasury with information, returns, documents, explanations and motivations that may be prescribed by Regulation for this section or information that the Minister of Finance or the National Treasury may request.

(b) Paragraph (a) does not require or permit the provision of information about persons identifiable from the information.

Chapter 15
Financial Services Tribunal

Part 1 – Interpretation

218. Definitions

For the purposes of this Chapter—

"**decision**" means each of the following:

(a) A decision by a financial sector regulator or the Ombud Council in terms of a financial sector law in relation to a specific person;

(b) a decision by an authorised financial services provider, as defined in section 1 of the Financial Advisory and Intermediary Services Act, in terms of section 14 of that Act in relation to a specific person;

(c) a decision in relation to a specific person by a market infrastructure, being a decision in terms of rules of the market infrastructure contemplated by the Financial Markets Act, or a decision contemplated in section 105 of the Financial Markets Act;

(d) a decision of a statutory ombud in terms of a financial sector law in relation to a specific complaint by a person;

(e) a decision of a kind prescribed by Regulation for the purposes of this paragraph,

and includes —

(f) an omission to take such a decision within the period prescribed or specified in a financial sector law, rules, or other requirements pertaining to the decision-maker;

(g) an omission to take such a decision within a reasonable period, if the applicable financial sector law, or rules of, or other requirements pertaining to, the decision-maker require the decision to be taken but without prescribing or specifying a period;

(h) an action taken as a result of such a decision; and

(i) an omission to take action as a result of such a decision within the prescribed or a reasonable period, if the applicable financial sector law requires the action to be taken but does not prescribe a period,

but does not include—

(j) a decision of a financial sector regulator that the financial sector regulator is directed to take in terms of section 18(2) or 30(1);

(k) a decision to conduct a supervisory on-site inspection or an investigation;

(l) an assessment of a levy issued to a specific person; or

(m) a decision prescribed by Regulations made for this paragraph;

"**decision-maker**" means—

(a) in relation to a decision by a financial sector regulator, the financial sector regulator;

(b) in relation to a decision by the Ombud Council, the Ombud Council;

(c) in relation to a decision referred to in paragraph (b) of the definition of "decision" in this section, the authorised financial services provider;

(d) in relation to a decision referred to in paragraph (c) of the definition of "decision" in this section, the market infrastructure;

(e) in relation to a decision by a statutory ombud, the statutory ombud; and

(f) in relation to a decision referred to in paragraph (e) of the definition of "decision" in this section, the person identified in the Regulations as the decision-maker.

Part 2 – Financial Services Tribunal

219. Establishment and function of Financial Services Tribunal

(1) The Financial Services Tribunal is hereby established to reconsider, in terms of this chapter, decisions as defined in section 218 and to perform the other functions conferred on it by this act and specific financial sector laws.

(2) The Tribunal—

(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.

220. Members of Tribunal

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

(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.

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

(a) is a disqualified person; or

(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

(b) is responsible for managing the work of the Tribunal effectively.

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

221. Term of office and termination of membership

(1) A Tribunal member holds office for—

(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.

(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

(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

(ii) has acted in a way that is inconsistent with 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.

222. Staff and resources

(1) The Chairperson may, in accordance with applicable law—

(a) for the work of the Tribunal—

(i) appoint persons as employees;

(ii) enter into secondment arrangements; or

(iii) engage persons on contract otherwise than as employees;

(b) enter into contracts;

(c) acquire and dispose of property;

(d) insure the Tribunal against any loss, damage, risk or liability that it may suffer or incur; and

(e) do anything else necessary for the performance of the Tribunal's functions.

(2) The Chairperson 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 Chairperson have agreed in writing on—

(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.

223. Duties of staff members

(1) A person who is or was a staff member under section 222 may not use that position or any information obtained as a staff member to—

(a) improperly benefit himself or herself or another person;

(b) impede the Tribunal's ability to perform its functions; or

(c) cause improper detriment to another person.

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

224. Panels of Tribunal

(1) The Chairperson must constitute a panel of the Tribunal for each application for reconsideration of a decision.

(2) The panel constituted to consider an application for the reconsideration of a decision is the decision-making body of the Tribunal, and the panel exercises any of the powers of the Tribunal relating to the reconsideration of the decision.

(3) The decision of the panel is the decision of the Tribunal as referred to in sections 234, 235 and 236 in respect of an application for the reconsideration of a decision.

(4) A panel consists of—

(a) a person to preside over the panel, who must be a person referred to in section 220(2)(a) or 225(2)(a)(i); and

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

(5) If, for any reason, a panel member is unable to complete proceedings for a reconsideration of a decision, the Chairperson may—

(a) replace that member with a person referred to in subsection (4);

(b) direct that the proceedings continue before the remaining panel members; or

(c) constitute a new panel and direct the new panel to either continue the proceedings, or start new proceedings.

225. Panel list

(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 included in the panel list must—

(a) have relevant experience in or expert knowledge —

(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.

(4) The Minister may, every five years, publicly invite persons to apply for inclusion in the panel list.

(5) The Chairperson must ensure that the persons included in the panel list have an equal opportunity to be appointed to serve on a panel of the Tribunal.

(6) The Minister—

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

(i) if the person so requests; or

(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

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

226. Disclosure of interests

(1) (a) If before or during proceedings in which a panel member is participating, it becomes apparent that the panel member or a person who is a related party to the panel member has an interest in the decision that the panel has been constituted to reconsider, the panel member must—

(i) immediately and fully disclose this interest to the other members of the panel; and

(ii) withdraw from any further involvement in the hearing.

(b) A disclosure in terms of paragraph (a) by the Chairperson must, in addition, be made to the Minister.

(c) A disclosure in terms of paragraph (a) by another panel member must, in addition, be made to the Chairperson.

(2) 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.

(3) In this section, "interest" does not include an interest that is not material.

(4) The Chairperson must maintain a register of all disclosures made in terms of this section, and must maintain a system for the annual disclosure of interests by members of the Tribunal.

227. Tribunal rules

(1) The Chairperson may make rules, not inconsistent with this Act, in respect of the procedure to be followed in connection with proceedings on applications for reconsideration of decisions in terms of this Chapter, and the conduct of those proceedings, and may at any time amend or revoke those rules.

(2) Tribunal rules, and amendments and revocations of Tribunal rules, must be published.

Part 3 – Right to reasons for decisions

228. Right to be informed

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—

(a) to request reasons for the decision in terms of section 229; and

(b) to have the decision reconsidered in terms of Part 4.

229. Right to reasons for decisions

(1) A person 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 decision-maker.

(2) The decision-maker must, within one month after receiving a request in terms of subsection (1), give the person a statement of the reasons for the decision, which must include a statement of the material facts on which the decision was based.

Part 4 – Reconsideration of decisions

230. Applications for reconsideration of decisions

(1) (a) A person aggrieved by a decision may apply to the Tribunal for a reconsideration of the decision by the Tribunal in accordance with this Part.

(b) A reconsideration of a decision in terms of this Part constitutes an internal remedy as contemplated in section 7(2) of the Promotion of Administrative Justice Act.

(2) The application must be made —

(a) if the applicant requested reasons in terms of section 229, within 30 days after the statement of reasons was given to the person; or

(b) in all other cases, within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed.

(3) An application in terms of subsection (1) must be made in accordance with the Tribunal rules.

231. Decision of Tribunal not suspended

Neither an application for a reconsideration of a decision, nor the proceedings on the application, suspends the decision of the decision-maker unless the Tribunal so orders.

232. Proceedings for reconsideration of decisions

(1) In proceedings for reconsideration of a decision—

(a) the procedure is, subject to the financial sector laws and the Tribunal rules, determined by the Chairperson;

(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 proceedings for reconsideration of a decision before the panel.

(3) A panel must conduct any hearing it holds 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.

(4) In proceedings for reconsideration of a decision, 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 over a panel—

(a) may, on good cause shown, 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.

(6) A person giving evidence or information, or producing documents, has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

233. Decisions of panels

If the panel constituted for an application for reconsideration of a decision is divided in opinion as to an order to be made, the opinion of the majority of the panel members prevails, but if they are equally divided in opinion, the opinion of the member presiding over the panel prevails.

234. Tribunal orders

(1) In proceedings on an application for reconsideration of a decision the Tribunal may, by order—

(a) set the decision aside and remit the matter to the decision-maker for further consideration;

(b) in the case of a decision of any of the following kinds, also make an order setting aside the decision and substituting the decision of the Tribunal:

(i) A decision in terms of Chapter 13;

(ii) a decision referred to in paragraph (b) or (c) of the definition of "decision" in section 218; and

(iii) a decision of a kind prescribed by Regulation for the purposes of this section; or

(c) dismiss the application.

(2) The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for reconsideration of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.

(3) Subsections (1) and (2) are subject to any provision of a financial sector law that excludes, restricts or qualifies the orders that the Tribunal may make in proceedings for reconsideration of a decision.

(4) The Tribunal may, by order, summarily dismiss an application for reconsideration of a decision if the application is frivolous, vexatious or trivial.

(5) This section does not affect any other right that a person may have.

235. Judicial review of Tribunal orders

Any party to proceedings on an application for reconsideration of a decision who is dissatisfied with an order of the Tribunal may institute proceedings for a judicial review of the order in terms of the Promotion of Administrative Justice Act or any applicable law.

236. Enforcement of Tribunal orders

(1) A party to proceedings on an application for reconsideration of a decision may file with the registrar of a competent court a certified copy of an order made in terms of section 234 if—

(a) no proceedings in relation to the making of the order have been commenced in a court by the end of the period for commencing such proceedings; or

(b) if such proceedings have been commenced, the proceedings have 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.

Chapter 16
Fees, levies and finances

Part 1 – Fees and levies

237. Fees and levies

(1) (a) Fees may be charged by a financial sector body in accordance with this Part to fund the performance of specific functions under this Act and the relevant financial sector laws.

(b) Levies may be imposed by a financial sector body in accordance with this Part, read with legislation that empowers the imposition of levies, to fund the operations of the financial sector body.

(2) A financial sector body must publish fees that have been determined and levies that have been imposed in the Register and on its website.

(3) Fees and levies are payable to the financial sector body at the time specified by the financial sector body, or at a time agreed to by the financial sector body.

(4) Different fees may be determined and different levies may be imposed for different types or categories of persons or supervised entities.

238. Fees and levies to be debts

(1) A fee or levy payable to a financial sector body in terms of section 237 is a debt due to the financial sector body.

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

239. Budget, fees and levies proposals

(1) For each financial year, each financial sector body must prepare and adopt—

(a) a budget in accordance with section 248 that includes an estimate of its expenditure;

(b) a proposal for the fees that will be charged and levies that will be imposed by the financial sector body; and

(c) projected estimates of its expenditure for next 2 financial years.

(2) A proposal for levies may include a proposal for one or more special levies, and in that case, the estimate of expenditure must include an estimate for the special expenditure in relation to a special levy proposal.

(3) An estimate of expenditure for a financial year may include provision for one or more reserves, but the total accumulated reserves included in the estimate of expenditure may not exceed 15% of the total estimated expenditure, excluding the reserves.

(4) The financial sector body must take into account submissions made in respect of the budget as well as the fees and levies proposals, which it receives in terms of section 240.

(5) The financial sector body must submit the finalised budget, together with the fees and levies proposals, to the Minister.

(6) The Minister must be allowed a period of at least 30 days to consider the proposals and provide comments, if any.

(7) In respect of the fees and levies proposals for the first financial year following the commencement of this section, the Minister must approve the proposals for all the financial sector bodies.

(8) In respect of the Tribunal, the Minister must approve the fees and levies proposals for any financial year following the commencement of this section.

(9) (a) In respect of financial sector bodies other than the Tribunal, for any financial year other than when subsection (7) applies, the Minister must approve the fees or levies proposals, if the fees or levies proposals are based on an estimate of expenditure in excess of the amount calculated as—

previous year basis x 1.025 x (current index ÷ previous index).

(b) For the purposes of paragraph (a) —

"current index" means the value of the index at the date the amount is to be indexed, or if the value is not available, the latest available value for the purposes of the preparation of fees and levies proposals for the current financial year;

"index" means the Consumer Price Index, as published by Statistics South Africa;

"previous index" means the value of the index that was used for the value of the "current index" in the fees and levies proposals prepared for the previous financial year; and

"previous year basis", for a financial year, means the estimate of operating expenditure adopted in terms of this section for the financial year before the year for which the calculation is being done.

240. Consultation requirements

(1) Part 1 of chapter 7, with the exception of section 100, applies with the necessary changes, to the adoption of the budget, the estimates of expenditure as well as the fees and levies proposals as provided for in section 239.

(2) The documents that must be published under section 98 include—

(a) the budget, estimates of expenditure and the fees and levies proposals provided for in section 239 for the relevant financial year; and

(b) an explanation by the financial sector body of the budget, estimates of expenditure and fees and levies proposals, and of the variation of the budget, estimates of expenditure and the fees and levies proposals against the budget, estimates of expenditure and the fees and levies proposals adopted for the previous financial year.

241. Determinations of information required for assessment of levy

(1) A financial sector body may, in writing, require a supervised entity to provide it with information relevant to any assessment of the supervised entity's liability for any levy as specified in the requirement.

(2) A requirement in terms of subsection (1) may be published in the Register or provided to the supervised entity from whom information is required, and must specify the manner in which, and the date by when, the information must be provided.

(3) If—

(a) the supervised entity fails or refuses to comply with the requirement issued in terms of subsection (1); or

(b) the information provided by the supervised entity is incomplete, incorrect or misleading,

the supervised entity, and each director or member of the governing body of the supervised entity, are liable to an administrative penalty under Chapter 13.

242. Assessments of levy

(1) A financial sector body must issue to each supervised entity that is liable to pay a levy for the financial year, an assessment of a levy payable by the supervised entity.

(2) The assessment notice issued to a supervised entity must state the date on which the levy is due and must be paid, which period must not be less than 30 days from the date of receipt of the notice of assessment by the supervised entity.

243. Payment of fee or levy by instalments

(1) A person who has been charged a fee, or a supervised entity who has been charged a levy, may offer to pay the fee or levy by specified instalments, and if an offer is made, the financial sector body must—

(a) accept the offer;

(b) accept a modified offer; or

(c) reject the offer,

and must notify the person who made the offer accordingly.

(2) A person who wishes to make an offer to pay a fee or levy by instalments must make an offer—

(a) immediately after being notified of the fee or levy charged, if the fee or levy must be paid within 14 days after the date on which notification is received; or

(b) at least 14 days before the date on which the fee or levy must be paid, if paragraph (a) does not apply.

(3) The financial sector body must notify the person who made an offer in terms of subsection (1) of its decision—

(a) immediately after receipt of the offer, in respect of an offer referred to in subsection (2)(a); or

(b) within seven days after the receipt of the offer, in respect of an offer referred to in subsection (2)(b).

244. Interest on late or non-payment of fees and levies

(1) If a fee or levy is not paid, or not paid in full, within the period specified for payment, and an offer to pay the fee or levy by instalments has not been accepted as referred to in section 243(1)(a) or (b), the person liable to pay the fee or levy in question must pay interest at the rate referred to in subsection (2), on the amount of the fee or levy that remains unpaid 30 days after the due date.

(2) Interest due and payable on an outstanding fee or levy amount must be calculated based on the interest rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(3) Interest charged is a debt due to the financial sector body, and may be recovered by a judicial process in a competent court.

245. Exemption from fee

(1) A financial sector body may, on application by a person who is liable to pay a fee, exempt the person from the payment of a fee, or a part of a fee, to the extent and subject to conditions determined by the financial sector body.

(2) An application referred to in subsection (1) must include the particulars determined by the financial sector body.

(3) A financial sector body may only grant an exemption from the payment of a fee, or a part of a fee, for sound reasons.

246. Management of fees and levies

(1) Fees determined in accordance with section 237(1)(a), and interest accrued on fees in terms of section 244 must be collected by the financial sector body and paid into a bank account designated for that purpose, which is in the name and control of the financial sector body.

(2) Levies imposed in accordance with section 237(1)(b), and interest accrued on levies in term of section 244 must be collected by the financial sector conduct authority and paid into a bank account designated for that purpose, which is in the name and control of the financial sector conduct authority.

(3) Each financial sector body's allocation of the levies collected contemplated in subsection (2) must be transferred to the financial sector body's designated account in accordance with a payment schedule agreed between the financial sector body and the financial sector conduct authority.

(4) The designated bank accounts referred to in subsections (1) to (3) must be approved by the National Treasury.

Part 2 – Finances

247. Finances of financial sector bodies

(1) The money of each financial sector body consists of—

(a) amounts received by the financial sector body as fees and levies;

(b) funds accruing to the financial sector body from any other source; and

(c) interest on amounts standing to the credit of the financial sector body in an account.

(2) The money of a financial sector body may be applied only as follows:

(a) To the general administrative and operating costs of the financial sector body;

(b) to exercise the powers, perform the functions, and fulfil the duties of the financial sector body in terms of the financial sector laws; and

(c) to repay amounts paid to it in error.

Part 3 – Budgeting, accounting, auditing and financial reporting

248. Budgeting, accounting, auditing and financial reporting

(1) The accounting authority of the Financial Sector Conduct Authority, the Ombud Council, the Office of the Pension Funds Adjudicator, and the Office for the Ombud for Financial Services Providers is the accounting authority for the designated bank account referred to in section 246(1), and has the duties referred to in Part 2 of Chapter 6 of the Public Finance Management Act.

(2) The accounting authority of the Financial Sector Conduct Authority is the accounting authority for the designated bank account referred to in section 246(2), and has the duties referred to in Part 2 of Chapter 6 of the Public Finance Management Act.

(3) In respect of the Prudential Authority, the Chief Executive Officer is responsible for accounting for the designated bank account referred to in section 246(1).

(4) (a) The Financial Sector Conduct Authority, the Ombud Council, the Office of the Pension Funds Adjudicator, and the Office of the Ombud for Financial Services Providers must—

(i) prepare an annual budget in accordance with section 53 of the Public Finance Management Act and section 239 of this Act;

(ii) prepare an annual report and financial statements in accordance with section of the Public Finance Management Act;

(iii) submit information as required in terms of section 54 of the Public Finance Management Act; and

(iv) comply with Treasury Regulations, circulars, guidelines and practice notes in terms of the Public Finance Management Act.

(b) The Tribunal, although it is not a public entity in terms of the Public Finance Management Act, must also comply with the requirements in paragraph (a).

(5) (a) The Prudential Authority must prepare an annual budget and estimates of expenditure for the financial year in accordance with section 239, and an annual report and financial accounts in accordance with section 55.

(b) The Chief Executive Officer is responsible for ensuring that the expenditure of the Prudential Authority is in accordance with its approved budget.

(6) The Prudential Authority, the Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator, and the Office of the Ombud for Financial Services Providers must provide the Financial Sector Conduct Authority with its levies that will be imposed for the operation of the financial sector body two months prior to the start of a financial year in respect of which the levies will be imposed.

(7) In addition to the matters which must be included in the annual report and financial statements of the Financial Sector Conduct Authority referred to in section 55 of the Public Finance Management Act, the annual report must set out and contain a statement showing—

(a) the total number of supervised entities who paid levies imposed in accordance with section 237(1)(b);

(b) the total funds distributed from the designated bank account referred to in section 246(2) to the designated bank account of each financial sector body referred to in section 246(1); and

(c) any other matter determined by the Minister.

(8) In addition to the matters which must be included in the annual reports and financial statements or financial accounts of a financial sector body referred to in subsections (4) and (5), the annual report of a financial sector body must contain a statement showing—

(a) the total number of persons who paid fees determined by that financial sector body in the financial year;

(b) the total number of supervised entities who paid levies imposed by that financial sector body in that financial year;

(c) the total fees collected by the financial sector body;

(d) the total levies collected on behalf of and received by the financial sector body; and

(e) any other matter determined by the Minister.

(9) A financial sector body must publish its annual budget on their website, and must publish its determined fees and imposed levies in the Register and on its website.

Part 4 – Application of Chapter to Tribunal

249. Application of Chapter to Tribunal

The Chairperson of the Tribunal is responsible to ensure that the functions and duties of the Tribunal in terms of this Chapter are performed.

Chapter 17
Miscellaneous

Part 1 – Information sharing and reporting

250. Designated authority

In this Part, "designated authority" means—

(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;

(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) the Ombud Council;

(i) an ombud; or

(j) a payment system management body recognised in terms of section 3(1) of the National Payment System Act.

251. Information sharing

(1) (a) A financial sector regulator or the Reserve Bank has an obligation and a duty to—

(i) achieve its objective as set out in this Act;

(ii) achieve the objects of financial sector laws;

(iii) perform its functions, including its supervisory functions, in terms of financial sector laws and the Financial Intelligence Centre Act.

(b) A financial sector regulator or the Reserve Bank must collect and use information, including personal information as defined in the Protection of Personal Information Act, to the extent that the financial sector regulator or the Reserve Bank determines is necessary to properly perform the obligations and duties referred to in paragraph (a).

(c) A financial sector regulator or the Reserve Bank may only share or disclose information in order to fulfil its obligations and duties in terms of this subsection and subsection (2), and the disclosure or sharing of information for any other purposes constitutes the sharing or disclosure of information for a purpose that is not authorised, as referred to in section 272.

(2) (a) A financial sector regulator or the Reserve Bank must disclose information referred to in subsection (1)(b) if the financial sector regulator or the Reserve Bank determines it is necessary to comply with its obligations —

(i) to perform functions in terms of, or as enabled by, the financial sector laws or the Financial Intelligence Centre Act;

(ii) relating to legal proceedings or other proceedings;

(iii) to warn 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;

(iv) to inform financial customers of actions taken against a financial institution in terms of the financial sector laws or the Financial Intelligence Centre Act;

(v) to alert 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;

(vi) to protect the public interest;

(vii) to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial products or financial services; or

(viii) relating to anti-money laundering and combating the financing of terrorism.

(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.

(3) A financial sector regulator or the Reserve Bank, in pursuing the obligations and duties referred to in subsections (1)(a) and (2)(a), may—

(a) liaise with any designated authority on matters of common interest;

(b) participate in the proceedings of any designated authority;

(c) advise or receive advice from any designated authority;

(d) 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

(e) 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 —

(i) co-ordinate and harmonise the reporting and other obligations of financial institutions;

(ii) provide mechanisms for the exchange of information, including provisions requiring or permitting a financial sector regulator, the Reserve Bank or a designated authority —

(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;

(iii) provide procedures for the co-ordination of supervisory activities to facilitate the monitoring of financial institutions, including on an on-going basis; and

(iv) 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.

(4) (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.

(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 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.

(c) A financial sector regulator or the Reserve Bank may only request information from a designated authority in connection with the performance of obligations and duties in terms of the laws referred to in subsections (1) and (2).

(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;

(ii) may not be disclosed to a third party without the consent of the designated authority that provided the information; and

(iii) must retain its integrity and confidentiality, and the designated authority that receives the information must take appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of the information, and unlawful access to or processing of the information.

(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

(ii) use all reasonable means to oppose the compulsion to disclose, and otherwise to protect the information.

(5) When sharing or disclosing information in terms of subsection (3) or (4), a financial sector regulator or the Reserve Bank must comply with the requirements in those subsections, and a contravention of those requirements constitutes the sharing or disclosure of information in a manner that is not authorised, as referred to in section 272.

(6) (a) A financial sector regulator or the Reserve Bank must have in place written processes and procedures that—

(i) clearly specify which officials and employees in the financial sector regulator or the Reserve Bank are authorised to share or disclose information in terms of this section; and

(ii) provide for the sharing or disclosure of information in a manner that is consistent with the requirements of this section and the Protection of Personal Information Act.

(b) The processes and procedures referred to in paragraph (a) must grant authority to share or disclose information only to officials and employees who have an appropriate degree of seniority in the institution.

(c) Only an official or employee of a financial sector regulator or the Reserve Bank who is authorised by the policy and procedures of the financial sector regulator or the Reserve Bank may share or disclose information on behalf of the financial sector regulator or the Reserve Bank.

(7) For the purposes of this section, "information" does not include aggregate statistical data or information that does not disclose the identity of a person.

252. Reporting by auditors to financial sector regulators

(1) (a) An 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 a financial conglomerate, the holding company of the financial institution, about any matter relating to the business of the financial institution or a company within the conglomerate, being a matter—

(i) which the auditor becomes aware of in the course of performing functions and duties as auditor; and

(ii) that the 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) 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) An 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 auditor believes are the reasons for the termination; and

(b) any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, 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 an auditor of a report or information under subsection (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 an auditor to comply with this section does not confer upon any person a right of action against the auditor.

253. Reporting to financial sector regulators

(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.

254. Prohibition of victimisation

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 252; or

(b) made a report in terms of section 253, even if the report was not required by law.

255. Protected disclosures

Sections 252 and 253 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

256. Establishment and operation of Financial Sector Information Register

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

257. Purpose of Register

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.

258. Content of Register

(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.

259. Keeping of Register

(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 public.

260. Requirements for registered documents

The Director-General may make a written determination—

(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.

261. Status of Register and judicial notice

(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.

(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 effect, in whole or in part, of a law or regulatory instrument as it appears in the Register.

(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

(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.

262. Extracts from Register regarding licence status

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—

(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; 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.

263. Rectification of Register

(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.

264. Delegations by Director-General

(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 or any other suitable person, and the Director-General may, at any time, amend or revoke a delegation.

(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.

(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

265. Duties of members and staff of certain bodies

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 five years, or to both a fine and such imprisonment.

266. Licensing

(1) A person who contravenes section 111(1), (2), (3), (4) or (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.

(2) A licensee who contravenes section 117 is liable to an administrative penalty not exceeding R5 000 for each day during which the offence continues.

(3) A licensee who contravenes section 127 is liable to an administrative penalty not exceeding R50 000.

267. Requests for information, supervisory on-site inspections and investigations

(1) A supervised entity that contravenes section 131(1)(b) commits an offence and is liable on conviction to a fine not exceeding R1 000 for each day during which the offence continues.

(2) A supervised entity that or person who contravenes section 132(4)(a)(iii) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(3) If—

(a) a financial sector regulator gives a supervised entity a directive in terms of section 132(4)(a)(iii); and

(b) without reasonable excuse, a business document to which the directive relates is removed from the premises, or concealed, destroyed or otherwise interfered with, contrary to the directive,

the supervised entity or person on whom the directive was served commits an offence and is liable on conviction to a fine not exceeding R2 500 000.

(4) A person who contravenes section 133 commits an offence and is liable on conviction to a fine not exceeding R1 000 000 or imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

(5) A person who contravenes section 139 commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.

268. Enforcement

(1) A person that contravenes section 149(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.

(2) A person who contravenes section 153(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—

(a) a person who is subject to a debarment order contravenes section 153(4) (a) by entering into an arrangement referred to in section 153(4)(b); and

(b) the other party to the arrangement knew or should reasonably have known that entering into the arrangement contravened that section,

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.

(4) A person who contravenes section 153(5) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

269. Administrative penalties

A person who contravenes section 174 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.

270. Ombud schemes

(1) A person who contravenes section 189(1) or (2) or section 192 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(2) A person who contravenes section 202(11) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(3) A natural person who contravenes section 205(8) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(4) If—

(a) a natural person who is subject to a debarment order in terms of section 205, contravenes section 205(8)(a) by entering into an arrangement referred to in section 205(8)(b); and

(b) the other party to the arrangement knew or should reasonably have known that entering into the arrangement contravened that section;

the other party to the arrangement also commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(5) A person who contravenes section 207(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.

(6) A licensed financial institution that contravenes section 210 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(7) A financial institution that contravenes section 215(1) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(8) A person who contravenes section 217 commits an offence and is liable on conviction to a fine not exceeding R5 000 for each day during which the offence continues.

271. Proceedings in Tribunal

A person who contravenes a direction in terms of section 232(5)(a), or refuses, without reasonable excuse, to take an oath or make an affirmation when required to do so as contemplated in section 232(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 five years, or to both a fine and such imprisonment.

272. Miscellaneous

(1) (a) A financial sector regulator or the Reserve Bank commits an offence if information is disclosed or shared for a purpose that is not authorised in terms of section 251(1) or (2), or in a manner that is not authorised as referred to in section 251(5).

(b) Both an official or employee who shares or discloses information, and the financial sector regulator or the Reserve Bank on whose behalf the information is shared or disclosed, commit an offence if an official or employee—

(i) who is not authorised to share or disclose information shares or discloses information in contravention of section 251(6) (c);

(ii) who is authorised to share or disclose information shares or discloses information for a purpose that is not authorised in terms of section 251(1) or (2), or in a manner that contravenes section 251(3) or (4).

(2) (a) If a financial sector regulator or the Reserve Bank commits an offence referred to in subsection (1), it is liable on conviction to a fine not exceeding R5 000 000.

(b) An official or employee who commits an offence referred to in subsection (1)(b) is liable on conviction to a fine not exceeding R5 000 000, or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(3) An auditor who contravenes section 252 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(4) A person who contravenes section 254 commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(5) A person who contravenes a condition imposed in terms of section 280 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

273. False or misleading information

A person who provides to a financial sector regulator or the Reserve Bank, information in connection with the operation of a financial sector law, that the person knew or believed, or ought reasonably to have known or believed, to be false or misleading, including by omission, commits an offence and is liable on conviction to a fine not exceeding R10 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

274. Accounts and records

A person who is required in terms of a financial sector law to keep accounts or records commits an offence if—

(a) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and

(b) the person—

(i) knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;

(ii) intended to deceive or mislead a financial sector regulator or an investigator; or

(iii) 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,

and is liable on conviction to a fine not exceeding R10 000 000, or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

275. False assertion of connection with financial sector regulator

A person who, without the consent of the financial sector regulator, applies to a company, body, business or undertaking a name or description that reasonably 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.

276. Liability in relation to juristic persons

(1) If—

(a) a financial institution commits an offence in terms of a financial sector law; and

(b) a member of the governing body of the financial institution failed to take all reasonably practicable steps to prevent the commission of the offence,

the member of the governing body commits the like offence, and is liable on conviction to a penalty not exceeding the penalty that may be imposed on the financial institution for the offence.

(2) If—

(a) a key person of a financial institution engages in conduct that amounts to a contravention of a financial sector law; and

(b) the financial institution failed to take all reasonably practicable steps to prevent the conduct,

the financial institution must be taken also to have engaged in the conduct.

Part 4 – General matters

277. Complaints

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.

278. Compensation for contraventions of financial sector laws

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.

279. Extension of period for compliance

(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.

280. Conditions of licences

(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.

(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.

(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.

281. Exemptions

(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—

(a) will be contrary to the public interest; or

(b) may prejudice the achievement of the objects of a financial sector law.

(2) Subsection (1) applies to the granting of exemptions if a financial sector law does not provide a power to grant exemptions.

(3) If a financial sector law provides a power to grant exemptions, the responsible authority must—

(a) grant the exemption in terms of the relevant provisions of the financial sector law; and

(b) when deciding whether to grant an exemption, comply with the requirements of subsection (1) in addition to any requirements specified in the financial sector law.

(4) The responsible authority must publish each exemption.

282. Requirements for notification and concurrence

(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 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.

(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; 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.

283. Arrangements for engagements with stakeholders

Each of the financial sector regulators and the Ombud Council must establish and give effect to arrangements to facilitate consultation and the exchange of information with financial institutions, financial customers, and prospective financial customers on matters of mutual interest.

[Date of commencement of section 283: 1 April 2018 in respect of the Prudential Authority and the Financial Sector Conduct Authority, and 1 October 2018 in respect of the Ombud Council]

284. Records and entries in books of account admissible in evidence

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.

285. Immunities

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 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.

286. Notices to licensees

(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—

(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.

287. Publication requirements in financial sector laws

(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.

(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) This section does not require publication of a draft of a document in the Register.

Part 5 – Regulations and guidelines

288. Regulations and guidelines

(1) The Minister may make Regulations to facilitate the implementation of this Act, including Regulations —

(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) 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 publish the Regulations also in the Register.

(3) (a) The Minister may issue guidelines for the disclosure of material interests contemplated in sections 49, 72, 193 and 226 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, 72 193 and 226 from their duty to properly apply their minds and disclose all material interests.

(4) The Minister may not make a Regulation unless the Minister—

(a) has published—

(i) a draft of the Regulation;

(ii) a statement explaining the need for and the intended operation of the Regulation;

(iii) a statement of the expected impact of the Regulation;

(iv) a notice inviting submissions in relation to the Regulation and stating where, how and by when submissions are to be made; and

(b) has, once submissions referred to in paragraph (a)(iv) have been received and considered, submitted to Parliament, while it is in session,—

(i) the documents mentioned in paragraph (a)(i) to (iv); and

(ii) a report of the consultation process, which report must include—

(aa) a general account of the issues raised in the submissions; and

(bb) a response to the issues raised in the submissions.

(5) (a) The period allowed for making submissions referred to in subsection (4)(a) must be at least six weeks.

(b) The period allowed for Parliamentary scrutiny referred to in subsection (4)(b) must be at least 30 days while Parliament is in session.

(6) If a Minister intends, whether or not as a result of a consultation process, to make a Regulation in a materially different form from the draft Regulation published in terms of subsection (4), the Minister must, before making the Regulation, repeat the process referred to in subsection (4).

(7) If complying with subsection (4) or (6), in the opinion of the Minister, is likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed Regulation, the Minister must, before making the Regulation—

(a) publish—

(i) a draft of the Regulation and a statement explaining the need for and the intended operation of the Regulation;

(ii) a notice inviting submissions in relation to the Regulation and stating where, how and by when submissions are to be made; and

(iii) a statement of the reasons why the delay involved in complying with subsections (4) and (6) is considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed Regulation; and

(b) submit to Parliament the documents mentioned in paragraph (a).

(8) (a) The period allowed for making submissions referred to in subsection (7)(a)(ii) must be at least seven days.

(b) The period allowed for submission to Parliament referred to in subsection (7)(b) must be at least seven days, whether Parliament is in session or not.

(c) The period referred to in paragraph (b) may run concurrently with the period referred to in paragraph (a).

(9) The Minister must, after making a Regulation pursuant to subsections (7) and (8), within 30 days of making the Regulation, submit to Parliament a report of the consultation process referred to in subsections (13) to (15).

(10) This section does not prevent the Minister from engaging in consultations in addition to those required in terms of this section.

(11) In deciding whether to make a Regulation, the Minister must take into account all submissions received by the expiry of the period referred to in subsection (5)(a) or (8)(a) and any deliberations of Parliament.

(12) A Regulation comes into effect—

(a) on the date that it is published in the Register; or

(b) if the Regulation provides that it comes into effect on a later date, on the later date.

(13) With each Regulation, the Minister must publish a consultation report.

(14) A consultation report must include —

(a) a general account of the issues raised in the submissions made during the consultation; and

(b) a response to the issues raised in the submissions.

(15) If the Minister did not comply with subsection (4) or (6) for the reason stated in subsection (7), the consultation report must be published 30 days after the instrument was made and the report must include a statement of the reasons why the delay involved in complying, or complying fully, with subsection (4) or (6) was considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the Regulation.

Part 6 – Amendments, repeals, transitional and saving provisions

289. Interpretation

In this Part—

"**Appeal Board**" means the Appeal Board established by section 26A of the Financial Services Board Act;

"**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;

"**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

"**Financial Services Board Act**" means the Financial Services Board Act, 1990 (Act No. 97 of 1990).

290. Amendments and repeals

The Acts listed in Schedule 4 are amended or repealed as set out in that Schedule.

[Date of commencement of section 290: See Schedule 4 for details regarding dates of commencement]

291. Transitional provision in relation to medical schemes

(1) The functions of the Prudential Authority in relation to medical schemes and the associated powers and duties of the Prudential Authority are, to the extent determined by, and subject to any conditions determined by, the Minister, to be exercised by the Council for Medical Schemes instead of the Prudential Authority, but with the concurrence 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 the extent determined by, and subject to any conditions determined by, the Minister, to be exercised by the Council for Medical Schemes instead of the Financial Sector Conduct Authority, but with the concurrence of the Financial Sector Conduct Authority.

(3) A determination in terms of subsection (1) or (2) must be published.

(4) The concurrence of a financial sector regulator in terms of subsection (1) or (2) to the exercise of a particular power or the performance of a particular function or duty is not required if the financial sector regulator has agreed in writing that—

(a) the exercise of the power or the performance of the function or duty does not prejudice the achievement of its objective; and

(b) its concurrence is unnecessary.

292. Transitional prudential powers of Financial Sector Conduct Authority

(1) This section applies for the period of three years from the date on which this section comes into effect but the Minister may, by notice in the *Gazette*, determine a shorter or longer period.

(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:

(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;

(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.

(5) Subsection (3) does not affect the powers of the Financial Sector Conduct Authority in respect of a financial institution.

293. Transfer of assets and liabilities of Financial Services Board

(1) At the date on which this section 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.

(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).

(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 section came into effect.

(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.

294. Transfer of staff of Financial Services Board

(1) (a) At the date on which this section 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).

(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.

(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 fund of the South African Reserve Bank, where applicable.

(2) The Financial Sector Conduct Authority, at the date on which this section comes into effect, becomes liable 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—

(a) a person who was employed by the Financial Services Board as at 1 January 1998 and remained continuously so employed until he or she 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 person's retirement from the Financial Services Board, or the person's death while employed by the Financial Services Board.

(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.

(4) At the date on which this section comes into effect, the pension fund of the Financial Services Board becomes the pension fund of the Financial Sector Conduct Authority.

295. Annual reports

(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, for the reporting period during which this section comes into effect.

(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 during which this section comes into effect.

(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.

296. Inspections and investigations

(1) An inspection or investigation in terms of the Banks Act, the Reserve Bank 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 that is pending and not concluded immediately before the date on which this section comes into effect may be continued and concluded by the Prudential Authority in terms of the relevant provisions of this Act, or by the Financial Sector Conduct Authority in relation to an inspection or investigation in terms of the Short-term Insurance Act or the Long-term Insurance Act.

(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 the 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.

297. Co-operation agreements with foreign agencies

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 section 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 arrangement.

298. Enforcement Committee and Appeal Board

(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

(ii) a panel of the Appeal 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.

(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;

(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.

299. Right of appeal of Financial Services Board decisions

Despite the repeals effected in terms of section 290, 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 made to the Tribunal.

300. Pending proceedings

(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 section 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.

(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 section 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.

(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 section comes into effect, for the Financial Services Board, the Directorate of Market Abuse, where applicable, or a registrar in terms of a financial sector law other than the Banks Act.

301. Savings of approvals, consents, registrations and other acts

(1) A licence, 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 section 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 provisions of that financial sector law.

(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 section come into effect have effect as Ombud Council rules, and may be amended or revoked by Ombud Council rules in accordance with this Act.

(3) A regulatory instrument or Regulation made or issued in terms of a financial sector law and in force immediately before the date on which this section comes into effect remains in force for the purposes of the financial sector law but may be amended or revoked by a regulatory instrument made by the responsible authority for the financial sector law in accordance with the relevant financial sector law.

(4) Consultations undertaken before the date on which Part 1 of Chapter 7 comes into effect in relation to a regulatory instrument proposed to be made under a specific financial sector law or a proposed financial sector law after that Part came into effect are taken to meet the requirements of this Act for consultation to the extent that they—

(a) meet the requirements of the specific financial sector law for consultation prior to the amendment of that law in accordance with Schedule 4; or

(b) substantially meet the requirements of this Act for consultation on the proposed regulatory instrument.

(5) 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 section comes into effect continue in force, but may be amended or repealed by Regulations made in terms of section 5 by the Prudential Authority.

(6) An ombud scheme that, immediately before the repeal of the Financial Services Ombuds Schemes Act, 2004 (Act No. 37 of 2004), came into effect, was recognised in terms of that Act must be taken to be a recognised industry ombud scheme as if it had been recognised under this Act.

(7) Subsection (6) ceases to have effect at the end of 12 months after Chapter 14 takes effect, but the Ombud Council may, on application and for good reason, extend the application of that subsection in a particular case for a further period of not more than 6 months.

302. Levy

(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 a date fixed by the Minister by notice published in the Register.

(2) A levy referred to in subsection (1) is, from the date on which this section takes effect, taken to be a levy for the purposes of this Act.

303. Chief Actuary

A reference in any Act or subordinate legislation to the Chief Actuary is, after the date on which this section comes into effect, to be read as a reference to the Prudential Authority.

304. Additional transitional arrangements

(1) In order to facilitate the coming into effect, appropriate implementation and operation of this Act, the Minister may make Regulations providing for transitional arrangements regarding the exercise of powers, the performance of functions and duties, and other matters that may be necessary in relation to—

(a) the establishment of the financial sector regulators and other bodies in terms of this Act;

(b) the coming into operation of different provisions of this Act; and

(c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

(2) Without limiting subsection (1), Regulations in terms of this section may provide for—

(a) the Reserve Bank to exercise specified powers and to perform specified functions and duties of the Prudential Authority, should it be necessary for powers and functions of the Prudential Authority in terms of this Act to be exercised for a period prior to the Prudential Authority being formally established; and

(b) the Financial Services Board to exercise specified powers and perform specified functions and duties of the Financial Sector Conduct Authority, should it be necessary for the powers and functions of the Financial Sector Conduct Authority in terms of this Act to be exercised prior to the Financial Sector Conduct Authority being formally established.

Part 7 – Short title and commencement

305. Short title and commencement

(1) This Act is called the Financial Sector Regulation Act, 2017, and comes into effect on a date determined by the Minister by notice in the *Gazette*.

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

(a) different provisions of this Act;

(b) different provisions of this Act in respect of different categories of financial institutions; and

(c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

Schedule 1

Financial sector laws (Section 1(1))

[date of commencement of Schedule 1: 29 March 2018]

Pension Funds Act, 1956 (Act No. 24 of 1956)

Friendly Societies Act, 1956 (Act No. 25 of 1956)

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, 1998 (Act No. 52 of 1998)

Short-term Insurance Act, 1998 (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)

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)

[date of commencement of Schedule 2: 1 April 2018]

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
The Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998), so far as they relate to matters within the objectives of—	
(a) the Prudential Authority	Prudential Authority
(b) the Financial Sector Conduct 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—	Prudential Authority Financial Sector Conduct Authority

(a) the Prudential Authority (b) the Financial Sector Conduct Authority	

Schedule 3

Documents to be published in the Register (Section 258)

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 interpretation rulings issued under part 1 of chapter 10

7. Enforceable undertakings

8. Orders of a court under section 152 or 204, 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 of fees in terms of section 237(1)(a)

20. Exemptions under section 281 (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 290)

Act No. and year	Short title	Extent of repeal or amendment
Act No. 24 of 1936	Insolvency Act, 1936	1. The addition in section 35A(1) in the definition of "market infrastructure" of the following paragraphs: "(d) a central counterparty as defined in section 1 of that Act and licensed under section 49 of that Act; or (e) a licensed external central counterparty as defined in section 1 of that Act;". *[date of commencement of item 1: 29 March 2018]* 2. The amendment of section 83— (a) by the substitution for subsection (2) of the following subsection: "(2) If such property consists of **[a marketable security]** securities as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012), **[or]** a bill of exchange or a financial instrument or a foreign financial instrument as defined in section **[1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]** 1(1) of the Financial Sector Regulation Act, 2017, the creditor may, after giving the notice mentioned in subsection (1) and before the second meeting of creditors, realise the property in the manner and on the conditions mentioned in subsection (8)."; (b) by the substitution for subsection (3) of the following subsection: "(3) If such property does not consist of **[a marketable security]** securities or a bill of exchange, the trustee may,

within seven days as from the receipt of the notice mentioned in subsection (1) or within seven days as from the date which the certificate of appointment issued by the Master in terms of subsection (1) of section eighteen or subsection (2) of section fifty six reached him, whichever be the later, take over the property from the creditor at a value agreed upon between the trustee and the creditor or at the full amount of the creditor's claim, and if the trustee does not so take over the property the creditor may, after the expiration of the said period but before the said meeting, realise the property in the manner and on the conditions mentioned in subsection (8)."; and

(c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

"(a) if it is **[—**

(i)] any property of a class ordinarily sold through [**a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)**] an authorised user or an external authorised user, on an exchange or an external exchange, each defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012) or, where applicable, a person prescribed by the Minister of Finance as a regulated person in terms of section 5 of that Act, the creditor may, subject to the provisions of [**the said**] that Act and [**(where]** applicable [) **the**] standards and rules [**referred to in section 12 thereof, forthwith**] in terms of that Act, immediately sell it through [**a stockbroker**] an authorised user, external authorised user or such regulated person, or if the creditor is [**a stockbroker**] an authorised user, external authorised user or regulated person, also to another [**stockbroker]** authorised user,

		external authorised user or regulated person; [**or** **(ii) a financial instrument referred to in subsection (2) the creditor may, subject to the provisions of the Financial Markets Control Act, 1989, and rules referred to in sections 17 thereof, forthwith sell it through a financial instrument trader as defined in section 1 of the said Act, or, if the creditor is a financial instrument trader or financial instrument principal as defined in section 1 of the said Act, also to another financial instrument trader or financial instrument principal; and**]". *[date of commencement of item 2: 29 March 2018]*

Act No. and year	Short title	Extent of repeal or amendment
Act No. 24 of 1956	Pension Funds Act, 1956	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "audit-exempt fund" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;"; (b) by the insertion in subsection (1) after the definition of "complaint" of the following definition: "'**conduct standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (c) by the insertion in subsection (1) after the definition of "fair value" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (d) by the deletion in subsection (1) of the definitions of "Financial Services Board" and "prescribed"; (e) by the insertion in subsection (1) after the definition of "investment reserve account" of the following definition: "'**joint standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (f) by the insertion in subsection (1) after the definition of "provident preservation fund" of the following definition: "'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(g) by the insertion in subsection (1) after the definition of "publish" of the following definition:

"'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(h) by the deletion in subsection (1) of the definition of "registrar";

(i) by the insertion in subsection (1) after the definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(j) by the addition of the following subsection:

"(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.".

[date of commencement of item 1: 1 April 2018]

2. The insertion after section 1 of the following sections:

"**Relationship between Act and Financial Sector Regulation Act**

1A. (1) A reference in this Act to the registrar or the Financial Services Board must be read as a reference to the Authority.

(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.

(3) 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.

(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—

(a) a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5)(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.

(b) The Authority may also publish the information or document on its web site.

(6) 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 237 and Chapter 16 of the Financial Sector Regulation Act.

(7) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

Regulatory instruments

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 *Gazette* is specifically

required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts section 1A(1)-(4)(a), (5) and (7): 1 April 2018, insofar as it inserts section 1B: 18 March 2019, insofar as it inserts section 1A(6): 1 April 2022 and insofar as it inserts section 1A(4)(b): to be proclaimed]

3. The repeal of section 2(5).

[date of commencement of item 3: to be proclaimed]

4. The repeal of section 3.

[date of commencement of item 4: 1 April 2018]

5. The amendment of section 18—

(a) by the substitution for subsection (1) of the following subsection:

"(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

[date of commencement of paragraph (a): 28 September 2018]

(b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(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.".

[date of commencement of paragraph (b): 1 April 2018]

6. The amendment of section 19—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"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

[date of commencement of paragraph (a): 28 September 2018]

(b) by the deletion of subsection (7).

[date of commencement of paragraph (b): 1 April 2018]

7. The repeal of section 25.

[date of commencement of item 7: 1 April 2018]

8. The substitution in section 26 for subsection (1) of the following subsection:

"(1) [**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)—**

(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)] Without limiting what a directive of a financial sector regulator may include, the Authority may, through a directive, 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 being managed in accordance with this Act or the rules of the fund.".

[date of commencement of item 8: 1 April 2018]

9. The insertion in Chapter VA before section 30A of the following section:

"**Ombud scheme**

30AA. 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.".

[date of commencement of item 9: 1 April 2018]

10. 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—".

[date of commencement of item 10: 1 April 2022]

11. The substitution for section 30D of the following section:

"Main object of Adjudicator

30D. (1) 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 211 of the Financial Sector Regulation Act [**in a procedurally fair, economical and expeditious manner]**.

(2) In disposing of complaints in terms of subsection (1) the Adjudicator must—

(a) apply, where appropriate, principles of equity;

(b) have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution;

(c) have regard to the provisions of this Act; and

(d) act in a procedurally fair, economical and expeditious manner.".

[date of commencement of item 11: 1 April 2022]

12. 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]**— ".

[date of commencement of item 12: 1 April 2022]

13. The substitution in section 30R(1) for paragraph (a) of the following paragraph:

" (a) funds [**provided by the Financial Services Board**] accruing to the Adjudicator in terms of legislation on the grounds of a budget submitted to, and approved **[of]** by, the **[Financial Services Board]** Minister; and".

[date of commencement of item 13: 1 April 2022]

14. The substitution in section 30S for the expression "Financial Services Board", wherever occurring in the section, of the expression "Minister".

[date of commencement of item 14: 1 April 2022]

15. 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),]** The Adjudicator is the accounting authority of the Office of the Adjudicator.".

[date of commencement of item 15: 1 April 2022]

16. The repeal of sections 33, 33A and 34.

[date of commencement of item 16: 1 April 2018]

17. The deletion in section 36 of subsections (1)(bA) and (3).

[date of commencement of item 17: 1 April 2022]

18. The deletion in section 37 of subsections (2) to (5).

[ate of commencement of item 18: to be proclaimed]

19. The 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 insertion before item 30A of the following item: "**30AA**. Ombud scheme". *[date of commencement of item 19: 1 April 2018]*

Act No. and year	Short title	Extent of repeal or amendment
Act No. 25 of 1956	Friendly Societies Act, 1956	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "assets" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;"; (b) by the insertion in subsection (1) after the definition of "assets" of the following definition: "'**conduct standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (c) by the insertion in subsection (1) after the definition of "court" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (d) by the insertion in subsection (1) after the definition of "Insurance Act" of the following definition: "'**joint standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (e) by the deletion in subsection (1) of the definition of "prescribed"; (f) by the insertion in subsection (1) after the definition of "principal officer" of the following definition: "'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (g) by the insertion in subsection (1) after the definition of "principal officer" of the following definition:

"**'Register'** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(h) by the deletion in subsection (1) of the definition of "registrar"; and

(i) by the addition of the following subsection:

"(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.".

[date of commencement of item 1: 1 April 2018]

2. The insertion after section 1 of the following sections:

"Relationship between Act and Financial Sector Regulation Act

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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(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 Au-

thority publishing the information or document in the Register.

(b) The Authority may also publish the information or document on its web site.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

(5) The Authority must publish the following on the Register:

(a) the registration of a society in terms of this Act and each cancellation of a registration;

(b) any exemption or any withdrawal of an exemption referred to in sections 3(2) and (3), 25(1) or section 47(1)(bC); and

(c) the rules of each registered friendly society, and each amendment of those rules.

Regulatory instruments

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 *Gazette* is specifically required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(3), (5) and 1B: 1 April 2018, and insofar as it inserts section 1A(4): 1 April 2022]

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**] Authority with such statistical infor-

mation as may be requested by the **[Minister]** Authority;".

[date of commencement of item 3: 1 April 2018]

4. The repeal of sections 4 and 32.

[date of commencement of item 4: 1 April 2018]

5. The substitution in section 33 for subsection (1) of the following subsection:

"(1) The [**registrar**] Authority 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 the court for an order in terms of paragraph (b), (d) or (e) of that subsection, if the [**registrar**] Authority 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 *prima facie* the desirability of the order for which it wished to apply.".

[date of commencement of item 5: 1 April 2018]

6. The repeal of sections 44 and 45.

[date of commencement of item 6: 1 April 2018]

7. The deletion in section 47(1) of paragraphs (bA) and (bC).

[date of commencement of item 7 insofar as it deletes paragraph (bA): 1 April 2022 and insofar as

		it deletes paragraph (bC): to be proclaimed] 8. The deletion in section 48 of subsections (2), (3), (4) and (5). *[date of commencement of item 8: to be proclaimed]* 9. The substitution for the expression "registrar", wherever it occurs, of the expression "Authority". *[date of commencement of item 9: 1 April 2018]* 10. The amendment of the arrangement of sections by the insertion after item 1 of the following items: "**1A**. Relationship between Act and Financial Sector Regulation Act **1B**. Regulatory instruments". *[date of commencement of item 10: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 90 of 1989	South African Reserve Bank Act, 1989	1. The amendment of section 3 by the addition of the following subsection, the existing section becoming subsection (1): "(2) In addition, the Bank is responsible for protecting and maintaining financial stability as envisaged in the Financial Sector Regulation Act, 2017.". *[date of commencement of item 1: 1 April 2018]* 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), the Financial Sector Regulation Act, 2017 and other financial sector laws as defined in section 1(1) of the Financial Sector Regulation Act, 2017.". *[date of commencement of item 2: 1 April 2018]* 3. The substitution in section 11 for subsection (2) of the following subsection: "(2)(a) The provisions of [**the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984),**] Part 4 of Chapter 9 of the Financial Sector Regulation Act, 2017 except [**sections 2 and 7**] section 134 [**thereof**], shall [***mutatis mutandis***] apply with the changes necessary in the context in respect of an inspection carried out in terms of subsection (1). (b) Section 130 of the Financial Sector Regulation Act, 2017 does not apply in respect of an

		inspection carried out in terms of subsection (1).". *[date of commencement of item 3: 1 April 2018]* 4. The substitution in section 12 for subsection (2) of the following subsection: "(2) The provisions of [**sections 4, 5, 8 and 9 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984),**] Part 4 of Chapter 9 of the Financial Sector Regulation Act shall apply [***mutatis mutandis***] with the necessary changes required by the context in respect of an inspection carried out in terms of subsection (1).". *[date of commencement of item 4: 1 April 2018]*

Act No. and year	Short title	Extent of repeal or amendment
Act No. 94 of 1990	Banks Act, 1990	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "allocated capital and reserve funds" of the following definition: "'**Authority**' means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;"; (b) by the deletion in subsection (1) of the definition of "board of review"; *[date of commencement of paragraph (b): 28 September 2018]* (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 section 1(1) of the Financial Sector Regulation Act;"; (d) by the insertion in subsection (1) after the definition of "fellow subsidiary" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (e) by the deletion in subsection (1) of the definition of "prescribed"; (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 section 1(1) of the Financial Sector Regulation Act;"; (g) by the insertion in subsection (1) after the definition of "qualifying capital and reserve funds" of the following definition:

"'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(h) by the deletion in subsection (1) of the definition of "Registrar";

(i) by the insertion in subsection (1) after the definition of "tier 2 unimpaired reserve funds" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(j) by the addition of the following subsection:

"(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.".

[date of commencement of item 1, excluding paragraph (b): 1 April 2018]

2. The insertion after section 1 of the following section:

"Relationship between Act and Financial Sector Regulation Act

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.

(2) 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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard or a conduct standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(4)(a) Matters in respect of which regulations relating to banks may be prescribed in terms of this Act may also be made in prudential standards or conduct standards.

(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 may be repealed by the Minister to allow for prudential or conduct standards to be made in terms of the Financial Sector Regulation Act, in respect of the subject matter of those regulations.

(c) Paragraph (b) does not limit the powers of the Minister in terms of this Act to prescribe regulations.

(5) A reference in this Act to an inspection or an investigation in terms of section 6 of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act, but not a reference to an inspection in terms of section 83 or 84 of this Act.

(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.

(b) The Authority may also publish the information or document on its web site.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

(8) A reference in this Act to a review of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(9)(a) If any requirement in the Financial Sector Regulation Act is inconsistent with any provision of this Act, the requirement in the Financial Sector Regulation Act prevails.

(b) If any requirement in a regulatory instrument made in terms of the Financial Sector Regulation Act is inconsistent with any provision of a regulatory instrument made in terms of this Act, the requirement in the regulatory instrument made in terms of the Financial Sector Regulation Act prevails.".

[date of commencement of item 2 insofar as it inserts section 1A(1)-(6) and (8)-(9): 1 April 2018 and insofar as it inserts subsection (7): 1 April 2022]

3. The repeal of section 3.

[date of commencement of item 3: 1 April 2018]

4. The deletion in section 4 of subsections (1) and (2).

[date of commencement of item 4: 1 April 2018]

5. The substitution in section 5 for subsection (2) of the following subsection:

"(2) Any delegation under subsection (1)(a) shall not prevent the exercise of the relevant power

by the **[Registrar personally]** Authority.".

[date of commencement of item 5: 1 April 2018]

6. The deletion in section 6 of subsections (1) and (2).

[date of commencement of item 6: 1 April 2018]

7. The repeal of sections 8, 9 and 10.

[date of commencement of item 7 insofar as it repeals sections 8 and 10: 1 April 2018 and insofar as it repeals section 9: to be proclaimed]

8. The amendment of section 23—

(a) by the substitution for subsection (1) of the following subsection:

"(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.";

(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 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

(c) by the substitution for subsection (3) of the following subsection:

"(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.".

[date of commencement of item 8: 1 April 2018]

9. The substitution in section 52 for subsection (1A) of the following subsection:

"(1A) Notwithstanding subsection (1), the Registrar may, by [**means of a circular contemplated in section 6(4)]** notice published in the Register, determine circumstances and conditions in terms whereof an application contemplated in subsection (1) is not required.".

[date of commencement of item 9: 1 April 2018]

10. The amendment of section 69A—

(a) by the substitution for subsection (4) of the following subsection:

"(4) A commissioner appointed under subsection (1) and any person or persons appointed under subsection (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**] or an investigator in terms of the

Financial Sector Regulation Act: Provided that for the purposes of this section, those powers extend to the associates of the bank.

[**(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**

(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

[date of commencement of paragraph (a): to be proclaimed]

(b) by the substitution for subsections (4) and (5) with the following subsections:

"(4) A commissioner appointed under subsection (1) and any person or persons appointed under subsection (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**] Part 4 of Chapter 9 of the Financial Sector Regulation Act: Provided that for the purposes of this section—

(a) any reference to [**an "institution" or a "financial institution" in sections 4 and 5 of the Inspection of Financial Institutions Act, 1998**] Part 4 of Chapter 9 of the Financial Sector Regulation Act shall be deemed to be a reference to a bank under

curatorship or any of its associates; and

(b) any reference to ["**the registrar**"] "a financial sector regulator" and "an [**inspector]** investigator" in [**sections 4 and 5 of the Inspection of Financial Institutions Act, 1998]** Part 4 of Chapter 9 of the Financial Sector Regulation Act shall be deemed to be a reference to the commissioner and any person appointed under subsection (2), respectively.

(5) When an investigation is made under this section and [**section 4 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998),**] Part 4 of Chapter 9 of the Financial Sector Regulation Act applies, [**subsection (1)(a) of that**] section 136(1) of that Act shall [**be deemed to have been amended as follows:**

'(1) In carrying out an investigation into the business, trade, dealings, affairs or assets and liabilities of a bank under curatorship, a commissioner may—

(a) administer an oath or affirmation or otherwise examine any person who is, or formerly was, a director, servant, employee, partner, member or shareholder of the institution: Provided that the person examined, whether under oath or not, may have his or her legal adviser present at the examination: Provided further that on good cause shown the commissioner may direct that the proceedings under this paragraph shall be held *in camera* and not be accessible to the public;] apply with the changes necessary in the context in respect of an inspection carried out in terms of subsection (1) and the commissioner may on good cause shown direct that the proceedings under this paragraph

shall be held in camera and not be accessible to the public."; and

[date of commencement of paragraph (b): 1 April 2018]

(c) by the repeal of subsection (5A).

[date of commencement of paragraph (c): to be proclaimed]

11. The substitution in section 84 for subsection (5) of the following subsection:

"(5) For the purposes of the performance of the duties as set out in subsection (4), the repayment administrator shall, in relation to the person subject to the relevant direction and in relation to the affairs of that person, have the powers conferred by [**sections 4 and 5 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)**] sections 136 to 138 of the Financial Sector Regulation Act, upon an [**inspector]** investigator contemplated in those sections, as if the repayment administrator were an [**inspector**] investigator and the person subject to the direction were a financial institution contemplated in those sections.".

[date of commencement of item 11: 1 April 2018]

12. The deletion in section 90 of subsection (1)(e) and (g).

[date of commencement of item 12 insofar as it deletes paragraph (e): 1 April 2018 and insofar as it deletes paragraph (g): 1 April 2022]

13. The amendment of section 91 —

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(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, 70(2), (2A) or (2B), 70A, 72, 73, 75, 76, 77, 78(1) or (3), 79, 80, 84(1A) or 84(2),"; (b) by the deletion in subsection (4) of paragraph (c); and (c) by the deletion of subsections (6), (6A) and (7). *[date of commencement of item 13: 1 April 2018]* **14.** The repeal of section 91A. *[date of commencement of item 14: 1 April 2018]* **15.** The substitution for the expression "Registrar", wherever it occurs, of the expression "Authority". *[date of commencement of item 15: 1 April 2018]* **16.** The amendment of the arrangement of sections— (a) by the insertion after item 1 of the following item: "**1A.** Relationship between Act and Financial Sector Regulation Act"; and (b) by the substitution for item 4 of the following item: "**4.** Authority". *[date of commencement of item 16: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 97 of 1990	Financial Services Board Act, 1990	1. The repeal of the whole Act. *[date of commencement of repeal of sections 1 (other than in respect of the repeal of the definitions of "appeal board", "financial institution" and "trust property"), 10(3), 10A, 14, 15, 18-26, 26A and 27-30: 1 April 2018; section 1 (in respect of the repeal of the definition of "appeal board"): 28 September 2018; and section 1 (in respect of the repeal of the definitions of "financial institution" and "trust property" and sections 15A and 16: 1 April 2022]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 8 of 1993	Financial Supervision of the Road Accident Fund Act, 1993	1. The amendment of section 1— (a) by the insertion before the definition of "executive officer" of the following definition: "'**Authority**' means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act, 2017;"; and (b) by the deletion of the definitions of "executive officer" and "Financial Services Board". *[date of commencement of item 1: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 124 of 1993	Mutual Banks Act, 1994	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "associate" of the following definition: "**'Authority'** means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;"; (b) by the deletion in subsection (1) of the definition of "board of appeal"; *[date of commencement of paragraph (b): 28 September 2018]* (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 section 1(1) of the Financial Sector Regulation Act;"; (d) by the insertion in subsection (1) after the definition of "executive officer" of the following definition: "**'Financial Sector Regulation Act'** means the Financial Sector Regulation Act, 2017;"; (e) by the deletion in subsection (1) of the definition of "prescribed"; (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 section 1(1) of the Financial Sector Regulation Act;"; (g) by the insertion in subsection (1) after the definition of "public" of the following definition:

"'**Register'** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(h) by the deletion in subsection (1) of the definition of "Registrar";

(i) by the insertion in subsection (1) after the definition of "subsidiary" of the following definition:

"'**Tribunal'** means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(j) by the addition of the following subsection:

"(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.".

[date of commencement of item 1, excluding paragraph (b): 1 April 2018]

2. The insertion after section 1 of the following section:

"Relationship between Act and Financial Sector Regulation Act

1A.(1) A reference in this Act to the Registrar must be read as a reference to the Authority.

(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.

(3) 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.

(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in terms of section 91, a reference in this Act to a matter being—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard or a conduct standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5)(a) Matters in respect of which regulations relating to banks may be prescribed in terms of this Act may also be made in prudential standards or conduct standards.

(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 may be repealed by the Minister to allow for prudential or conduct standards to be made in terms of the Financial Sector Regulation Act, in respect of the subject-matter of those regulations.

(1) Paragraph (b) does not limit the powers of the Minister in terms of this Act to prescribe regulations.

(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.

(b) The Authority may also publish the information or document on its web site.

(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 237 and Chapter 16 of

the Financial Sector Regulation Act.

(8) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(9)(a) If any requirement in the Financial Sector Regulation Act is inconsistent with any provision of this Act, the requirement in the Financial Sector Regulation Act prevails.

(b) If any requirement in a regulatory instrument made in terms of the Financial Sector Regulation Act is inconsistent with any provision of a regulatory instrument made in terms of this Act, the requirement in the regulatory instrument made in terms of the Financial Sector Regulation Act prevails.".

[date of commencement of item 2, insofar as it inserts section 1A(1)-(6) and (8)-(9): 1 April 2018, and insofar as it inserts subsection (7): 1 April 2022]

3. The repeal of section 2.

[date of commencement of item 3: 1 April 2018]

4. The substitution in section 3 for subsection (2) of the following subsection:

"(2) Any delegation under subsection (1)(a) shall not prevent the exercise of the relevant power by the [**Registrar personally**] Authority.".

[date of commencement of item 4: 1 April 2018]

5. The deletion in section 4 of subsections (1) and (2).

[date of commencement of item 5: 1 April 2018]

6. The repeal of sections 6, 7 and 8.

[date of commencement of item 6 insofar as it repeals sections 6 and 8: 1 April 2018 and insofar as it repeals section 7: 28 September 2018]

7. The amendment of section 21—

(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.";

(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

(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.". *[date of commencement of item 7: 1 April 2018]* 8. The deletion in section 91 of subsection (1)(e) and (g). *[date of commencement of item 8 insofar as it deletes paragraph (g): 1 April 2018 and insofar as it deletes paragraph (e): 1 April 2022]* 9. The deletion in section 92 of subsections (6) and (7). *[date of commencement of item 9: 1 April 2018]* 10. The 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". *[date of commencement of item 10: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 141 of 1993	Policy Board for Financial Services and Regulation Act, 1993	1. The repeal of the whole Act. *[date of commencement of item 1: 29 March 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 52 of 1998	Long-term Insurance Act, 1998	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "auditor" of the following definition: "'**Authority**' means— (a) in the case of sections 7, 9 to 17, 19 to 21, 23 to 35 and 37 to 43, the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act; (b) in the case of section 8 and sections 44 to 65, the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act; and (c) 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;"; (b) by the deletion in subsection (1) of the definition of "Board"; (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 section 1(1) of the Financial Sector Regulation Act;"; (d) by the insertion in subsection (1) after the definition of "financial reporting standards" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (e) by the insertion in subsection (1) after the definition of "holding

company" of the following definition:

"'**joint standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(f) by the deletion in subsection (1) of the definition of "prescribe";

[date of commencement of paragraph (f): to be proclaimed]

(g) by the insertion in subsection (1) after the definition of "premium" of the following definition:

"'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(h) by the insertion in subsection (1) after the definition of "publish" of the following definition:

"'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(i) by the deletion in subsection (1) of the definition of "Registrar";

(j) by the insertion in subsection (1) after the definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(k) by the addition of the following subsection:

"(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.".

[date of commencement of item 1, excluding paragraph (f): 1 April 2018]

2. The insertion after section 1 of the following sections:

"**Relationship between Act and Financial Sector Regulation Act**

1A. (1) A reference in this Act to the Registrar (but not to the Registrar of Medical Schemes) or a reference to the Board must be read as a reference to the Authority.

(2) 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.

(3) 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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5)(a) A reference in this Act to an on-site visit in terms of a provision of this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

(b) A reference to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(6) 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 reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

Regulatory instruments

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 *Gazette* is specifically required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(6) and 1B: 1 April 2018, and insofar as it inserts section 1A(7): 1 April 2022]

3. The substitution for section 2 of the following section:

"Exercise of powers and performance of duties by Authority

2. (1) 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.

(2) The Prudential Authority, in respect of sections 9 to 15, 26 and 37 to 43, must act with the concurrence of the Financial Sector Conduct Authority.

(3) The Prudential Authority or the Financial Sector Conduct Authority, as the case may be,

in respect of sections 18 and 22, must act with the concurrence of the other Authority.".

[date of commencement of item 3: 1 April 2018]

4. The deletion in section 4 of subsections (2), (4) and (8).

[date of commencement of item 4: 1 April 2018]

5. The repeal of section 5.

[date of commencement of item 5: 1 April 2018]

6. The amendment of section 9—

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) unless the applicant demonstrates to the satisfaction of the Authority that—

(i) 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;

(ii) its directors and managing executives meet the fit and proper requirements; and

(iii) 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;"; and

(b) by the addition in subsection (3) of the following paragraph:

"(cA) if the registration will be contrary to the interests of prospective policyholders or the public interest.".

[date of commencement of item 6: 1 April 2018]

7. The amendment of section 10 by the insertion after paragraph (f) of the following paragraph:

"(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;".

[date of commencement of item 7: 1 April 2018]

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 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—

(a) upon application of a long-term insurer and having regard, with the necessary changes required by the context, to section 9(3)(b);

(aA) when in the public interest or the interests of the policyholders or potential policyholders of the longterm insurer;

(b) 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

(c) 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 longterm insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10**].".

[date of commencement of item 8: 1 April 2018]

9. The deletion in section 22 of subsection (3).

[date of commencement of item 9: 1 April 2018]

10. The amendment of section 26 —

(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 within the meaning of section 2(2) of the Companies Act, over that long-term insurer.";

(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]** 15 per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned;

(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 long-term insurer concerned.";

(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)— ";

(d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:

"(aA) shall not be given if the person does not meet the fit and proper requirements;";

(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**] 15 per cent of —"; and

(f) by the deletion of subsections (5) and (6).

[date of commencement of item 10: 1 April 2018]

11. The deletion in section 62 of subsections (2)(f) and (4).

[date of commencement of item 11: 1 April 2018]

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);".

[date of commencement of item 12: 1 April 2018]

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);".

[date of commencement of item 13: 1 April 2018]

14. The repeal of section 6B.

[date of commencement of item 14: to be proclaimed]

15. 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 [**for which the relevant criteria have been]** that complies with criteria approved by the [**Registrar]** Authority and any [**subject to such**] conditions as [**he or she]** the Authority may determine;"; 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**] Authority, which approval may be subject to conditions determined by the Authority.".

[date of commencement of item 15: 1 April 2018]

16. The 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". *[date of commencement of item 16: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 53 of 1998	Short-term Insurance Act, 1998	1. The amendment of section 1 — (a) by the insertion in subsection (1) after the definition of "approved reinsurance policy" of the following definition: "'**Authority**' means— (a) 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; (b) 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 (c) in the case of sections 3, 4, 18, 21, 35, 57, 58 and 63, either the Prudential Authority or the Financial Sector Conduct Au-thority, subject to consultation and co-ordination requirements set out in the Financial Sector Regulation Act;"; (b) by the deletion in subsection (1) of the definition of "Board"; (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 section 1(1) of the Financial Sector Regulation Act;"; (d) by the insertion in subsection (1) after the definition of "financial reporting standards" of the following definition: "**'Financial Sector Regulation Act'** means the Financial Sector Regulation Act, 2017;";

(e) by the deletion in subsection (1) of the definition of "Financial Services Board Act";

(f) by the insertion in subsection (1) after the definition of "independent intermediary" of the following definition:

"**'joint standard'** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(g) by the deletion in subsection (1) of the definition of "prescribe";

[date of commencement of paragraph (g): to be proclaimed]

(h) 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 section 1(1) of the Financial Sector Regulation Act;";

(i) by the insertion in subsection (1) after the definition of "publish" of the following definition:

"**Register'** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act";

(j) by the deletion in subsection (1) of the definition of "Registrar";

(k) by the insertion in subsection (1) after the definition of "transportation policy" of the following definition:

"**'Tribunal'** means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(l) by the addition of the following subsection:

"(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.".

[date of commencement of item 1, excluding paragraph (g): 1 April 2018]

2. The insertion after section 1 of the following sections:

"**Relationship between Act and Financial Sector Regulation Act**

1A. (1) A reference in this Act to the Registrar (but not to the Registrar of Medical Schemes) or a reference to the Board, must be read as a reference to the Authority.

(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.

(3) 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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5) A reference in this Act to an onsite visit in terms of a provision of this Act must be read as a reference to a supervisory on-

site inspection in terms of the Financial Sector Regulation Act.

(6) A reference to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(7) 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 reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

Regulatory instruments

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 *Gazette* is specifically required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(7) and 1B: 1 April 2018, and insofar as it inserts section 1A(8): 1 April 2022]

3. The substitution for section 2 of the following section:

"**Exercise of powers and performance of duties by Authority**

2. (1) 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.

(2) The Prudential Authority, in respect of sections 9 to 15, 25 and 36 to 42, must act with the concurrence of the Financial Sector Conduct Authority.

(3) The Prudential Authority or the Financial Sector Conduct Authority, as the case may be, in respect of sections 18, 21 and 57, must act with the concurrence of the other Authority.".

[date of commencement of item 3: 1 April 2018]

4. The deletion in section 4 of subsections (2), (4) and (8).

[date of commencement of item 4: 1 April 2018]

5. The repeal of section 5.

[date of commencement of item 5: 1 April 2018]

6. The amendment of section 9—

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) unless the applicant demonstrates to the satisfaction of the Authority that—

(i) 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;

(ii) its directors and managing executives meet the fit and proper requirements; and

(iii) any persons that directly or indirectly control or own that applicant within the meaning of section 25 meet the fit and proper requirements."; and

(b) by the addition in subsection (3) of the following paragraph:

"(cA) if registration will be contrary to the interests of pro-

spective policyholders or the public interest.".

[date of commencement of item 6: 1 April 2018]

7. The amendment of section 10 by the insertion after paragraph (f) of the following paragraph:

"(fA) relating to the business arrangements of the short-term insurer, including, but not limited to, the outsourcing arrangements that the short-term insurer may enter into;".

[date of commencement of item 7: 1 April 2018]

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—

(a) upon application of a short-term insurer and having regard, with the necessary changes required by the context, to section 9(3)(b);

(aA) when in the public interest or the interests of the policyholders or potential policyholders of the short-term insurer;

(b) when acting in accordance with section 12(2) or (3), or when giving an authorisation in accordance with section 34(2)(a), in relation to a short-term insurer; or

(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**].".

[date of commencement of item 8: 1 April 2018]

9. The deletion in section 21 of subsection (3).

[date of commencement of item 9: 1 April 2018]

10. The amendment of section 25 —

(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 within the meaning of section 2(2) of the Companies Act over that short-term insurer.";

(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]** 15 per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned;

(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.";

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"(3) The approval referred to in subsection (1) or (2) — ";

(d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:

"(aA) shall not be given if the person does not meet the fit and proper requirements;";

(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**] 15 per cent of —"; and

(f) by the deletion of subsections (5) and (6).

[date of commencement of item 10: 1 April 2018]

11. The amendment of section 55 by the deletion of subsections (2)(f) and (4).

[date of commencement of item 11: 1 April 2018]

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);".

[date of commencement of item 12: 1 April 2018]

13. The repeal of section 66.

[date of commencement of item 13: to be proclaimed]

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 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;" 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**] Authority, which approval may be subject to conditions determined by the Authority.".

[date of commencement of item 14: 1 April 2018]

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 the Authority may determine.". *[date of commencement of item 15: 1 April 2018]* 16. The 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". *[date of commencement of item 16: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 80 of 1998	Inspection of Financial Institutions Act, 1998	The repeal of the whole Act. *[date of commencement of item: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 28 of 2001	Financial Institutions (Protection of Funds) Act, 2001	1. The amendment of section 1— (a) by the deletion of the definitions of "administrative sanction" and "applicant"; (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;"; (c) by the deletion of the definitions of "board", "determination", "directorate", "enforcement committee" and "financial institution"; (d) by the insertion after the definition of "financial institution" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (e) by the substitution for the definition of "institution" of the following definition: "'**institution**', for the purposes of sections 5 [**, 6, 9]** and 10, means— (a) a [**financial institution**] supervised entity; (b) any person, partnership, company or trust in which, or in the business of which, a [**financial institution**] supervised entity 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]** supervised entity or unregistered person, or in the business of a [**financial**

institution] supervised entity 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**] supervised entity or an unregistered person; or

(f) any unregistered person;";

[date of commencement of paragraph (e): to be proclaimed]

(f) by the substitution for the definition of "law" of the following definition:

"'**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;";

(g) by the substitution for the definition of "registrar" of the following definition:

"**'registrar'** means—

(a) 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**;

(b) the executive officer defined in section 1 of the Financial Services Board Act, 1990;] or

[**(c)**](b) [**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;";

(h) by the deletion of the definition of "respondent"; and

(i) by the addition in section 1 of the following subsection, the existing section becoming subsection (1):

"(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.". *[date of commencement of item 1, excluding paragraph (e): 1 April 2018]* 2. The repeal of section 4A. *[date of commencement of item 2: 1 April 2018]* 3. The amendment of section 5— (a) by the substitution in subsection (5) for paragraph (e) of the following paragraph: "(e) 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;"; and (b) by the substitution for subsection (7) of the following subsection: "(7) 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.". *[date of commencement of item 3: 1 April 2018]* 4. The repeal of sections 6, 6A to 6I, 7, 9 and 9A. *[date of commencement of item 4 insofar as it repeals sections 6(4) and (5), 6A-6I, 7, 9 and 9A: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 38 of 2001	Financial Intelligence Centre Act, 2001	1. The substitution in section 45E for subsections (2) and (3) of the following subsections: "(2) The members of the Financial Sector Tribunal established in terms of section 219 of the Financial Sector Regulation Act, 2017, and appointed in terms of section 220 of that Act, are the members of the appeal board. (3) Proceedings before the appeal board are to be conducted and determined in accordance with this Act.". *[date of commencement of item 1: 7 May 2018]* 2. The deletion of section 45E(4) to (11) and (13). *[date of commencement of item 2: 7 May 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2002	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "advice" of the following definition: "'**alternative investment fund**' means a collective investment undertaking, including investment compartments of a collective investment undertaking, constituted in any legal form, including in terms of a contract, by means of a trust, or in terms of statute, which— (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 (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);"; *[date of commencement of paragraph (a): to be proclaimed]* (b) by the insertion in subsection (1) after the definition of "authorised financial services provider" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;"; (c) by the deletion in subsection (1) of the definitions of "Board" and "board of appeal"; (d) by the insertion before the definition of "client" of the following definition:

"'**conduct standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act, 2017;";

(e) by the insertion after the definition of "financial product" of the following definition:

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

(f) by the deletion in subsection (1) of the definition of "Financial Services Board Act";

(g) by the insertion in subsection (1) in the definition of "financial product" after paragraph (g) of the following paragraph:

"(gA) an investment, subscription, contribution, or commitment in an alternative investment fund;";

[date of commencement of paragraph (g): to be proclaimed]

(h) by the substitution in subsection (1) in the definition of "financial product" for paragraph (j) of the following paragraph:

"(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;";

(i) by the substitution in subsection (1) for the definition of "fit and proper requirements" of the following definition:

"'**fit and proper requirements**' means the requirements [**published under**] referred to in section 6A;";

(j) by the substitution in subsection (1) for the definition of "intermediary service" of the following definition:

"'**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**]—

(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

(b) with a view to—

(i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product [**purchased by a client from a product supplier or in which the client has invested**];

(ii) collecting or accounting for premiums or other moneys payable by the client [**to a product supplier]** in respect of a financial product; or

(iii) receiving, submitting [**or]**, processing or settling the claims of a client [**against a product supplier]** in respect of a financial product;";

[date of commencement of paragraph (j): to be proclaimed]

(k) by the insertion in subsection (1) after the definition of "intermediary service" of the following definition:

"'**joint standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(l) by the deletion in subsection (1) of the definition of "official web site";

(m) by the insertion in subsection (1) after the definition of "Ombud" of the following definition:

"'**Ombud Council**' means the council established in terms of

section 175 of the Financial Sector Regulation Act;";

[date of commencement of paragraph (m): 1 April 2022]

(n) by the insertion after the definition of "product supplier" of the following definition:

"'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(o) by the insertion in subsection (1) after the definition of "publish" of the following definition:

"'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(p) by the deletion in subsection (1) of the definition of "registrar";

(q) by the insertion in subsection (1) after definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;";

(r) by the deletion of subsection (3)(b)(ii); and

[date of commencement of paragraph (r): to be proclaimed]

(s) 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 Financial Sector Regulation Act.".

[date of commencement of item 1, excluding paragraphs (a), (g), (j), (m) and (r): 1 April 2018]

2. The insertion after section 1 before Chapter 1 of the following sections:

"**Relationship between Act and Financial Sector Regulation Act**

1A. (1) A reference in this Act to the Board or the registrar must be read as a reference to the Authority.

(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.

(3) 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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5) A reference in this Act to an onsite visit in terms of a provision of this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

(6) A reference in this Act to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(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.

(b) The Authority may also publish the information or document on its web site.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

(9) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

Regulatory instruments

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.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(3), (5)-(7), (9) and 1B: 1 April 2018; insofar as it inserts section 1A(8): 1 April 2022; and insofar as it inserts s. 1A(4): to be proclaimed]

3. The repeal of section 2.

[date of commencement of item 3: 1 April 2018]

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".

[date of commencement of item 4: 1 April 2022]

5. The deletion in section 4 of subsections (1), (5) and (6).

[date of commencement of item 5: 1 April 2018]

6. The substitution for section 6 of the following section:

"Delegations

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 conduct standard referred to in section 6A(2)(a), (b) and (e).

(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.

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

(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.

(5) A delegation made under this section may be amended or revoked in writing at any time, but an amendment or revocation does not affect any rights or liabilities accrued because of the acts of the delegate.".

[date of commencement of item 6: 1 April 2018]

7. The amendment of section 6A —

(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 may be made on any of the following matters:"; and

[date of commencement of paragraph (a): to be proclaimed]

(b) by the insertion after paragraph (a) of the following paragraph:

"(aA) may classify representatives into different categories; and".

[date of commencement of paragraph (b): 1 April 2018]

8. The amendment of section 8 by the substitution for subsections (1) and (1A) of the following subsections:

"(1) An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the [**registrar]** Authority in the form and manner determined by the [**registrar**] Authority by notice on the [**official]** Authority's web site, and be accompanied by information to satisfy the [**registrar**] Authority that the applicant complies with the fit and proper requirements [**determined for financial services providers or categories of providers, determined by the registrar by notice in the *Gazette*, in respect of—**

(a) personal character qualities of honesty and integrity;

(b) competence;

(bA) operational ability; and

(**c) financial soundness**].

(1A) If the applicant is a partnership, trust or corporate or unincorporated body, [**the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case]** the application must be accompanied by additional

information to satisfy the [**registrar**] Authority that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for [**, in respect of—**

(a) personal character qualities of honesty and integrity;

(b) competence; and

(c) operational ability],

to the extent required in order for such key individual to fulfill the responsibilities imposed by this Act.".

[date of commencement of item 8: 1 April 2018]

9. The amendment of section 9(1) —

(a) by the substitution for paragraphs (c) and (d) of the following paragraphs:

"(c) has failed to comply with any other provision of this Act or any requirement under the Financial Sector Regulation Act, including a conduct standard, a prudential standard or a joint standard;

(d) [**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

[date of commencement of paragraph (a) in respect of paragraph (c): 1 April 2018 and in respect of paragraph (d): 28 September 2018]

(b) by the substitution for paragraph (f) of the following paragraph:

"(f) has failed to comply with a regulator's [**any**] directive [**issued under this Act**]; or".

[date of commencement of paragraph (b): 1 April 2018]

10. The substitution in section 13 for subsection (3) of the following subsection:

"(3) [**The**] An authorised financial services provider must—

(a) 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

(b) 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).".

[date of commencement of item 10: 1 April 2018]

11. The substitution for section 14 of the following section:

"**Debarment of representatives**

14. (1)(a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be—

(i) a representative of the financial services provider; or

(ii) a key individual of such representative,

if the financial services provider is satisfied on the basis of available facts and information that the person—

(iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or

(iv) has contravened or failed to comply with any provision of this Act in a material manner;

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

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

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

(3) A financial services provider must—

(a) before debarring a person—

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

(ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and

(iii) give the person a reasonable opportunity to make a submission in response;

(b) consider any response provided in terms of paragraph (a)(iii), and then take a decision in terms of subsection (1); and

(c) immediately notify the person in writing of—

(i) the financial services provider's decision;

(ii) the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and

(iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

(4) Where the debarment has been effected as contemplated in subsection (1), the financial services provider must—

(a) immediately withdraw any authority which may still exist for the person to act on behalf of the financial services provider;

(b) where applicable, remove the name of the debarred person from the register referred to in section 13(3);

(c) immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to;

(d) in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and

(e) provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require within 15 days of the debarment.

(5) A debarment in terms of subsection (1) that is undertaken in respect of a person who no longer is a representative of the financial services provider must be commenced not longer than six months from the date

that the person ceased to be a representative of the financial services provider.

(6) 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 that is furnished by the Authority, the Ombud or any other interested person.

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

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

(9) A person debarred in terms of subsection (1) may not 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.".

[date of commencement of item 11: 1 April 2018]

12. The repeal of section 14A.

[date of commencement of item 12: 1 April 2018]

13. The amendment of section 20 by the substitution for subsection (3) of the following subsection:

"(3) 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 211 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 —

(a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and

(b) the provisions of this Act and the Financial Sector Regulation Act.".

[date of commencement of item 13: 1 April 2022]

14. The insertion after section 20 of the following section:

"**Ombud scheme**

20A. 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.".

[date of commencement of item 14: 1 April 2018]

15. The substitution in section 21 for the expression "Board", wherever it occurs in the section, of the expression "Minister".

[date of commencement of item 15 in respect of subsections (1), (3) and (4): 1 April 2018 and in respect of subection (2): 1 April 2022]

16. The amendment of section 22(1) by the substitution for paragraph (a) of the following paragraph:

"(a) funds [**provided by the Board**] accruing to the Ombud in terms of legislation on the basis of a budget submitted by the

Ombud to the **[Board]** Minister and approved by the latter; and".

[date of commencement of item 16: 1 April 2022]

17. 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.".

[date of commencement of item 17: 1 April 2022]

18. The repeal of section 26.

[date of commencement of item 18: to be proclaimed]

19. The repeal of section 32.

[date of commencement of item 19: 1 April 2018]

20. The deletion in section 35(1) of paragraphs (b), (c) and (d).

[date of commencement of item 20 in respect of paragraph (d): 1 April 2018 and in respect of paragraphs (b) and (c): to be proclaimed]

21. The substitution for section 39 of the following section:

"Right to reconsideration of decision

39. Any person aggrieved by a decision of a financial services provider to debar that person in terms of section 14 may apply for the reconsideration of the decision to the Tribunal.".

[date of commencement of item 21: 1 April 2018]

22. The repeal of sections 41 and 44.

[date of commencement of item 22: 1 April 2022]

23. The amendment of section 45 —

(a) by the deletion in subsection (1) of paragraph (a)(ii); and

(b) by the insertion after subsection (1) of the following subsections:

"(1A) The provisions of this Act do not apply to the—

(a) performing of the activities referred to in paragraph (b)(ii) and (iii) of the definition of "intermediary service" by a product supplier—

(i) who is authorised under a particular law to conduct business as a financial institution; and

(ii) where the rendering of such service is regulated under such law; and

(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.

(1B) The exemption referred to in —

(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

(b) subsection (1A)(b) does not apply to an authorised agent as defined in section 1 of the Collective Investment Schemes Control Act, 2002."

[date of commencement of item 23 in respect of section 45(1)(a)(ii), (1A)(b) and (1B)(b): 1 April 2018; remaining provisions: to be proclaimed]

24. The 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 6 of the following item: "6. Delegations"; (c) by the insertion after item 20 of the following item: "20A. Ombud scheme"; and (d) by the substitution for item 39 of the following item: "39. Right to reconsideration of decision". *[date of commencement of item 24: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 45 of 2002	Collective Investment Schemes Control Act, 2002	1. The amendment of section 1— (a) by the insertion after the definition of "authorised agent" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;"; (b) by the deletion of the definition of "Board"; (c) by the insertion after the definition of "company" of the following definition: "'**conduct standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (d) by the insertion after the definition of "exchange securities" of the following definition: "'**Financial Sector Regulation Act**' means the Financial Sector Regulation Act, 2017;"; (e) by the insertion after the definition of "investor" of the following definition: "'**joint standard'** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (f) by the deletion of the definitions of "official web site" and "prescribed"; (g) by the insertion before the definition of "publish" of the following definition: "'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;"; (h) by the insertion after the definition of "publish" of the following definition:

"'**Register'** means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(i) by the deletion of the definition of "registrar";

(j) by the insertion after the definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Sector Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(k) by the addition in section 1 of the following subsection, the existing section becoming subsection (1):

"(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.".

[date of commencement of item 1: 1 April 2018]

2. The insertion after section 1 of the following sections:

"Relationship between Act and Financial Sector Regulation Act

1A. (1) A reference in this Act to the registrar must be read as a reference to the Authority.

(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.

(3) 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.

(4) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5) A reference in this Act to an onsite visit in terms of a provision in this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

(6) A reference in this Act to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(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.

(b) The Authority may also publish the information or document on its web site.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

(9) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

Regulatory instruments

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 *Gazette* is specifically required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(3), (5)-(7), (9) and 1B: 1 April 2018; insofar as it inserts section 1A(8): 1 April 2022; and insofar as it inserts section 1A(4): to be proclaimed]

3. The repeal of sections 7 and 14.

[date of commencement of item 3: 1 April 2018]

4. The amendment of section 15—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"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—";

(b) by the deletion in subsection (1) of the proviso to paragraph (f); and

(c) by the substitution in subsection (1) for paragraph (j) of the following paragraph:

"(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.".

[date of commencement of item 4: 1 April 2018]

5. The amendment of section 15A —

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(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

(b) by the substitution for subsection (3) of the following subsection:

"(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 or by a prudential standard, conduct standard or joint standard.".

[date of commencement of item 5: 1 April 2018]

6. The repeal of sections 15B, 18, 22, 23 and 24.

[date of commencement of item 6 insofar as it repeals sections 15B, 23 and 24: 1 April 2018; and insofar as it repeals sections 18 and 22: to be proclaimed]

7. The substitution in sections 63 and 66 for the expression "Minister", wherever it occurs, of the expression "Authority".

[date of commencement of item 7: 1 April 2018]

8. The amendment of section 99(1) by the substitution for

paragraph (b) of the following paragraph:

"(b) the [**registrar**] Authority, granted on such conditions as [**he or she**] the Authority may impose in writing [**may determine**].".

[date of commencement of item 8: 1 April 2018]

9. The amendment of section 112 —

(a) by the deletion of subsection (3); and

(b) by the substitution for subsection (4) of the following subsection:

"(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.".

[date of commencement of item 9: 1 April 2018]

10. The amendment of section 114 by the deletion of subsections (3)(d), (5) and (6).

[date of commencement of item 10 in respect of subection (5): 1 April 2018 and in respect of subsections (3)(d) and (6): 1 April 2022]

11. 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, regulatory instrument or regulation under any provision of this Act or the Financial Sector Regulation Act,".

[date of commencement of item 11: 1 April 2018]

12. The amendment of the arrangement of sections by the insertion after item 1 of the following items:

"1A. Relationship between Act and Financial Sector Regulation Act

		1B. Regulatory instruments". *[date of commencement of item 12: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 37 of 2004	Financial Services Ombud Schemes Act, 2004	1. The repeal of the whole Act. *[date of commencement of item 1: 31 May 2021]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 34 of 2005	National Credit Act, 2005	1. The substitution in section 1 for the definition of "ombud with jurisdiction" of the following definition— "'**ombud with jurisdiction**', in respect of any particular dispute arising out of a credit agreement in terms of which the credit provider is a "financial institution" as defined in the [**Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004)**] Financial Sector Regulation Act, 2017, means an [**"ombud", or the "statutory ombud"**] "ombud scheme", as [**those terms are respectively]** that term is defined in that Act, [**who**] that has jurisdiction in terms of that Act to deal with a complaint against that financial institution;". *[date of commencement of item 1: 1 October 2018]* 2. The amendment of section 134 — (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs— "(a) If the credit provider concerned is a financial institution as defined in the **[Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004)**] Financial Sector Regulation Act, 2017, the matter— (i) may be referred only to the ombud with jurisdiction to resolve a complaint or settle a matter involving that credit provider, as determined in accordance with [**sections 13 and 14 of**] that Act; and (ii) must be procedurally resolved as if it were a complaint in terms of that Act; or

		(b) if the credit provider is not a financial institution, as defined in the [**Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004)**] Financial Sector Regulation Act, 2017, the matter may be referred to either— (i) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or (ii) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration."; and (b) by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph — "(i) to the ombud with jurisdiction, for resolution in accordance with this Act and in terms of the [**Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004)**] Financial Sector Regulation Act, 2017, if the credit provider concerned is a financial institution [**and a participant in a recognised scheme**] as defined in that Act; or". *[date of commencement of item 2: 1 October 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 40 of 2007	Co-operative Banks Act, 2007	1. The amendment of section 1— (a) by the deletion of the definition of "appeal board"; *[date of commencement of paragraph (a): 28 September 2018]* (b) by the insertion after the definition of "Agency" of the following definition: "'**Authority**' means the Prudential Authority established in terms of section 32 of the Financial Sector Regulation Act;"; (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 section 1(1) of the Financial Sector Regulation Act;"; (d) by the substitution for the definition of "co-operative bank" of the following definition: "'**co-operative bank**' means a cooperative or a co-operative financial institution registered as a co-operative bank in terms of this Act whose members— (a) are employed by a common employer or who are employed within the same business district; or (b) have common membership in an association or organisation, including a religious, social, co-operative, labour or educational group; (c) reside within the same defined community or geographical area;"; (e) by the substitution for the definition of "co-operative financial institution" of the following definition:

"'**co-operative financial institution**' means a co-operative that takes deposits and chooses to identify itself by use of the name Financial Co-operative, Financial Services Co-operative, Credit Union or Savings and Credit Co-operative;";

(f) by the insertion after the definition of "executive officer" of the following definition:

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

(g) by the insertion after the definition of "Fund" of the following definition:

"'**joint standard'** has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(h) by the deletion of the definition of "prescribed";

(i) by the insertion after the definition of "proposed co-operative bank" of the following definition:

"'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;";

(j) by the insertion after the definition of "Public Finance Management Act" of the following definition:

"'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(k) by the deletion of the definition of "supervisor";

(l) by the insertion after the definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act.";
and

(m) by the addition in section 1 of the following subsection, the existing section becoming subsection (1):

"(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.".

[date of commencement of item 1, excluding paragraph (a): 1 April 2018]

2. The insertion after section 1 of the following sections:

"Relationship between Act and Financial Sector Regulation Act

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.

(2) 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.

(3) 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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, conduct standard or joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing

		and registering the determination in the Register. (4) Matters in respect of which regulations relating to co-operative banks and co-operative financial institutions may be prescribed in terms of this Act may also be prescribed in prudential standards, conduct standards or joint standards in terms of the Financial Sector Regulation Act. (5) A reference to rules made by the Authority in terms of section 46 must be read as a reference to prudential standards, conduct standards or joint standards. (6) (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. (b) 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 Chapter 9 of the Financial Sector Regulation Act. (7) (a) A reference in this Act to the Authority or the Agency announcing or publishing information or a document on a web site must be read as a reference to the Authority or the Agency publishing the information or document in the Register. (b) The Authority or the Agency may also publish the information or document on its web site. (8) (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 237 and Chapter 16 of the Financial Sector Regulation Act.

(b) The Agency, when determining a fee in terms of this Act, must comply with the requirements of section 237 and Chapter 16 of the Financial Sector Regulation Act.

(9) A reference in this Act to an appeal of a decision of the Authority or the Agency must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(10)(a) The Authority must publish the following in the Register—

(i) each registration of a co-operative bank in terms of section 8 and each suspension and de-registration in terms of section 11;

(ii) each conversion of registration in terms of section 28;

(iii) each registration of a co-operative financial institution in terms of section 40C, and each suspension, lapsing and de-registration in terms of section 40D.

(b) The Agency must publish the following in the Register—

(i) each registration of a representative body in terms of section 33, and each cancellation or suspension of registration in terms of section 35; and

(ii) each accreditation of a support organisation in terms of section 38, and each cancellation or suspension of accreditation in terms of section 40.

Regulatory instruments

1B. For the purposes of the definition of "regulatory instrument" in section 1(1) of the Financial Sector Regulation Act, the following are regulatory instruments:

(a) existing rules made in terms of section 46 prior to the date on

which this section comes into effect; and

(b) prudential, conduct or joint standards made in terms of section 46 subsequent to the date on which this section comes into effect;".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(7) and (9)-(10) and 1B: 1 April 2018 and insofar as it inserts section 1A(8): 1 April 2022]

3. The amendment of section 2 by the substitution for paragraphs (b) and (c) of the following paragraphs:

"(b) promote the development of sustainable and responsible co-operative banks and co-operative financial institutions; and

(c) establish an appropriate regulatory framework and regulatory institutions for co-operative banks and co-operative financial institutions that protect the interests of members of co-operative banks, co-operative financial institutions, and the public,

by providing for—

(i) the registration of deposit-taking financial services co-operatives as co-operative banks or co-operative financial institutions;

(ii) the [**establishment of supervisors to ensure]** appropriate and effective regulation and supervision of co-operative banks and co-operative financial institutions, and to protect members and the public interest; and

(iii) the establishment of a Development Agency for Co-operative Banks to develop and enhance the sustainability of co-operative banks and co-operative financial institutions.".

[date of commencement of item 3: 1 April 2018]

4. The amendment of section 3 by the substitution for the section of the following section:

"**3. [(1)]** This Act applies to all co-operative banks registered under this Act and to any [**—**

(a) primary co-operative registered under the Co-operatives Act that takes deposits and—

(i) has 200 or more members; and

(ii) holds deposits of members to the value of one million rand or more; and

(b) secondary or tertiary co-operative registered under the Co-operatives Act, whose members consist of at least—

(i) two or more co-operative banks;

(ii) two or more financial services co-operatives that take deposits; or

(iii) one co-operative bank and one financial services co-operative that take deposits] co-operative financial institution registered under this Act.

[(2) A co-operative referred to in subsection (1) must, subject to section 91, within two months of meeting the criteria referred to in subsection (1) apply for registration as a co-operative bank in terms of this Act.]".

[date of commencement of item 4: 1 April 2018]

5. The amendment of section 4 by the substitution for subsection (1) of the following subsection:

"(1) The Co-operatives Act applies to co-operative banks and co-operative financial institutions unless the application of a provision thereof has specifically

been excluded or amended in this Act.".

[date of commencement of item 5: 1 April 2018]

6. The amendment of section 5 by the substitution for paragraphs (c) and (d) for the following paragraphs:

"(c) a secondary co-operative bank whose members consist of at least —

(i) two or more co-operative banks;

(ii) two or more co-operative financial institutions; or

(iii) one co-operative bank and one co-operative financial institution; and

(b) a tertiary co-operative bank whose members consist of two or more secondary co-operative banks."

[date of commencement of item 6: 1 April 2018]

7. The insertion after section 40 in Chapter VII of the following Chapter:

"Chapter VIIA Cooperative financial institutions

Application for registration as cooperative financial institution

40A. (1)A co-operative financial institution must apply to the Authority, or to the Agency if this function has been assigned or delegated to the Agency, for registration on the application form as prescribed.

(2) The co-operative financial institution must submit copies of documents and any other information as prescribed, together with the application form referred to in subsection (1).

Requirements for registration

40B. (1) In order to qualify for registration, or to continue to

be registered, a co-operative financial institution must demonstrate, to the satisfaction of the Authority, or to the Agency if this function has been assigned or delegated to the Agency, on an ongoing basis that—

(a) it has the requisite experience, knowledge, qualifications and competence to give effect to its obligations;

(b) it has sufficient human, financial, and operational capacity to function efficiently and competently;

(c) it meets any prescribed threshold requirements in respect of membership, membership shares and deposits held; and

(d) it meets any other applicable prescribed requirements.

(2)(a) A co-operative financial institution must, once it has reached a prescribed amount of members' deposits, apply for registration as a co-operative bank in terms of this Act.

(b) If the responsibility for the registration of a co-operative financial institution has been assigned or delegated to the Agency, the Agency must recommend to the Authority whether the application for registration as a co-operative bank should be approved or declined.

(c) In the event that the application by a co-operative financial institution to register as a co-operative bank is declined—

(i) the Authority may determine that the co-operative financial institution concerned may not hold members' deposits exceeding a specified amount; and

(ii) the co-operative financial institution concerned must re-apply for registration as a co-operative bank once the requirements to register as a co-operative bank have been met.

(d) An amount determined by the Authority in terms of paragraph (c)(i)—

(i) must be based on the nature and size of the co-operative financial institution; and

(ii) may not exceed the general maximum limit for holdings of deposits by any co-operative financial institution prescribed by the Authority.

(e) An application by a co-operative financial institution for registration as a co-operative bank must be accompanied by a letter of recommendation from the Agency, if applicable.

(3) On the date that this section comes into operation, a co-operative financial institution that qualifies to be registered in terms of this Act—

(a) must apply for registration in terms of this Act within 12 months from the date on which this section comes into operation; and

(b) that holds members' deposits exceeding a prescribed threshold, but which does not qualify to be registered as a co-operative bank, must not hold members' deposits exceeding an amount determined by the Authority, based on the nature and size of the co-operative financial institution.

(4) If the registration of co-operative financial institutions has been assigned or delegated to the Agency in terms of the Act, the Agency must inform the Authority of the registration of a cooperative financial institution within 14 days of the registration.

Registration of co-operative financial institution

40C. (1) The Authority may grant an application for registration on payment of the fee, prescribed by

the Authority, if the Authority is satisfied that—

(a) the application has been made in accordance with this Act; and

(b) the co-operative financial institution complies with the requirements for registration referred to in section 40B.

(2) The Authority must, on registration, issue a certificate of registration to the co-operative financial institution and publish a notice of the registration in the Register.

Suspension of registration or de-registration

40D. The Authority may, subject to subsection (4), de-register or, where appropriate, suspend the registration of a co-operative financial institution where the Authority is satisfied that the co-operative financial institution—

(a) has not commenced operating as a co-operative financial institution six months after the date of its registration as a co-operative financial institution;

(b) has ceased to operate;

(c) obtained registration through fraudulent means;

(d) no longer meets the requirements for registration referred to in section 40B;

(e) is unable to meet or maintain its prudential requirements referred to in section 40B;

(f) has failed to comply with any condition imposed under this Act;

(g) has failed to comply with any directive issued under this Act; or

(h) is de-registered or wound-up under the Co-operatives Act.

(2) Where a co-operative financial institution has requested its de-registration, the Authority may on submission of such a request, along with any other prescribed

or requested information, de-register the co-operative financial institution.

(3)(a) Where the Authority suspends the registration of a co-operative bank under subsection (1), the Authority may do so subject to any condition that the Authority may determine.

(b) The Authority may revoke any suspension under subsection (1) if the Authority is satisfied that the co-operative financial institution has complied with all the conditions to which the suspension was made subject.

(4)(a) The Authority must publish a notice of such de-registration or suspension in the Register.

(b) The de-registration of a co-operative financial institution takes effect on the date specified in the notice referred to in paragraph (a).

(c) Where a co-operative financial institution has applied for reconsideration of the decision of the Authority referred to in subsection (1), the Authority must not publish the notice referred to in paragraph (a) until the application for reconsideration of the decision has been finalised.

Repayment of deposits on de-registration or lapsing of registration

40E. (1) The Authority may, on the de-registration of a co-operative financial institution, direct the co-operative financial institution to repay any deposits, including interest thereon, held by that co-operative financial institution as at the date of de-registration within the period specified in the directive.

(2) A directive referred to in subsection (1) may—

(a) apply to all deposits generally; or

(b) differentiate between different types, kinds and amounts of deposits.

(3) A co-operative financial institution that fails to comply with a directive under subsection (1) is deemed not to be able to pay its debts.

Winding-up or judicial management of co-operative financial institution

40F. (1) Despite the provisions of sections 72(1), 73(1) and 77(2) of the Co--operatives Act—

(a) the Authority may—

(i) apply to a court that a co-operative financial institution be wound-up;

(ii) recommend to the Minister responsible for co-operatives that a co-operative financial institution be wound-up; and

(iii) apply to a court for a judicial management order; and

(b) the Minister responsible for co-operatives may not order that a cooperative financial institution be wound-up without the written concurrence of the Authority, or the Agency, if functions of the Authority have been assigned or delegated to the Agency as contemplated in this Act.

(2) Any application to a court for the winding-up, including the voluntary winding-up, of a co-operative financial institution must be served on the Authority.

(3) Despite any other law, the Master of the High Court may only appoint a person recommended by the Authority as a provisional liquidator or liquidator of a co-operative financial institution, unless the Master is of the opinion that the recommended person is not fit and proper to be appointed as a provisional liquidator or liquidator of the co-

operative financial institution concerned.

(4) A liquidator of a co-operative financial institution that is voluntarily wound-up must submit to the Authority any documents that the co-operative financial institution being wound-up would have been obliged to submit in terms of this Act.".

[date of commencement of item 7: 1 August 2018]

8. The repeal of sections 41 and 43.

[date of commencement of item 8: 1 April 2018]

9. The amendment of section 44—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The [**supervisor**] Authority may, in writing, delegate or assign any of the powers entrusted to [**him or her**] the Authority in terms of this Act and assign any of the duties imposed on [**him or her**] the Authority in terms of this Act to [**a deputy supervisor**,] any person employed by the Authority or the South African Reserve Bank, to the Financial Sector Conduct Authority, or, with the concurrence of the Minister, to the Agency [**a deputy supervisor or any other person**]."; and

[date of commencement of paragraph (a): 1 April 2018]

(b) by the insertion after subsection (3) of the following subsection:

"(4)(a) To the extent that a power or function relating to the licensing of co-operative financial institutions has been delegated to the Agency, references in Chapter VIIA to "the Authority" must be read as a reference to "the Agency".

(b) A reference in Chapter VIIA to "prescribed" means "prescribed in

prudential, conduct or joint standards".

(c) To the extent that a power or function relating to the licensing of co-operative financial institutions has been assigned or delegated to the Agency—

(i) the Agency may make rules in relation to the performance of that power or function; and

(ii) "prescribed" must be read as referring to "rules made by the Agency".".

[date of commencement of paragraph (b): 18 March 2019]

10. The substitution for section 45 of the following section:

"45. The [**supervisor**] Authority, in addition to other functions conferred on the [**supervisor**] Authority by or in terms of any other provision of this Act—

(a) must take steps [**he or she**] that the Authority considers necessary to protect the public in their dealings with co-operative banks and co-operative financial institutions;

(b) may, on the written request of a cooperative bank, co-operative financial institution, representative body, support organisation or auditor, extend any period within which any documentation, information or report must be submitted to [**him or her**] the Authority;

(c) must determine the form, manner and period, if a period is not specified in this Act, within which any documentation, information or report that a co-operative bank, co-operative financial institution, [**a**] representative body, support organisation or auditor is required to submit to the [**supervisor**] Authority under this Act must be submitted;

(d) may, despite the provisions of any law, furnish information

acquired by [**him or her]** the Authority under this Act to any person charged with the performance of a function under any law;

(e) may issue guidelines to co-operative banks, co-operative financial institutions, members, supporting institutions and auditors on the application and interpretation of this Act and provide them with information on market practices or market or industry developments within or outside the Republic;

(f) may publish a journal or any other publication, and issue newsletters and circulars containing information relating to co-operative banks and co-operative financial institutions; and

(g) may take any measures [**he or she]** that the Authority considers necessary for the proper performance and exercise of [**his or her**] the Authority's functions or duties or for the implementation of this Act.".

[date of commencement of item 10: 1 April 2018]

11. The substitution for section 46 of the following section:

"**Power to make [rules] standards**

46. (1) [**The supervisor may prescribe rules with regard to—**] A prudential, conduct or joint standard for or in respect of co-operative financial institutions and co-operative banks may be made on any of the following matters:

(a) **[any**] Any matter that is required or permitted to be prescribed in terms of this Act; and

(b) any other matter for the better implementation of this Act or a function or power provided for in this Act.

(2) [**Rules**] Standards referred to in subsection (1) may—

(a) apply to co-operative banks or cooperative financial institutions generally; or

(b) be limited in application to a particular co-operative bank or co-operative financial institution or kind of cooperative bank or co-operative financial institution, which may be defined in relation to either a type or budgetary size of co-operative bank or co-operative financial institution or to any other matter.

[(3)(a) Before the supervisor prescribes any rule under this section, he or she must—

(i) publish a draft of the proposed rule in the *Gazette* together with a notice calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and

(ii) secure the written approval of the Minister.

(b) If the supervisor alters a draft rule because of any comment, he or she need not publish the alteration before prescribing the rule.

(4) The supervisor may, if circumstances necessitate the immediate publication of a rule, publish that rule without the approval as contemplated in subsection (3)(a)(ii).]".

[date of commencement of item 11: 1 April 2018]

12. The substitution for section 47 of the following section:

"**Inspections**

47. (1) [**(a)**] The [**supervisor**] Authority may at any time of [**his or her**] the Authority's own accord, on application by at least 10 per cent of the

members of or at the request of the judicial manager of a co-operative bank or a co-operative financial institution, inspect the business of a co-operative bank or a co-operative financial institution if the **[supervisor]** Authority has reason to believe that the co-operative bank or co-operative financial institution is not conducting its affairs in accordance with the provisions of this Act or is contravening a provision of this Act.

[**(b) The supervisor has for the purposes of subsection (2) the powers and duties conferred or imposed upon a registrar by the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), and any reference in that Act to "registrar" must be construed as a reference to "supervisor" and any reference to "financial institution" must be construed as a reference to "co-operative bank", provided that no warrant is required for search and seizure activities aimed at establishing regulatory compliance.**]

(2) The [**supervisor**] Authority may take any measures and make any recommendation [**he or she**] that the Authority considers appropriate following an inspection in terms of subsection (1), including a recommendation to—

(a) the co-operative bank or the cooperative financial institution; and

(b) the relevant prosecuting authority if the inspection was done on the authority of a warrant.".

[date of commencement of item 12: 1 April 2018]

13. The amendment of section 48 —

(a) by the substitution in subsection (1) for the words

preceding paragraph (a) of the following words:

"The [**supervisor**] Authority may, in order to ensure the implementation and administration of this Act or to protect members and the public in general, issue a directive to a co-operative bank or a co-operative financial institution—"; and

(b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

"(a) apply to co-operative banks or co-operative financial institutions generally; or

(b) be limited in its application to a particular co-operative bank or co-operative financial institution, or kind of co-operative bank or co-operative financial institution, which may be defined either in relation to a type or budgetary size of co-operative bank or co-operative financial institution or to any other matter.".

[date of commencement of item 13: 1 April 2018]

14. The amendment of section 49 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) The [**supervisor**] Authority may, despite and in addition to taking any step [**he or she]** that the Authority may take under this Act, impose an administrative penalty on [**the]** a co-operative bank or co-operative financial institution for any failure to comply with a provision of this Act."; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) If a co-operative bank or co--operative financial institution fails to pay an administrative penalty within the specified

period the [**supervisor**] Authority may by way of civil action in a competent court recover the amount of the administrative penalty from the cooperative bank.".

[date of commencement of item 14: 1 April 2018]

15. The substitution for section 50 of the following section:

"**Information and reports**

50.[**(1)**] (a) The [**supervisor**] Authority may on written notice require a cooperative bank, a co-operative financial institution, a representative body or a support organisation [**of a co-operative bank**] to submit to **[him or her]** the Authority—

(i) the information specified in the notice; or

(ii) a report by an auditor or by any other person with appropriate professional skill, designated by the [**supervisor**] Authority, on any matter specified in the notice.

(iii) A report required under [s**ubsection (1)**] paragraph (a) must be prepared at the expense of the co-operative bank, representative body or support organisation.".

[date of commencement of item 15: 1 April 2018]

16. The amendment of section 55 by the insertion after paragraph (l) of the following paragraph:

"(lA) exercise powers and perform functions in relation to co-operative financial institutions, including regulatory and supervisory functions, as specified in terms of this Act, or which the Authority may, with the concurrence of the Minister, delegate or assign to the Agency;".

[date of commencement of item 16: 1 April 2018]

17. The amendment of section 57 —

		(a) by the substitution in subsection (1) for paragraph (aA) of the following paragraph: "(aA) the matters referred to in section 55(1)(f) to (h) and paragraph (aB) of this subsection, in consultation with the [**supervisor]** Authority;"; (b) by the insertion after paragraph (aA) of the following paragraph: "(aB) co-operative financial institutions, in order to perform the Agency's functions in relation to co-operative financial institutions, including regulatory and supervisory functions, as specified in terms of this Act, or which the Authority may, with the concurrence of the Minister, delegate or assign to the Agency;"; (c) by the substitution in subsection (2) of the following subsection: "(2) Rules referred to in subsection (1) may— (a) apply to co-operative banks, representative bodies [**or**], support organisations or co-operative financial institutions generally; [**or**] (b) be limited in application to a particular co-operative bank, representative body [**or**], support organisation or co-operative financial institution, or kind of co-operative bank or co-operative financial institution, which may be defined either in relation to a type or budgetary size of co-operative bank or co-operative financial institution, or to any other matter; and (c) only apply to co-operative financial institutions, in the case of rules referred to in subsection (1)(aB).". *[date of commencement of item 17: 1 April 2018]*

18. The repeal of sections 75 and 76.

[date of commencement of item 18: 28 September 2018]

19. The substitution for section 77 of the following section:

"**Unlawful use of word 'co-operative bank', 'co-operative financial institution' or unlawful conduct of [banking] business of co-operative bank or cooperative financial institution.**

77. (1) It is an offence for any person who is not registered as a co-operative bank or a co-operative financial institution under this Act to—

(a) in connection with any business conducted by him, her or it—

(i) use or refer to himself, herself or itself by any name, description or symbol indicating, or calculated to lead persons to infer, that such person is a cooperative bank or a co-operative financial institution registered as such under this Act; or

(ii) in any manner purport to be a co-operative bank or a co-operative financial institution registered as such under this Act; or

(b) use in respect of any business a name or description that includes the expression "co-operative bank", "co-op bank", "co-operative financial institution" or any derivative thereof.

(2) It is an offence for any person to conduct the business of any co-operative bank or co-operative financial institution unless such person is registered as a co-operative bank or a co-operative financial institution in terms of this Act.

(3)(a) It is an offence for a co-operative bank to provide, participate in or undertake

banking services other than the services authorised in respect of the type of co-operative bank it is registered as in terms of this Act.

(b) It is an offence for a co-operative financial institution to provide, participate in or undertake services other than the services that it is authorised to provide as a registered co-operative financial institution in terms of this Act.".

[date of commencement of item 19: 1 April 2018]

20. The substitution for section 78 of the following section:

"**Untrue information in connection with applications**

78. It is an offence for any person in connection with an application for registration as a co-operative bank or a co-operative financial institution to provide any information that to the knowledge of such person is untrue or misleading in any material respect.".

[date of commencement of item 20: 1 April 2018]

21. The substitution for section 79 of the following section:

"Criminal liability of director, managing director, executive officer and other persons

79. (1) It is an offence for any director, managing director or executive officer of a co-operative bank or a cooperative financial institution to, directly or indirectly, be involved in or take part in the management of a co-operative bank or a co-operative financial institution while the business of the co-operative bank or co-operative financial institution is carried on recklessly, with intent to defraud creditors of the co-operative bank or co-operative financial institution, or creditors of any other person, or for any fraudulent purpose.

(2) It is an offence for any person other than a director, managing director or executive officer to knowingly, directly or indirectly, benefit from, be involved in or take part in the management of a co-operative bank or a co-operative financial institution while the business of the co-operative bank or co-operative financial institution is carried on recklessly, with intent to defraud creditors of the co-operative bank or co-operative financial institution, or creditors of any other person, or for any fraudulent purpose.".

[date of commencement of item 21: 1 April 2018]

22. The substitution for section 82 of the following section:

"**Fair administrative action**

82. [**Any**] Where a decision or other step of an administrative nature taken by the [**supervisor,**] Authority or the Agency [**or appeal board that**] affects the rights of another person, the [**supervisor,**] Authority 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 or in terms of the Financial Sector Regulation Act.".

[date of commencement of item 22: 1 April 2018]

23. The substitution for section 85 of the following section:

"**Indemnity**

85. Neither the [**supervisor**,] Authority 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.".

[date of commencement of item 23: 1 April 2018]

24. The substitution for section 87 of the following section:

"**Powers of Minister**

87. The Minister may delegate any of [**his or her**] the Minister's 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.".

[date of commencement of item 24: 1 April 2018]

25. The substitution for the long title of the Act for the following:

"To promote and advance the social and economic welfare of all South Africans by enhancing access to banking services under sustainable conditions; to promote the development of sustainable and responsible co-operative banks and co-operative financial institutions; to establish an appropriate regulatory framework and regulatory institutions for co-operative banks and co-operative financial institutions that protect members of co-operative banks and co-operative financial institutions; to provide for the registration of deposit-taking financial services co-operatives as co-operative banks and co-operative financial institutions; to provide for the regulation and supervision of co-operative banks and co-operative financial institutions; and to provide for the establishment [of co-operative banks supervisors and] a development agency for co-operative banks;

and to provide for matters connected therewith".

[date of commencement of item 25: 1 April 2018]

26. The substitution for the expression "supervisor", wherever it occurs, of the expression "Authority".

[date of commencement of item 26: 1 April 2018]

27. The 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";

(b) by the substitution for items 18 and 19 of the following items:

"**18.** Functions of Auditor in relation to Authority

19. Submission of documents to Authority";

(c) the insertion after item 40 of the following heading and items:

"Chapter VIIA Co-operative financial institutions

40A. Application for registration as co-operative financial institution

40B. Requirements for registration

40C. Registration of co-operative financial institution

40D. Suspension of registration or de-registration

40E. Repayment of deposits on deregistration or lapsing of registration

40F. Winding-up or judicial management of co-operative financial institution"; and

(d) the substitution for item 77 of the following item:

		"77. Unlawful use of words "co-operative bank", "co-operative financial institution" or unlawful conduct of business of co-operative bank or co-operative financial institution". *[date of commencement of item 27: 1 April 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 19 of 2012	Financial Markets Act, 2012	1. The amendment of section 1— (a) by the deletion in subsection (1) of the definition of "appeal board"; (b) by the insertion in subsection (1) after the definition of "authorised user" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;"; (c) by the deletion in subsection (1) of the definition of "board"; (d) by the insertion in subsection (1) after the definition of "bank" of the following definition: "'**central counterparty**' means a clearing house that— (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 (b) becomes a counterparty to trades with market participants through novation, an open offer system or through a legally binding agreement;"; (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 or a licensed central counterparty in accordance with its rules;"; (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 or a licensed central counterparty in accordance with this Act;";

(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 or a licensed central counterparty, 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,";

(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 the Financial Sector Regulation Act;";

(i) by the deletion in subsection (1) of the definition of "enforcement committee";

(j) by the insertion in subsection (1) after the definition of "external authorised user" of the following definition:

"'**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—

(a) establish a regulatory framework equivalent to that established by this Act; and

(b) are supervised by a supervisory authority;";

(k) by the insertion in subsection (1) after the definition of "external exchange" of the following definition:

"'**external market infrastructure**' means each of the following:

(a) An external central counter-party;

(b) an external central securities depository;

(c) an external clearing house;

(d) an external exchange;

(e) an external trade repository;";

(l) by the insertion in subsection (1) after the definition of "Financial Intelligence Centre Act" of the following definitions:

"'**financial sector law**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

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

(m) by the deletion in subsection (1) of the definition of "Financial Services Board Act";

(n) 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;";

(o) 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 section 1(1) of the Financial Sector Regulation Act;";

(p) 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;";

(q) by the insertion in subsection (1) after the definition of "licensed exchange" of the following definitions:

"'**licensed external central counterparty**' means an external central counterparty licensed under section 49A;

'**licensed external trade repository**' means an external trade repository licensed under section 56A;";

(r) by the substitution in subsection (1) for the definition of "market infrastructure" of the following definition:

"'**market infrastructure**' means each of the following—

(a) a licensed central counterparty;

[(**a**)] (b) a licensed central securities depository;

[**(b)**] (c) a licensed clearing house;

[**(c)**] (d) a licensed exchange;

[**(d**)] (e) a licensed trade repository;";

(s) by the deletion in subsection (1) of the definition of "official website";

(t) 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;";

(u) by the insertion in subsection (1) after the definition of "participant" of the following definition:

"'**prescribed**' means prescribed by the Minister by regulations, or by a conduct standard or a joint standard;";

(v) by the deletion in subsection (1) of the definitions of "prescribed by the Minister" and "prescribed by the registrar";

(w) by the insertion in subsection (1) after the definition of "prescribed" of the following definitions:

"'**Prudential Authority**' means the authority established in terms of section 32 of the Financial Sector Regulation Act;

'**prudential standard**' has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;";

(x) by the substitution in subsection (1) for the definition of "registrar" of the following definition:

"'**registrar**' means [t**he person referred to in section 6**] the Registrar and Deputy Registrar of Securities Services referred to in section 1A(1);";

(y) by the substitution in subsection (1) for the definition of "regulated person" of the following definition:

"'**regulated person'** means —

(a) a licensed central counterparty;

[**(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;

[**(f)**] (g) a clearing member;

[**(g)**] (h) a nominee;

[**(h)**] (i) a participant;

[**(i)**] (j) except for the purposes of section 3(6), sections 74 and 75, sections 89 to 92, and sections 100 to 103, an issuer;

(k) except for the purposes of sections 89 to 92, and sections 100 to 103, a licensed external central counterparty and a licensed external trade repository; or

[**(j)**] (l) any other person [**prescribed by the Minister in terms of section 5**] specified in regulations for this purpose;";

(z) 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]** Authority in terms of section 65 of that Act; and";

(zA) 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 licensed central counterparty or a licensed central securities depository to settle a transaction, in which case it has the meaning assigned in paragraph (a);";

(zB) by the insertion in subsection (1) after the definition of "transfer" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;";

(zC) by 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]** Authority, such decision requires the concurrence of the **[registrar]** Authority."; and

(zD) by the addition of the following subsection:

"(4) 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.".

[date of commencement of item 1: 9 February 2018]

3. The insertion after section 1 of the following section:

[Please note: numbering as in original]

"Relationship between Act and Financial Sector Regulation Act

1A. (1) If the Minister has determined by notice in the *Gazette* that the amendments of this Act contained in Schedule 4 to the Financial Sector Regulation Act must come into operation before the provisions of the Financial Sector Regulation Act in terms of which the Authority is established come into operation,

then until the date on which the Authority is established—

(a) a reference to "Authority" must be read as a reference to the executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act, who are the Registrar and the Deputy Registrar of Securities Services, respectively; and

(b) the Registrar and Deputy Registrar of Securities Services exercise the powers and perform the functions of the Authority.

(2) If the Minister has determined by notice in the *Gazette* that the amendments of this Act contained in Schedule 4 to the Financial Sector Regulation Act must come into operation before the provisions of the Financial Sector Regulation Act in terms of which the Prudential Authority is established come into operation, then until the date on which the Prudential Authority is established—

(a) a reference to "Prudential Authority" must be read as a reference to the Registrar of Banks; and

(b) the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No. 94 of 1990) exercises the powers and performs the functions of the Prudential Authority.

(3) 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.

(4) 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 in the Register.

(5) 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—

(a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard, or a joint standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(6) (a) A reference in this Act to an on-site visit in terms of a provision of this Act, must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

(b) A reference to an inspection in terms of a provision of this Act other than section 79(b) must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(7) (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.

(b) The Authority may also publish the information or document on the Authority's website.

(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 237 and Chapter 16 of the Financial Sector Regulation Act.

(9) A reference in this Act to an appeal of a decision of the Authority or a market infrastructure to the appeal board

must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

(10) For the purposes of the Financial Sector Regulation Act, conduct standards made in terms of section 74 are regulatory instruments.".

[date of commencement of item 3 in respect of section 1A(8): 1 April 2019]

4. The amendment of section 3—

(a) by the substitution for subsection (3) of the following subsection:

"(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, except the Financial Intelligence Centre Act and the Financial Sector Regulation Act, this Act prevails."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) Despite any other law, if other national legislation confers a power on or imposes a duty upon an organ of state, other than the South African Reserve Bank or the Prudential Authority, 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]** concurrence of the [**registrar]** Authority.".

[date of commencement of item 4: 9 February 2018]

5. The amendment of section 4—

(a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

"(e) act as a clearing member unless authorised by a licensed exchange [**or**], a licensed independent clearing house, a licensed central counterparty, a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of section 49A, as the case may be;";

(b) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

"(g) perform the functions of or operate as a trade repository unless that person is licensed under section 56 or section 56A, as the case may be; or";

(c) by the substitution for subsection (2) of the following subsection:

"(2) A person who is not—

(a) licensed as an exchange, a central securities depository, a trade repository [**or**], a clearing house or a central counterparty;

(b) a participant;

(c) an authorised user;

(d) a clearing member;

(e) an approved nominee; [**or**]

(f) an issuer of listed securities**[,]**;

(g) licensed as an external central counterparty, or exempt from the requirement to be licensed in terms of section 49A; or

(h) licensed as an external trade repository,

may not purport to be an exchange, central securities depository, trade repository, clearing house, central counterparty, external central counterparty, external trade repository, 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, central counterparty, external central counterparty, external trade repository, participant, authorised user or clearing member, as the case may be, where in fact no such connection exists."; and

(d) by the substitution for subsection (5) of the following subsection:

"(5)(a) 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 a licensed central counterparty, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.

(b) A clearing member may only provide clearing services or settlement services for which it is authorised by a licensed external central counterparty or an external central counterparty that is exempt from the requirement to be licensed in terms of section 49A, with the joint prior written approval of the Authority, the Prudential Authority and the South African Reserve Bank.".

[date of commencement of item 5: 9 February 2018]

6. The amendment of section 5—

(a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

"(b) a category of regulated persons, other than those specifically regulated under this Act, if the securities services provided, and the functions and duties exercised, 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;

(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, external clearing member, external central counterparty or external trade repository, as the case may be."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) An external authorised user, external exchange, external participant, external central securities depository, external clearing house, or external clearing member [**or external trade repository**] may only provide those securities services or exercise functions or duties, as the case may be, prescribed by the Minister in terms of subsection (1)(c).".

[date of commencement of item 6: 9 February 2018]

7. The amendment of section 6:

(a) by the substitution for the heading of the section of following heading:

"[**Registrar and Deputy Registrar**] Authority";

(b) by the deletion of subsections (1) and (2);

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"In performing [**those**] its functions in terms of this Act, the Authority—;

(d) by the substitution in subsection (3) for paragraph (k) of the following paragraph:

"(k) may issue [**guidelines**] guidance notices on the application and interpretation of this Act;";

(e) by the substitution in subsection (3) for paragraph (m) of the following paragraph:

"(m) may exempt, for a specified period which may be renewed, any person or category of persons from the provisions of a section of this Act if the [**registrar**] Authority is satisfied that—

[**(i) the application of said section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and**]

[**(ii)**] (i) the granting of the exemption will not—

(aa) conflict with the public interest; or

(bb) frustrate the achievement of the objects of this Act; and

(ii) the application of the section will cause the applicant or clients of the applicant financial or other hardship or prejudice; and

(iii) in relation to an external market infrastructure, and with the concurrence of the South African Reserve Bank and the Prudential Authority, the applicant—

(aa) is based in an equivalent jurisdiction in terms of section 6A and is authorised by the supervisory authority of such jurisdiction;

(bb) complies with any criteria prescribed in joint standards for the exemption of such persons; and

(cc) undertakes to cooperate and share information with the Authority, the South African Reserve Bank and the Prudential

Authority to assist with the performance of functions and the exercise of powers in terms of financial sector law;";

(f) by the substitution in subsection (3) for paragraph (n) of the following paragraph:

"(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**];";

(g) by the deletion in subsection (3) of paragraph (o);

(h) by the substitution for subsection (5) of the following subsection:

"(5) The [**registrar**] Authority must, where an exemption or a directive applies to all persons, regulated persons or securities services generally, publish the directive in the *Gazette* and on the [**official**] Authority's website, and a copy of the published exemption or directive must be tabled in Parliament.";

(i) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

"The [**registrar**] Authority may, with the concurrence of the Prudential Authority and in accordance with the requirements prescribed by the Minister under section 5(1)(a), in conduct standards or joint standards for, or in respect of, securities services— ";

(j) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

"(b) prescribe conditions and requirements for the provision of securities services in respect of unlisted securities, including, but not limited to, [**prescribing a code of conduct and]** imposing reporting requirements;";

(k) by the substitution in subsection (7) for paragraph (d) of the following paragraph:

"(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;";

(l) 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**] standards may—";

(m) 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]** conduct standards and imposing reporting requirements;";

(n) 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 [**the**] this Act or the Financial Sector Regulation Act."; and

(o) by the addition of the following subsection:

"(9) In relation to the securities services that may be provided, or 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, joint standards may prescribe additional criteria for the approval, authorisation, licensing or exemption of those persons in the Republic, and for the equivalence recognition of the applicable foreign country.".

[date of commencement of item 7: 9 February 2018]

8. The insertion after section 6 of the following sections:

"Equivalence recognition of foreign jurisdictions

6A. (1) On application by an interested party, the Authority, with the concurrence of the South African Reserve Bank and the Prudential Authority, may determine that the regulatory framework of a specified foreign country is equivalent (an "equivalent jurisdiction") to the regulatory framework established in terms of financial sector law, if the legislative and regulatory framework established in that foreign country meets the objectives of the financial sector law.

(2) A recognition in terms of section 6A(1) must be published on the Authority's website and in the Register.

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

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

(a) the nature and intensity of the supervisory authority's oversight processes, including direct comparison with the regime applied by the Authority, the

Prudential Authority and the South African Reserve Bank, as the case may be;

(b) alignment of the foreign country's regulatory framework with relevant principles developed by international standard setting bodies applicable to market infrastructures;

(c) observed outcomes of the foreign regulatory framework applicable to market infrastructures relative to those in South Africa; and

(d) the need to prevent regulatory arbitrage.

Withdrawal of recognition

6B. The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, withdraw recognition where the criteria set out in section 6A are no longer met.

Principles of co-operation

6C. (1) The Authority must enter into a supervisory co-operation arrangement with the relevant supervisory authority from the equivalent jurisdiction for the purpose of performing its functions in terms of this Act.

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

(a) the mechanism for the exchange of information between the Authority, the South African Reserve Bank, the Prudential Authority, and the relevant supervisory authorities ("the authorities"), including access to all information requested by the Authority regarding a licensed external market infrastructure;

(b) the mechanism for prompt notification to the Authority, the South African Reserve Bank and the Prudential Authority where the supervisory authority 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, or any other matter which may have an effect on the authorisation of the market infrastructure;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, for collaboration regarding the timing, scope and role of the authorities with respect to any cross-border supervisory on-site inspections;

(d) the processes the authorities should use if an authority subsequently determines that it needs to use requested supervisory information for law enforcement or disciplinary purposes, such as obtaining the consent of the requested authority and handling such information in accordance with the terms of existing memoranda of understanding for enforcement co-operation;

(e) the procedures for co-operation, including, where applicable, for discussion of relevant examination reports, for assistance in analysing documents or obtaining information from a licensed external market in-frastructure and members of the controlling body or senior management; and

(f) the degree to which a supervisory authority may onward-share to a third party any non-public supervisory information received from an-other authority, and the processes for doing so.

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

(a) establish and maintain appropriate confidential safeguards to protect all non-

public supervisory information obtained from another supervisory authority;

(b) consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors;

(c) consult, co-operate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets;

(d) co-operate in the day-to-day and routine oversight of internationally active licensed external market infrastructures;

(e) provide advance notification and consult, where possible and otherwise as soon as practicable, regarding issues that may materially affect the respective regulatory or supervisory interests of another authority;

(f) design mechanisms for supervisory co-operation to provide information both for routine supervisory purposes and during periods of crisis; and

(g) undertake ongoing and *ad hoc* staff communications regarding internationally active licensed external market infrastructure as well as more formal periodic meetings, particularly as new or complex regulatory issues arise.".

[date of commencement of item 8: 9 February 2018]

9. The amendment of section 7—

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) be made in the manner and contain the information prescribed by the [**registrar**] Authority;";

(b) by the substitution in subsection (3)(c) for subparagraph (v) of the following subparagraph:

"(v) the application fee **[prescribed by the registrar]** determined in terms of the Financial Sector Regulation Act;";

[date of commencement of paragraph (b): 1 April 2019]

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The **[registrar]** Authority must publish a notice of an application for an exchange licence in two national newspapers at the expense of the applicant, and on the **[official]** Authority's website.";

(d) by the substitution in subsection (4)(b) for subparagraphs (ii) and (iii) of the following subparagraphs:

"(ii) **[where]** 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

(iii) the period within, and the process by, which objections to the application or rules and listing requirements may be lodged with the **[registrar]** Authority;"; and

(e) by the addition in subsection (4) of the following paragraph:

"(c) The Authority must publish the proposed exchange rules and listing requirements referred to in paragraph (b)(ii) on the Authority's website.".

[date of commencement of item 9, excluding paragraph (b): 9 February 2018]

10. The amendment of section 8—

(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 relevant joint standards are met by the applicant, or the licensed exchange, as the case may be, [**its directors**] members of its controlling body and senior management;"; and

(b) by the addition of the following subsection:

"(3)(a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

(b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).

(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 standards or joint standards.".

[date of commencement of item 10: 9 February 2018]

11. The amendment of section 9(4) by the substitution for paragraph (a) of the following paragraph:

"(a) The [**registrar]** Authority must publish a notice of an application for an amendment of the terms of an exchange licence or the conditions subject to which the licence was granted in two national newspapers, at the expense of the applicant, and on the [**official**] Authority's website.".

[date of commencement of item 11: 9 February 2018]

12. The amendment of section 10 —

(a) by substitution in subsection (2) for paragraph (f) of the following paragraph:

"(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

(b) by the substitution in subsection (2)(i) for subparagraph (ii) of the following subparagraph:

"(ii) may appoint **[an associated or independent]** a clearing house or central counterparty licensed under Chapter V to clear or settle transactions or both clear and settle transactions on behalf of the exchange;".

[date of commencement of item 12: 9 February 2018]

13. The amendment of section 11 —

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) an exchange may take into account at a hearing information obtained by the [**registrar]** Authority in the course of [**an]** a supervisory on-site [**visit or**] inspection or investigation conducted [**under section 95**] in terms of the Financial Sector Regulation Act or obtained by the directorate in an investigation under section 84, read with section 85.";

(b) by the substitution in subsection (6) by the substitution for paragraphs (c) and (d) of the following paragraphs:

"(c) The [**registrar**] Authority must, as soon as possible after the receipt of a proposed amendment, publish—

(i) the amendment on the [**official**] Authority's website; and

(ii) a notice in the *Gazette* that the proposed amendment is available on the [**official**] Authority's website, calling upon all interested persons who have any objections to the proposed amendment, to lodge their objections with the [**registrar**] Authority within a period of 14 days from the date of publication of the notice.

(d) If there are no such objections, or if the [**registrar**] Authority has considered the objections and, if necessary, has consulted with the exchange and the persons who raised such objections and has decided to approve or amend the proposed amendment, the [**registrar**] Authority must publish —

(i) the amendment and the date on which it comes into operation on the [**official**] Authority's website; and

(ii) a notice in the *Gazette*, which notice must state—

(aa) that the amendment of the listing requirements has been approved;

(bb) that the listing requirements as amended are available on the [**official]** Authority's website and the website of the exchange; and

(cc) the date on which the amendment of the listing requirements will come into operation.";

(c) by the substitution in subsection (7)(a) for the words proceeding subparagraph (i) of the following words:

"(a) The [**registrar**] Authority may, by notice in the *Gazette* and on the [**official**] Authority's website, amend the listing requirements of an exchange—"; and

(d) by the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:

"(ii) publish the reasons for the amendment, and the imperative for such amendment in the *Gazette* and on the [**official**] Authority's website.".

[date of commencement of item 13: 9 February 2018]

14. The amendment of section 12(6) by the substitution for paragraph (b) of the following paragraph:

"(b) If the refusal to list securities was due to any fraud or other crime committed by the issuer, or any material misstatement of its financial position or non-disclosure of any material fact, or if the removal of securities was due to a failure to comply with the listing requirements of the exchange, no other exchange in the Republic may, for a period of six months from the date referred to in paragraph (a), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such securities, unless the refusal or removal is withdrawn by the first exchange or set aside on [**appeal**] reconsideration by the [**appeal board in terms of section 105**] Tribunal."

[date of commencement of item 14: 9 February 2018]

15. The amendment of section 17 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) The exchange rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.";

(b) by the insertion after subsection (2) of the following subsection:

"(2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the exchange rules."; and

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(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.".

[date of commencement of item 15: 9 February 2018]

16. The amendment of section 25(2) by the substitution for the words preceding paragraph (a) of the following words:

"The [**registrar**] Authority may**[,]** prescribe standards in respect of [**a report**] reports referred to in subsection (1)[, **prescribe**] specifying—".

[date of commencement of item 16: 9 February 2018]

17. The amendment of section 27 —

(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The [**registrar**] Authority must publish a notice of an application for a central securities depository licence in two national newspapers, at the expense of the applicant, and on the **[official]** Authority's website."; and

(b) by the addition in subsection (4) of the following paragraph:

"(c) The Authority must publish the proposed depository rules re-

ferred to in paragraph (b)(ii) on the Authority's website.".

[date of commencement of item 17: 9 February 2018]

18. The amendment of section 28 —

(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, or the central securities depository, as the case may be, [**its directors**] members of its controlling body and senior management;"; and

(b) by the addition of the following subsection:

"(3)(a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

(b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).

(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 standards or joint standards.".

[date of commencement of item 18: 9 February 2018]

19. The amendment of section 29 —

(a) by the substitution for subsection (2) of the following subsection:

"(2) The licence must specify the registered office of the central securities depository in the Republic and the places where the central securities depository may be operated, and that the central securities depository may not be operated at any other place without the joint prior written approval of the [**registrar**] Authority, the Prudential Authority and the South African Reserve Bank."; and

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The [**registrar**] Authority must publish a notice of an application for an amendment of the terms of a central securities depository licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the [**official**] Authority's website.".

[date of commencement of item 19: 9 February 2018]

20. The amendment of section 30(2) by the substitution for paragraph (h) of the following paragraph:

"(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;".

[date of commencement of item 20: 9 February 2018]

21. The amendment of section 33 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"An issuer may convert certificated [**Certificated**] securities [**may be converted**] to uncertificated securities, at the election of the issuer or the holder

of certificated securities, and an issuer may, subject to subsection (2), issue uncertificated securities despite any contrary provision in —".

[date of commencement of item 21: 9 February 2018]

22. The amendment of section 35 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) The depository rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.";

(b) by the insertion after subsection (2) of the following subsection:

"(2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the depository rules.";

(c) by the substitution in subsection (4) 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 or joint standards, the depository rules may provide for the approval of external participants or external central securities depositories to be participants of the central securities depository."; and.

(d) by the substitution in subsection (4)(b) for subparagraph (ii) of the following subparagraph:

"(ii) where a central securities depository has approved an external central securities depository as a participant, for the identification of the relevant laws or depository rules that apply to each aspect of the participation, including, but not limited to, the laws regulating

effectiveness against third parties and insolvency proceedings.**[—**

(aa) the identification of the supervisory authority that supervises that external central securities depository;

(bb) the identification of the relevant laws or depository rules that apply to each aspect of the participation, including, but not limited to, the laws regulating effectiveness against third parties and insolvency proceedings.]".

[date of commencement of item 22: 9 February 2018]

23. 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 a 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.".

[date of commencement of item 23: 9 February 2018]

24. The amendment of section 39 by the substitution for subsection (3) of the following subsection:

"(3) An interest in respect of uncertificated securities may be granted under this section, where applicable, and in the manner provided for in the depository rules, and is effective against third parties, in relation to a central securities account or a securities account, where such an interest extends to all uncertificated securities standing to the credit

of the relevant central securities account or securities account at the time the pledge is effected.".

[date of commencement of item 24: 9 February 2018]

25. The amendment of the heading in Chapter V preceding section 47 by the substitution for the heading of the following heading:

"**Licensing of clearing house and central counterparty**".

[date of commencement of item 25: 9 February 2018]

26. The amendment of section 47 —

(a) by the substitution for the heading of the section of the following heading:

"**Application for clearing house licence and central counterparty licence**";

(b) by the substitution for subsection (1) of the following subsection:

"(1) A clearing house and a central counterparty must be licensed under section 49.";

(c) by the insertion after subsection (1) of the following subsection:

"(1A) Subject to section 110(6), a central counterparty must be an independent clearing house.";

(d) by the substitution for subsection (2) of the following subsection:

"(2) A juristic person may apply to the **[registrar]** Authority for a clearing house licence or a central counterparty licence.";

(e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"An application for a clearing house licence or central counterparty licence must—";

		(f) by the substitution in subsection (3)(c) for subparagraph (iii) of the following subparagraph: "(iii) the application fee [**prescribed by the registrar**] determined in terms of the Financial Sector Regulation Act;"; *[date of commencement of paragraph (f): 1 April 2019]* (g) 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 or a central counterparty licence, a copy of the proposed clearing house rules that must comply with section 53; and"; (h) by the substitution in subsection (4) for paragraph (a) of the following paragraph: "(a) The [**registrar**] Authority must publish a notice of an application for a clearing house licence in two national newspapers at the expense of the applicant and on the **[official]** Authority's website."; (i) by the substitution in subsection (4)(b) for subparagraph (ii) of the following subparagraph: "(ii) in relation to an independent clearing house or a central counterparty, [**where**] that the proposed clearing house rules [**may be inspected by**] are available on the Authority's website for comments from members of the public; and"; and (j) by the addition in subsection (4) of the following paragraph: "(c) The Authority must publish the proposed clearing house rules referred to in paragraph (b)(ii) on the Authority's website.". *[date of commencement of item 26, excluding paragraph (f): 9 February 2018]*

27. The amendment of section 48 —

(a) by the substitution for the heading of the section of the following heading:

"Requirements applicable to applicants for clearing house licence, central counterparty licence [and], licenced clearing house and licensed central counterparty";

(b) by the substitution for subsection (1) of the following subsection:

"(1) An applicant for a clearing house licence and a licensed clearing house, and an applicant for a central counterparty licence and a licensed central counterparty must—

(a) subject to the requirements prescribed by the Minister, have sufficient assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act;

(b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing house or central counterparty, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;

(c) demonstrate that the fit and proper requirements prescribed [**by the registrar**] in the relevant joint standards are met by the applicant [**or]**, the licensed clearing house or the licensed central counterparty, as the case may be, [**its directors**] members of its controlling body and senior management;

(d) comply with the requirements prescribed [**by the registrar**] in the joint standards for the clear-

ing or settlement of transactions in securities, or both;

(e) implement an effective and reliable infrastructure to facilitate the clearing of securities cleared by the clearing house or central counterparty;

(f) implement effective arrangements to manage the material risks associated with the operation of a clearing house or central counterparty;

(g) have made arrangements for security and back-up procedures to ensure the integrity of the records of transactions cleared, settled or cleared and settled through the clearing house or central counterparty; and

(h) in relation to an applicant for an independent clearing house licence **[or]**, a central counterparty licence, 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.";

(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—

(a) implement a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(b) collect and manage collateral held for the due performance of the obligations of clearing members or clients of clearing members;

(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; (d) maintain initial capital as prescribed, including an appropriate buffer; (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; (f) provide an appropriate segregation and portability regime to protect the positions of clients of a defaulting clearing member; and (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— (i) ensure that sufficient risk policies, procedures and processes are in place; and (ii) have sound internal controls for robust transaction processing and management."; (d) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs: "(2) The [**registrar**] Authority may — (a) require an applicant [**or**], a licensed clearing house or licensed central counterparty to furnish such additional information, or require such information to be verified, as the [**registrar**] Authority may deem necessary; (b) take into consideration any other information regarding the applicant, a licensed clearing house or licensed central counterparty, derived from whatever source, including any other supervisory authority, if

such information is disclosed to the applicant or a licensed clearing house and the latter is given a reasonable opportunity to respond thereto; and"; and

(e) by the addition of the following subsection:

"(3)(a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

(b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).

(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 standards or joint standards.".

[date of commencement of item 27: 9 February 2018]

28. The amendment of section 49 —

(a) by the substitution for the heading of the section of the following heading:

"**Licensing of clearing house and central counterparty**";

(b) by the substitution for subsection (1) of the following subsection:

"(1) The [**registrar**] Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank and 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 **[registrar]** Authority may consider appropriate, grant a clearing house licence to perform the functions referred to in section 50, if—"

(c) by the insertion after subsection (1) of the following subsection:

"(1A) Subject to the regulations or joint standards, the Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, and 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—

(a) the applicant complies with the relevant requirements of this Act; and

(b) the objects of this Act referred to in section 2 will be furthered by the granting of the licence.";

(d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The clearing house licence and the central counterparty licence—";

(e) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

"(a) must specify the functions that may be performed by the clearing house and central counterparty, and the securities in respect of which those functions may be performed, any other terms and conditions of the licence, the registered office of the clearing house and central counterparty, and the places where the clearing house and central counterparty

may be operated, and stipulate that the clearing house and central counterparty, may not be operated at any other place without the joint prior written approval of the [**registrar**] Authority, the Prudential Authority and the South African Reserve Bank; and

(b) may specify that insurance, a guarantee, compensation fund, or other warranty must be in place to enable the clearing house and central counterparty to provide compensation, subject to the clearing house rules, to clients of clearing members.";

(f) by the substitution in subsection (3) of the following subsection:

"(3) A clearing house and a central counterparty, may at any time apply to the [**registrar**] Authority for an amendment of the terms of the licence and the conditions subject to which the licence was granted."; and

(g) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The [**registrar**] Authority must publish a notice of an application for an amendment of the terms of a clearing house licence and central counterparty licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the [**official**] Authority's website.".

[date of commencement of item 28: 9 February 2018]

29. The insertion after section 49 of the following section:

"Licensing of external central counterparty

49A. (1) An external central counterparty must be licensed under this section to perform functions or provide services, unless it is exempt from the

requirement to be licensed in terms of section 6(3)(m).

(2) An external central counterparty from an equivalent jurisdiction may apply to the Authority for a licence.

(3) An application for a licence in terms of this section must—

(a) be made in the manner and contain information determined by the Authority;

(b) be accompanied by a copy of the proposed rules;

(c) be accompanied by the application fee determined in terms of the Financial Sector Regulation Act; and

(d) be supplemented by any additional information that the Authority may reasonably require.

(4)(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 the Authority's website.

(b) The notice must state—

(i) the name of the applicant; and

(ii) the availability of the operating rules of the external central counterparty on the Authority's website, for members of the public.

(5) An applicant for a licence or a licensed external central counterparty must be either—

(a) a company as defined in section 1(1) of the Companies Act; or

(b) an external company as defined in section 1(1) of the Companies Act that is registered as required by section 23 of that Act.

(6) The Authority may—

(a) require an applicant or a licensed external central counterparty to furnish such

information, or require such information to be verified, as the Authority may deem necessary in connection with the application; and

(b) take into consideration any other information regarding the applicant or the external central counterparty, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant or the external central counterparty, as the case may be, and the latter is given a reasonable opportunity to respond thereto.

(7) Regulations or joint standards may prescribe additional criteria for the licensing or exemption of an external central counterparty.

(8) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, grant a licence or an exemption, if—

(a) the applicant or the external central counterparty 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 law; and

(b) the objects of this Act referred to in section 2 will be furthered by the granting of the licence.

(9) A licence or exemption may only be granted after the following factors have been taken into consideration:

(a) Relevant international standards;

(b) the type and size of external central counterparty;

(c) the impact of the activities of the external central counterparty on the South African financial system;

(d) the degree of systemic risk posed by the activities of the external central counterparty; and

(e) any other factors that the Minister, the Authority, the South African Reserve Bank or the Prudential Authority, as the case may be, deem relevant.

(10) A licensed external central counterparty must comply with the relevant requirements of this Act and any other terms and conditions of the licence.

(11) The licence granted in terms of subsection (8) must specify those functions or duties, or services that may be provided by the external central counterparty and the securities in respect of which those functions or duties, or services may be performed.

(12) A licensed external central counterparty may at any time apply to the Authority for an amendment of the terms of its licence or the conditions subject to which the licence was granted.

(13)(a) The Authority must publish a notice of an application for an amendment of the terms of a licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.

(b) The notice must state—

(i) the name of the applicant;

(ii) the nature of the proposed amendments; and

(iii) the period within which objections to the application may be lodged with the Authority.

(14) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, amend the terms of a licence or the conditions subject to which the licence was granted.

(15)(a) In respect of regulations that may be prescribed in terms of subsection (7), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(b) Paragraph (a) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (7).

(c) Joint standards may be prescribed 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 (7).".

[date of commencement of item 29 in respect of section 49A(3)(c): 1 April 2019]

30. The amendment of the heading in Chapter V preceding section 50 by the substitution for the heading of the following heading:

"**Functions of licensed clearing house and licensed central counterparty** ".

[date of commencement of item 30: 9 February 2018]

31. The amendment of section 50 —

(a) by the substitution for the heading of the section of the following heading:

"Functions of licensed clearing house and licensed central counterparty, and power of Authority to assume responsibility for functions";

(b) by the substitution for subsection (1) of the following subsection:

"(1) A licensed clearing house and a licensed central counterparty must conduct its business in a fair and transparent manner with due

regard to the rights of clearing members and their clients.";

(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"A licensed clearing house and a licensed central counterparty—";

(d) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(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**] give rise to, or increase, systemic risk;";

(e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"A licensed independent clearing house and a licensed central counterparty, in addition to the functions referred to in subsection (2)—";

(f) by the insertion after subsection (3) of the following subsection:

"(3A) A central counterparty, in addition to the functions referred to in subsections (1), (2) and (3), must—

(a) interpose itself between counterparties to transactions in securities through the process of novation, legally binding agreement or open offer system;

(b) manage and process the transactions from the date the central counterparty interposes itself between counterparties to transactions, becoming the buyer to every seller and seller to every buyer, to the date of fulfilment of the legal obligations in respect of such transactions; and

(c) facilitate its post-trade management functions."; and

(g) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) The [**registrar**] Authority must, before assuming responsibility as contemplated in paragraph (a)—

(i) inform the clearing house or central counterparty of the [**registrar's**] Authority's intention to assume responsibility;

(ii) give the clearing house or central counterparty the reasons for the intended assumption; and

(iii) call upon the clearing house or central counterparty to show cause within a period specified by the [**registrar**] Authority why responsibility should not be assumed by the **[registrar]** Authority.".

[date of commencement of item 31: 9 February 2018]

32. The amendment of section 51 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) An independent clearing house or a central counterparty required under section 49(2)(b) to have insurance, a guarantee, a compensation fund, or other warranty in place, may impose a fee on any person involved in a transaction in listed or unlisted securities cleared or settled or both through the clearing house for the purpose of maintaining that insurance, guarantee, compensation fund or other warranty."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) Any funds received or held by an independent clearing house or a central counterparty for the purpose of maintaining the insurance, guarantee,

compensation fund or other warranty contemplated in section 49(2)(b), are for all intents and purposes considered to be "trust property" as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds.".

[date of commencement of item 32: 9 February 2018]

33. The amendment of section 52 by the substitution for the section of the following section:

"Funds of mutual independent clearing house or central counterparty";

"A mutual independent clearing house or a central counterparty may require its clearing members to contribute towards the funds of the clearing house for the purpose of carrying on the business of the clearing house.".

[date of commencement of item 33: 9 February 2018]

34. The amendment of section 53 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) The clearing house rules must be consistent with this Act, the Financial Sector Regulation Act and any standard made in terms of this Act or the Financial Sector Regulation Act.";

(b) 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";

(c) by the substitution in subsection (2) for paragraphs

(z) and (aa) of the following paragraphs:

"(z) for the segregation and portability of funds and securities held as collateral; [**and**]

(aa) that clearing members must notify the clearing house as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and";

(d) by the addition in subsection (2) of the following paragraph:

"(bb) 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;";

(e) by the insertion after subsection (2) of the following subsection:

"(2A) Regulations or standards may prescribe additional matters to those listed in subsection (2) that must be contained in the clearing house rules."; and

(f) 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**] in joint standards, clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house.".

[date of commencement of item 34: 9 February 2018]

35. The amendment of section 54 —

(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.";

(b) by the substitution in subsection (3)(c) for subparagraph (iii) of the following subparagraph:

"(iii) the application fee [**prescribed by the registrar**] determined in terms of the Financial Sector Regulation Act;"; and

[date of commencement of paragraph (b): 1 April 2019]

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The [**registrar**] Authority must publish a notice of an application for a trade repository licence in two national newspapers, at the expense of the applicant, and on the [**official]** Authority's website.".

[date of commencement of item 35, excluding paragraph (b): 9 February 2018]

36. The amendment of section 55 —

(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 joint standards are met by the applicant, [**its directors**] members of its controlling body and senior management;";

(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;

(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**

(c) prescribe any of the requirements referred to in subsection (1) in greater detail]."; and

(c) by the addition of the following subsection:

"(3)(a) Despite subsection (1), requirements prescribed under this section that are in force immediately before the commencement of this subsection continue to be in force.

(b) In respect of regulations prescribed in terms of subsection (1)(a), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1)(a).

(d) Requirements prescribed in terms of subsection (1)(c) before the commencement of this subsection may be amended or repealed by conduct standards or joint standards.".

[date of commencement of item 36: 9 February 2018]

37. The amendment of section 56 —

(a) by the substitution for subsection (1) of the following subsection:

"(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**] Authority may consider appropriate, grant a trade repository a licence to

perform the duties referred to in section 57."; and

(b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

"(a) The **[registrar]** Authority must publish a notice of an application for an amendment of the terms of a trade repository licence and the conditions subject to which the licence was granted in two national newspapers, at the expense of the applicant, and on the [**official**] Authority's website.".

[date of commencement of item 37: 9 February 2018]

38. The insertion after section 56 of the following section:

"Licensing of external trade repository

56A. (1) An external trade repository must be licensed under this section to perform duties or provide services, unless it is exempt from the requirement to be licensed in terms of section 6(3)(m).

(2) An external trade repository from an equivalent jurisdiction may apply to the Authority for a licence.

(3) An application for a licence in terms of this section must—

(a) be made in the manner and contain the information determined by the Authority;

(b) be accompanied by the application fee determined in terms of the Financial Sector Regulation Act; and

(c) be supplemented by any additional information that the Authority may reasonably require.

(4)(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 the Authority's website.

(b) The notice referred to in paragraph (a) must state—

(i) the name of the applicant; and

(ii) the period within, and the process by, which objections to the application may be lodged with the Authority.

(5) Regulations or joint standards may prescribe additional criteria for the licensing of an external trade repository.

(6) The Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, grant a licence, if—

(a) 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 law; and

(b) the objects of this Act referred to in section 2 will be furthered by the granting of the licence.

(7) A licence or exemption may only be granted after the following factors have been taken into consideration:

(a) Relevant international standards;

(b) the type and size of the external trade repository;

(c) the impact of the activities of the external trade repository on the South African financial system;

(d) the degree of systemic risk posed by the activities of the external trade repository; and

(e) any other factors that the Minister, the Authority, the South African Reserve Bank or the Prudential Authority, as the case may be, deem relevant.

(8) A licensed external trade repository must comply with

the relevant requirements of this Act and any other terms and conditions of the licence.

(9) The licence granted in terms of subsection (6) must specify the services that may be provided by the external trade repository and the securities in respect of which those services may be provided.

(10) A licensed external trade repository may at any time apply to the Authority for an amendment of the terms of its licence or the conditions subject to which the licence was granted.

(11)(a) The Authority must publish a notice of an application for an amendment of the terms of a licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant and on the Authority's website.

(b) The notice must state—

(i) the name of the applicant;

(ii) the nature of the proposed amendments; and

(iii) the period within which objections to the application may be lodged with the Authority.

(12) The Authority may, with the concurrence of the South African Reserve Bank and the Prudential Authority, amend the terms of a licence or the conditions subject to which the licence was granted.

(13)(a) In respect of regulations that may be prescribed in terms of subsection (5), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(b) Paragraph (a) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (5).

(c) Joint standards or conduct standards may be prescribed 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 (5).".

[date of commencement of item 38 in respect of section 56A(3)(b): 1 April 2019]

39. The amendment of section 57 —

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) make [**the]** information [**prescribed by the registrar]** prescribed by the Authority in joint standards made with the concurrence of 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 with the concurrence of the South African Reserve Bank under section 58 [**regarding**] as to the manner, form, and frequency of disclosure;"; and

(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**].".

[date of commencement of item 39: 9 February 2018]

40. The amendment of section 58 by the addition of the following subsection, the existing section becoming subsection(1):

"(2)(a) Despite subsection (1), requirements prescribed under this section that are in

force immediately before the commencement of this subsection continue to be in force.

(b) In respect of regulations prescribed in terms of subsection (1), the Minister may repeal regulations, and new requirements may then be prescribed in joint standards or conduct standards.

(c) Paragraph (b) does not affect or limit the power of the Minister to prescribe or amend regulations in terms of subsection (1).

(d) Requirements other than those that were prescribed in regulations referred to in paragraph (b) that were prescribed terms of subsection (1) before the commencement of this subsection, may be amended or repealed by conduct standards or joint standards.".

[date of commencement of item 40: 9 February 2018]

41. The substitution for section 59 of the following section:

"**Annual assessment**

59. The [**registrar**] Authority, in consultation with the Prudential Authority, must annually assess whether a licensed market infrastructure—

(a) complies with this Act, the Financial Sector Regulation Act and the rules of the market infrastructure;

(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

(c) where applicable, gives effect to decisions of the [**appeal board in terms of section 105**] Tribunal.".

[date of commencement of item 41: 9 February 2018]

42. The amendment of section 60 —

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The [**registrar**] Authority may, with the concurrence of the Prudential Authority and the South African Reserve Bank, cancel or suspend a licence if—";

(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**] a financial sector law; or

(iii) give effect to a decision of the [**appeal board in terms of section 105**] Tribunal;";

(c) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"(b) after an [**inspection in terms of section 95 of the affairs of the market infrastructure**] investigation, the [**registrar**] Authority is satisfied on reasonable grounds that the manner in which it is operated is— "; and

(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".

[date of commencement of item 42: 9 February 2018]

43. The amendment of section 61 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) A market infrastructure may not conduct any additional business [**which may introduce**] if to do so would create or increase systemic risk.";

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"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—";

(c) by the substitution for the words following paragraph (b) of the following words:

"[**prohibit or lay down requirements in respect of the**] after consultation with the Prudential Authority and the South African Reserve Bank, make a determination specifying requirements in relation to the market infrastructure carrying on of such business, function or service.";

(d) by the insertion after subsection (3) of the following subsection:

"(3A) The Authority may not make a determination in terms of subsection (3) in respect of a particular market infrastructure unless—

(a) a draft of the determination has been given to the market infrastructure;

(b) the market infrastructure has had a reasonable period of at least 14 days to make submissions to the Authority about the matter; and

(c) the Authority had regard to all submissions made to it in deciding whether or not to make the determination.

(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)."; and

(e) by the substitution for subsection (4) of the following subsection:

"(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 determination was made.".

[date of commencement of item 43: 9 February 2018]

44. The amendment of section 62 by the substitution for paragraph (b) of the following paragraph:

"(b) an annual assessment, [**in the manner prescribed by the registrar]** in accordance with conduct standards or joint standards, of the arrangements referred to in [**subparagraph**] paragraph (a), the results of which must be published.".

[date of commencement of item 44: 9 February 2018]

45. The amendment of section 63 —

(a) by the substitution for the heading of the section of the following heading:

"Demutualisation of exchange, central securities depository [or**], independent clearing house or central counterparty**";

(b) by the substitution for subsection (1) of the following subsection:

"(1) An exchange, central securities depository, [**or]** independent clearing house or central counterparty 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.";

(c) by the substitution in subsection (2) for paragraphs (a) to (k) of the following paragraphs:

"(a) the exchange, central securities depository, [**or**] independent clearing house or central counterparty referred to in subsection (1) is deemed to be a company incorporated in terms of the Companies Act from a date determined by the [**registrar**] Authority in consultation with the exchange, central securities depository, [**or**] independent clearing house or central counterparty in question;

(b) the Companies and Intellectual Property Commission, established by section 185 of the Companies Act, must accept the filed notice of incorporation of the exchange, central securities depository, [**or**] independent clearing house or central counterparty in terms of section 13 of that Act and register the entity in question as a company in terms of section 14 of that Act on the date referred to in paragraph (a);

(c) the continued corporate existence of the exchange, central securities depository, [**or**] independent clearing house or central counterparty 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 central counterparty before its conversion remain effectual;

(d) the terms and conditions of service of employees of the exchange, central securities depository, [**or**] independent clearing house or central counterparty are not affected;

(e) all the assets and liabilities of the exchange, central securities depository [**or**], independent clearing house or central counterparty, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the exchange, central securities depository [**or]**, independent clearing house or central counterparty to cover any liabilities of the clearing members of independent clearing houses or central counterparties, authorised users or participants, as the case may be, to clients, remain vested in and binding upon the company or such other entity acceptable to the [**registrar**] Authority as the company may designate;

(f) the company has the same rights and is subject to the same obligations as were possessed by or binding upon the exchange, central securities depository, [**or**] independent clearing house or central counterparty immediately before its conversion;

(g) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the exchange, central securities depository [**or**], independent clearing house or central counterparty and in force immediately before the conversion remain in force and effectual, and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the company, as the case may be;

(h) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the exchange, central

securities depository, [**or**] independent clearing house or central counterparty which was in force immediately before the conversion, remains in force, and is construed as a bond, pledge, guarantee or instrument given to or in favour of the company, as the case may be;

(i) any claim, right, debt, obligation or duty accruing to any person against the exchange, central securities depository, independent clearing house or central counterparty or owing by any person to such exchange, central securities depository, [**or**] independent clearing house or central counterparty is enforceable against or owing to the company, subject to any law governing prescription;

(j) any legal proceedings that were pending or could have been instituted against the exchange, central securities depository, [**or**] independent clearing house or central counterparty before the conversion may be continued or instituted against the company, subject to any law governing prescription; and

(k) the licence of the exchange, central securities depository, [**or]** independent clearing house or central counterparty, 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 central counterparty.".

[date of commencement of item 45: 9 February 2018]

46. The amendment of section 64 by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) all the assets and liabilities of the amalgamating entities (or in the case of a transfer of assets and liabilities, of the entity by which

the transfer is effected), including any insurance, guarantee, compensation fund or other warranty owned or maintained by any of them to cover any liabilities of clearing members of independent clearing houses or central counterparties, authorised users or participants, as the case may be, to clients, vest in and become binding upon the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities or such other entity acceptable to the [**registrar**] Authority as the parties to the amalgamation may designate;".

[date of commencement of item 46: 9 February 2018]

47. 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 duty of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.".

[date of commencement of item 47: 9 February 2018]

48. The amendment of section 66 —

(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

(b) by the deletion of subsections (8) and (9).

[date of commencement of item 48: 9 February 2018]

49. The amendment of section 67 —

(a) by the substitution for subsection (4) of the following subsection:

"(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**].";

(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)— ";

(c) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

"(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, as the case may be,**]—

(i) in a case where subsection (3) applies, 15 per cent; or

(ii) 49 per cent,

of the total nominal value of all the issued shares of the market infrastructure; and"; and

(d) by the substitution for subsection (8) of the following subsection:

"(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.".

[date of commencement of item 49: 9 February 2018]

50. The substitution for section 69 of the following section:

"Report to [registrar] Authority

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 financial affairs and status of the market infrastructure.".

[date of commencement of item 50: 9 February 2018]

51. The amendment of section 71 —

(a) by the insertion after subsection (1) of the following subsection:

"(1A) 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 or the Financial Sector Regulation Act.";

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) The [**registrar]** Authority may, after consultation with the Prudential Authority and the South African Reserve Bank, subject to this section, amend the rules or issue an interim rule.";

(c) by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs:

"(b) The [**registrar**] Authority must as soon as possible after the receipt of a proposed amendment publish—

(i) the amendment on the [**registrar's]** Authority's website; and

(ii) a notice in the *Gazette* that the proposed amendment is available on the [**registrar's**] Authority's website,

calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the [**registrar]** Authority within a

period of 14 days from the date of publication of the notice.

(c) If there are no such objections, or if the [**registrar**] Authority has considered the objections and, if necessary, has consulted with the market infrastructure and the persons who raised such objections and has decided to approve or amend the proposed amendment, the [**registrar**] Authority must publish—

(i) the amendment and the date on which it comes into operation on the [**official**] Authority's website; and

(ii) a notice in the *Gazette*, which notice must state—

(aa) that the amendment to the rules has been approved;

(bb) that the rules as amended are available on the [**official**] Authority's website and the website of the market infrastructure; and";

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The [**registrar]** Authority, after consultation with the Prudential Authority and the South African Reserve Bank, by notice in the *Gazette* and on the [**official**] Authority's website, may amend the rules of that market infrastructure—";

(e) by the substitution in subsection (4) for paragraph (b) of the following:

"(b) Where the [**registrar]** Authority has amended the rules of a market infrastructure under paragraph (a), the [**registrar**] Authority must—";

(f) by the substitution in subsection (4)(b) for subparagraph (ii) of the following subparagraph:

"(ii) give reasons for the amendment, and explain the imperative referred to in paragraph (a)(i), in

the *Gazette* and on the [**official**] Authority's website.";

(g) by the substitution in subsection (5) for paragraphs (a) and (b) of the following paragraphs:

"(a) Subject to prior approval of the [**registrar**] Authority, a market infrastructure may suspend any of the rules of that organisation for a period not exceeding 30 days at a time after reasonable notice of the proposed suspension has been advertised on the [**official**] Authority's website.

(b) The [**registrar]** Authority may after consultation with the Prudential Authority and the South African Reserve Bank, for the period of such suspension, issue an interim rule by notice in the *Gazette* to regulate the matter in question.";

(h) by the substitution in subsection (6)(a) for subparagraphs (iv) to (vii) of the following subparagraphs:

"(iv) suspension or cancellation of the right to be a clearing member of an independent clearing house or central counterparty, an authorised user or a participant;

(v) disqualification, in the case of a natural person, from holding the office of a director or officer of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant, as the case may be, for any period of time;

(vi) a restriction on the manner in which a clearing member of an independent clearing house or central counterparty, an authorised user or a participant may conduct business or may utilise an officer, employee or agent;

(vii) suspension or cancellation of the authorisation of an officer

or employee of a clearing member of an independent clearing house or central counterparty, an authorised user or a participant to perform a function in terms of the rules;"; and

(i) by the substitution in subsection (6)(b) for subparagraph (iii) of the following subparagraph:

"(iii) a market infrastructure may take into account at a disciplinary hearing any information obtained by the [**registrar]** Authority in the course of an inspection conducted [**under section 95**] in terms of the Financial Sector Regulation Act;".

[date of commencement of item 51: 9 February 2018]

52. The amendment of the heading for Chapter VIII by the substitution for the heading of the following heading:

"[Code of conduct]

Chapter VIII Conduct standards".

[date of commencement of item 52: 9 February 2018]

53. The amendment of section 74 —

(a) by the substitution for the heading of the section of the following heading:

"[**Code of conduct] Conduct standards for regulated persons**";

(b) by the substitution for subsection (1) of the following subsection:

"(1) **[The registrar may in an appropriate consultative manner prescribe a code of conduct for**] Conduct standards

may prescribe requirements in relation to—

[**(i)**](a) authorised users, participants or clearing members of

independent clearing houses or central counterparties; or

[**(ii)**] (b) any other regulated person, where the required standard of conduct is not prescribed 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."; and

(c) by the substitution for subsection (2) of the following subsection:

"(2) A [**code of conduct**] conduct standard is binding on authorised users, participants or clearing members of independent clearing houses or central counterparties or any other regulated person in respect of whom the [**code of conduct**] conduct standard was prescribed, as the case may be, and on their officers and employees and clients.".

[date of commencement of item 53: 9 February 2018]

54. The amendment of section 75 —

(a) by the substitution for the heading of the section of the following heading:

"**Principles [of code of conduct] for conduct standards**";

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A [**code of conduct**] conduct standard for authorised users, participants or clearing members of independent clearing houses or central counterparties must be based on the principle that—";

(c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) an authorised user, participant or clearing member of

an independent clearing house or central counterparty must—";

(d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"A [**code of conduct]** conduct standard for regulated persons, other than the regulated persons mentioned in subsection (1), must be based on the principle that the regulated person must—";

(e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"A [**code of conduct**] conduct standard may provide for—"; and

(f) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

"(f) any other matter which is necessary or expedient to be regulated in a [**code of conduct**] conduct standard for the achievement of the objects of this Act.".

[date of commencement of item 54: 9 February 2018]

55. 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 and the ongoing requirements applicable to it must be equivalent to [**that applied by the registrar when approving a nominee under subsection (3)**] criteria determined in conduct standards for nominees."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3)(a) [**The registrar may prescribe requirements for—**

(i) the approval of a nominee that is not approved as a nominee in terms of subsection (1); and

(ii) approved nominees.] A nominee that is not approved as a nominee in terms of subsection (1) must—

(i) be approved by the Authority; and

(ii) comply with conduct standards determined by the Authority.

(b) The [**registrar**] Authority must maintain a list of all nominees approved under this section.".

[date of commencement of item 55: 9 February 2018]

56. The amendment of section 77 —

(a) by the deletion of the definition of "claims officer";

(b) by the substitution for paragraph (b) of the definition of "inside information" 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 derivative instrument related to such a security;"; and

(c) by the substitution in paragraph (a) of the definition of "insider" 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 derivative instruments related to such securities to which the inside information relates; or".

[date of commencement of item 56: 9 February 2018]

57. The amendment of section 78 —

(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 or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.";

(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 or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.";

(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 or in derivative instruments related to such securities, to which the inside information possessed by the insider relates or which are likely to be affected by it, who knew that such person is an insider, commits an offence.";

(d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(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 or trading with a derivative instrument related to such a security and that he or she at the same time disclosed that the information was inside information."; and

(e) by the substitution for subsection (5) of the following subsection:

"(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 or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence.".

[date of commencement of item 57: 9 February 2018]

58. The amendment of section 82 —

(a) by the substitution for the expression "Enforcement Committee", wherever it occurs in the section, of the expression "Authority";

(b) by the substitution for subsection (4) of the following subsection:

"(4) Any amount recovered by the [**board]** Authority as a result of the proceedings contemplated in this section must be deposited by the [**board**] Authority directly into a specially designated trust account and—

(a) the [**board]** Authority 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);

(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

(c) any amount not paid out in terms of paragraph (b) accrues to the [**board**] Authority.";

(c) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) submit claims to the [**directorate**] Authority within 90 days from the date of publication of a notice in one national newspaper or on the [**official**] Authority's website inviting persons who are affected by the dealings referred to in section 78(1) to (5) to submit their claims; and"; and

(d) by the substitution in subsection (5)(b) for the words preceding subparagraph (i) of the following words:

"prove to the reasonable satisfaction of the [**claims officer**] Authority that—".

[date of commencement of item 58: 9 February 2018]

59. The substitution for section 83 of the following section:

"**Attachments and interdicts**

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.".

[date of commencement of item 59: 9 February 2018]

60. The substitution for section 84 of the following section:

"**Additional powers of Authority**

84. The Authority may—

(a) after consultation with the relevant regulated markets in the Republic,—

(i) make conduct standards, or

(ii) give regulator's directives for the implementation of such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter; and

(b) make conduct standards for the disclosure of inside information.".

[date of commencement of item 60: 1 April 2018]

61. The substitution for section 85 of the following section:

"Composition and functions of directorate

85. (1)(a) The Directorate established by section 12 of the Insider Trading Act, 1998 (Act No. 135 of 1998), and that continued to exist under the Securities Services Act, 2004 (Act No. 36 of 2004), continues to exist under the name Directorate of Market Abuse, despite the repeal of those Acts.

(b) A reference to the Insider Trading Directorate in any law must, unless clearly inappropriate, be construed as a reference to the Directorate of Market Abuse.

(c) The Authority may determine the functions, powers and duties of the directorate, which may include to consider and make recommendations relating to investigations into offences referred to in sections 78, 80 and 81 of this Act and section 135(2) of the Financial Sector Regulation Act.

(2)(a) The directorate consists of members and alternate members appointed by the Authority.

(b) The members of the directorate holding office at the

date that Part 6 of Chapter 17 of the Financial Sector Regulation Act comes into force remain as members for the terms and subject to the conditions applicable to them on their respective appointments.

(c) A member and an alternate member hold office for a period, not exceeding three years, as the Authority may determine at the time of the member's appointment, and is eligible for reappointment upon the expiry of the member's term of office.

(d) If on the expiry of the term of office of a member, a reappointment is not made or a new member is not appointed, the former member must remain in office for a further period of not more than six months.

(e) The Authority may remove a member of the directorate from office on good cause shown and after having given the member sufficient opportunity to show why the member should not be removed.

(3) The members of the directorate may comprise of—

(a) not more than two members of staff of the Authority;

(b) one person and an alternate from each of the licensed exchanges in the Republic;

(c) one commercial lawyer of appropriate experience and an alternate;

(d) one accountant of appropriate experience and an alternate;

(e) one person of appropriate experience and an alternate from the insurance industry;

(f) one person of appropriate experience and an alternate from the banking industry;

(g) one person of appropriate experience and an alternate from the fund management industry;

(h) one person of appropriate experience and an alternate that represents institutional investors;

(i) one person of appropriate experience and an alternate nominated by the South African Reserve Bank;

(j) one person of appropriate experience and an alternate nominated by the Prudential Authority; and

(k) two other persons of appropriate experience and alternates, to ensure that the directorate is comprised of an appropriate mix of skills and experience.

(4) The persons referred to in subsection (3) who are nominated —

(a) must be available to serve as members of the directorate;

(b) must have appropriate knowledge of financial markets; and

(c) may not be practising authorised users.

(5) The Authority must designate a chairperson, who may not be the Commissioner of the Authority, and a deputy chairperson who performs the functions of the chairperson when the office of chairperson is vacant or when the chairperson is unable to perform the chairperson's functions.

(6) All members of the directorate, other than the additional members, have one vote in respect of matters considered by the directorate, but an alternate member only has a vote in the absence from a meeting of the member whom the alternate is representing.

(7) A meeting of the directorate is convened by the chairperson.

(8) If four members of the directorate in writing request the chairperson of the directorate

to convene a meeting of the directorate, a meeting must be held within seven business days of the date of receipt of the request.

(9) A meeting of the directorate is chaired by the chairperson or, in the chairperson's absence, by the deputy chairperson or another member designated by the chairperson or the remaining members.

(10) The directorate determines its procedures, subject to any directions of the Authority.

(11) The decision of a majority of the members of the directorate constitutes the decision of the directorate.

(12) The Authority must ensure that written minutes of each meeting of the directorate are kept in a manner determined by the Authority.

(13) A member of the directorate must disclose, at a meeting of the directorate, or in writing to each of the other members of the directorate, any interest in a matter that is being or is intended to be considered by the directorate, being an interest that —

(a) the member has; or

(b) a person has who is a related party to the member.

(14) A disclosure in terms of subsection (13) must be given as soon as practicable after the member concerned becomes aware of the interest.

(15) A member referred to in subsection (13) may not participate in the consideration of or decision on that matter by the directorate unless—

(a) the member has disclosed the interest in accordance with subsection (13); and

(b) the other members of the directorate have decided that

the interest does not affect the proper execution of the member's functions in relation to the matter.".

[date of commencement of item 61: 1 April 2018]

62. The repeal of section 86.

[date of commencement of item 62: 9 February 2018]

63. The substitution for section 88 of the following section:

"**Confidentiality and sharing of information**

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 Prudential Authority, 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**] 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.".

[date of commencement of item 63: 9 February 2018]

64. The amendment of section 90 by the substitution for paragraphs (a) and (b) of the following paragraphs:

"(a) maintain on a continual basis the accounting records [**prescribed by the registrar**] determined 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**] determined in joint standards;

(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]** determined in joint standards or such later date as the [**registrar**] Authority may allow on application by a regulated person; and".

[date of commencement of item 64: 9 February 2018]

65. The amendment of section 91 —

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"When an auditor of a regulated person has conducted an audit in terms of subsection (1), the auditor must, subject to subsection (3), report to the regulated person or to the exchange, central securities depository, [**or**] independent clearing house or central counterparty in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house or central counterparty, and on request to the [**registrar**] Authority— "; and

(b) by the substitution for paragraph (b) of the following paragraph

"(b) on the matters prescribed [**by the registrar, including matters relating to the nominees**

of those regulated persons] in conduct standards.".

[date of commencement of item 65: 9 February 2018]

66. The substitution in Chapter XII for the heading preceding section 94 of the following heading:

"**Powers of [registrar] Authority and court** ".

[date of commencement of item 66: 9 February 2018]

67. The substitution for section 94 of the following section:

"General powers of [registrar] Authority

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—**

(i) provide the registrar with any information, document or record reasonably required by the registrar about such services;

(ii) appear before the registrar at a specified time and place] in terms of the Financial Sector Regulation Act.

(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**].".

[date of commencement of item 67: 9 February 2018]

68. The repeal of section 95.

[date of commencement of item 68: 9 February 2018]

69. The amendment of section 96 —

(a) by the substitution for the heading of the section of the following heading:

"**Powers of [registrar] Authority after supervisory on-site [visit or] inspection or investigation**";

(b) by the substitution for the words preceding paragraph (a) of the following words:

"After [**an**] a supervisory on-site [**visit or**] inspection or an investigation has been conducted [**under section 95**], the **[registrar**] Authority may, in order to achieve the objects of this Act referred to in section 2—"; and

(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 supervisory on-site [**visit or]** inspection or investigation[**: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial**

Institutions (Protection of Funds) Act.];".

[date of commencement of item 69: 9 February 2018]

70. The repeal of section 97.

[date of commencement of item 70: 9 February 2018]

71. The amendment of section 98 by the addition of the following subsection:

"(5) This section does not affect Part 5 of Chapter 10 of the Financial Sector Regulation Act.".

[date of commencement of item 71: 9 February 2018]

72. The deletion of the following heading in Chapter XII preceding section 99:

"**Enforcement Committee** ".

[date of commencement of item 72: 9 February 2018]

73. The repeal of section 99.

[date of commencement of item 73: 9 February 2018]

74. The amendment of section 105 —

(a) by the substitution for subsection (1) of the following subsection:

"(1) A person aggrieved by a decision of—

(a) the [**registrar**] Authority under a power conferred or a duty imposed upon the [**registrar**] Authority by or under this Act or the Financial Sector Regulation Act;

(b) an exchange to refuse an application by that person to be admitted as an authorised user;

(c) an exchange to withdraw the authorisation of an authorised user or to direct an authorised user to terminate the access to the exchange by an officer or employee of such authorised user;

(d) an exchange to defer, refuse or grant an application for the inclusion of securities in the list or to remove securities from the list or to suspend the trading in listed securities;

(e) a central securities depository to refuse an application by a person to be accepted as a participant;

(f) a central securities depository to terminate the participation of a participant or to direct a participant to terminate the access to the central securities depository by an officer or employee of a participant;

(g) an independent clearing house or central counterparty to refuse an application by a person to be admitted as a clearing member;

(h) an independent clearing house or central counterparty to withdraw the authorisation of a clearing member or to direct a clearing member to terminate the access to the independent clearing house or central counterparty by an officer or employee of such clearing member;

(i) an exchange, central securities depository, independent clearing house or central counterparty to impose a penalty on an authorised user, issuer, participant or clearing member of an independent clearing house or central counterparty, as the case may be, or on an officer or employee of an authorised user, issuer, participant or clearing member of an independent clearing house or central counterparty**[;**

(j) the claims officer referred to in Chapter X], may [**appeal to the appeal board on the conditions determined by or under section 26 of the Financial Services Board Act and subject to this section**] approach the Tribunal for a

reconsideration of the decision."; and

(b) by the deletion of subsection (2).

[date of commencement of item 74: 9 February 2018]

75. The amendment of section 108 by the substitution for subsection (1) of the following subsection:

"(1) The [**registrar**] Authority may [**prescribe**] determine fees in respect of matters contemplated in this Act and, in relation to [**such**] those fees [**as well as fees payable in terms of this Act]**, the person by whom the fee must be paid, the manner of payment thereof and, where necessary, the interest payable in respect of overdue fees.".

[date of commencement of item 75: 9 February 2018]

76. The amendment of section 109 by the substitution for paragraph (c) of the following paragraph:

"(c) contravenes or fails to comply with the provisions of sections 4, 7(1), 24, 25(1), 27(1), 47(1), 49A(1), 54(1), 56A(1) or a prohibition by the **[registrar]** Authority referred in terms of section 6(7) commits to both such fine and such imprisonment.".

[date of commencement of item 76: 9 February 2018]

77. The amendment of section 110 —

(a) by the deletion of subsection (5); and

(b) by the addition of the following subsection:

"(6) Despite any other provision of this Act, a clearing house performing the functions of a central counterparty must comply with any requirements imposed by regulations or standards, and must—

(a) until 31 December 2021, be licensed as either an associated clearing house or an independent clearing house, and be approved by the Authority, the South African Reserve Bank and the Prudential Authority, in the manner and form prescribed by the Authority, to perform the functions of a central counterparty;

(b) as of 1 January 2022, be licensed as both an independent clearing house and a central counterparty.".

[date of commencement of item 77: 9 February 2018]

78. The substitution for the long title of the following long title:

"To provide for the regulation of financial markets; to license and regulate exchanges, central securities depositories, clearing houses, central counterparties and trade repositories; to regulate and control securities trading, clearing and settlement, and the custody and administration of securities; to prohibit insider trading, and other market abuses; to provide for the approval of nominees; to provide for [codes of conduct] conduct standards; to replace the Securities Services Act, 2004, as amended by the Financial Services Laws General Amendment Act, 2008, so as to align this Act with international standards; and to provide for matters connected therewith.".

[date of commencement of item 78: 9 February 2018]

79. The substitution for the expression "registrar", wherever it occurs, of the expression "Authority", except in section 1(1) and 1A(1).

[date of commencement of item 79: 9 February 2018]

80. The amendment of the arrangement of sections—

(a) by the insertion after item 1 of the following item:

"**1A**. Relationship between Act and Financial Sector Regulation Act";

(b) by the substitution for item 6 of the following item:

"**6.** Authority";

(c) by the insertion after item 6 of the following items:

"**6A**. Criteria for recognition of external market infrastructures.

6B. Withdrawal of recognition.

6C. Principles of co-operation";

(d) by the substitution for the heading in Chapter V preceding item 47 of the following heading:

"**Licensing of clearing house and central counterparty**";

(e) by the substitution for item 47 of the following item:

"**47**. Application for clearing house licence and central counterparty licence";

(f) by the substitution for item 48 of the following item:

"**48**. Requirements applicable to applicants for clearing house licence, central counterparty licence, licenced clearing house and licensed central counterparty";

(g) by the insertion after item 49 of the following item:

"**49A**. Licensing of external central counterparty";

(h) by the substitution for the heading in Chapter V preceding item 50:

"**Functions of licensed clearing house and licensed central counterparty** ";

(i) by the substitution for item 50 of the following item:

"**50**. Functions of licensed clearing house and licensed central counterparty, and power of Authority to assume responsibility for functions";

(j) by the insertion after item 56 of the following item:

"**56A**. Licensing of external trade repository";

(k) by the substitution for item 63 of the following item:

"**63**. Demutualisation of exchange, central securities depository, independent clearing house or central counterparty";

(l) by the substitution for item 69 of the following item:

"**69**. Report to Authority";

(m) by the substitution for the heading of Chapter VIII of the following heading:

"Chapter VIII Conduct standards";

(n) by the substitution for item 74 of the following item:

"**74**. Conduct standards for regulated persons";

(o) by the substitution for item 75 of the following item:

"**75**. Principles for Conduct standards";

(p) by the substitution for item 84 of the following item:

"**84**. Additional powers of Authority";

(q) by the substitution for the heading in Chapter XII preceding section 94 of the following heading:

"**Powers of Authority and court**";

(r) by the substitution for item 94 of the following item:

		"**94**. General powers of Authority"; (s) by the substitution for item 96 of the following item: "**96**. Powers of Authority after supervisory on-site inspection or investigation"; and (t) by the deletion of the following heading in Chapter XII preceding item 99: "**Enforcement Committee**". *[date of commencement of item 80: 9 February 2018]*

Act No. and year	Short title	Extent of repeal and amendment
Act No. 24 of 2012	Credit Rating Services Act, 2012	1. The amendment of section 1— (a) by the insertion in subsection (1) after the definition of "associate" of the following definition: "'**Authority**' means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;"; (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 section 1(1) of the Financial Sector Regulation Act;"; (c) by the deletion in subsection (1) of the definition of "deputy registrar"; (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 Financial Sector Regulation Act, 2017;"; (e) by the deletion in subsection (1) of the definitions of "Financial Services Board Act", "FSB official web site" and "prescribe"; (f) by the insertion in subsection (1) after the definition of "rating category" of the following definition: "'**Register**' means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;"; (g) by the deletion in subsection (1) of the definition of "registrar";

(h) by the insertion in subsection (1) after the definition of "this Act" of the following definition:

"'**Tribunal**' means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;"; and

(i) 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 Financial Sector Regulation Act.".

[date of commencement of item 1: 1 April 2018]

2. The insertion after section 1 of the following sections:

"Relationship between Act and Financial Sector Regulation Act

1A. (1) A reference in this Act to the registrar must be read as a reference to the Authority.

(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.

(3) 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.

(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—

(a) prescribed must be read as a reference to the matter being prescribed in a conduct standard; or

(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.

(5) A reference in this Act to an onsite visit in terms of a provision of this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.

(6) A reference in this Act to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.

(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.

(b) The Authority may also publish the information or document on its web site.

(8) A reference in this Act to a prescribed fee must be read as a reference to the relevant fee determined in terms of section 237 and Chapter 16 of the Financial Sector Regulation Act.

(9) A reference in this Act to a review of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

Regulatory instruments

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 *Gazette* is specifically

required by this Act is a regulatory instrument.".

[date of commencement of item 2 insofar as it inserts sections 1A(1)-(7) and (9) and 1B: 1 April 2018 and insofar as it inserts section 1A(8): 1 April 2022]

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".

[date of commencement of item 3: 1 April 2022]

4. The repeal of sections 21 and 22.

[date of commencement of item 4: 1 April 2018]

5. The deletion in section 23(1) of paragraphs (c), (e) and (h).

[date of commencement of item 5: 1 April 2018]

6. The amendment of section 24—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A conduct standard for or in respect of credit rating agencies may be made on any of the following matters:"; and

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The [**rules**] conduct standards contemplated in subsection (1) may—".

[date of commencement of item 6: 1 April 2018]

7. The deletion in section 24 of subsections (3) and (4).

[date of commencement of item 7: 1 April 2018]

		8. The repeal of sections 25, 26, 27, 28, 30, 31 and 33. *[date of commencement of item 8 insofar as it repeals sections 25, 26, 28(3)-(6), 30, 31 and 33: 1 April 2018; insofar as it repeals section 28(1) and (2): 1 April 2022; and insofar as it repeals section 27: to be proclaimed]* 9. The deletion in section 34 of subsection (2). *[date of commencement of item 9: 28 September 2018]* 10. Amendment of the arrangement of sections by the insertion after item 1 of the following items: **1A**. Relationship between Act and Financial Sector Regulation Act **1B.** Regulatory instruments". *[date of commencement of item 10: 1 April 2018]*