



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1600.

11 Julie 1990

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 97 van 1990: Wet op die Raad op Finansiële Dienste, 1990.

No. 1600.

11 July 1990

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 97 of 1990: Financial Services Board Act, 1990.

Wet No. 97, 1990

WET OP DIE RAAD OP FINANSIËLE DIENSTE, 1990

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om voorsiening te maak vir die instelling van 'n raad om toesig oor die bedrywighede van finansiële instellings uit te oefen; en vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 28 Junie 1990.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrappings

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
 - (i) “adjunk- uitvoerende beampte” die persoon wat as sodanig ingevolge 5 artikel 13 aangestel is; (iv)
 - (ii) “appèlraad” die appèlraad ingestel by artikel 26 (1); (ii)
 - (iii) “finansiële diens” enige finansiële diens gelewer deur 'n finansiële instelling aan die publiek of 'n regspersoon en ook enige diens wat deur enige ander 10 persoon aldus gelewer word en ooreenstem met 'n diens wat normaalweg aldus deur 'n finansiële instelling gelewer word; (vii)
 - (iv) “finansiële instelling”—
 - (a) 'n instelling bedoel in paragraaf (b), (c), (f), (g) of (h) van die 15 woordomskraving van “finansiële instelling” in artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984 (Wet No. 39 van 1984);
 - (b) 'n gelisensieerde effektebeurs of effektemakelaar bedoel in artikel 1 van die Wet op die Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985), en ook iemand beoog in paragraaf (c), (d), (e) of (f) van artikel 4 (1) van genoemde Wet; 20
 - (c) 'n finansiële beurs, lid of erkende verrekeningshuis vermeld in artikel 1 van die Wet op die Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), en ook iemand beoog in paragraaf (e), (f), (g) of (h) van artikel 5 (1) van genoemde Wet;
 - (d) 'n geregistreerde versekeraar soos omskryf in artikel 1(1) van die 25 Versekeringswet, 1943 (Wet No. 27 van 1943);
 - (e) 'n agent, makelaar of ander persoon beoog in artikel 20bis van die Versekeringswet, 1943;
 - (f) iemand wat behoort tot 'n klas persone beoog in artikel 23A (2) (a) (vi) van die Versekeringswet, 1943; 30
 - (g) iemand wat ingevolge artikel 60 van die Versekeringswet, 1943, geag word versekeringsbesigheid in die Republiek te dryf; (vi)
 - (v) “hierdie Wet” ook 'n regulasie deur die Minister kragtens hierdie Wet uitgevaardig; (ix)

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To provide for the establishment of a board to exercise supervision over the business of financial institutions; and for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 28 June 1990.)*

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

Definitions

1. In this Act, unless the context otherwise indicates—

- 5 (i) "board" means the Financial Services Board established by section 2; (viii)
- (ii) "board of appeal" means the board of appeal established by section 26 (1); (ii)
- (iii) "chief actuary" means the person appointed as such in terms of section 13; (vi)
- 10 (iv) "deputy executive officer" means the person appointed as such in terms of section 13; (i)
- (v) "executive officer" means the person appointed as such in terms of section 13; (ix)
- (vi) "financial institution" means—
- 15 (a) any institution referred to in paragraph (b), (c), (f), (g) or (h) of the definition of "financial institution" in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
- (b) any licensed stock exchange or stock broker referred to in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), and also
- 20 any person contemplated in paragraph (c), (d), (e) or (f) of section 4 (1) of the said Act;
- (c) any financial exchange, member or recognized clearing house mentioned in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), and also any person contemplated in paragraph (e),
- 25 (f), (g) or (h) of section 5 (1) of the said Act;
- (d) any registered insurer as defined in section 1 (1) of the Insurance Act, 1943 (Act No. 27 of 1943);
- (e) any agent, broker or other person contemplated in section 20*bis* of the Insurance Act, 1943;
- 30 (f) any person belonging to a class of persons contemplated in section 23A (2) (a) (vi) of the Insurance Act, 1943;
- (g) any person deemed, in terms of section 60 of the Insurance Act, 1943, to be carrying on insurance business in the Republic; (iv)
- 35 (vii) "financial service" means any financial service rendered by a financial institution to the public or a juristic person and includes any service

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- (vi) "hoofaktuaris" die persoon wat as sodanig ingevolge artikel 13 aangestel is;
- (iii)
- (vii) "Minister" die Minister van Finansies; (viii)
- (viii) "raad" die Raad op Finansiële Dienste ingestel by artikel 2; (i)
- (ix) "uitvoerende beampte" die persoon wat as sodanig ingevolge artikel 13 5
aangestel is. (v)

Instelling van raad

2. Daar word hierby 'n regspersoon ingestel wat die Raad op Finansiële Dienste heet.

Werkzaamhede van raad

10

3. Die werkzaamhede van die raad is om—

- (a) toesig te hou oor die uitoefening van beheer ingevolge die een of ander wet oor die bedrywighede van finansiële instellings en oor finansiële dienste; en
- (b) die Minister van advies te dien oor sake rakende finansiële instellings en finansiële dienste, òf uit eie beweging òf op versoek van die Minister. 15

Samestelling van raad

4. (1) Die raad bestaan uit soveel lede as wat die Staatspresident nodig ag en deur hom aangestel word met inagneming van die belange van die gebruikers van finansiële dienste en die verskaffers van finansiële dienste, met inbegrip van finansiële tussengangers, en die openbare belang. 20

(2) Die Staatspresident kan vir elke lid van die raad 'n plaasvervangende lid aanstel.

(3) Die Staatspresident stel 'n lid van die raad as voorsitter en 'n ander lid as ondervoorsitter van die raad aan.

(4) Indien die voorsitter afwesig is of om die een of ander rede nie as voorsitter kan 25
optree nie, verrig die ondervoorsitter die werkzaamhede van die voorsitter.

Persone wat onbevoeg is om lede van raad te wees

5. Niemand word as 'n lid of 'n plaasvervangende lid van die raad aangestel nie—

- (a) tensy hy 'n burger is van en permanent woonagtig is in die Republiek;
- (b) indien hy, volgens die oordeel van die Staatspresident, daadwerklik 30
betrokke is in die sake van 'n finansiële instelling of daadwerklik betrokke is in die lewering van 'n finansiële diens;
- (c) indien hy 'n ongerehabiliteerde insolvent is;
- (d) indien hy te eniger tyd (in die Republiek of elders) skuldig bevind is aan 35
diefstal, bedrog, vervalsing of die uitgifte van 'n vervalste stuk, meened, 'n misdryf kragtens die Wet op Voorkoming van Korruptsie, 1958 (Wet No. 6 van 1958), of 'n misdryf waarby oneerlikheid betrokke is, en daarvoor gestraf is met gevangenisstraf sonder die keuse van 'n boete of met 'n boete van meer as R100; of
- (e) indien hy geestelik versteurd is. 40

Ontruiming van amp deur lede van raad

6. (1) 'n Lid of 'n plaasvervangende lid van die raad ontruim sy amp—

- (a) indien hy onderhewig raak aan 'n onbevoegdheid in artikel 5 beoog; of
- (b) indien, in die geval van 'n lid, hy sonder verlof van die voorsitter van meer 45
as twee agtereenvolgende vergaderings van die raad afwesig is of indien, in die geval van 'n plaasvervangende lid, hy aldus afwesig is tydens die afwesigheid, of vakature in die amp, van die lid vir wie hy as plaasvervangende lid aangestel is.

(2) Die Staatspresident kan te eniger tyd die lidmaatskap van 'n lid of 'n plaasvervangende lid van die raad beëindig indien daar na die oordeel van die 50
Staatspresident gegronde redes daarvoor bestaan.

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so rendered by any other person and corresponding to a service normally so rendered by a financial institution; (iii)

(viii) "Minister" means the Minister of Finance; (vii)

(ix) "this Act" includes a regulation made by the Minister under this Act. (v)

5 Establishment of board

2. There is hereby established a juristic person to be known as the Financial Services Board.

Functions of board

3. The functions of the board are—

- 10 (a) to supervise the exercise of control, in terms of any law, over the activities of financial institutions and over financial services; and
(b) to advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister.

Constitution of board

15 4. (1) The board shall consist of so many members as the State President may deem necessary and appoint, with due regard to the interests of the users of financial services and the suppliers of financial services, including financial intermediaries, and the public interest.

20 (2) The State President may appoint an alternate member for every member of the board.

(3) The State President shall appoint a member of the board as the chairman and another member as the deputy chairman of the board.

(4) If the chairman is absent or is for any reason unable to act as chairman the deputy chairman shall perform the functions of the chairman.

25 Persons disqualified from being members of board

5. No person shall be appointed as a member or an alternate member of the board—

- 30 (a) unless he is a citizen of, and permanently resident in, the Republic;
(b) if, in the opinion of the State President, he is actually engaged in the business of a financial institution or actually engaged in the rendering of a financial service;
(c) if he is an unrehabilitated insolvent;
35 (d) if he has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100; or
(e) if he is of unsound mind.

Vacating of office by members of board

40 6. (1) A member or alternate member of the board shall vacate his office—

- (a) if he becomes subject to a disqualification contemplated in section 5; or
(b) if, in the case of a member, he has been absent for more than two consecutive meetings of the board without leave of the chairman or if, in the case of an alternate member, he has been so absent during the absence,
45 or vacancy in the office, of the member for whom he has been appointed as alternate member.

(2) The State President may at any time terminate the membership of any member or alternate member of the board if in the opinion of the State President sufficient reasons exist therefor.

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Ampstermyn van lede van raad, en vul van vakatures

7. (1) 'n Lid of 'n plaasvervangende lid van die raad beklee sy amp, behoudens die bepalings van artikel 6, vir die tydperk, maar hoogstens drie jaar, wat die Staatspresident ten tyde van sy aanstelling bepaal.

(2) Indien 'n lid of 'n plaasvervangende lid van die raad om die een of ander rede sy amp ontruim, kan die Staatspresident iemand aanstel om in daardie lid of plaasvervangende lid se plek vir die onverstreke tydperk van sy ampstermyn op te tree.

(3) Iemand wie se ampstermyn as 'n lid of 'n plaasvervangende lid van die raad verstryk het, kan weer aangestel word.

Vergaderings en besluite van raad

8. (1) Die eerste vergadering van die raad word gehou op 'n tyd en plek wat die voorsitter bepaal, en daarna vergader die raad op die tye en plekke wat die raad van tyd tot tyd bepaal.

(2) Die voorsitter kan te eniger tyd 'n buitengewone vergadering van die raad belê, wat gehou moet word op die tyd en plek wat hy bepaal.

(3) Die kworum vir 'n vergadering van die raad is 'n meerderheid van sy lede.

(4) Indien sowel die voorsitter as die ondervoorsitter van 'n vergadering van die raad afwesig is, kies die aanwesige lede iemand uit hul geledere om op daardie vergadering voor te sit.

(5) Die beslissing van 'n meerderheid van die lede wat op 'n vergadering van die raad aanwesig is, maak 'n besluit van die raad uit, en by 'n staking van stemme oor 'n aangeleentheid, het die persoon wat op die betrokke vergadering voorsit, benewens sy beraadslagende stem 'n beslissende stem.

(6) Geen besluit geneem of handeling verrig op gesag van die raad, is ongeldig nie bloot vanweë 'n toevallige vakature in die raad of omdat iemand wat nie geregtig was om as 'n lid van die raad sitting te neem nie, as so 'n lid sitting geneem het op die tydstip waarop die besluit geneem of handeling gemagtig is, indien die besluit geneem of handeling gemagtig is deur die meerderheid van die lede van die raad wat toe aanwesig was en geregtig was om as lede sitting te neem.

(7) By die toepassing van hierdie artikel beteken "lid" ook 'n plaasvervangende lid wat by 'n bepaalde vergadering van die raad aanwesig is tydens die afwesigheid, of vakature in die amp, van die lid vir wie hy as plaasvervangende lid aangestel is.

Uitvoerende bestuur

9. (1) Daar is 'n uitvoerende bestuur, wat gedurende die tydperke tussen vergaderings van die raad die werksaamhede van die raad verrig ooreenkomstig die beleid en voorskrifte van die raad.

(2) Die uitvoerende bestuur is nie bevoeg nie, behalwe vir sover die raad anders gelas, om 'n besluit van die raad tersyde te stel of te wysig.

(3) Die raad kan 'n besluit van die uitvoerende bestuur tersyde stel of wysig, uitgesonderd 'n besluit as gevolg waarvan aan iemand 'n betaling gedoen of 'n ander reg verleen is.

(4) Die uitvoerende bestuur bestaan uit die uitvoerende beampte, die adjunk-uitvoerende beampte en die hoofaktuaris.

(5) Die beslissing van twee lede van die uitvoerende bestuur maak 'n besluit van die uitvoerende bestuur uit.

Komitees van raad

10. (1) Die raad kan een of meer komitees benoem, wat, onderworpe aan die voorskrifte van die raad, dié werksaamhede van die raad kan verrig wat die raad bepaal.

(2) So 'n komitee bestaan uit soveel lede van die raad of soveel ander persone of soveel lede en ander persone as wat die raad nodig ag, en die raad kan te eniger tyd so 'n komitee ontbind of hersaamstel.

(3) Indien 'n komitee bedoel in subartikel (1) uit meer as een lid bestaan, wys die raad 'n lid van die komitee as voorsitter daarvan aan.

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Term of office of members of board, and filling of vacancies

7. (1) A member or an alternate member of the board shall hold office, subject to the provisions of section 6, for such period, not exceeding three years, as the State President may determine at the time of his appointment.
- 5 (2) If a member or an alternate member of the board for any reason vacates his office, the State President may appoint a person to act in the place of such member or alternate member for the unexpired period of his term of office.
- (3) Any person whose term of office as a member or an alternate member of the board has expired, shall be eligible for reappointment.

10 Meetings and decisions of board

8. (1) The first meeting of the board shall be held at a time and place determined by the chairman, and thereafter the board shall meet at such times and places as the board may from time to time determine.
- (2) The chairman may at any time convene an extraordinary meeting of the board
- 15 to be held at a time and place determined by him.
- (3) The quorum for a meeting of the board shall be a majority of its members.
- (4) If both the chairman and the deputy chairman are absent from any meeting of the board, the members present shall from among themselves elect a person to preside at such meeting.
- 20 (5) The decision of a majority of the members present at a meeting of the board shall constitute a decision of the board, and in the event of an equality of votes on any matter the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.
- (6) No decision taken by or act performed under the authority of the board, shall
- 25 be invalid by reason only of a casual vacancy on the board or of the fact that any person not entitled to sit as a member of the board sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the board who were present at the time and entitled to sit as members.
- 30 (7) For the purposes of this section "member" shall include an alternate member present at a particular meeting of the board during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

Executive

9. (1) There shall be an executive, which shall, during the periods between
- 35 meetings of the board, perform the functions of the board in accordance with the policy and instructions of the board.
- (2) The executive shall not be competent, except in so far as the board may otherwise direct, to set aside or vary a decision of the board.
- (3) The board may set aside or vary any decision of the executive, except a
- 40 decision in consequence of which a payment has been made or any other right has been granted to any person.
- (4) The executive shall consist of the executive officer, the deputy executive officer and the chief actuary.
- (5) The decision of two members of the executive shall constitute a decision of the
- 45 executive.

Committees of board

10. (1) The board may nominate one or more committees, which may, subject to the instructions of the board, perform those functions of the board that the board may determine.
- 50 (2) Such a committee shall consist of so many members of the board or so many other persons or so many members and other persons as the board may deem necessary, and the board may at any time dissolve or reconstitute such a committee.
- (3) If a committee referred to in subsection (1) consists of more than one member, the board shall designate a member of the committee as chairman thereof.

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(4) Die raad word nie onthef nie van verantwoordelikheid vir die verrigting van 'n werksaamheid wat ingevolge hierdie artikel aan 'n komitee opgedra is.

Besoldiging van lede van raad en van komitees

11. Aan 'n lid of 'n plaasvervangende lid van die raad of 'n lid van 'n komitee van die raad wat nie in die heeltidse diens van die Staat is nie, word uit die fondse van die raad die besoldiging en toelaes betaal wat die Minister bepaal. 5

Algemene bevoegdhede van raad

12. (1) Vir die doeleindes van 'n ondersoek deur die raad in verband met die verrigting van sy werksaamhede is die Kommissiewet, 1947 (Wet No. 8 van 1947), van toepassing op die raad en getuies en hul getuienis asof die raad 'n kommissie was waarop genoemde Wet van toepassing is en die uitvoerende beampte die sekretaris van die raad was. 10

(2) Die raad kan die hulp inroep van die persoon of persone wat hy nodig mag vind om hom by te staan by die verrigting van sy werksaamhede.

(3) Die raad kan— 15

- (a) die roerende of onroerende goed wat die raad vir die verrigting van sy werksaamhede nodig ag, huur, koop of andersins verkry en goed wat aldus gekoop of verkry is, verhuur of verkoop of andersins daarvoor beskik;
- (b) ten einde sy werksaamhede te verrig, 'n ooreenkoms aangaan met 'n persoon, met inbegrip van die Staat, 'n universiteit, 'n navorsingsinstelling of 'n ander owerheidsinstelling, vir die verrigting van 'n besondere handel- 20
ling of werksaamheid of die lewering van besondere dienste;
- (c) homself verseker teen enige verlies, skade, risiko of aanspreeklikheid wat hy mag ly of oploop;
- (d) geld leen deur die uitreiking van effekte of op 'n ander wyse tot 'n maksimum bedrag wat deur die Minister goedgekeur is; 25
- (e) beamptes en werknemers aanstel om hom by die verrigting van sy werksaamhede by te staan; en
- (f) in die algemeen die handelinge verrig wat nodig of dienstig is vir die verrigting van sy werksaamhede. 30

Personeel van raad

13. (1) Die raad word by die verrigting van sy werksaamhede bygestaan deur—

- (a) 'n uitvoerende beampte, 'n adjunk- uitvoerende beampte en 'n hoofak-
tuaris wat deur die Minister na oorlegpleging met die raad aangestel word
en in bedoelde rangorde die mees senior beamptes van die raad is; 35
- (b) persone wat deur die raad aangestel word; en
- (c) beamptes en werknemers wat kragtens artikel 14 (3) (a) van die Staats-
dienswet, 1984 (Wet No. 111 van 1984), tot die beskikking van die raad
gestel word.

(2) Die hoofaktuaris moet— 40

- (a) 'n volwaardige lid van die Aktuariële Genootskap van Suid-Afrika wees;
- (b) 'n Suid-Afrikaanse burger wees; en
- (c) na geslaagde aflegging van die toelatingseksamens wat die Aktuariële
Genootskap van Suid-Afrika erken of afneem, minstens twee jaar toepas-
like praktiese aktuariële ondervinding opgedoen het. 45

(3) Die uitvoerende beampte verrig, onderworpe aan toesig deur die raad, die werksaamhede wat by of ingevolge hierdie of 'n ander Wet aan hom opgedra word.

(4) Iemand in diens van die raad kan met sy instemming en op die voorwaardes wat die raad bepaal, afgestaan word aan die diens van die Staat of aan die diens van 'n ander staat of 'n raad, inrigting of liggaam wat by of kragtens die een of ander wet ingestel is, of aan 'n ander liggaam of persoon, hetsy vir 'n besondere diens of vir 'n tydperk deur die raad bepaal: Met dien verstande dat indien so iemand aldus afgestaan word, die voorwaardes waarop hy by die raad in diens is, nie deur die afstaan nadelig geraak mag word nie. 50

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(4) The board shall not be absolved from responsibility for the performance of any functions entrusted to any committee in terms of this section.

Remuneration of members of board and of committees

11. A member or an alternate member of the board or a member of any committee of the board who is not in the full-time employment of the State shall be paid such remuneration and allowances out of the funds of the board as the Minister may determine.

General powers of board

12. (1) For the purposes of any investigation by the board in connection with the performance of its functions the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the board and witnesses and their evidence as if the board were a commission to which the said Act applied and the executive officer were the secretary of the board.

(2) The board may call to its assistance such person or persons as it may deem necessary to assist it in the performance of its functions.

(3) The board may—

- (a) hire, purchase or otherwise acquire such movable or immovable property as the board may deem necessary for the performance of its functions and may let, sell or otherwise dispose of property so purchased or acquired;
- (b) in order to perform its functions, enter into an agreement with any person, including the State, a university, a research institution or any other government institution, for the performance of any specific act or function or the rendering of specific services;
- (c) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (d) borrow money by the issue of stock or in any other manner to a maximum amount approved by the Minister;
- (e) appoint officers and employees to assist it in the performance of its functions; and
- (f) in general do anything which is necessary or expedient to perform its functions.

Staff of board

13. (1) The board shall in the performance of its functions be assisted by—

- (a) an executive officer, a deputy executive officer and a chief actuary appointed by the Minister after consultation with the board and who in that order of rank shall be the most senior officers of the board;
- (b) persons appointed by the board; and
- (c) officers and employees placed at the disposal of the board under section 14 (3) (a) of the Public Service Act, 1984 (Act No. 111 of 1984).

(2) The chief actuary shall—

- (a) be a full member of the Actuarial Society of South Africa;
- (b) be a South African citizen; and
- (c) have had at least two years' appropriate practical actuarial experience after passing the entrance examination recognized or conducted by the Actuarial Society of South Africa.

(3) The executive officer shall, subject to supervision by the board, perform the functions entrusted to him by or in terms of this or any other Act.

(4) Any person in the employment of the board may with his consent and on the conditions determined by the board be seconded, either for a specific service or for a period determined by the board, to the service of the State or the service of any other state or any council, institution or body established by or under any law or to any other body or person: Provided that if any such person is so seconded, the terms and conditions on which he is employed by the board shall not be affected detrimentally by the secondment.

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Vergoeding van personeel van raad

14. (1) Die raad kan aan die persone in sy diens die vergoeding, toelaes, bonusse, subsidies, pensioen- en ander diensvoordele betaal of verskaf wat die raad, na verkryging van die vakkundige advies wat hy goedvind, as mededingend vir die betrokke werkkragte op die ope mark beskou en wat die raad met die instemming van die Minister bepaal, sonder om aan enige bepalings van die Staatsdienswet, 1984 (Wet No. 111 van 1984), onderworpe te wees. 5

(2) Die raad moet die Staat vergoed vir enige betaling wat die Staat doen ooreenkomstig 'n dienskontrak wat van toepassing is ten opsigte van 'n beampte of werknemer bedoel in artikel 13 (1) (c). 10

Pensioenregte van beamptes en werknemers

15. (1) 'n Beampte of werknemer wat 'n lid is van die Regeringsdienspensioen-fonds, die Pensioenfonds vir Tydelike Werknemers of enige ander pensioenfonds of -skema wat deur die Departement van Nasionale Gesondheid en Bevolkingsontwikkeling geadministreer word en wat deur die raad in diens geneem word, kan— 15

(a) kies om 'n lid van sodanige fonds te bly, en vanaf die datum van die uitoefening van so 'n keuse word so 'n beampte of werknemer, ondanks die bepalings van 'n ander wet, geag 'n rustende lid van die betrokke fonds te wees soos bedoel in artikel 15 (1) (a) van die Algemene Pensioenwet, 1979 (Wet No. 29 van 1979); of 20

(b) versoek om 'n lid te word van die Pensioenfonds vir Geassosieerde Inrigtings ingestel kragtens die Wet op die Pensioenfonds vir Geassosieerde Inrigtings, 1963 (Wet No. 41 van 1963), indien die raad kragtens artikel 4 van genoemde Wet tot 'n geassosieerde inrigting verklaar is; of

(c) versoek om 'n lid te word van 'n ander pensioenfonds wat kragtens die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), geregistreer is. 25

(2) In die geval waar so 'n beampte of werknemer 'n lid van 'n fonds word ooreenkomstig 'n versoek ingevolge paragraaf (b) of (c) van subartikel (1)—

(a) dra die fonds waarvan hy 'n lid was aan die fonds waarvan hy 'n lid word, 'n bedrag oor gelyk aan die befondingspersentasie van eersgenoemde fonds vermenigvuldig met die aktuariële verpligtinge van die fonds teenoor daardie beampte of werknemer soos op die datum van indienstreding van die beampte of werknemer by die raad, verhoog met die bedrag rente daarop bereken teen die prima koers vanaf die datum van genoemde indienstreding tot die datum van die oordrag van die bedrag; 35

(b) verval, vanaf die datum van sy indienstreding by die raad, sy lidmaatskap van die fonds waarvan hy 'n lid was en het hy daarna, behalwe vir sover paragraaf (a) anders bepaal, geen verdere regte teen dié fonds nie; en

(c) dra die fonds waarvan hy 'n lid was, enige vordering wat dié fonds teen dié beampte of werknemer mag hê, oor aan die fonds waarvan hy aldus 'n lid geword het. 40

(3) In die geval waar so 'n beampte of werknemer 'n lid van 'n fonds word ooreenkomstig 'n versoek ingevolge paragraaf (c) van subartikel (1), betaal die Staat aan dié fonds 'n bedrag gelyk aan die verskil tussen die aktuariële verpligting van die fonds waarvan hy 'n lid was, ten opsigte van dié beampte of werknemer soos op die datum van sy indienstreding by die raad, en die bedrag oorgedra kragtens paragraaf (a) van subartikel (2) aan eersgenoemde fonds, verhoog met die bedrag van rente daarop bereken teen die prima koers vanaf die datum van genoemde indienstreding tot die datum van die oordrag van die bedrag. 45

(4) Die bepalings van subartikels (2) en (3) is *mutatis mutandis* van toepassing ten opsigte van 'n beampte of werknemer wat uit hoofde van 'n keuse ingevolge paragraaf (a) van subartikel (1) 'n rustende lid geword het en daarna versoek dat sy opgelope pensioenvoordele ingevolge die bepalings van artikel 15A (1) van die Algemene Pensioenwet, 1979, oorgedra word aan 'n pensioenfonds bedoel in genoemde Wet of 'n pensioenfonds wat ingevolge die Wet op Pensioenfondse, 1956, geregistreer is. 50

(5) Waar, in die geval van 'n beampte of werknemer in subartikel (1) bedoel wat, as gevolg van 'n versoek ingevolge paragraaf (c) van daardie subartikel, 'n lid geword het van 'n ander pensioenfonds, 'n enkelbedragvoordeel deur genoemde pensioen-fonds betaalbaar geword het as gevolg van die dood van genoemde beampte of 60

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Remuneration of staff of board

14. (1) The board may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market for the manpower concerned and may with the concurrence of the Minister determine without being subject to any provisions of the Public Service Act, 1984 (Act No. 111 of 1984).

(2) The board shall reimburse the State for any payment made by the State in terms of any contract of service applicable in respect of an officer or an employee referred to in section 13 (1) (c).

Pension rights of officers and employees

15. (1) An officer or employee who is a member of the Government Service Pension Fund, the Temporary Employees Pension Fund or any other pension fund or scheme administered by the Department of National Health and Population Development and who is employed by the board may—

(a) choose to remain a member of such fund, and from the date of exercising such a choice such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be a dormant member of the fund concerned as contemplated in section 15 (1) (a) of the General Pensions Act, 1979 (Act No. 29 of 1979); or

(b) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), if the board has under section 4 of the said Act been declared to be an associated institution; or

(c) request to become a member of any other pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956).

(2) In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of paragraph (b) or (c) of subsection (1)—

(a) the fund of which he was a member shall transfer to the fund of which he becomes a member an amount equal to the funding level of the first-mentioned fund multiplied by the actuarial liability of the fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee by the board, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of transfer of the amount;

(b) his membership of the fund of which he was a member shall lapse as from the date of the commencement of his employment by the board and he shall thereafter, except as is provided by paragraph (a), not have any further claim against the said fund; and

(c) the fund of which he was a member shall transfer any claim which it may have against such officer or employee to the fund of which he so became a member.

(3) In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of paragraph (c) of subsection (1) the State shall pay to such fund an amount equal to the difference between the actuarial liability of the fund of which he was a member, in respect of such an officer or employee as on the date of the commencement of his employment by the board, and the amount transferred in terms of paragraph (a) of subsection (2) to the first-mentioned fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of the transfer of the amount.

(4) The provisions of subsections (2) and (3) shall *mutatis mutandis* apply in respect of an officer or employee who has by virtue of a choice in terms of paragraph (a) of subsection (1) become a dormant member and thereafter requests that his accrued pension benefits be transferred in terms of the provisions of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a pension fund registered in terms of the Pension Funds Act, 1956.

(5) Where, in the case of any officer or employee referred to in subsection (1) who has in consequence of a request in terms of paragraph (c) of that subsection become a member of any other pension fund, any lump sum benefit has become payable by such pension fund in consequence of the death of such officer or employee or on his

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werknemer of by sy uittreding, onttrekking of bedanking uit genoemde pensioen-fonds of by die likwidasië van genoemde pensioenfonds, word genoemde pensioen-fonds by die toepassing van paragraaf (e) van die omskrywing van "bruto inkomste" in artikel 1 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), geag met betrekking tot genoemde beampte of werknemer 'n fonds te wees bedoel in 5 paragraaf (a) van die omskrywing van "pensioenfonds" in genoemde artikel 1.

(6) By die toepassing van hierdie artikel beteken—

- "aktuariële verpligting" van 'n pensioenfonds ten opsigte van 'n bepaalde lid of groep lede van dié fonds dié aktuariële verpligting soos bepaal, na oorleg met die hoofaktuaris, deur 'n aktuaris wat die Minister van Nasionale 10 Gesondheid en Bevolkingsontwikkeling vir dié doel benoem het;
- "befondsingspersentasie van 'n pensioenfonds" die markwaarde van die bates van die fonds uitgedruk as 'n persentasie van die totale aktuariële verpligting van die fonds nadat sodanige bates en verpligtinge verminder is met die bedrag van die verpligtinge van die fonds teenoor al sy pensioentrekkers, 15 soos bepaal ten tyde van die mees onlangse aktuariële waardering van die fonds of 'n hersiening daarvan wat kragtens opdrag van die Minister van Nasionale Gesondheid en Bevolkingsontwikkeling uitgevoer is; en
- "prima koers" die gemiddelde heersende prima koers van die drie grootste 20 banke in die Republiek.

Fondse van raad

16. (1) Die fondse van die raad bestaan uit—

- (a) geld wat die Parlement bewillig ten einde die raad in staat te stel om sy werksaamhede kragtens hierdie Wet te verrig;
- (b) geld wat geïen word by wyse van gelde ten opsigte van dienste gelewer deur 25 die raad by die verrigting van sy werksaamhede kragtens hierdie of 'n ander Wet, of heffings deur die raad opgelê op finansiële instellings, wat deur die Minister goedgekeur en deur hom by kennisgewing in die *Staatskoerant* bekend gemaak is;
- (c) geld wat die raad behoudens die bepalinge van artikel 12 (3) (d) leen; en 30
- (d) geld wat die raad uit 'n ander bron toeval.
- (2) (a) Die raad kan geld of ander goed wat aan die raad geskenk of bemaak is, aanvaar, mits geen voorwaarde aan sodanige skenking of bemaking verbonde is nie.
- (b) Besonderhede van enige sodanige skenking of bemaking moet in die 35 betrokke jaarverslag van die raad vermeld word.
- (3) Die raad wend sy fondse aan ter bestryding van uitgawes wat die raad by die verrigting van sy werksaamhede kragtens hierdie Wet aangaan.
- (4) Die raad moet 'n rekening open by 'n instelling wat as 'n bank of bouvereniging geregistreer is, en moet in daardie rekening alle geld bedoel in subartikels (1) en (2) 40 stort.
- (5) Die raad kan geld wat ingevolge subartikel (4) gestort is en nie vir onmiddellike gebruik nodig is nie, belê op 'n wyse wat hy goeddink.
- (6) Geld wat in krediet van die raad staan in die rekening bedoel in subartikel (4) by die sluiting van 'n boekjaar van die raad, asook geld wat ingevolge subartikel (5) 45 belê is, word as 'n krediet in dié rekening en van die raad na die daaropvolgende boekjaar oorgedra.

Rekenpligtigheid

17. (1) Die uitvoerende beampte is die rekenpligtige beampte van die raad en is belas met die verantwoording vir alle geld ontvang en betalings gedoen deur die 50 raad.

(2) Die boekjaar van die raad eindig op 31 Maart in elke jaar.

(3) Die rekenpligtige beampte moet—

- (a) volledige en juiste aantekeninge hou van alle geld ontvang of bestee deur, en van die bates, laste en finansiële transaksies van, die raad; en 55
- (b) so gou doenlik, maar hoogstens drie maande, na die einde van elke boekjaar in subartikel (2) bedoel, finansiële jaarstate opmaak wat, met gepaste besonderhede, geld deur die raad ontvang en uitgawes deur die raad aangegaan gedurende, en sy bates en laste aan die einde van, die betrokke boekjaar aantoon. 60

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retirement, withdrawal or resignation from such pension fund or on the winding up of such pension fund, such pension fund shall for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed in relation to such officer or employee to be a fund referred to in paragraph (a) of the definition of "pension fund" in the said section 1.

(6) For the purposes of this section—

"actuarial liability" of a pension fund in respect of a particular member or a group of members of such fund means such actuarial liability as determined, after consultation with the chief actuary, by an actuary who has been nominated for the purpose by the Minister of National Health and Population Development;

"funding percentage of a pension fund" means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the Minister of National Health and Population Development; and

"prime rate" means the average current prime rate of the three largest banks in the Republic.

Funds of board

16. (1) The funds of the board shall consist of—

- (a) money appropriated by Parliament in order to enable the board to perform its functions under this Act;
- (b) money raised as fees in respect of services rendered by the board in the performance of its functions under this or any other Act or levies imposed by the board on financial institutions and approved by the Minister and made known by him by notice in the *Gazette*;
- (c) money borrowed by the board subject to the provisions of section 12 (3) (d); and
- (d) money accruing to the board from any other source.

(2) (a) The board may accept money or other goods donated or bequeathed to the board, provided no condition is attached to such donation or bequest.

(b) Details of any such donation or bequest shall be specified in the annual report in question of the board.

(3) The board shall utilize its funds for the defrayal of expenses incurred by the board in the performance of its functions under this Act.

(4) The board shall open an account with an institution registered as a bank or building society and shall deposit in that account all money referred to in subsections (1) and (2).

(5) The board may invest money deposited in terms of subsection (4) which is not required for immediate use, in any manner it deems fit.

(6) Any money standing to the credit of the board in the account referred to in subsection (4) at the close of any financial year of the board, as well as money which has been invested in terms of subsection (5), shall be carried forward to the next financial year as a credit in the account and of the board.

Accounting responsibility

17. (1) The executive officer shall be the accounting officer of the board charged with accounting for all money received and payments made by the board.

(2) The financial year of the board shall end on 31 March in each year.

(3) The accounting officer shall—

- (a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of, the board; and
- (b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (2), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the board during, and its assets and liabilities at the end of, the financial year in question.

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(4) Die aantekeninge en finansiële jaarstate in subartikel (3) bedoel, moet deur die Ouditeur-generaal geouditeer word.

Oorlegpleging met Minister

18. Die raad en die uitvoerende beampte, adjunk- uitvoerende beampte en hoofaktuaris moet met die Minister oorleg pleeg by die uitoefening van die bevoegdhede en die uitvoering van die pligte kragtens hierdie Wet of 'n ander wet wat die Minister van tyd tot tyd bepaal, en die raad en die uitvoerende beampte pleeg regstreeks oorleg met die Minister in verband met enige ander aangeleentheid wat hy onder die aandag van die Minister wil bring.

Reëls deur raad

19. Die raad kan reëls uitvaardig betreffende—

- (a) die wyse waarop vergaderings van die uitvoerende bestuur of 'n komitee van die raad byeengeroep moet word, die prosedure op, die werksaamhede van en die kworums vir dié vergaderings en die wyse waarop notule van dié vergaderings gehou moet word;
 - (b) die goeie bestuur van die raad se sake en die doelmatige uitvoering van sy werksaamhede; en
 - (c) in die algemeen, enige aangeleentheid wat die raad nodig of dienstig ag om voor te skryf of te reël ten einde die oogmerke van hierdie Wet te verwesenlik, sonder dat die algemeenheid van hierdie bepaling deur die voorafgaande paragrawe beperk word,
- en kan sodanige reëls bekend maak op die wyse wat hy goedgevind.

Delegering van werksaamhede

20. (1) Die Minister kan 'n bevoegdheid by hierdie Wet aan hom verleen, deleger aan die Direkteur-generaal: Finansies of 'n ander beampte in die Departement van Finansies.

(2) Die raad kan—

- (a) op die voorwaardes wat die raad bepaal, 'n bevoegdheid by of kragtens hierdie Wet aan die raad verleen, deleger aan die voorsitter, die uitvoerende beampte of 'n ander beampte of werknemer van die raad; of
- (b) die voorsitter, die uitvoerende beampte of 'n ander beampte of werknemer van die raad magtig om 'n plig wat by of kragtens hierdie Wet aan die raad opgedra is, te verrig.

(3) Die uitvoerende beampte kan—

- (a) aan 'n beampte of werknemer van die raad 'n bevoegdheid by of kragtens hierdie Wet of 'n ander wet aan die uitvoerende beampte verleen, met inbegrip van 'n bevoegdheid wat aan die uitvoerende beampte kragtens hierdie Wet gedelegeer is, deleger; of
- (b) so 'n beampte of werknemer magtig om 'n plig by of kragtens hierdie Wet of 'n ander wet aan die uitvoerende beampte opgedra, te verrig.

(4) 'n Delegering kragtens subartikel (1), (2) (a) of (3) (a) belet nie die uitoefening nie van die betrokke bevoegdheid deur die Minister, raad of uitvoerende beampte, na gelang van die geval.

(5) Iets wat gedoen of nagelaat is deur 'n beampte of werknemer van die raad by die uitoefening van 'n bevoegdheid of die uitvoering van 'n plig kragtens subartikel (3) aan hom gedelegeer of opgedra, of deur die adjunk- uitvoerende beampte kragtens 'n ander wet, word geag deur die uitvoerende beampte gedoen of nagelaat te wees.

Jaarverslag

21. (1) Die raad moet elke jaar 'n verslag oor sy sake en werksaamhede gedurende die jaar wat op die voorafgaande 31 Desember geëindig het, aan die Minister voorlê wat onder meer die volgende insluit:

- (a) 'n Geouditeerde balansstaat, met inbegrip van aantekeninge daarop of 'n stuk daarby aangeheg wat inligting verstrek wat deur hierdie Wet vereis word;

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(4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor-General.

Consultation with Minister

18. The board and the executive officer, deputy executive officer and chief actuary shall consult with the Minister in the exercise of such powers and the performance of such duties under this Act or any other law as the Minister may determine from time to time, and the board and the executive officer shall directly consult with the Minister in connection with any other matter it or he wishes to bring to the attention of the Minister.

10 Rules by board

19. The board may make rules regarding—

- (a) the manner in which meetings of the executive or any committee of the board shall be convened, the procedure at, the functions of and the quorums for such meetings and the manner in which minutes of such meetings shall be kept;
- (b) the good management of the affairs of the board and the effective execution of its functions; and
- (c) in general, any matter which the board may deem necessary or expedient to prescribe or to regulate in order to achieve the objects of this Act, the generality of this provision not being limited by the preceding paragraphs, and may make any such rules known in such manner as it may deem fit.

Delegation of functions

20. (1) The Minister may delegate any power conferred upon him by this Act to the Director-General: Finance or any other officer in the Department of Finance.

(2) The board may—

- (a) on such conditions as the board may determine delegate to the chairman, executive officer or any other officer or employee of the board any power conferred upon the board by or under this Act; or
- (b) authorize the chairman, the executive officer or any other officer or employee of the board to perform any duty assigned to the board by or under this Act.

(3) The executive officer may—

- (a) delegate to an officer or employee of the board any power conferred upon the executive officer by or under this Act or any other law, including a power delegated to the executive officer under this Act; or
- (b) authorize such officer or employee to perform any duty assigned to the executive officer by or under this Act or any other law.

(4) Any delegation under subsection (1), (2) (a) or (3) (a) does not prohibit the exercise of the power in question by the Minister, board or executive officer, as the case may be.

(5) Anything done or omitted to be done by an officer or employee of the board in the exercise of any power or the performance of any duty delegated or assigned to him under subsection (3), or by the deputy executive officer under any other law, shall be deemed to have been done or omitted by the executive officer.

45 Annual report

21. (1) The board shall each year submit to the Minister a report on its affairs and functions during the year ended on 31 December last preceding which shall, *inter alia*, include the following:

- (a) An audited balance sheet, including any notes thereon or document annexed thereto providing information required by this Act;

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- (b) 'n geouditeerde inkomstestaat, met inbegrip van 'n finansiële staat, waar dié vorm gepas is, en met inbegrip van aantekeninge daarop of 'n stuk daarby aangeheg wat inligting verstrek wat deur hierdie Wet vereis word; en
- (c) 'n geouditeerde staat van die bron en aanwending van fondse. 5
- (2) Die finansiële state bedoel in subartikel (1) (a), (b) en (c) moet—
 - (a) in ooreenstemming wees met algemeen aanvaarde rekeningkundige praktyk;
 - (b) die stand van die sake en werksaamhede van die raad en die resultate daarvan, redelik weergee; en 10
 - (c) die aandag vestig op enige tersaaklike aangeleenthede wat nie uitdruklik deur hierdie Wet voorgeskryf word nie maar die sake van die raad raak of waarskynlik sal raak.
- (3) 'n Verslag in subartikel (1) bedoel, word in beide amptelike tale gedruk.

Geheimhouding

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22. Geen lid of plaasvervangende lid van die raad of persoon in artikel 13 (1) bedoel of lid van die appèlraad mag aan enige persoon, behalwe vir die doeleindes van die vervulling van sy pligte of die uitoefening van sy bevoegdhede ingevolge hierdie Wet of 'n ander wet of wanneer dit in 'n hof of kragtens 'n wet van hom vereis word, enige inligting openbaar met betrekking tot die sake van die raad, of iemand anders, wat by die vervulling van sy pligte of die uitoefening van sy bevoegdhede deur hom ingewin is nie. 20

Beperking van aanspreeklikheid

23. Die Minister, die raad, 'n lid of plaasvervangende lid van die raad of die appèlraad of 'n beampte of werknemer in diens van die raad is nie aanspreeklik nie ten opsigte van enige *bona fide*-uitoefening van 'n diskresie by die verrigting deur hom van 'n werksaamheid kragtens hierdie Wet. 25

Beperking op gebruik van naam of beskrywing wat verband met raad te kenne gee

24. Niemand mag 'n naam of beskrywing vir 'n maatskappy, liggaam, firma, besigheid of onderneming gebruik wat die een of ander verband tussen dié maatskappy, liggaam, firma, besigheid of onderneming en die raad aandui of te kenne gee nie. 30

Likwidasie

- 25. (1) Die raad word nie gelikwideer nie behalwe by 'n Wet van die Parlement.
- (2) In geval van die likwidasie van die raad val die surplus bates van die raad (as daar is) die Staat toe. 35

Appèlraad, en appèl teen besluite van uitvoerende beampte

- 26. (1) Daar word hierby 'n appèlraad ingestel, wat bestaan uit drie persone, aangestel deur die Minister, en van wie—
 - (a) een, wat die voorsitter is, aangestel word op grond van sy kennis van die reg; 40
 - (b) een een van die lede van die raad is; en
 - (c) een 'n persoon is wat kragtens artikel 23 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951 (Wet No. 51 van 1951), as 'n rekenmeester en ouditeur geregistreer is en wat na die oordeel van die Minister wye ervaring het van, en oor kundigheid beskik aangaande die jongste ontwikkelinge in, die rekenmeesters- en ouditeursberoep. 45
- (2) Iemand wat hom veronreg voel deur 'n besluit van die uitvoerende beampte kragtens 'n bevoegdheid aan hom verleen of 'n plig hom opgelê by of kragtens hierdie Wet of 'n ander wet, kan binne die tydperk en op die wyse en by betaling van die gelde wat die Minister by regulasie voorskryf, by die appèlraad teen daardie besluit appelleer. 50

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- (b) an audited income statement, including any similar financial statement, where such form is appropriate, and including any notes thereon or document annexed thereto providing information required by this Act; and
- (c) an audited statement of the source and application of funds.
- 5 (2) The financial statements referred to in subsection (1) (a), (b) and (c) shall—
- (a) be in conformity with generally accepted accounting practice;
- (b) fairly present the state of affairs and functions of the board and the results thereof; and
- 10 (c) refer to any material matters not specifically prescribed by this Act which have affected or are likely to affect the affairs of the board.
- (3) A report referred to in subsection (1) shall be printed in both official languages.

Preservation of secrecy

22. No member or alternate member of the board or person referred to in section 13 (1) or member of the board of appeal shall disclose to any person, except for the
- 15 purposes of the performance of his duties or the exercise of his powers in terms of this Act or any other law or when required to do so before a court or under any law, any information relating to the affairs of the board or any other person acquired by him in the performance of his duties or the exercise of his powers.

Limitation of liability

- 20 23. The Minister, the board, a member or alternate member of the board or the board of appeal or any officer or employee in the employment of the board shall not be liable in respect of any *bona fide* exercise of a discretion in the performance of any function by him under this Act.

Restriction on use of name or description implying connection with board

- 25 24. No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between such company, body, firm, business or undertaking and the board.

Liquidation

25. (1) The board shall not be placed in liquidation except by Act of Parliament.
- 30 (2) In the event of the liquidation of the board, the surplus assets of the board (if any) shall accrue to the State.

Board of appeal, and appeal against decisions of executive officer

26. (1) There is hereby established a board of appeal, which shall consist of three persons, appointed by the Minister, of whom—
- 35 (a) one shall be a person appointed on account of his knowledge of law, who shall be the chairman;
- (b) one shall be one of the members of the board; and
- (c) one shall be a person registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and who in the opinion of the Minister has wide experience of, and expert knowledge of the latest developments in, the accountants' and auditors' profession.
- 40 (2) Any person aggrieved by a decision by the executive officer under a power conferred or a duty imposed upon him by or under this Act or any other law may
- 45 within the period and in the manner and upon payment of the fees prescribed by the Minister by regulation, appeal against such decision to the board of appeal.

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(3) Indien daar voor of gedurende die aanhoor van 'n appèl blyk dat 'n lid van die appèlraad enige direkte of indirekte persoonlike belang by die uitslag van daardie appèl het, moet daardie lid hom onttrek en vir die verhoor van die appèl vervang word deur—

- (a) in die geval van die lid bedoel in subartikel (1) (a), iemand tydelik aangestel behoudens die bepalinge van dié subartikel; 5
- (b) in die geval van 'n lid bedoel in subartikel (1) (b), een van die ander lede van die raad tydelik deur die Minister aangestel; en
- (c) in die geval van die lid bedoel in subartikel (1) (c), iemand tydelik aangestel behoudens die bepalinge van dié subartikel. 10

(4) 'n Lid van die appèlraad bekleë sy amp vir 'n tydperk van drie jaar en kan by verstryking van sy ampstermyn weer aangestel word.

(5) 'n Toevallige vakature wat in die appèlraad ontstaan, word gevul deur die aanstelling deur die Minister, behoudens die bepalinge van subartikel (1), van 'n ander persoon, en 'n persoon aldus aangestel, bekleë sy amp vir die onverstreke gedeelte van die ampstermyn van sy voorganger. 15

(6) 'n Appèl word aangehoor op die datum, plek en tyd wat die appèlraad bepaal, wat sowel die appellant as die uitvoerende beampte skriftelik daarvan in kennis moet stel.

(7) Vir die doeleindes van 'n appèl is die Kommissiewet, 1947 (Wet No. 8 van 1947), van toepassing op die appèlraad en getuies en hul getuienis asof die appèlraad 'n kommissie was waarop genoemde Wet van toepassing is en die voorsitter van dié raad die sekretaris daarvan was. 20

(8) Die prosedure by die aanhoor van 'n appèl word deur die voorsitter van die appèlraad bepaal. 25

(9) Sowel die appellant as die uitvoerende beampte het die reg om by 'n appèl deur 'n regspraktisyn verteenwoordig te word.

(10) Die appèlraad kan na die aanhoor van die appèl—

- (a) die betrokke besluit van die uitvoerende beampte bevestig, tersyde stel of wysig; en 30
- (b) gelas dat die beslissing van die appèlraad uitgevoer word.

(11) Die beslissing van 'n meerderheid van die lede van die appèlraad maak die besluit van dié raad uit.

(12) Die beslissing van die appèlraad moet op skrif gestel word, en 'n afskrif daarvan moet aan sowel die appellant as die uitvoerende beampte verstrek word. 35

(13) Die beslissing van die appèlraad is nie vatbaar vir appèl nie.

(14) Indien die appèlraad 'n besluit van die uitvoerende beampte tersyde stel, moet die voorgeskrewe gelde wat deur die appellant ten opsigte van die betrokke appèl betaal is, aan hom terugbetaal word, en indien die appèlraad so 'n besluit wysig, kan die appèlraad na goëddunke gelas dat al of enige gedeelte van sodanige gelde aan die appellant terugbetaal word. 40

(15) 'n Lid van die appèlraad wat nie in die heeltidse diens van die Staat is nie, ontvang ten opsigte van sy diens as so 'n lid die besoldiging, met inbegrip van vergoeding vir vervoer-, reis- en verblyfsuitgawes deur hom aangegaan by die verrigting van sy werksaamhede as 'n lid van die appèlraad, wat die Minister van tyd tot tyd bepaal. 45

Misdrywe en strawwe

27. Iemand wat die bepalinge van artikel 22 of 24 oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R4 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sodanige boete sowel as sodanige gevangenisstraf. 50

Toepassing van Wet

28. Die bepalinge van hierdie Wet raak nie die bedryf nie van 'n bank, onderlinge bouvereniging of bouvereniging wat ingevolge die Bankwet, 1965 (Wet No. 23 van 1965), of die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), of die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), geregistreer is, ten opsigte van bank- of bouverenigingsake wat deur so 'n bank of bouvereniging ooreenkomstig die bepalinge van genoemde Wette uitgeoefen word. 55

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(3) If before or during the hearing of any appeal it transpires that any member of the board of appeal has any direct or indirect personal interest in the outcome of that appeal, that member shall recuse himself and for the hearing of the appeal be replaced by—

- 5 (a) in the case of the member referred to in subsection (1) (a), a person temporarily appointed subject to the provisions of that subsection;
 (b) in the case of the member referred to in subsection (1) (b), one of the other members of the board temporarily appointed by the Minister; and
10 (c) in the case of the member referred to in subsection (1) (c), a person temporarily appointed subject to the provisions of that subsection.

(4) A member of the board of appeal shall hold office for a period of three years and shall on the expiration of his term of office be eligible for reappointment.

- (5) Any casual vacancy that occurs on the board of appeal shall be filled by the appointment by the Minister, subject to the provisions of subsection (1), of another
15 person, and any person so appointed shall hold office for the unexpired portion of the period of office of his predecessor.

(6) An appeal shall be heard on the date and at the place and time fixed by the board of appeal, which shall in writing notify the appellant as well as the executive officer thereof.

- 20 (7) For the purposes of an appeal the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the board of appeal and witnesses and their evidence as if the board of appeal were a commission to which the said Act applied and the chairman of such board were the secretary thereof.

- (8) The procedure at the hearing of an appeal shall be determined by the chairman
25 of the board of appeal.

(9) The appellant as well as the executive officer shall be entitled to be represented at an appeal by a legal practitioner.

(10) The board of appeal may after hearing the appeal—

- 30 (a) confirm, set aside or vary the relevant decision of the executive officer; and
 (b) order that the decision of the board of appeal be given effect to.

(11) The decision of a majority of the members of the board of appeal shall be the decision of that board.

(12) The decision of the board of appeal shall be put in writing, and a copy thereof shall be furnished to the appellant as well as to the executive officer.

- 35 (13) No appeal shall lie against the decision of the board of appeal.

(14) If the board of appeal sets aside any decision by the executive officer the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, and if the board of appeal varies any such decision it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

- 40 (15) A member of the board of appeal who is not in the full-time employment of the State shall in respect of his services as such a member be paid such remuneration, including reimbursement for transport, travelling and subsistence expenses incurred by him in the performance of his functions as a member of the board of appeal, as may from time to time be determined by the Minister.

45 Offences and penalties

27. Any person who contravenes the provisions of section 22 or 24 shall be guilty of an offence and on conviction liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

50 Application of Act

28. The provisions of this Act shall not affect the operation of any bank, mutual building society or building society registered in terms of the Banks Act, 1965 (Act No. 23 of 1965), or the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or the Building Societies Act, 1986 (Act No. 82 of 1986), in respect of any bank or
55 building society business carried on by such a bank or building society in accordance with the provisions of the said Acts.

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Wysiging van wette

29. Die wette in die Bylae genoem, word hierby gewysig in die mate aangedui in die derde kolom daarvan.

Kort titel en inwerkingtreding

30. (1) Hierdie Wet heet die Wet op die Raad op Finansiële Dienste, 1990, en die 5
bepalings daarvan tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan kragtens subartikel (1) ten opsigte van verskillende bepalinge van hierdie Wet bepaal word.

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Amendment of laws

29. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

Short title and commencement

5 30. (1) This Act shall be called the Financial Services Board Act, 1990, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

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Bylae

WETTE GEWYSIG (ARTIKEL 29)

No. en jaar van wet	Kort titel	Omvang van wysiging
Wet No. 27 van 1943	Versekeringswet, 1943	(a) Die vervanging in artikel 1 (1) van die omskrywing van "registrateur" deur die volgende omskrywing: <u>"'registrateur' die Registrateur of die Adjunk-registrateur van Versekeringswese bedoel in artikel 2;"</u>; (b) die vervanging van artikel 2 deur die volgende artikel: <u>"Registrateur en Adjunk-registrateur van Versekeringswese</u> <u>2. (1) Die uitvoerende beampte en die adjunk-uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Versekeringswese onderskeidelik."</u>; en (c) die skapping van artikel 2C.
Wet No. 24 van 1956	Wet op Pensioenfondse, 1956	(a) Die vervanging in artikel 1 (1) van die omskrywing van "registrateur" deur die volgende omskrywing: <u>"'registrateur' die Registrateur of die Adjunk-registrateur van Pensioenfondse vermeld in artikel 3;"</u>; (b) die vervanging van artikel 3 deur die volgende artikel: <u>"Registrateur en Adjunk-registrateur van Pensioenfondse</u> <u>3. Die uitvoerende beampte en die adjunk-uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Pensioenfondse onderskeidelik."</u>; en (c) die skapping van artikel 3A.
Wet No. 25 van 1956	Wet op Onderlinge Hulpverenigings, 1956	(a) Die vervanging in artikel 1 (1) van die omskrywing van "registrateur" deur die volgende omskrywing: <u>"'registrateur' die Registrateur of die Adjunk-registrateur van Onderlinge Hulpverenigings vermeld in artikel 4;"</u>; (b) die vervanging van artikel 4 deur die volgende artikel: <u>"Registrateur en Adjunk-registrateur van Onderlinge Hulpverenigings</u> <u>4. Die uitvoerende beampte en die adjunk-uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Onderlinge Hulpverenigings onderskeidelik."</u>; en (c) die skapping van artikel 4A.
Wet No. 73 van 1968	Woerkerwet, 1968	Die vervanging in artikel 1 van die omskrywing van "Registrateur" deur die volgende omskrywing: <u>"'Registrateur' die uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, of, na gelang die Minister goedvind, iemand deur hom as registrateur aangestel onderworpe aan die bepalings van die Staatsdienswet, 1984 (Wet No. 111 van 1984);"</u>.
Wet No. 54 van 1981	Wet op Beheer van Effekte-trustskemas, 1981	(a) Die vervanging in artikel 1 van die omskrywing van "registrateur" deur die volgende omskrywing: <u>"'registrateur' die Registrateur of die Adjunk-registrateur van Effekte-trustmaatskappye bedoel in artikel 2;"</u>; (b) die vervanging van artikel 2 deur die volgende artikel:

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Schedule
LAWS AMENDED (SECTION 29)

No. and year of law	Short title	Extent of amendment
Act No. 27 of 1943	Insurance Act, 1943	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: <u>"registrar" means the Registrar or the Deputy Registrar of Insurance referred to in section 2;"</u>; (b) the substitution for section 2 of the following section: <u>"Registrar and Deputy Registrar of Insurance</u> <u>2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Insurance, respectively;"</u>; and (c) the deletion of section 2C.
Act No. 24 of 1956	Pensions Funds Act, 1956	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: <u>"registrar" means the Registrar or the Deputy Registrar of Pension Funds mentioned in section 3;"</u>; (b) the substitution for section 3 of the following section: <u>"Registrar and Deputy Registrar of Pension Funds</u> <u>3. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Pension Funds, respectively;"</u>; and (c) the deletion of section 3A.
Act No. 25 of 1956	Friendly Societies Act, 1956	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: <u>"registrar" means the Registrar or the Deputy Registrar of Friendly societies mentioned in section 4;"</u>; (b) the substitution for section 4 of the following section: <u>"Registrar and Deputy Registrar of Friendly Societies</u> <u>4. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Friendly Societies, respectively;"</u>; and (c) the deletion of section 4A.
Act No. 73 of 1968	Usury Act, 1968	The substitution in section 1 for the definition of "Registrar" of the following definition: <u>"Registrar" means the executive officer mentioned in section 1 of the Financial Services Board Act, 1990, or, as the Minister may deem fit, a person appointed by him as registrar subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984);"</u>
Act No. 54 of 1981	Unit Trusts Control Act, 1981	(a) The substitution in section 1 for the definition of "registrar" of the following definition: <u>"registrar" means the Registrar or the Deputy Registrar of Unit Trust Companies referred to in section 2;"</u>; (b) the substitution for section 2 of the following section:

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Wet No. 38 van 1984	Wet op Inspeksie van Finansiële Instellings, 1984	“Registrateur en Adjunk-registrateur van Effekte-trustmaatskappye 2. Die uitvoerende beampte en die adjunk- uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Effekte-trustmaatskappye onderskeidelik.”; en (c) die skraping van artikel 2A. (a) Die vervanging in artikel 1 van die omskrywing van “registrateur” deur die volgende omskrywing: “registrateur” die uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, maar met betrekking tot ’n mediese skema wat ingevolge die Wet op Mediese Skemas, 1967 (Wet No. 72 van 1967), geregistreer is, die registrateur van mediese skemas wat kragtens artikel 13 van daardie Wet aangestel is;”; (b) die vervanging van subartikel (1) van artikel 2 deur die volgende subartikel: “(1) [Behoudens die wette op die Staatsdiens moet daar] Die registrateur kan van tyd tot tyd inspekteurs kragtens hierdie Wet [aangestel word] aanstel.”; en (c) die vervanging van subartikel (2) van artikel 2 deur die volgende subartikel: “(2) Wanneer hy dit nodig ag, kan die registrateur ’n persoon wat nie in die heeltydse diens van die Staat of die raad vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is nie, as ’n tydelike inspekteur aanstel om die registrateur of ’n inspekteur in subartikel (1) bedoel met ’n inspeksie kragtens hierdie Wet van die sake of enige deel van die sake van ’n finansiële instelling of van ’n persoon, vennootskap of maatskappy wat nie as ’n finansiële instelling geregistreer is nie, te help of om so ’n inspeksie te onderneem.”.
Wet No. 1 van 1985	Wet op Beheer van Effektebeurse, 1985	(a) Die vervanging in artikel 1 van die omskrywing van “Registrateur” deur die volgende omskrywing: “Registrateur” die Registrateur of die Adjunk-registrateur van Effektebeurse [kragtens] vermeld in artikel 2 [aangewys].”; (b) die vervanging van artikel 2 deur die volgende artikel: “Registrateur en Adjunk-registrateur van Effektebeurse 2. Die uitvoerende beampte en die adjunk- uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Effektebeurse onderskeidelik.”; en (c) die skraping van artikel 2A.
Wet No. 55 van 1989	Wet op Beheer van Finansiële Markte, 1989	(a) Die vervanging in artikel 1 van die omskrywing van “Registrateur” deur die volgende omskrywing: “Registrateur” die Registrateur of die Adjunk-registrateur van Finansiële Markte [kragtens] vermeld in artikel 2 [(1) aangewys].”; en (b) die vervanging van artikel 2 deur die volgende artikel: “Registrateur en Adjunk-registrateur van Finansiële Markte 2. Die uitvoerende beampte en die adjunk- uitvoerende beampte vermeld in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990, is ook die Registrateur en die Adjunk-registrateur van Finansiële Markte onderskeidelik.”.

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No. and year of law	Short title	Extent of amendment
		"Registrar and Deputy Registrar of Unit Trust Companies" 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Unit Trust Companies, respectively."; and (c) the deletion of section 2A.
Act No. 38 of 1984	Inspection of Financial Institutions Act, 1984	(a) The substitution in section 1 for the definition of "registrar" of the following definition: <u>"registrar" means the executive officer mentioned in section 1 of the Financial Services Board Act, 1990, but in relation to a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967), the registrar of medical schemes appointed under section 13 of that Act;"</u>; (b) the substitution for subsection (1) of section 2 of the following subsection: <u>"(1) [Subject to the laws governing the public service there shall] The registrar may from time to time [be appointed] appoint inspectors under this Act."</u>; and (c) the substitution for subsection (2) of section 2 of the following subsection: <u>"(2) When he considers it necessary, the registrar may appoint a person who is not in the full-time employment of the State or the board mentioned in section 1 of the Financial Services Board Act, 1990, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a financial institution or of any person, partnership or company not registered as a financial institution, or to undertake such an inspection."</u>
Act No. 1 of 1985	Stock Exchanges Control Act, 1985	(a) The substitution in section 1 for the definition of "Registrar" of the following definition: <u>"Registrar" means the Registrar or the Deputy Registrar of Stock Exchanges [designated under] mentioned in section 2;"</u>; (b) the substitution for section 2 of the following section: <u>"Registrar and Deputy Registrar of Stock Exchanges"</u> 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Stock Exchanges, respectively."; and (c) the deletion of section 2A.
Act No. 55 of 1989	Financial Markets Control Act, 1989	(a) The substitution in section 1 for the definition of "Registrar" of the following definition: <u>"Registrar" means the Registrar or the Deputy Registrar of Financial Markets [designated under] mentioned in section 2[(1)];"</u>; and (b) the substitution for section 2 of the following section: <u>"Registrar and Deputy Registrar of Financial Markets"</u> 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Financial Markets, respectively.".

