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REPUBLIEK VAN SUID-AFRIKA

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No. 36121

## THE PRESIDENCY

No. 70

1 February 2013

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

**Act No. 19 of 2012: Financial Markets Act, 2012**

## LIHHOVISI LEMENGAMELI

No. 70

1 February 2013

Ngaloku kwentiwa satiso sekutsi uMengameli uwuvumile lomTsetfo lolandzelako, lekungumTsetfolokhishwako lapha kutsi watiwe ngumphakatsi wonkhe:—

**No 19 wa 2012: UmTsetfo Wetimakethe lemnotfo, 2012**

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(English text signed by the President)  
(Assented to 30 January 2013)

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# ACT

To provide for the regulation of financial markets; to license and regulate exchanges, central securities depositories, clearing houses 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; 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.

## ARRANGEMENT OF SECTIONS

### CHAPTER I

#### PRELIMINARY PROVISIONS

1. Definitions and interpretation
2. Objects of Act
3. Application of Act and rules
4. Prohibitions and adherence to authorisation by authorised users, participants and clearing members

### CHAPTER II

#### REGULATION AND SUPERVISION OF FINANCIAL MARKETS

5. Powers of the Minister
6. Registrar and Deputy Registrar of Securities Services

### CHAPTER III

#### EXCHANGES

##### *Licensing of exchange*

7. Application for exchange licence
8. Requirements applicable to applicant for exchange licence and licensed exchange
9. Licensing of exchange

##### *Functions of licensed exchange*

10. Functions of licensed exchange and power of registrar to assume responsibility for functions
11. Listing of securities
12. Removal of listing and suspension of trading
13. Application of amended listing requirements to previously listed securities
14. Disclosure of information by issuers of listed securities

(English text signed by the President)  
(Assented to 30 January 2013)

# UMTSETFO

Kwentela kulawulwa kwekuphatfwa kwetimakethe temnotfo; kuniketa imvume nekulawula lokuguculwako, bemasheya labasemkhatsini kuvikela emabhang, netindlu tekucacisa and netindzawo tekuhwebelana lapho kusiswa khona; kuphatsa nekulawula kuhanjisa kwemasheya kanye nekugcinwa nekuphatfwa kwemasheya; kuvikela kutsengiselana kwangekhatsi; kwentela kutfola imvume yalabaphakanyisiwe; kwentela kutfola indlela yekutiphatsa; kuvala i-Securities Services Act, 2004 (Umtsetfo Nom. 36 wanga 2004) njengoba uchitjiyelwe yi-Financial Services Laws General Amendment Act, 2008 (Umtsetfo Nom. 22 wanga 2008), kute kutsi loMtsetfo uhambisane nemazinga amhlabawonkhe; kanye nekuniketela kutindzaba letiphatselene naletlo.

## KUHLELWA KWETIGABA

### SAHLUKO I

#### IMIBANDZELA KUSINGENISO

1. Tinchazelo nekuhumusha
2. Tinjongo talomtsetfo
3. Kusetjentiswa kweMtsetfo neTindlela tekwenta
4. Lokuvimbako nekuhambisana nemitsetfo yebasebentisi labavunyelwe, bangeneleli nemalunga lagunyatako

### SAHLUKO II

#### UMTSETFOSIMISO NEKULANDZELELWA KWETIMAKETHE TEMALI

5. Emandla aNgcongcoshe
6. Nobhala naSekela Nobhala weMisebenti Yemasheya

### SAHLUKO III

#### EMAGATJA

*Kuniketwa lilayisensi kweligatja*

7. Kufaka sicelo sekugucula ilayisensi
8. Tidzingo letikhona kulofaka sicelo ngetingucuko telayisensi yeligatja
9. Kuniketwa lilayisensi kweligatja

*Imisebenti yeligatja lelinemvume*

10. Imisebenti yeligatja nemandla anobhala ekucala umsebenti
11. Kubhalwa phansi kwalokungenile
12. Kukhishwa eluhlweni kanye nekumiswa kwekutsengiselana
13. Kusetjentiswa kweluhlu loluchitjiyelwe kubemasheya lebebabbalisiwe
14. Kukhishwa kwelwatiso lebelufihlakele ngulabaneluhlu lebemasheya

15. Maintenance of insurance, guarantee, compensation fund or other warranty
16. Funds of mutual exchange

***Exchange rules***

17. Requirements with which exchange rules must comply

***Authorised users***

18. Restriction on borrowing against and repledging of securities belonging to other persons
19. Marking of or recording details of securities
20. Restriction on alienation of securities
21. Segregation of funds
22. Segregation of securities

***General provisions in relation to listed securities***

23. Use of designation “stockbroker” and related designations
24. Buying and selling listed securities
25. Reporting of transactions in listed securities

**CHAPTER IV**

**CUSTODY AND ADMINISTRATION OF SECURITIES**

26. Definition

***Licensing of central securities depository***

27. Application for central securities depository licence
28. Requirements applicable to applicant for central securities depository licence and licensed central securities depository
29. Licensing of central securities depository

***Functions of licensed central securities depository***

30. Functions of licensed central securities depository and power of registrar to assume responsibility for functions

***Participant***

31. Authorisation of participant

***Duties of participant***

32. Duties of participant

***Uncertificated securities***

33. Uncertificated securities
34. Duties of issuer of uncertificated securities

***Depository rules***

35. Requirements with which depository rules must comply

15. Kuphatfwa kwemshwälense, siciñiseko, sikhwama sekuncepheteliswa noma lenye iwaranti
16. Timali teligatja letetayelekile

***Imitsetfo yeligatja***

17. Tidzingo lekfanele imitsetfo yeligatja ihambisane nato

***Basebentisi labagunyatiwe***

18. Imitsetfo lecinile ngekuboleka noma kutsatsa usebentise bekuvikela labange-balomunye umuntfu
19. Kumaka kwe noma kubhalwa kwemininingwane yebemasheya
20. Kuvimbela kwehlukana kwemasheya
21. Kuhlukanisa kwetimali
22. Kwehlukanisa kwemasheya

***Imibandzela leyeyelekile ngalokuphatselene nemasheya labhalisiwe***

23. Kusetjentiswa kwesikhundla “semtsengisi wemashezi” kanye naletinye tikhundla
24. Kutsenga nekutsengisa masheya lsseluhlwani
25. Kubikwa kwetintfo letentekile kumasheya labhalisiwe

**SAHLUKO IV**

**KUGGINWA NEKULAWULWA KWEMASHEYA**

26. Tincharzelo

***Kuniketwa kwemalayisensi kwemasheya kulibhange lelisemkhatsini***

27. Kufaka sicelo selayisensi yebunikati kulibhange lelisemkhatsini
28. Lokudzingekako kubafaki sicelo kutfola emalayisensi asebhange lelisemkhati
29. Kuniketwa kwemalayisensi kwemasheya kulibhange lelisemkhatsini

***Imisebenti yemabhange emasheya lasemkhatsini***

30. Imisebenti yemabhange emasheya lasemkhatsini kanye nemandla anobhala kucala umtfwalo wemsebenti

***Labangenelelako***

31. Kugunyatwa kwalabangenelelako

***Umsebenti waLabangenelelako***

32. Umsebenti walabangenelelako

***Emasheya langekho emtsetfweni***

33. Emasheya langekho emtsetfweni
34. Umsebenti wemnikeli wmasheya langekho emtsetfweni

***Imitsetfo Yesikhungo***

35. Lokudzingekako lapho khona imitsetfo yemabhange kufanele ihambisane nako

***General provisions relating to custody and administration of securities***

36. Registration of securities
37. Ownership of securities
38. Transfer of uncertificated securities or interest in uncertificated securities
39. Pledge or cession of securities *in securitatem debiti*
40. Ranking of interests in securities
41. Acquisition by bona fide transferee
42. Withdrawal and delivery of securities
43. Records
44. Warranty and indemnity
45. Attachment
46. Effectiveness in insolvency

**CHAPTER V****CLEARING HOUSE*****Licensing of clearing house***

47. Application for clearing house licence
48. Requirements applicable to applicant for clearing house licence and licensed clearing house
49. Licensing of clearing house

***Functions of licensed clearing house***

50. Functions of licensed clearing house and power of registrar to assume responsibility for functions
51. Maintenance of insurance, guarantee, compensation fund or other warranty
52. Funds of mutual independent clearing house

***Clearing house rules***

53. Requirements with which clearing house rules must comply

**CHAPTER VI****TRADE REPOSITORIES**

54. Application for trade repository licence
55. Requirements applicable to applicant for trade repository licence and licensed trade repository
56. Licensing of trade repository
57. Duties of licensed trade repository
58. Reporting obligations

**CHAPTER VII****GENERAL PROVISIONS APPLICABLE TO MARKET INFRASTRUCTURES**

59. Annual assessment
60. Cancellation or suspension of licence
61. Carrying on of additional business
62. Conflicts of interest
63. Demutualisation of exchange, central securities depository and independent clearing house
64. Amalgamation, merger, transfer or disposal
65. Duty of members of controlling body
66. Appointment of members of controlling body

*Imibandzela leyetayelekile lecondziswe kugcinwa nekuphatfwa kwemasheya*

36. Kubhaliswa kwemasheya
37. Bunikati bemasheya
38. Kudlulisela emasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni
39. Sifungo noma kuyekela kwemasheya kuvikela tikweleti
40. Kubekwa ezingeni kwentalo kwemasheya
41. Kutfola lilungelo lekudululisa
42. Kuhociswa kanye nekuniketwa kwemasheya
43. Emarekhodi
44. Iwaranti nekuvikeleka
45. Lokufakiwe
46. Kuphumelela ekutfunjweni kwemphahla

**SAHLUKO V**

**INDLU LEGUNYATAKO**

*Ilayisensi yendlu legunyatako*

47. Kufaka sicelo selayisensi yendlu legunyatako
48. Tidzingo letikhona kulofake sicelo sekuba nelayisensi yeligatja lendlu legunyatako
49. Ilayisensi yendlu legunyatako

*Imisebenti yendlu legunyatako*

50. Imisebenti yeligatja leligunyatiwe lelibhalisiwe nemandla anobhala ekucala umsebenti
51. Kuphatfwa kwemshwalense, siccise, sikhwama sekuncepheteliswa noma lenye iwaranti.
52. Timali tebudlelwa tendlu legunyatako letimele

*Imitsetfo yendlu legunyatako*

53. Tidzingo lekfanele indlu legunyatako nemitsetfo lekfanele iyilandzele

**SAHLUKO VI**

**EMABHANGE LAHWEBELANAKO**

54. Kufaka sicelo selayisensi yendzawo yekuhwebelana.
55. Tidzingo letifunekako kusicelo selayisensi yendzawo yekuhwebelana.
56. Kubhaliswa kwendzawo yekuhwebelana.
57. Imisebenti yendzawo yekuhwebelana.
58. Imitfwalo yekubika

**SAHLUKO VII**

**IMIBANDZELA LEYETAYELEKILE LEHAMBISANA  
NETINSITANCHATI TETIMAKETHE**

59. Kuhlolwa myaka wonkhe
60. Kukhanselwa noma kumiswa kusebenta kwelayisensi
61. Kwenta lomunye umsebenti longetiwe
62. Kungcubutana kwetinshisekelo
63. Kuguculwa kwenhlangano letilawulako, libhange lemasheya lelisemkhatsini nedlu legunyatako letimele
64. Kuhlanganisa, kudlulisela noma kususa
65. Umsebenti wemalunga emtimba lophetse enhlangano letilawulako
66. Kubekwa kwemalunga emtimba lophetse inhlangano letilawulako

- 67. Limitation on control of and shareholding or other interest in market infrastructures
- 68. Delegation of functions
- 69. Report to registrar
- 70. Attendance of meetings by, and furnishing of documents to, registrar
- 71. Manner in which the rules of certain market infrastructures may be made, amended or suspended and penalties for contraventions of such rules
- 72. Limitation of liability
- 73. Disclosure of information

## **CHAPTER VIII**

### **CODE OF CONDUCT**

- 74. Code of conduct for regulated persons
- 75. Principles of code of conduct

## **CHAPTER IX**

### **PROVISIONS RELATING TO NOMINEES**

- 76. Approval of nominee

## **CHAPTER X**

### **MARKET ABUSE**

- 77. Definitions

#### *Offences*

- 78. Insider trading
- 79. Publication
- 80. Prohibited trading practices
- 81. False, misleading or deceptive statements, promises and forecasts

#### *Insider trading sanction*

- 82. Liability resulting from insider trading

#### *Procedural matters*

- 83. Attachments and interdicts

#### *Administration of Chapter*

- 84. Powers and duties of Financial Services Board
- 85. Composition and functions of directorate
- 86. Financing of directorate

#### *General provisions*

- 87. Protection of existing rights
- 88. Confidentiality and sharing of information

## **CHAPTER XI**

### **AUDITING**

- 89. Auditor
- 90. Accounting records and audit
- 91. Functions of auditor

67. Tihibe tekulawula nalamanye emasheya noma lenye intalo kunhlangano tsite letilawulako
68. Kuniketwa kwemisebenti
69. Umbiko wanobhala wenhlangano letilawulako
70. Kungenelwa kwemihlangano ngunobhala, kanye nekuniketwa kwemiculu
71. Indlela imitsetfo yenhlangano letilawulako kufanele yentiwe ngayo, ichitjiyelwe noma ihociswe kanye netinhlawulo tekwephula leyo mitsetfo
72. Tihibe netingcinamba
73. Kuvetwa kwelwatiso

### **SAHLUKO VIII**

#### **INDLELA YEKUTIPHATSA**

74. Indlela yekutiphatsa kwebantfu labasemtsefweni
75. Imigomo yekutiphatsa

### **SAHLUKO IX**

#### **IMIBANDZELA LEYETAYELEKILE LECONDZISWE KULABAKHETSIWE**

76. Kuvunyelwa kwalabakhetsiwe

### **SAHLUKO X**

#### **KUPHATFWA KABI KWETIMAKETHE**

77. Tinchazelo

#### *Emacala*

78. Kuhwebelana ngekhatsi
79. Lushicilelo
80. Kuhwebelana ngekhatsi lokungakavumeleki
81. Titatimende letingemanga, letilahlekisako naletikhohlisako, titsembiso kanye nelikusasa

#### *Kucindzeteleka lokubangelwa kuhwebelana ngekhatsi*

82. Imibandzela yekuncepheteliswa lokubangelwe kuhwebelana ngekhatsi

#### *Lokuphat selene nenchubo*

83. Lokufakiwe netivimbo

#### *Kulawulwa kweSahluko*

84. Emandla nemisebenti yeBhodi yeMisebenti Yetimali
85. Kwakheka nemisebenti yalabaphetse
86. Kusitwa ngetimali kwalabaphetse

#### *Imibandzela leyetayekile*

87. Kuvikelwa kwemalungelo lasavele akhona
88. Kubamba imfihlo nekwabelana ngelwatiso

### **SAHLUKO XI**

#### **KUHLOLWA KWEMABHUKU**

89. Umhloli mabhuku
90. Emarekhodi etimali nekuhlolwa kwemabhuku
91. Imisebenti yemhloli mabhuku

- 92. Furnishing of information in good faith by auditor
- 93. Power of registrar to request audit

## CHAPTER XII

### GENERAL PROVISIONS

#### *Powers of registrar and court*

- 94. General powers of registrar
- 95. Powers of registrar to conduct on-site visit or inspection
- 96. Powers of registrar after on-site visit or inspection
- 97. Power of registrar to impose penalties
- 98. Power of court to declare person disqualified

#### *Enforcement committee*

- 99. Referral to enforcement committee

#### *Winding-up, business rescue and curatorship*

- 100. Winding-up or sequestration by court
- 101. Business rescue
- 102. Appointment of curator
- 103. Appointment of business rescue practitioner or liquidator and approval of business rescue plan

#### *Miscellanea*

- 104. General interpretation of Act
- 105. Right of appeal
- 106. Evidence
- 107. Regulations
- 108. Fees
- 109. Offences and penalties
- 110. Savings and transitional arrangements
- 111. Repeal or amendment of laws
- 112. Short title and commencement

## SCHEDULE

### LAWS REPEALED OR AMENDED

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CHAPTER I

### PRELIMINARY PROVISIONS

#### Definitions and interpretation

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1. (1) In this Act, unless the context indicates otherwise—  
“advice” means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to a client or group of clients—  
(a) in respect of the buying and selling of securities;  
(b) on any corporate action or other event affecting the rights or benefits in respect of securities; or  
(c) on the exercise or lapse of any right in respect of securities irrespective of whether or not such advice results in any such transaction being effected, but does not include—  
(i) factual advice given merely—

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92. Kucedzelelwa kwelwatiso ngendlela lekahle icedzelelwa ngumhloli mabhuku
93. Emandla anobhala ekucela emabhuku lahloliwe

## SAHLUKO XII

### IMIBANDZELA LEYETAYELEKILE

#### *Emandla anobhala nenkhantolo*

94. Emandla latayelekile anobhala
95. Emandla anobhala ekuvashela ngekhatsi noma ekuhlola
96. Emandla anobhala ngemuva kwekuvakashela ngekhatsi noma kwekuhlola
97. Emandla anobhala ekubeka tinhlawulo
98. Emandla enkhantolo ekucinisekisa kutsi umuntfu ukhishiwe

#### *Likomidi lelicinisekisako*

99. Kudlulisewa kulikomidi lelicinisekisako

#### *Kubuyeketa, kuhlengwa kwelibhizinisi nemlawuli*

100. Kubuyeketa noma kumukwa imphahla kwsikhishane yinkhantolo
101. Kuhlengwa kwelibhizinisi
102. Kubekwa kwemlawuli
103. Kubekwa kwsesibenti lesitawuhlenga ibhizinisi noma umcitsi nkapani kanye nekuvunyelwa kweluhlelo lekuhlenga ibhizinisi

#### *Inchubevange*

104. Kuhlatiywa kweMtsetfo ngalokutayelekile
105. Lilungelo lekufaka sikhalo
106. Bufakazi
107. Imitsetfosimiso
108. Timali
109. Emacala netinhlawulo
110. Lokongiwe
111. Imitsetfo lechitjiyelwe
112. Sihloko lesifushane nekucala kusebenta

## ISHEJULI

### IMITSETFO LECITSIWE NOMA LECHITJIYELWE

**N**GAKO-KE KUTAWUMISWA yiPhalamende yase Riphabulikhi neNingizimu Afrika, ngalendlela:—

## SAHLUKO I

### IMIBANDZELA LESEKUCALENI

#### Tinchazelo nekuhumusha

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1. (1) KuloMtsetfo, ngaphandle kwekutsi ingcikitsi ikubeke ngalenyne indlela—  
“seluleko” kushiwo noma ngabe ngusiphi sincomo, kuboniswa noma siphakamiso lesiphatselene nemali, nganoma ngayiphi indlela noma sento, lesicondziswe kulikhasimende noma licembu lemakhasingende—
  - (a) ngalokuphat selene nekutsenga nekutsengiselana kwemasheya;
  - (b) kunoma ngabe nguliphi libhizinisi noma sippi sehlakalo lesitsintsa emalungelo noma lokuhloniyulwako ngalokuphat selene nemasheya; noma
  - (c) ngalesikhatsi kusetjentiswa noma kuphela noma liphi lilungelo ngalokuphat selene nesitifiketi sebunikati; noma ngabe leso seluleko sibangela kutsi loko kusebenta kutsintseke, kodvwa akufaki ekhatsi—
    - (i) seluleko lesiliciniso lesiniketwe—

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<ul style="list-style-type: none"> <li>(aa) on the procedure for entering into a transaction in respect of securities;</li> <li>(bb) on the procedure relating to a corporate action or other event affecting the rights or benefits in respect of securities;</li> <li>(cc) in relation to the description of securities;</li> <li>(dd) in reply to routine administrative queries;</li> <li>(ee) in the form of objective information about securities; or</li> <li>(ff) by the display or distribution of promotional material;</li> </ul> <p>(ii) an analysis or report on securities without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the securities is appropriate to the particular investment objectives, financial situation or particular needs of a client;</p> <p><b>“appeal board”</b> means the appeal board established by section 26A of the Financial Services Board Act;</p> <p><b>“associated clearing house”</b> means a clearing house that clears transactions in securities on behalf of one or more exchanges in accordance with the rules of the relevant exchange and that does not approve or regulate clearing members;</p> <p><b>“attachment”</b> means a judicial act or process to freeze, restrict or impound the securities or interest in securities held in a central securities account or securities account, as the case may be, in order to enforce or satisfy a judgment or warrant of execution;</p> <p><b>“Auditing Profession Act”</b> means the Auditing Profession Act, 2005 (Act No. 26 of 2005);</p> <p><b>“auditor”</b> means an auditor registered in terms of the Auditing Profession Act;</p> <p><b>“authorised user”</b> means a person authorised by a licensed exchange to perform one or more securities services in terms of the exchange rules, and includes an external authorised user, where appropriate;</p> <p><b>“bank”</b> means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993); or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007);</p> <p><b>“board”</b> means the Financial Services Board established by section 2 of the Financial Services Board Act;</p> <p><b>“central securities account”</b> means an account that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities, held by a licensed central securities depository for a participant or external central securities depository in the name of—</p> <ul style="list-style-type: none"> <li>(a) a participant;</li> <li>(b) an external central securities depository; or</li> <li>(c) any other persons as determined in the depository rules;</li> </ul> <p><b>“central securities depository”</b> means a person who constitutes, maintains and provides an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities, and which infrastructure includes a securities settlement system;</p> <p><b>“certificated securities”</b> means securities evidenced—</p> <ul style="list-style-type: none"> <li>(a) in relation to securities issued by an issuer other than a public company, by a certificate or written instrument; or</li> <li>(b) in relation to securities issued by a public company, by a certificate;</li> </ul> <p><b>“clear”</b>, in relation to a transaction or group of transactions in securities, means—</p> <ul style="list-style-type: none"> <li>(a) to calculate and determine, before each settlement process— <ul style="list-style-type: none"> <li>(i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller; and</li> </ul> </li> </ul>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>
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(aa) ngendlela yekungenelela ekusetjentisweni kwetimali nganca yesitifiketi sebunikati;	
(bb) kulenchubo lephatselene nesento selibhizinisi noma siph i sehlakalo lesitsintsa emalungelo noma kuhlomula ngalokuphat selene nesitifiketi sebunikati;	5
(cc) ngalokuphat selene nekuchazwa kwemasheya;	
(dd) ngekuphendlula imibuto lehlala ikhona ngekulawula;	
(ee) ngeluhlobo lwelwatiso lolunenjongo ngalokuphat selene nemasheya; noma	
(ff) ngekukhangisa noma kuhhicitwa kwemapheda ekukhangisa;	10
(ii) kuhiatiya noma umbiko ngemasheya ngaphandle kwetincomo letishiwu noma letilindzelekile, kuholwa noma kubikwa ngemasheya tifanele leto tinjongo talokusiwako, simo sesetimali noma tidzingo telikhaisimende lelitsite;	
<b>“ibhodi yetikhalo”</b> kushiwo ibhodi yetikhalo lesungulwe ngekwasigaba 26A 15 <i>se-Financial Services Board Act;</i>	
<b>“indlu legunyatako lehambisanako”</b> kushiwo indlu legunyatako lekhulula ematsekshini emasheya ngekumela ligatja linye noma langetulu noma emagatja ngekuhambisana nemitsetfo aleligatja lelfanele kantsi loko akuvumeli noma akulawuli lilunga leligunyatiwe;	20
<b>“Lokufakiwe”</b> kushiwo sento lesisemtsetfweni noma inchubo yekucedza, kuvimbela noma kuvalela masheya noma inzuzo yemasheya letigcinwe ku akhawunti yavelonkhe noma i-akhawunti yemasheya, ngendlela lekungabekwa ngayo, kute kutsi kusentjentiswe noma kucinisekiswe sincumo noma imvume yekwenta lokutsite;	25
<b>“Auditing Profession Act”</b> kushiwo <i>i-Auditing Profession Act</i> , 2005 (Umtsetfo Nom. 26 wanga 2005);	
<b>“umhloli mabhuku”</b> kushiwo umhloli mabhuku lobhaliswe ngekwe- <i>Auditing Profession Act</i> ;	
<b>“umsebentisi logunyatiwe”</b> kushiwo umuntfu logunyatwe ligatja 30 lelisemtsetfweni kutsi ente umsebenti munye noma lengetulu yetitifiketi tebu nikati ngekwemitsetfo yeligatja, kantsi kufaka ekhatsi nemsebentisi logunyatiwe, lapho kufanele khona;	
<b>“libhange”</b> kushiwo libhange njengoba lichazwe ku- <i>Banks Act</i> , 1990 (Umtsetfo Nom. 94 wanga 1990), kanye nelibhange kanye neligatja leligunyatiwe ngekwe- <i>Mutual Banks Act</i> , 1993 (Umtsetfo Nom. 124 wanga 1993) noma libhange lemakhophorethivi njengoba lichazwe ku co-operative banks Act, 2007 (Umtsetfo Nom. 40 wanga 2007);	35
<b>“ibhodi”</b> kushiwo Ibhodi Lesebenta ngeTimali lesungulwe ngesigaba 2 se- <i>Financial Services Board Act;</i>	40
<b>“i-akhawunti yemasheya avelonkhe”</b> kushiwo i-akhawunti lekhombisa inombolo nelinani lemasheya lweluhlobo ngalunye lolufakiwe noma nako konkhe lokungenile ngalokuphat selene naletu masheya, letigcinwe ngulabanemvume kumasheya kwentela labangenelelako noma masheya letingaphandle letifakwe egameni—	45
(a) lalabangenelelako;	
(b) libhange lemasheya leliphatselene netangaphandle; noma	
(c) noma ngabe ngubani njengoba kuncunyiwe kumitsetfo yelibhange;	
<b>“libhange lelisemkhatsini lemasheya”</b> kushiwo umuntfu lobeka umtsetfo, aphatse abuye anikete tinsitanchanti tekuba neemasheya langekho 50 emtsetfweniletenta kutsi kube nalokungenako ngalokuphat selene neemasheya langekho emtsetfweni, lapho khona tinsitanchanti tifaka ekhatsi luhlelo lwekucedzelelwa kwemasheya;	
<b>“emasheya lanetitifiketi”</b> kushiwo masheya letifakazelwa—	
(a) ngalokuphat selene nemasheya letikhokhwe ngulonemvume yekukhipha 55 kungasiyo inkhampani yembuso, citifiketi noma lithulusi ;lelibhalwe phansi; noma	
(b) ngalokuphat selene kumasheya letiniketwe yinkhampani yembuso, sitifiketi;	
<b>“kucacisa”</b> , ngalokuphat selene nalokukhishwako noma lokufakwako noma livembu lalokukhishwako noma lokufakwako kutitifiketi tebunikati, kushiwo— 60	
(a) kubala bese uncuma, ngembi kwenchubo ngayinye yekucedzelela—	
(i) lenombolo lekungiyu noma lelinani lelilinganisewa lesitifiketi sebuniyo loluhlobo ngalunye kufanele ludlilisewa noma ngekumela umtsengisi;	

- (ii) the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or group of transactions; or
- (b) where applicable, the process by means of which—
- (i) the functions referred to in paragraph (a) are performed; and
  - (ii) the due performance of the transaction or group of transactions by the buyer and the seller is underwritten from the time of trade to the time of settlement,
- and “**clearing**” has a corresponding meaning;
- “**clearing house**” means a person who constitutes, maintains and provides an infrastructure to clear transactions in securities; 10
- “**clearing house directive**” means a directive issued by a licensed independent clearing house in accordance with its rules;
- “**clearing house rules**” means the rules made by a licensed independent clearing house in accordance with this Act;
- “**clearing member**” means— 15
- (a) in relation to an associated clearing house, a person authorised by a licensed exchange with which it is associated to perform clearing services or settlement services or both clearing services and settlement services in terms of the exchange rules;
  - (b) in relation to a licensed independent clearing house, 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, 20 and includes an external clearing member, where appropriate;
- “**clearing services**” means services offered and activities performed by a clearing member in terms of the exchange rules or clearing house rules, as the case may be, to facilitate clearing of transactions in securities; 25
- “**client**” means any person to whom a regulated person provides securities services, and includes a person that acts as an agent for another person in relation to those services in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;
- “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
- “**confidential information**” means personal information that belongs to a person and is not generally available to or known by others;
- “**deposit**” means a deposit of securities, and includes a deposit by means of an entry in a securities account or a central securities account; 35
- “**depository directive**” means a directive issued by a licensed central securities depository in accordance with its rules;
- “**depository rules**” means the rules made by a licensed central securities depository in accordance with this Act; 40
- “**derivative instrument**” means any—
- (a) financial instrument; or
  - (b) contract, that creates rights and obligations and whose value depends on or is derived from the value of one or more underlying asset, rate or index, on a measure of economic value or on a default event; 45
- “**directive**” means a directive issued by the registrar in terms of section 6(4);
- “**directorate**” means the Directorate of Market Abuse referred to in section 85;
- “**document**” includes a book, record, security or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, electro-mechanically or optically or in any other form; 50
- “**electronic**” includes created, recorded, transmitted or stored in digital or other intangible but visible form by electronic, magnetic, optical or any similar means;

- (ii) lelinani lemali lekfanele likhkhwe ngekumelana nalotsengisako,  
 Kwentela kucedzelewa kwekuhishwa noma kufakwa kwemali noma  
 licembu lekwenta lowo msebenti; noma
- (b) lapho kufanele khona, lechubo lapho khona—  
 (i) lemisebenti lebalwe kundzima (a) yentiwa; kanye 5  
 (ii) lokwentiwa kwalomsebenti nyalo noma licembu lemisebenti ngulona  
 lotsengako nalotsengisako agunyatiwe kusukela ngalesikhatsi  
 sekutsengiselana kuya kulesikhatsi sekucedza kukhokha; kanye  
 nalomucu;
- “kugunyata”** inencharzelo lefanako; 10
- “indlu legunyatako”** kushiwo umuntfu losungula, agcine abuye anikete  
 luhlakancanti kutsi agunyate ematransekshini emasheya;
- “tinkhambiso tendlu legunyatako”** kushiwo inkhambiso leniketwe sikhungo  
 lesitimele lesigunyatiwe lesinemvume ngekuhambisana nemitsetfo yayo;
- “imitsetfo yesikhungo lesigunyatako”** kushiwo imitsetfo leyentiwe sikhungo 15  
 lesigunyatako lesitimele ngekuhambisana naloMtsetfo;
- “lilunga leligunyatako”** kushiwo—  
 (a) ngekuhambisana nesikhungo lesigunyatako, umuntfu logunyatwe ligatja lelo  
 leliphat selene naloko lekuniketela ngetimvume kutsi ente umsebenti  
 logunyatiwe noma wekukhkhela noma yomibili imisebenti tekugunyata 20  
 noma wekukhkhela ngekuhambisana nemitsetfo yeligatja;
- (b) ngalokuphat selene nesikhungo lesitimele lesigunyatako umuntfu loniketwe  
 imvume kutsi ente umsebenti logunyatiwe noma imisebenti yekukhkhela  
 noma kokubili umsebenti logunyatiwe newekukhkhelwa ngekwemitsetfo 25  
 yesikhungo lesigunyatako, Kantsi kufaka ekhatsi lilunga lelitimele noma  
 lelingasilo lesikhungo, lapho kufanele khona;
- “kwenta imisebenti legunyatiwe”** kushiwo imisebenti leniketiwe kanye  
 naleyentiwa lilunga leligunyatiwe ngekwemitsetfo yeligatja noma imitsetfo  
 yesikhungo lesigunyatako, njengtoba kungabe kubekiwe, kutsi ibukete kuhanjisa  
 kahe kwemibenti legunyatiwe emagatjeni; 30
- “iklayenti”** kushiwo umuntfu lapho khona umuntfu losemtsetweni aniketa  
 imisebenti yetinsita teligatja kantsi kufaka ekhatsi u8muntfu losebenta  
 njengesitfunya salomunye umuntfu ngalokuphat selene naleyo misebenti ngaleso  
 sizatfu kutawufakwa ekhatsi lesitfunya noma kukhishwe lomuntfu uma ngabe  
 lesivumelwano leshleliwe lesikhona emkhatsini wetinhlangano sikhombisa loku 35  
 njengesizatfu;
- “i-Companies Act”** kushiwo i-Companies Act, 2008 (Umtsetfo Nom. 71 wanga  
 2008);
- “lwatiso loluyimfihlo”** kushiwo lwatiso loluphat selene nemuntfu kantsi  
 alutfolakali kunoma ngubani noma lwatiwa ngulabanye; 40
- “lokufakwako”** kushiwo timali letifakwako kantsi tifaka ekhatsi lokufakwe  
 ngalokuphat selene ngalokungene ku-akhawunti noma i-akhawunti yalokusisiwe;
- “umtsetfo wekufaka”** kushiwo umtfo lokhishwe ligatja lelisemkhatsini  
 lelinemvume yekufaka ngekuhambisana nemitsetfo yalo;
- “imitsetfo yekufaka”** kushiwo imitsetfo leyentiwe ligatja lelisemkhatsini 45  
 lelinemvume yekufaka ngekuhambisana naloMtsetfo;
- “lithulisi lekungasilo mbamba”** kushiwo noma ngabe nguliphi—  
 (a) lithulisi leliyimali; noma  
 (b) sivumelwano, lesakha emalungelo linani lawo leyame noma lesuselwa  
 kumanani emphahla yinye noma ngetulu, lizinga noma i-indeksi, 50  
 ngesilinganiso semanani emnotfo noma kusehlakalo lekungasiso;
- “umtsetfo”** kushiwo umtsetfo lokhishwe ngnobhala ngekwesigaba 6(4)  
 saloMtsetfo;
- “lihhovisi lemecondzisi”** kushiwo Lihhovisi Lekuphatfwa kabi kweTimakethe  
 lelibalwe kusigaba 85;
- “umeulu”** ufaka ekhatsi libhuku, emarekhodi, kuvikela noma i-akhawunti, noma  
 luphi lwatiso lolubekwe noma lolubhalwe ngekwe-elektronikhi, lolutfwetjuliwe,  
 ngekwemagnethi, umshini, umshini wagezi noma ngekwemehlo noma nganoma  
 luphi luhlobo;
- “i-elektronikhi”** kufaka ekhatsi lokwakhiwe, lokurekhodiwe, lokudlulisewi 60  
 noma lokubekwe kudijithali noma lokuphatsekako kodvwa kube ngendlela  
 ye-elektronikhi lebukekako, imaginethiki, kwekubona noma ngalenye indlela;

<b>“enforcement committee”</b>	means the enforcement committee established by section 10A of the Financial Services Board Act;	5
<b>“entry”</b>	means an electronic recording of any issuance, deposit, withdrawal, transfer, attachment, pledge, cession <i>in securitatem debiti</i> or other instruction in respect of securities or an interest in securities;	
<b>“exchange”</b>	means a person who constitutes, maintains and provides an infrastructure—	
(a)	for bringing together buyers and sellers of securities;	
(b)	for matching bids and offers for securities of multiple buyers and sellers; and	10
(c)	whereby a matched bid and offer for securities constitutes a transaction;	
<b>“exchange directive”</b>	means a directive issued by a licensed exchange in accordance with its rules;	
<b>“exchange rules”</b>	means the rules made by a licensed exchange in accordance with this Act;	
<b>“external authorised user”</b>	means a foreign person who is authorised by a supervisory authority to perform a service or services similar to one or more securities services as defined in this Act and who is subject to the laws of a country other than the Republic, which laws—	15
(a)	establish a regulatory framework equivalent to that established by this Act; and	20
(b)	are supervised by a supervisory authority;	
<b>“external central securities depository”</b>	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 securities depository as set out in this Act and who is subject to the laws of a country other than the Republic, which laws—	25
(a)	establish a regulatory framework equivalent to that established by this Act; and	
(b)	are supervised by a supervisory authority;	
<b>“external clearing house”</b>	means a foreign person who is authorised to perform a function or functions similar to one or more of the functions of a clearing house in terms of the laws of a country other than the Republic, which laws—	30
(a)	establish a regulatory framework equivalent to that established by this Act; and	
(b)	are supervised by a supervisory authority;	
<b>“external clearing member”</b>	means a foreign person who is authorised by a supervisory authority to perform a service or services similar to one or more clearing services or settlement services as defined in this Act and who is subject to the laws of a country other than the Republic, which laws—	35
(a)	establish a regulatory framework equivalent to that established by this Act; and	40
(b)	are supervised by a supervisory authority;	
<b>“external exchange”</b>	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 an exchange as set out in this Act and who is subject to the laws of a country other than the Republic, which laws—	45
(a)	establish a regulatory framework equivalent to that established by this Act; and	
(b)	are supervised by a supervisory authority;	
<b>“external participant”</b>	means a foreign person who is authorised by a supervisory authority to perform a service or services similar to one or more of the services of a participant or an external central securities depository as set out in this Act, and who is subject to the laws of a country other than the Republic, which laws—	50
(a)	establish a regulatory framework equivalent to that established by this Act; and	
(b)	are supervised by a supervisory authority;	55
<b>“external trade repository”</b>	means a foreign person who is authorised by a supervisory authority to perform a duty or duties similar to one or more of the	

**“likomidi lelibeka imitsetfo”** kushiwo likomidi lelibeka imitsetfo lelisungulwe ngekwasigaba 10A se-*Financial Services Board Act*;

**“lokubhaliwe”** kushiwo lokurekhodwe ngekwe-elektronikhi kwanoma yini lokuniketiwe, lokufakiwe, lokukhishiwe, lokudluliselwe, lokucinisekisiwe, njengesibambiso sesikweleti noma leminye imiyalelo ngalokuphatselene netibambiso noma intalo kutibambiso; 5

**“ligatja”** kushiwo umuntfu lowenta, agcine abuye anikete tinsitancanti—

- (a) kuflanganisela ndzawonye batsengi nebatsengisi bemasheya;
- (b) kulinganisa emabhidhi kanye nalokubekelwe emasheya ebatsengi labahamba ngababili kanye nebatsengisi; 10
- (c) nalapho khona ibhidi lecatsanisiwe kanye nalokubekelwe emasheya kufaka ekhatsi itranekshini;

**“umtsetfo lokhishwe ligatja”** kushiwo umtsetfo lokhishwe ligatja lelisemtsweni ngekuhambisana nemitsetfo yalo;

**“Imitsetfo yeligtja”** kushiwo imitsetfo leyentiwe ligatja lelisemtsweni 15 ngekuhambisana naloMtsetfo;

**“umsebentisi longaphandle logunyatiwe”** kushiwo umuntfu wangaphandle nalogunyatwe ngulabaphetse kutsi ente umsebentti noma imisebentti lofana noma lefana nemisebentti yetibambiso njengoba ichazwe kuloMtsetfo nalehambisana nemitsetfo yalelive ngaphandle kweRiphabhulikhi, imitsetfo yakhona— 20

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“libhange lelingaphandle lelitimele kumasheya”** kushiwo umuntfu wangaphandle nalogunyatwe ngulabaphetse kutsi ente umsebentti noma imisebentti lefana namunye noma leminyenti yalemisebentti yelihange lelingaphandle lelitimele njengoba kubekiwe kuloMtsetfo kanye nalohambisana nemitsetfo yalelo live ngaphandle kweRiphabhulikhi, imitsetfo yakhona— 25

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“indlu legunyatako yangaphandle”** kushiwo umuntfu wangaphandle naloniketwe imvume kutsi ente umsebentti noma imisebentti lefana namunye noma leminyenti yemisebentti yesikhungo lesigunyatako ngekwemistefo yelive ngaphandle kweRiphabhulikhi, lapho khona imitsetfo— 35

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“lilunga leligunyatako langaphandle”** kushiwo umuntfu wangaphandle nalogunyatwe ngulabaphetse kutsi ente umsebentti noma imisebentti noma imisebentti yekukhkhela njengoba ichazwe kuloMtsetfo kanye nalohambisana nemitsetfo yalelive kungasiyo yaseRiphabhulikhi, lapho khona imitsetfo— 40

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“ligatja langaphandle”** kushiwo umuntfu wangaphandle nalogunyatwe ngulabaphetse kutsi ente umsebentti noma imisebentti noma imisebentti yekukhkhela njengoba ichazwe kuloMtsetfo kanye nalohambisana nemitsetfo yalelive kungasiyo yaseRiphabhulikhi, lapho khona imitsetfo—

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“bangaphandle labangenelelako”** kushiwo umuntfu wangaphandle nalogunyatwe ngulabaphetse kutsi ente umsebentti noma imisebentti noma imisebentti yekungenelela njengoba ichazwe kuloMtsetfo kanye nalohambisana nemitsetfo yalelive kungasiyo yaseRiphabhulikhi, lapho khona imitsetfo— 55

- (a) isungula luhlaka Iwekulawula loluhambisana nalolo lolusungulwe nguloMtsetfo; kanye
- (b) nalaphetfwе ngulabagunyatwe kutsi baphatse;

**“libhange langaphandle lekuhwebelana”** kushiwo umuntfu wangaphandle loniketwe ligunya ngulolawulako kutsi ente umsebentti noma imisebentti lefana namunye noma leminyenti yalemisebentti yekuhwebelana njengoba kubekiwe 60

duties of a trade repository 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;

**“financial institution”** means—

- (a) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the securities of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;

- (b) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;

- (c) any collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or any manager or nominee in relation to such a scheme;

- (d) any long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively; and

- (e) a bank;

**“Financial Institutions (Protection of Funds) Act”** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);

**“Financial Intelligence Centre Act”** means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

**“Financial Services Board Act”** means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

**“foreign collective investment scheme”** means a scheme, in whatever form, carried on in a country other than the Republic, in pursuance of which members of the public—

- (a) are invited or permitted to invest money or other assets in one or more groups of assets (whether called a portfolio or by any other name) of such scheme;

- (b) acquire an interest or undivided share (whether called a unit or by any other name) in such a group of assets upon such investment; and

- (c) participate proportionately in the income or profits and the risk derived from such investment;

**“Governor”** means the Governor of the South African Reserve Bank appointed in terms of section 4 or 6(1)(a) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

**“independent clearing house”** means a clearing house that clears transactions in securities on behalf of any person, and authorises and supervises its clearing members in accordance with its clearing house rules;

**“index”** means an indicator that reflects changes in the value of a group of securities on one or more exchanges or external exchanges;

**“insolvency administrator”** means a person authorised to administer an insolvency proceeding by a court or any national legislation, or the laws of a country other than the Republic, including a person authorised on an interim basis;

**“insolvency proceeding”** means a judicial or administrative proceeding, or both, authorised in or by national legislation or the laws of a country other than the Republic, including an interim proceeding, in which the assets and affairs of a person are subject to the control or supervision by a court or an insolvency administrator for the purpose of reorganisation, business rescue, curatorship or liquidation, and includes, but is not limited to, any such proceeding under—

- (a) the Companies Act;

- (b) the Insolvency Act, 1936 (Act No. 24 of 1936);

- (c) the Banks Act, 1990 (Act No. 94 of 1990);

- (d) the Financial Institutions (Protection of Funds) Act; and

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kuloMtsetfo, nalo hambisana nemitsetfo yalamanye emave kungasiyi iRiphabhlukhi, lapho khona lemitsetfo—	
(a) Kusungulwa luhlaka Iwekulawula loluhambisana nalolo lolusungulwe ngekwaloMtsetfo; kanye	
(b) Nelelawulwa ngumlawuli losemtsetfweni;	5
“ <b>Financial Intelligence Centre Act</b> ” kushiwo i- <i>Financial Intelligence Centre Act</i> , 2001 (Umtsetfo Nom. 38 wanga 2001);	
“ <b>sikhungo setimali</b> ” kushiwo—	
(a) noma ngabe nguyiphi inhlangano yesikhwama sempesheni lebhaliswe ngekwe-Pension Funds Act, 1956 (Umtsetfo Nom. 24 wanga 1956), noma ngabe muphi umuntu lobalwe kusigaba 13B salowo Mtsetfo lolawula emasheya aleso sikhwama sempesheni noma kubukeka kwaloko kuhlomula lokuniketiwe kuleyo imitsetfo yesikhwama sempesheni;	10
(b) noma ngabe ngabe ngumuphi ummango lonebuntfu lobhaliswe ngaphansi kwe- <i>Friendly Societies Act</i> , 1956 (Umtsetfo Nom. 25 wanga 1956), noma ngabe ngubani lophetse tindlela tekulawulwa kwetindzaba talowo mmango;	15
(c) noma ngabe ngukuphi lokubutselwe kwetinhlangano tekusisa njengoba kuchazwe kusigaba 1 se- <i>Collective Investment Schemes Control Act</i> , 2002 (Umtsetfo Nom. 45 wanga 2002), noma ngumuphi umlawuli noma lokhetsiwe ngekuhambisana naleso sikhwama;	20
(d) noma ngabe ngubani lonemshwalensi wesikhashane noma wesikhatsi lesidze lobhaliswe njalo ngaphansi kwe- <i>Long-term Insurance Act</i> , 1998 (Umtsetfo Nom. 52 wanga 1998), noma <i>Short-term Insurance Act</i> , 1998 (Umtsetfo Nom. 53 wanga 1998), ngaleylo ndlela; kanye	
(e) nelibhangane;	25
“ <b>i-Financial Institutions (Kuvikelwa kwetimali) Act</b> ” kushiwo i- <i>Financial Institutions (Kuvikelwa kwetimali) Act</i> , 2001 (Umtsetfo Nom. 28 wanga 2001);	
“ <b>i-Financial Intelligence Centre Act</b> ” kushiwo i- <i>Financial Intelligence Centre Act</i> , 2001 (Umtsetfo Nom. 38 wanga 2001);	
“ <b>Financial Services Board Act</b> ” kushiwo i- <i>Financial Services Board Act</i> , 1990 (Umtsetfo Nom. 97 wanga 1990);	30
“ <b>sikhwama sekusisa lesiyinhlanganya yebangaphandle</b> ” kushiwo sikhwama, nganoma nguyiphi indlela, lesisetjentiswa kunoma nguliphi live ngaphandle kweRiphabhlukhi, ekwenteni loku emalunga emmango—	
(a) amenyiwe noma avunyelwe kutsi asise imali noma letinye tintfo ngakunye noma ngemacembvu (noma kungabitwa ngeligma tsetse noma lelinye nje ligama) laleso sikhwama;	35
(b) kutfola intalo noma sehlukaniso lesingakahluwanisa (noma kungabitwa ngeyunithi nanoma nguliphi lelinye nje ligama) kulelo licembu letintfo letikhona kuloko lokusisiwe; kanye	40
(c) kungenelela ngalokuyincenye kulokuzuziwe noma lokungenako kanye nebungoti lobuvele kuloko lokusisiwe;	
“ <b>Umbusi</b> ” kushiwo Umbusi weLibhange Ngodla wase Ningizimu Afrika lobekwe ngekwasigaba 4 noma 6(1)(a) se- <i>South African Reserve Bank Act</i> , 1989 (Umtsetfo Nom. 90 wanga 1989);	45
“ <b>ligatja lelitimele leligunyatoko</b> ” kushiwo ligatja leligunyatoko lelikhipha ematranekshini kumasheya ngalokuphat selene nanoma ngubani, ibuye ilawule iphatse emalunga ayo lagunyatiwe ngekuhambisana neligatja leligunyatoko ngekuhambisana nemitsetfo yeligatja leligunyatoko;	
“ <b>tinkhomba</b> ” kushiwo tinkhomba letikhombisa tingucuko kulinani lelicembu lemasheya kumunye noma kumagatja lamanyenti noma emagatja angaphandle;	50
“ <b>inchubo yekuhlakatwa</b> ” kushiwo inchubo ngekwemtsetfo noma kulawula noma kokubili, lehunyatwe noma ngekwemtsetfo loshayiwe velonkhe noma imitsetfo yelive ngaphandle kweRiphabhlukhi, kufaka ekhatsi inchubo yesikhashane, lapho khona imphahla kanye netindzaba temuntfu titawuphatfwa noma tilawulwe yinkhantolo noma umphatsi wekuhlakatwa kwemphahla kwentelwe tizatfu tekutsi kubuye kuhlelwae kabusha, kusindziswa kwebhizinisi, kugcinwa noma kutfunjwa kwemphahla, kantsi kufaka ekhatsi, kodvwa ayikavinjelwa kunoma ngabe nguyiphi yaletlo tinchubo ngaphansi kwe—	55
(a) <i>Companies Act</i> ;	60
(b) <i>Insolvency Act</i> , 1936 (Umtsetfo Nom. 24 wanga 1936);	
(c) <i>Banks Act</i> , 1990 (Umtsetfo Nom. 94 wanga 1990);	
(d) <i>Financial Institutions (Protection of Funds) Act</i> ; ne	

(e) the National Payment System Act;	
“in writing”, in relation to anything which must be done in writing in terms of this Act, includes electronic actions;	
“inter-dealer broker” means a person who acts as an intermediary between two authorised users or between an authorised user and another person in relation to the purchase and sale of securities;	5
“issuer” means an issuer of securities and, in Chapter IV, includes an issuer of money market securities;	
“juristic person” means a person incorporated in terms of the Companies Act, a foreign company or another form of body corporate;	10
“licensed central securities depository” means a central securities depository licensed under section 29;	
“licensed clearing house” means a clearing house licensed under section 49;	
“licensed exchange” means an exchange licensed under section 9;	
“licensed trade repository” means a trade repository licensed under section 56;	15
“listing requirements” means the requirements, determined by a licensed exchange and approved by the registrar, that must be met before a security may be included in the list of securities of that exchange, or be traded, or continue to be traded, on that exchange;	
“listed securities” means securities included in the list of securities kept by an exchange in terms of section 11;	20
“management of securities and funds” means—	
(a) to exercise discretion in buying or selling securities or in exercising any rights attached to those securities on behalf of another person;	
(b) the safeguarding of securities on behalf of another person; or	25
(c) the safeguarding of another person’s funds intended for the purchase of securities on behalf of that other person;	
“market infrastructure” means each of the following—	
(a) a licensed central securities depository;	
(b) a licensed clearing house;	30
(c) a licensed exchange;	
(d) a licensed trade repository;	
“Minister” means the Minister of Finance;	
“money market securities” means money market instruments that are uncertificated securities reflected in an uncertificated securities register;	35
“National Payment System Act” means the National Payment System Act, 1998 (Act No. 78 of 1998);	
“nominal value” means—	
(a) in relation to securities other than shares in a public company, the fixed value assigned to a security by the issuer when it is first issued and is used to assess dividend, capital ownership or interest; or	40
(b) in relation to shares in a public company—	
(i) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the fixed value assigned to a security by the issuer when it is first issued and is used to assess dividend, capital ownership or interest; or	45
(ii) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the value of the shares calculated or determined in accordance with the manner prescribed under the Companies Act;	
	50

- (e) *National Payment System Act*, 1998 (Umtsetfo Nom. 78 wanga 1998);  
“**umlawuli wekuhlakata**” kushiwo umuntfu logunyatwe yinkhantolo kutsi alawule inkhambiso yekuhlakatwa noma ngumuphi umtsetfo wavelonkhe loshayawi, noma imitsetfo yelive kungasiyo iRiphabhulikhi, kufaka ekhatsi umuntfu logunyatwe kwesikhashane; 5  
“**ngalokubhaliwe**”, ngalokuphat selene nganoma ngani lekfanele kwentiwe ngalokubhaliwe ngekwaloMtsetfo, kufaka ekhatsi lokwentiwe nge-elektronikhi; “**loniketako**” kushiwo loniketa ngemasheya kanye, nakuSahluko IV, kufaka ekhatsi ekhatsi loniketla ngemasheya etimakethe temnotfo;  
“**umtsengisi longumlamuli**” kushiwo umuntfu losebenta njengalongeneela 10 emkhatsini webasebentisi lababili labasemtsweni kanye nalomunye umuntfu ngalokuphat selene nekutsengiswa nekutsengwa kwemasheya;  
“**silulu semasheya lesisemkhatsini lesibhalisiwe**” kushiwo a silulu semasheya lesisemkhatsini lesibhalisiwe ngaphansi kwasigaba 29;  
“**umuntfu losemtsetfweni**” kushiwo umuntfulofakwe ngekuhambisana 15 neComanies Act, inkapani yangaphandle noma lolunye luhlobo Iwemtimba webalawuli;  
“**ligatja leligunyatiwe lelibhalisiwe**” kushiwo ligatja leligunyatiwe lelibhalisiwe ngaphansi kwasigaba 49;  
“**ligatja lelibhalisiwe**” kushiwo ligatja lelibhalisiwe ngaphansi kwasigaba 9; 20  
“**lokudzingekako kute ubhalisiwe**” kushiwo tidzingo, letitawuncunywa ligatja lelibhalisiwe kantsi tivunyelwe ngunobhala, lekfanele ube nato ngembi kwekutsi emasheya angafakwa kuluhla Iwemasheya lalelo gatja, noma atsengiswe, noma achubeke nekutsengiswa, kulelo ligatja;  
“**sikhungo sekuhwebelana lesibhalisie**” kushiwo sikhungo sekuhwebelana 25 lesibhaliswe ngaphansi kwasigaba 56;  
“**emasheya labhalisiwe**” kushiwo emasheya lafakwe kuluuhla Iwemasheyalagcinwe ligatja ngekwsigaba 11;  
“**kulawulwa kwemasheya netimali**” kushiwo—  
(a) kucaphelisa uma ngabe ustenga noma utsengisa emasheya noma uma ngabe 30 usebentisa noma liphi lilungelo lelibhambisana nalawo masheya ngecumela lomunye umuntfu;  
(b) lokuvikela emasheya ngecumela lomunye umuntfu; noma  
(c) kuvikela timali talomunye umuntfu lebekufanele atsenge lamasheya 35 ngecumela lowo muntu;  
“**Ngcongcoshe**” kushiwo Ngcongcoshe weTimali;  
“**sakhwonanti semakethe**” kushiwo kune kwaloku lokulandzelako—  
(a) Ligatja lemasheya lelisemkhatsini lelibhalisiwe;  
(b) Indlu legunyatiwe yemasheya;  
(c) Ligatja leligunyatiwe; 40  
(d) Indzawo yekuhwebelana legunyatiwe;  
“**emasheya asemakethe yetimali**” kushiwo emathulusi emakethe yetimali lekaemasheya langekho emtsetfweniletikhonjiswe kurejista yeemasheya langekho emtsetfweni;  
“**National Payment System Act**” kushiwo i-National Payment System Act, 1998 45 (Umtsetfo Nom. 78 wanga 1998);  
“**Lizinga lelilinganisiwe**” kushiwo—  
(a) ngalokuphat selene nalokusibambiso ngaphandle kwemasheya kunkhapani yemmango, lelinani lelibekiwe lelibekelwe emasheya ngulona loniketako ngalesikhatsi kukhishwa kwekulala kantsi isetjentiselwa kuhlola 50 lokuhukanisiwe, umnikati wemali noma intalo; noma  
(b) ngalokuphat selene nemasheya kunkhapani yahulumende,—  
    (i) ngembi kwekuntjintjwa kwemasheya laniketwe ngelizinga lelilinganisiwe noma lelilinganene ngekuhambisana ne *Companies Act*, lelinani lelibekiwe leliniketwe sibambiso ngulokhiphako ngalesikhatsi likhishwa kwekulala kantsi isetjentiselwa kuhlola lokuhukaniswako; noma  
    (ii) ngemuva kwetingucuko kumasheya laniketwe ngelizinga lelilinganisiwe noma lelilingaqnako ngekuhambisana ne *Companies Act*, lelinani lemasheya lelibaliwe noma lincunywe ngekuhambisana nalendlela 55 lekhishwe ngaphansi kwe-*Companies Act*;  
60

“ <b>nominee</b> ” means a person approved under section 76 to act as the holder of securities or of an interest in securities on behalf of other persons;	
“ <b>official website</b> ” means the website of the board;	
“ <b>participant</b> ” 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;	5
“ <b>prescribed by the Minister</b> ” means prescribed by the Minister by regulation in the <i>Gazette</i> ;	10
“ <b>prescribed by the registrar</b> ” means prescribed by the registrar by notice in the <i>Gazette</i> ;	
“ <b>registrar</b> ” means the person referred to in section 6;	
“ <b>regulated person</b> ” means—	
(a) a licensed central securities depository;	15
(b) a licensed clearing house;	
(c) a licensed exchange;	
(d) a licensed trade repository;	
(e) an authorised user;	
(f) a clearing member;	
(g) a nominee;	20
(h) a participant;	
(i) except for purposes of section 3(6), sections 74 and 75, sections 89 to 92, and sections 100 to 103, an issuer; or	
(j) any other person prescribed by the Minister in terms of section 5;	25
“ <b>regulation</b> ” means a regulation made under section 5 or 107;	
“ <b>rules</b> ” means exchange rules, depository rules or clearing house rules;	
“ <b>safeguarding</b> ” means the activities performed by an authorised user—	
(a) for the purposes of holding securities or funds in custody on behalf of another person; or	30
(b) where the authorised user is accountable to another person for a third party’s holding of securities or funds in custody on behalf of that other person, and includes the administration of matters incidental to those securities or funds;	
“ <b>securities</b> ” means—	
(a) listed and unlisted—	
(i) shares, depository receipts and other equivalent equities in public companies, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);	35
(ii) debentures, and bonds issued by public companies, public state-owned enterprises, the South African Reserve Bank and the Government of the Republic of South Africa;	40
(iii) derivative instruments;	
(iv) notes;	
(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 in terms of section 65 of that Act; and	45
(vi) instruments based on an index;	
(b) units or any other form of participation in a collective investment scheme licensed or registered in a country other than the Republic;	50
(c) the securities contemplated in paragraphs (a)(i) to (vi) and (b) that are listed on an external exchange;	
(d) an instrument similar to one or more of the securities contemplated in paragraphs (a) to (c) prescribed by the registrar to be a security for the purposes of this Act;	55

**“lokhetstiwe”** kushiwo umuntfu lovunyelwe ngaphansi kwesigaba 76 kusti asebente njengalonemasheya noma lonentalo kumasheya ngekumelela labanye labantfu;

**“iwebhuayithi lesemstfweni”** kushiwo iwebhusayithi yebhodi;

**“Labangenelelako”** kushiwo imuntfu logunyatwe silulu semasheya 5 lesisemkhatsini lesibhalisiwey kutsi abe libambela kantsi futsi alawule leminye imisebenti noma imisebenti yekucedzelela noma kokubili ngekuhambisana nemitsetfo yekufakwa kwemasheya lasemkhatsini, kantsi kungafaki ekhatsi bangaphandle labangenelelako, lapho kunesidzingo khona;

**“njengoba kubekwe nguNgcongcoshe”** kushiwo njengoba kubekwe 10 nguNgcongcoshe ngekwemtsetfo lomisiwe *kuGazethi*;

**“njengoba kubekwe ngunobhala”** kushiwo lokubekwe ngunobhala ngesatiso *kuGazethi*;

**“nobhala”** kushiwo lomuntfu lekukhulunywa ngaye kusigaba 6;

**“umuntfu losemtsetfweni”** kushiwo— 15

(a) silulu semasheya lesisemkhatsini lesibhalisiwe;

(b) ligatja leligunyatiwe lelibhalisiwe;

(c) ligatja lelibhalisiwe;

(d) indzawo yekuhwebelana;

(e) umsebentisi losemtsetfweni;

(f) lilunga leligunyatiwe;

(g) lophakanyisiwe;

(h) labangenelelako;

(i) ngaphandle kwetizatfu tesigaba 3(6), tigaba 100 kuya 103, netigaba 102 kuya 105, loniketako; 25

(j) noma ngab ngubani lobekwe nguNgcongcoshe ngekwesigaba 5;

**“umtsetfosimiso”** kushiwo umtsetfo lomiswe ngaphansi kwesigaba 107;

**“imitsetfo”** kushiwo imitsetfo yeligatja, imitsetfo yesikhungonoma imitsetfo yesikhungolesigunyatoko;

**“kuvikela nekuphepha”** kushiwo imisebenti leyentiwa ngumsebentisi 30 losemtsetfweni—

(a) kwentela tizatfu tekuba nemasheya noma timali letibekwe ngalokuphephile ngekumelela lomunye muntu; noma

(b) lapho khona umsebentisi losemtsetfweni kufanele achazele lomunye umuntfu kwentela losemkhatsini lophetse emasheya noma timali letisisiwe tabekelwa lowo muntu, kantsi kufaka ekhatsi kuphatfwa kwetintfo letihambelana nalawo masheya noma timali; 35

**“emasheya”** kushiwo—

(a) labhalisiwe noma langakabhaliswa—

(i) emasheya, kumarisidi emasheya kanye nakutilinganiso letifanako, 40 kungasiwo emasheya lakubhuloki yemasheya njengoba achaziwe *ku-Share Blocks Control Act*, 1980 (Umtsetfo Nom. 59 wanga 1980);

(ii) kusikhungo, nemabhondi etinkhapanini temmango; emabhizinisi ahulumende, Libhange Ngodla laseNingizimu Afrika kanye nahulumente waseNingizimu Afrika; 45

(iii) Emathulusi lokungewona mbamba;

(iv) emanotsi;

(v) inshisekelo yekungenelela ekusiseni ndzawonye njengenhangano njengoba kuchazwe *ku-Collective Investment Schemes Control Act*, 2002 (Umtsetfo Nom. 45 wanga 2002), kanye nemayunithi nanoma ngayiphi 50 lenye indlela yekungenelela kunhangano yekusisa ndzawonye yangaphandle levunyelwe nguNobhala weNhlangano yeKusisa ngeKuhlanganyela ngekwesigaba 65 saloMtsetfo; kanye

(vi) nemathulusi labhekiswe kunkhomba;

(b) emayunithi noma lenye indlela yekungenelela kunhangano yekusisa ngekuhlanganyela lenemvume noma lebhalisiwe kulelinye live kungasiyo iRiphabhlukhi;

(c) lamasheya labalwe kundzima (a)(i) kuya ku (vi) na (b) labhaliswe kuligatja lelitimele; kanye

(d) lithulusi lelifana nalinye noma emasheya lamanyenti lavetwe kundzima (a) 60 kuya ku (c) lebekwe ngunobhala kutsi abe ngumvikeli kwentela tinjongo taloMtstefo;

- (e) rights in the securities referred to in paragraphs (a) to (d),  
but excludes—
- (i) money market securities, except for the purposes of Chapter IV; or if prescribed by the registrar as contemplated in paragraph (d);
  - (ii) the share capital of the South African Reserve Bank referred to in section 21 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); and
  - (iii) any security contemplated in paragraph (a) prescribed by the registrar;
- “securities account” means an account kept by—
- (a) a participant or an authorised user for its own account or for a client; or
  - (b) a nominee for a person for whom it acts as a nominee, which reflects the number or nominal value of securities of each kind held for its own account or on behalf of that client or person, as the case may be, and all entries made in respect of such securities;
- “securities of the same kind” means securities of the same class and issued by the same issuer;
- “securities register” means any register of securities required by any law to be established by an issuer and, in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in section 1 of that Act;
- “securities services” means—
- (a) the buying or selling of securities for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business;
  - (b) the use of the trading system or infrastructure of an exchange to buy or sell listed securities;
  - (c) the furnishing of advice to any person;
  - (d) the custody and administration of securities by a participant or nominee;
  - (e) the management of securities and funds by an authorised user;
  - (f) clearing services; or
  - (g) settlement services;
- “senior management” refers to the level of management that is directly accountable to the chief executive officer or to the person in charge of an entity, and includes the chief executive officer if that person is not a director of the entity;
- “settle” means—
- (a) in respect of listed securities, other than listed derivative instruments, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules; or
  - (b) in respect of a listed derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument in accordance with the rules; or
  - (c) in respect of unlisted securities, other than money market securities or derivative instruments, the crediting and debiting of the accounts of the transferee and transferor, respectively, with the aim of completing a transaction in securities and receipt of a notification that payment has been received, unless—
    - (i) otherwise prescribed by the registrar; or
    - (ii) the parties have appointed a licensed independent clearing house or a licensed central securities depository to settle a transaction, in which case it has the meaning assigned in paragraph (a);
  - (d) in respect of money market securities, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities

- (e) emalungelo kumasheya labalwe kundzima (a) kuya ku (d); Kodvwa kungafaki ekhatsi—
- (i) emasheya asemakethe yetimali ngaphandle kwetizatfu teSahluko IV; noma uma ngabe kubekwe ngunobhala njengoba kuvetwe kundzinyana (d);
  - (ii) inzuzo yemasheya yeLibhange Ngodla lelibalwe kusigaba 21 seSouth African Reserve Bank Act, 1989 (Act Nom. 90 yanga 1989);
  - (iii) noma waphi emasheya lavetwe kundzima (a) abekwe ngunobhala;
- “i-akhawunti yemasheya”** kushiwo i-akhawunti legcinwa ngu—
- (a) labangenelelako noma umsebentisi losemtsetfweni kwentela i-akhawunti 10 yabo noma kwentela iklayenti; noma
- (b) lophakanyisiwe kwentela umuntfu lolibambela lona lophakanyisiwe, Lekhombisa lenombolo noma lizinga lelilinganisiwe lemasheya leluhlobo ngalunye lolubanjelwe i-akhawunti yabo noma ngekumelela leyo klayenti noma umuntfu, njengoba kungabe kubekiwe, kanye nawo onkhe emasheya 15 laphatselene nalawo masheya;
- “emasheya lafanako”** kushiwo emasheya lasezingeni lelilinganako kantsi akhishwe endzaweni lefanako;
- “irejista yemasheya”** kushiwo noma ngabe nguyiphi irejista yemasheya ledzingwa ngunoma muphi umtsetfo letawusungulwa nguloniketako kanye, 20 nangkuhambisana nemasheya laniketwe ngekuhambisana ne-*Companies Act*, analenchazelo laniketwe yona kusigaba 1 salowo Mtsetfo;
- “imisebenti yemasheya”** kushiwo—
- (a) kutsenga nekutsengisa emasheya utitsengisela wena noma umelele lomunye umuntfu njengebhizinisi, inceny ezbhizinisi noma ngandlela tsite wenta 25 libhizinisi;
  - (b) kusebentisa indlela yekuhwebelana noma tinsitanchanti teligatja kutsenga noma kutsengisa emasheya labhalisiwe;
  - (c) kululeka noma ngabe ngubani;
  - (d) kuvikela kanye nekulawula emasheya ngulabangenelelako noma 30 lophakanyisiwe;
  - (e) kulawulwa kwemasheya netimali ngumsebentisi losemtsetfweni;
  - (f) imisebenti legunyatiwe; noma
  - (g) imisebenti yekukhokhela;
- “baphatsi labaphakeme”** kushiwo baphatsi lababikela umphatsi losesikhundleni 35 lesiphakeme noma kulomuntfu lophetse sikhungo, nekufaka ekhatsi umphatsi losesikhundleni lesiphakeme uma ngabe lowo muntfu akasuye umcondzisi walesikhungo;
- “kubhadala konkhe”** kushiwo—
- (a) ngalokuphat selene nemasheya labhalisiwe, kungasiwo emathulusi 40 lokungewona mbamba labhalisiwe, lokucedzelelwa kwetransekshini ngekutsi kwedluliselwe emasheya kuemasheya langekho emtsetfweniletfanele kany nemarejista nekukhokhelwa kwetimali noma ngabe ngukuphi lokunye lokutsatfwako lokukhokhelwa ngekwaleyo transekshini, ngekweluhlelo lekukhokhela konkhe njengoba luchazwe kumitsetfo; noma
  - (b) ngalokuphat selene nelithulusi lekungasilo mbamba, lokucedzelelwa kwetransekshini ngekuvalwa yonkhe imibandzela yetivumelwano lehambisana nalesimo lesivelako kulelithulusi lekungasilo mbamba ngekuhambisana nemitsetfo; noma
  - (c) ngekuhambisana nemasheya labhalisiwe, ngaphandle kwemasheya 50 asemakethe yetimali noma emathulusi lokungewona mbamba, lokufakwa nekukhishwa kwemali kuma-akhawunti yalovo loyifakako noma loyikhiphako ngasikhatsi sinye ngesizatfu sekucedzelela itransekshini kumasheya kanye nekutfola satiso sekutsi lokukhokhiwe kutfolakele, ngaphandle kwekutsi—
- (i) kubekwe ngunobhala; noma
- (ii) tinhlangano tibeke sikhungo lesigunyatako lesitimele nalesibhalisiwe noma silulu semasheya lesisemkhatsini lesibhalisiwe kutsi bacedzelele itransekshini, ngaleyo ndlela itawuba nenchazelo leniketwe kundzima (a);
- (d) ngekwemasheya asemakethe yetimali, lokucedzelela kwetransekshini ngekusebentisa kudlulisewa kwemasheya aye kuemasheya langekho emtsetfweninekubhaliswa ngendlela lefanele kanye nekukhokhelwa

registers and the payment of funds or any other consideration payable in respect of that transaction, through a settlement system as defined in the rules;	
(e) in respect of an unlisted derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument, unless otherwise prescribed by the registrar;	5
(f) in respect of other securities, the discharge of the obligations arising from a transaction in such securities,	
and “settling” or “settlement” has a corresponding meaning;	
“settlement services” means any services offered and activities performed by an authorised user, a participant or a clearing member in terms of the relevant rules to facilitate settlement of transactions in securities;	10
“stockbroker” means a natural person who is a member of the South African Institute of Stockbrokers;	
“supervisory authority” means a body designated in national legislation to supervise, regulate or enforce legislation or a similar body designated in the laws of a country other than the Republic to supervise, regulate or enforce legislation of that country;	15
“systemic risk” means the danger of a failure or disruption of the whole or a significant or substantial part of the Republic’s financial system;	20
“this Act” includes the regulations, rules, and any notices or directives issued, exemption granted, determinations made, requirements determined or conditions imposed by the registrar, that have general application;	
“trade repository” means a person who maintains a centralised electronic database of records of transaction data;	25
“transaction” means a contract of purchase and sale of securities;	
“transfer” means the transfer of uncertificated securities or an interest in uncertificated securities by debiting the account in the uncertificated securities register from which the transfer is effected and crediting the account in the uncertificated securities register to which the transfer is effected in accordance with the depository rules, and in respect of securities issued in terms of the Companies Act, in the manner provided for in Part E of Chapter 2 of that Act;	30
“uncertificated securities” means—	
(a) securities that are not evidenced by a certificate or written instrument; or	
(b) certificated securities that are held in collective custody by a central securities depository or its nominee in a separate central securities account,	35
and are transferable by entry without a certificate or written instrument;	
“uncertificated securities register” means the record of uncertificated securities administered and maintained by a participant or a licensed central securities depository, as determined in accordance with the depository rules, and, in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in section 1 of that Act;	40
“unlisted securities” means securities that are not—	
(a) listed securities; or	
(b) listed on an external exchange;	45
“website” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and	
“withdraw” means the conversion of uncertificated securities to certificated securities, and “withdrawal” has a corresponding meaning.	
(2) For purposes of the definition of “insolvency proceeding”, a proceeding referred to in that definition commences—	50
(a) in relation to business rescue proceedings, as contemplated in section 132(1) of the Companies Act;	

- kwetimali noma ngabe ngukuphi lokungatsatfwa lokungakhokhelwa ngekwaleyotransekshini, ngekwekuhlelo lekukhokhela njengoba lichaziwe kulemitsetfo;
- (e) ngalokuphat selene nemathulusi langasiwo mbamba, lokucedzelewa kwetransekshini ngekufeza yonkhe imigomo yesivumelwano lehambisana naleso sikhundla lesiyimbangela yalelithulusi lekungasilo mbamba lehambisana nalembangela yelithul;usi lekungasilo mbamba, ngaphansle kwekutsi kubekwe ngunobhala ngalenyen indlela; 5
- (f) ngalokuphat selene nalamanye emasheya, lokuhishwa kwemigomo levela kutransekshini kulawo masheya, ngalokuphat selene nemasheya, kanye nalamanama “**kucedzelela**” noma “**kubhadala konkhe**” anenchazelo lehambisanako; 10
- “**imisebenti yekucedzelela**” kushiwo noma miphimisebenti kanye nemisebenti leyentiwa ngumsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe ngekuhambisana nemitsetfo lefanele kute kuhlolle imisebenti 15 yekucedzelela ematransekshini lakumasheya;
- “**losebenta ngemasheya**” kushiwo umuntfu lolilunga leSikhungo SaseNingizimu Afrika longumtsengisi wemasheya;
- “**ligunya lekulawula**” kushiwo umtimba loniketwe emandla kumtsetfo loshaywe velonkhe kutsi lilawule, libuse noma lisebentise umtsetfo loshayiwe noma umtimba lofanako lobekiwe kulemitsetfo yalelo live kungasiyo iRiphabhulikhi kutsi lilawule, libuse nekutsi lisebentise umtsetfo loshayiwe kulelo live; 20
- “**bungoti lobutayelekile**” kushiwo ingoti yekuhluleka noma yekuphatamiseka ngalokuphelele noma incence yeluhlelo Iwetimali taseRiphabhulikhi;
- “**lomtsetfo**” kufaka ekhatsi imitsetfosisimo, tinkhambiso, knye naletinye tatiso noma tinkhomba letikhishiwe, kuniketwe imvume, tincumo letentiwe, tidzingo letincunyiwe noma imibandzela lebekiwe ngunobhala, lenekusetjentiswa lokwetayelekile; 25
- “**indzawo yekuhwebelana**” kushiwo umuntfu logcina imininingwane ngelektronikhi ndzawonye ngemarekhodi edatha yalokufakiwe nalokuhishiwe; 30
- “**itransekshini**” kushiwo sivumelwano sekutsenga nekutsengisa emasheya;
- “**kudlulisela**” Kudlulisela kweemasheya langekho emtsetfweninoma intalo yeemasheya langekho emtsetfweningekukhipha imali ku-akhawunti yerejista yeemasheya langekho emtsemfweni lapho khona lokudlulisela kwentelwa kufaka kwemali kule-akhawunti kurejista yalamasheya langekho emtsetfweni lapho khona lokudluliswa kwentiwa ngekuhambisana nemitsetfo yesikhungo, kantsi ngalokuphat selene nemasheya lakkishwe ngekwe-*Companies Act*, ngendlela lebekelwe loko kuSahluko 2 Incenze yalowo Mtsetfo; 35
- “**emasheya langekho emtsetfweni**” kushiwo—
- (a) emasheya langafakazelwa sitifketi noma lithulusi lelibhaliwe; noma 40
- (b) emasheya lanesitifketi lekagcinwe lapho kuphephe khona agcinwe kusikhungo semasheya lesisemkhatsini noma lesiphakanyisiwe kumasheya lasemkhatsini kodvwa ahlukena kuma-akhawunti,
- Kantsi angadluliseka ngekuwafaka ngaphandle kwesitifiketi noma lithulusi lelibhaliwe; 45
- “**irejista yemasheya langekho emtsetfweni**” kushiwo emarekhodi emasheya langekho emtsetfweni lalawula abuye aphantwe ngu labangenelelako noma silulu semasheya lesisemkhatsini lesibhalisiwe, njengoba kuncunywe ngemitsetfo yesikhungo, kanye, nangalokuphat selene nemasheya lakkishwe ngekwe-*Companies Act*, inalenchazelo leniketwe yona kusigaba 1 saloMtsetfo; 50
- “**unemasheya labhalisiwe**” kushiwo emasheya lekungasiwo—
- (a) emasheya labhalisiwe; noma
- (b) labhalisiwe kuligatja lelitimele;
- “**iwebhusayithi**” inalenchazelo lebekwe kusigaba 1 se-*Electronic Communications Act*, 2005 (Umtsetfo Nom. 36 wanga 2005); 55
- “**kukhipha**” kushiwo lokuguculwa kwemasheya langekho emtsetfweni abe titifiketi temasheya, kantsi “**kukhipha**” kunenchazelo lefanako.
- (2) kwentela tizatfu talenchazelo “**inchubo yekuhlakata**”, inchubo lechazwe kulenchazelo icala—
- (a) ngalokuphat selene nenchubo yekuhlenga libhizinisi, njengoba kuvetwe 60 kusigaba 132(1) se-*Companies Act*;

- (b) in relation to a judicial proceeding, other than a judicial proceeding under paragraph (a), on the filing at court of an application for an insolvency proceeding; and
- (c) in relation to an administrative proceeding, other than an administrative proceeding under paragraph (a), on the filing of a resolution by a company, or the appointment of an insolvency administrator, as the case may be, in accordance with national legislation or the laws of a country other than the Republic.
- (3) Where in this Act any supervisory authority is required to take a decision in consultation with the registrar, such decision requires the concurrence of the registrar. 10

### Objects of Act

2. This Act aims to—
- (a) ensure that the South African financial markets are fair, efficient and transparent;
- (b) increase confidence in the South African financial markets by—
- (i) requiring that securities services be provided in a fair, efficient and transparent manner; and
- (ii) contributing to the maintenance of a stable financial market environment;
- (c) promote the protection of regulated persons, clients and investors;
- (d) reduce systemic risk; and
- (e) promote the international and domestic competitiveness of the South African financial markets and of securities services in the Republic. 20

### Application of Act and rules

3. (1) Sections 100 to 103 do not apply in relation to the South African Reserve Bank, 25 or a bank.
- (2) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.
- (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, this Act prevails. 30
- (4) Without affecting the generality of subsection (3), the provisions of this Act and the rules relating to insolvency proceedings and settlement effectiveness of entries in a central securities account and securities account, prevail over any other law, legislation, agreement or founding document of any person, and are binding on any person. 35
- (5) Despite any other law, if other national legislation confers a power on or imposes a duty upon an organ of state in respect of a matter regulated under this Act, that power or duty must be exercised or performed in consultation with the registrar, and any decision taken in accordance with that power or duty must be taken with the approval of the registrar. 40
- (6) Despite the provisions of the Consumer Protection Act, 2008 (Act No. 68 of 2008), that Act does not apply to any activities of a regulated person, or goods or services provided by a regulated person, that are subject to this Act.

- (b) ngalokuphat selene nenchubo yemtsetfo, ngaphandle kwenchubo yemtsetfo ngaphansi kwendzima (a), ekufakweni kwesicelo enkhantolo kutsi kube nenchubo yekuhlakatwa; kanye
- (c) ngalokuphat selene nenchubo yekuphatsa, kungasiyo inchubo yekuphatsa lengaphansi kwendzima (a), ngekubekwa kwetisombululo tenkapani, noma kucashwa kwemlawuli wekuhlakata, njengoba kungabe kudzingekile, ngalokuhambisana nemtsetfo loshaywe velonkhe noma imitsetfo yelive kungasiyo iriphabhulikhi.
- (3) Uma ngabe kuloMtsetfo noma ngabe ngubani logunyatwe kutsi aphatse udzingeka kutsi atsatse sincumo ngekutsintsana nanobhala, lesu sincumo sidzinga 10 kubambisana nanobhala.

### Tinjongo temtsetfo

#### 2. LoMtsetfo uhlose—

- (a) kucinisekisa kutsi timakethe temnotfo tase Ningizimu Afrika tineliciniso, tiyafinyeleka kantsi ticacile;
- (b) kutfutfukisa kutetsema timakethe temnotfo tase Ningizimu Afrika ngeku—  
 (i) dzinga kutsi tinsita ngemasheya tiniketwe ngalokuliciniso, kufinyeleka nangendlela lecacile; kanye  
 (ii) kufaka sandla ekuphatfweni kwesimondzawo setimakethe temnotfo lesismememe;
- (c) kutfutfukisa kuvikelwa kwebantu labashayelwa umtsetfo, emaklayenti kanye nebasisi;
- (d) kwehlisa luhlelo lwebungoti; kanye
- (e) kutfutfukisa kuncintisana kwetimakethe takuleli netanmgaphandle temnotfo taseNingizimu Afrika kanye netinsita temasheya eRiphabhulikhi.

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### Kusetjentiswa kweMtsetfo netindlela tekwenta

#### 3. (1) (a) Tigaba 100 kuya ku-103 atisebenti ngekwe-South African Reserve Bank.

(b) Tigaba 102 kuya ku-105 kufanele tisetjentiswe ngekuhambisana nesigaba 8 se-National Payment System Act, nesigaba-8 se-National Payment System Act siba ngetulu uma ngabe kuge nekungcubutana kwanoma nguyiphi imibandzela yetigaba 102 30 kuya ku-105.

(2) Noma ngabe ngumuphi umtsetfo noma umtsetfo lowancunywa be-Roma-emadashi lophatselene nekugembula noma kubheja awusebenti kunoma tiphi tintfo letilawulwa ngulo noma ngaphansi kwaloMtsetfo.

(3) Ngaphandle kwanoma miph iimitsetfo, kungasiyo i-Financial Intelligence Centre 35 Act, uma ngabe kune kungcubutana kunoma ngabe nguyiphi imibandzela yaloMtsetfo noma imibandzela yanoma ngabe nguwuphi umtsetfo, umtsetfo loshaywe velonkhe, kutawuma loMtsetfo.

(4) Ngaphandle kwekutsintseka kwasigatjana (3), lemidzela yaloMtsetfo kanye na lemitsetfo lephatselene kunchubo yekuhlakatwa nekukhokheleka kahle kwalokungenako ku-akhawanti yemasheya lasemkhatsini kanye ne-akhawanti, ungetulu kwanoma ngabe ngumuphi umtsetfo, umtsetfo loshayiwe, sivumelwano noma imiculu letfolakele yanoma bani.

(5) Ngaphandle kwanoma miph iimitsetfo, uma ngabe umtsetfo loshaywe velonkhe uniketa emandla noma uniketa umsebenti kumtimba wahulumende ngalokuphat selene neludzaba lolulawulwa ngaphansi kwaloMtsetfo, lawo mandla noma umsebenti kufanele kwentiwe noma kusetjentiswe ngekutsintsana nanobhala, kantsi noma ngabe ngusiphi sincumo lesitsatwe ngekuhambisana nalawo mandla noma umsebenti kufanele sitsatwe ngekutfolo invume yanobhala.

(6) Ngaphandle kwalemibandzela ye-Consumer Protection Act, 2008 (Umtsetfo Nom. 68 wanga 2008), lowo Mtsetfo awusebenti kunoma ngabe ngumuphi imisebenti yemuntfu losemtsetfweni, noma timphahlia noma imisebenti leyentiwa ngulomuntfu losemtsetfweni ngalokuphat selene naloMtsetfo.

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**Prohibitions and adherence to authorisation by authorised users, participants and clearing members**

**4. (1) No person may—**

- (a) act as an authorised user unless authorised by a licensed exchange in terms of the exchange rules;
- (b) carry on the business of buying or selling listed securities unless that person complies with section 24;
- (c) provide securities services in respect of unlisted securities in contravention of conditions imposed or prescribed under section 6(7);
- (d) act as a participant unless authorised as a participant by a licensed central securities depository in terms of section 31;
- (e) act as a clearing member unless authorised by a licensed exchange or a licensed independent clearing house, as the case may be;
- (f) act as a nominee unless that person is approved under section 76;
- (g) perform the functions of or operate as a trade repository unless that person is licensed under section 56; or
- (h) in any manner, directly or indirectly, advertise or canvass for carrying on the business of an authorised user, participant or clearing member, unless that person is an authorised user, participant or clearing member, or an officer or employee of an authorised user, participant or clearing member, who is so permitted in terms of exchange rules, depository rules or clearing house rules, as the case may be.

**(2) A person who is not—**

- (a) licensed as an exchange, a central securities depository, a trade repository or a clearing house;
- (b) a participant;
- (c) an authorised user;
- (d) a clearing member;
- (e) an approved nominee; or
- (f) an issuer of listed securities,

may not purport to be an exchange, central securities depository, trade repository, clearing house, 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, participant, authorised user or clearing member, as the case may be, where in fact no such connection exists.

(3) An authorised user may only provide the securities services for which it is authorised by a licensed exchange in terms of the exchange rules.

(4) A participant may only provide the securities services for which it is authorised by a licensed central securities depository in terms of the depository rules.

(5) A clearing member may only provide the clearing services or settlement services for which it is authorised by a licensed exchange or licensed independent clearing house, as the case may be, in terms of the exchange rules or clearing house rules, as the case may be.

**Lokuvimbako nekuhambisana nemitsetfo yebasebentisi labavunyelwe, bangeneleli nemalunga lagunyatako**

**4. (1) Akekho umuntfu langa—**

- (a) tenta njengemsebentisi losemtsetfweni ngaphandle kwekutsi aniketwe imvume ligatja lelibhalisiwe ngekuhambisana nemitsetfo yeligatja; 5
- (b) achubeke nelibhizinisi lekutsengisa nekutsengiselana emasheya labhalisiwe ngaphandle kwekutsi lowo muntfu ahambisana nesigaba 24;
- (c) anikete tinsita ngalokuphatselene nemasheya noma ngabe anemasheya labhalisiwe ngekuphula imigomo lebekiwe noma levetwe ngaphansi kwesigaba (6); 10
- (d) asebente njengalabangenelelako ngaphandle nabagunyatwe njengalabangenelelako silulu semasheya lesisemkhatsini lesibhalisiwe ngekwesigaba 31;
- (e) asebente njengelilunga leligunyatiwe ngaphandle kwekutsi agunyatwe ligatja lelibhalisiwe noma ligatja leligunyatako lelitimele, njengoba kungabe 15 kubekiwe;
- (f) asebente njengalophakanyisiwe ngaphandle kwekutsi lowo muntfu avunyelwe ngaphansi kwesigaba 76;
- (g) kwenta umsebenti noma asebente njengendzawo yekuhwebelana ngaphandle kwekutsi lowo muntfu abe nemvume layiniketwe ngaphansi kweigaba 56; 20 noma
- (h) nganoma yiphi indlela, ngalokucondzile noma ngalokungakacondzi, kukhangisa noma kukhankasa kute kwentiwe libhizinisi lemsebentisi losemtsetfweni, labangenelelako, noma lilunga leligunyatiwe, ngaphandle kwekutsi lowo muntfu abe ngumsebentisi losemtsetfweni, labangenelelako, 25 lilunga leligunyatiwe, noma umsebenti noma sisebenti semsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe lekaniketwe imvume ngekwemisetfo yeligatja, imitsetfo yesikhungonoma imitsetfo yesikhungoleligunyatako, njengoba kungaba njalo.

**(2) Umuntfu longena—**

- (a) mvume njengeligatja, sikhungo semasheya lesisemkhatsini, indzawo yekuhwebelana noma sikhungo lesigunyatako;
- (b) yalabangenelelako;
- (c) msebentisi losemtsetfweni;
- (d) silo lilunga leligunyatiwe;
- (e) ngakaphakanyiswa; noma
- (f) mvume yekuniketela ngemasheya labhalisiwe,

Angeke wafaka sicelo sekutsi abe ligatja, sikhungo semasheya lesisemkhatsini, indzawo yekuhwebelana, sikhungo lesigunyatako, labangenelelako, umsebentisi losemtsetfweni, 40 lilunga leligunyatiwe, lophakanyisiwe losemtsetfweni noma loniketa f emasheya labhalisiwe, njengoba kungabe kubekiwe, noma kutiphatsa ngendlela noma kusebentisa ligama noma inchazelo lephakamisa kutsi, lekhombisa noma lechaza kutsi kunebudlelwano emkhatsini walovo muntfu neligatja, sikhungo semasheya lesisemkhatsini, indzawo yekuhwebelana, sikhungo lesigunyatako, labangenelelako, umsebentisi losemtsetfweni noma lilunga leligunyatiwe, njengoba kungabe kubekiwe, 45 lapho khona akunabudlelwano lobukhona.

(3) Umsebentisi losemtsetfweni anganiketa tinsita ngemasheya letisemtsetfweni ligatja lelibhalisiwe ngekuhambisana nemitsetfo yeligatja.

(4) Labangenelelako banganiketa kupheda emasheya lagunyatiwe silulu semasheya lesisemkhatsini lesibhalisiwe ngekuhambisana nemitsetfo yesikhungo. 50

(5) Lilunga leligunyatiwe linganiketa tinsita tekugunyata noma tekukhokhela ngalokugcwle letiniketwe imvume yekwenta ligatja lelibhalisiwe noma sikhungo lesitimele lesigunyatiwe lesinemvume, njengoba kungabe kubekiwe, ngekuhambisana nemitsetfo yeligatja noma imitsetfo yesikhungolesigunyatako, njengoba kungabe kubekiwe.

## CHAPTER II

### REGULATION AND SUPERVISION OF FINANCIAL MARKETS

#### Powers of the Minister

- 5.** (1) The Minister may prescribe, in accordance with section 107(2),—  
(a) requirements for the regulation of unlisted securities; 5  
(b) a category of regulated person, other than those specifically regulated under this Act, if the securities services, 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; 10  
(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 or external trade repository, as the case may be. 15  
(2) An external authorised user, external exchange, external participant, external central securities depository, external clearing house, 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). 20  
(3) In performing the Minister's functions, the Minister must take into account the objects of the Act and the principle that competition between regulated persons should not be impeded or distorted. 20

#### Registrar and Deputy Registrar of Securities Services

- 6.** (1) The executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act are the Registrar and the Deputy Registrar of Securities Services, respectively. 25  
(2) The registrar must perform the functions assigned to the registrar by or under this Act and must supervise and enforce compliance with this Act.  
(3) In performing those functions the registrar—  
(a) must act in a manner which—  
(i) is compatible with the objects of this Act; 30  
(ii) is most appropriate for meeting those objects;  
(b) must have regard to—  
(i) international supervisory standards;  
(ii) the principle that a restriction which is placed on a regulated person, or on the rendering of securities services, should be proportionate to the purpose for which it is intended; 35  
(iii) the desirability of facilitating innovation in securities services;  
(iv) the international nature of regulated persons and securities services;  
(v) the principle that competition between regulated persons should not be impeded or distorted; and  
(vi) the need to use resources in the most effective and cost-efficient way;  
(c) must take steps he or she considers necessary to protect investors in their dealings in relation to securities services or regulated persons;  
(d) may require any person, including a regulated person, to furnish the registrar, 45 within a specified period, with specified information or documents;  
(e) may, despite the provisions of any law, furnish information acquired by him or her under this Act to any person charged with the performance of a function under any law, including a supervisory authority;  
(f) must act in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); 50  
(g) must take reasonable steps to verify any documentation, information or report given to the registrar by a licence applicant or regulated person, where such

## SAHLUKO II

### UMTSETFOSIMISO NEKULANDZELELWA KWETIMAKETHE TEMALI

#### Emandla aNgcongcoshe

5. (1) Ngcongcoshe angabeka, ngekuhambisana nesigaba 107(2),—

- (a) tidzingo tekulawulwa kwemasheya langakabhaliswa; 5  
(b) luhla lwebantfu labalawulwako, ngaphandle kwalabo labalawulwe ngekwaloMtsetfo, uma ngabe tinsita temasheya, noma ngabe kuya ngalabhalisiwe noma langakabhaliswa, uma ngabe labo bantu basengakalawulwa kulowo mkhakha ngekwaloMtsetfo, uma ngabe umbono waNgcongcoshe, utawuchubekisa tinjongo taloMtsetfo letikusigaba 2 10 tekulawula bantu labanjalo labakuleyo mikhakha;  
(c) lemisebenti yemasheya lenganiketwa kanye nemisebenti lengentiwa ngumsebentisi longaphandle, ligatja lelitimele, bangeneleli labatimele, libhange lemasheya lelitimele langaphandle, indlu yangaphandle legunyatako, lilunga langaphandle leligunyatako noma ligatja langaphandle 15 lekuhwebelana, njengoba kungabe kubekiwe.

(2) Umsebentisi wangaphandle logunyatiwe, ligatja langaphandle, longenelelako wangaphandle, sikhungo semasheya lesitimele sangaphandle, indlu yangaphandle legunyatako, lilunga langaphandle leligunyatako noma libhange langaphandle lekuhwebelana lingahle linikete leto tinsita temasheya noma kusebentisa imisebenti, 20 njengoba kungabe kubekiwe, kubekwe nguNgcongcoshe ngekuya ngalesigatjana (1)(c).

(3) Ekwenteni imisebenti yaNgcongcoshe, Ngcongcoshe kufanele kutsi anake tinjongo taloMtsetfo nalomgomu wekutsi umncintiswano bantu labagunyatiwe akufanele babanjelelw.

#### Nobhala naSekela Nobhala weMisebenti Yemasheya

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6. (1) Umphatsi losetulu kanye nelisekela lakhe lababalwe kusigaba *1st-Financial Services Board Act* labo-ke nguNobhala kanye naSekela Nobhala weTinsita Temasheya, ngekulandzelana kwabo.

(2) Nobhala kufanele ente lemisebenti leniketwe nobhala ngaphansi kwaloMtsetfo kantsi kufanele alawule abuye acinisekise kutsi kuyahanjiswana naloMtsetfo. 30

(3) Ekwenteni lemisebenti nobhala—

- (a) kufanele asebente ngendlela—  
    (i) lehambisana netinjongo taloMtsetfo;  
    (ii) ufanele anakanjani ahlangabetane naleto tinjongo;  
(b) kufanele abuke ngalokuphat selene—  
    (i) nemazinga ekulawula mhabawonke;  
    (ii) lomgomu lobekelwe umbandzela lewubekwa kumunfu loshayelwe umtsetfo, noma ekwentiwi nema kwemsebenti wemasheya, kufanele uhambisane nalesizatfu lebewuhloselwe sona;  
    (iii) lelilikuluku lekuhlola tingucuko kutinsita temasheya; 40  
    (iv) simo savelonkhe semuntfu losemtsetfweni kanye netinsita temasheya;  
    (v) lomgomu wekutsi umncintiswano emkhatsini webantu labasemtsetfweni akukafaneli uphatanyiswe noma uguculwe; nekutsi  
    (vi) lesidzingo sekusebentisa tinsita ngendlela leyengako nalenemphu melelo; 45  
(c) kufanele atsatse tinyatselo latibona kutsi tifanele kuvikela basisi ekusebenteni kwabo ngetinsita temasheya kanye nebantu labasemtsetfweni;  
(d) kungadzinga noma ngabe ngubani, kufaka ekhatsi umunfu losemtsetfweni, kutsi anikete nobhala, ngesikhatsi lesibekiwe, ngelwatiso lolubaliwe noma imiculu; 50  
(e) anganiketa lwatiso lolutfolwe nguye ngaphansi kwaloMtsetfo kunoma ngabe ngubani lobekwe licala lekwenta umsebenti ngaphansi kwanoma ngumuphi umtsetfo, kufaka ekhatsi labaneligunya lekulawula;  
(f) kufanele asebente ngekuhambisana ne-*Promotion of Administrative Justice Act, 2000* (Umtsetfo Nom. 3 waga 2000); 55  
(g) kufanele atsatse tinyatselo letifanele kucinisekisa noma maphi emapheda, lwatiso noma umbiko loniketiwe kunobhala ngulofake sicelo semvume noma umunfu losemtsetfweni, lapho khona lawo maphepha, lwatiso noma umbiko,

- documentation, information or report, in the opinion of the registrar, is material to giving effect to the objects of this Act set out in section 2;
- (h) may impose conditions that are consistent with this Act in respect of any licence, authorisation, approval, consent or permission granted by the registrar, and may amend or withdraw such conditions at any time; 5
- (i) may determine the form, manner and period, if not specified in this Act, in which or within which any documentation, information or report that a regulated person is required to publish, disclose, provide or submit under this Act, must be published, disclosed, provided or submitted;
- (j) may, on the written request of a regulated person, extend any period within 10 which any documentation, information or report must be submitted to the registrar;
- (k) may issue guidelines on the application and interpretation of this Act;
- (l) may take any measures he or she considers necessary for the proper performance and exercise of his or her functions, or for the implementation of 15 this Act;
- (m) may exempt any person or category of persons from the provisions of a section of this Act if the registrar 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 20
  - (ii) the granting of the exemption will not—
    - (aa) conflict with the public interest; or
    - (bb) frustrate the achievement of the objects of this Act;
- (n) must inform the Minister and the Governor of any matter that in the opinion of the registrar may pose systemic risk to the financial markets; and 25
- (o) must make adequate arrangements for effective co-operation with the Governor in respect of the monitoring and mitigation of systemic risk.
- (4) (a) The registrar may, in order to ensure the implementation and administration of this Act, compliance with this Act or achieving of the objects of this Act, issue a directive to any person, including a regulated person—
- (i) to implement specific practices, procedures or processes;
  - (ii) to take specific actions or measures;
  - (iii) to desist from undertaking specific practices, procedures, processes, actions or measures; or
  - (iv) prohibiting certain practices, procedures, processes, actions or measures. 35
- (b) A directive referred to in paragraph (a) may—
- (i) apply to any person, regulated person or securities services generally;
  - (ii) apply to a specific person, regulated person or securities service; or
  - (iii) be limited in its application to a particular kind or type of person, regulated person or securities service. 40
- (c) A directive issued in terms of paragraph (a) takes effect on the date determined by the registrar in the directive, and may take effect immediately.
- (d) The registrar may cancel or revoke any previously issued directives.
- (5) The registrar must, where an exemption or a directive applies to all persons, regulated persons or securities services generally, publish the directive in the *Gazette* 45 and on the official website, and a copy of the published exemption or directive must be tabled in Parliament.
- (6) (a) The registrar may—
- (i) liaise with any supervisory authority on matters of common interest;
  - (ii) negotiate agreements with any supervisory authority to co-ordinate and harmonise the reporting and other obligations of a regulated person, an external exchange, an external clearing house, an external central securities depository or 50

ngekwembono wanobhala, ngemaphepha latawuphumelelisa tinjongo taloMtsetfo letibekwe kusigaba 2;

- (h) angabeka imibandzela angabeka imibandzela lehambisana naloMtsetfo ngalokuphatsele nanoma nguyiphi imvume, kugunyatwa, imvume, siciniseko noma imvume leniketwe ngunobhala kantsi angachibiyela noma asuse leyo mibandzela noma nini; 5
- (i) angancuma ngelifomu, indlela nesikhatsi, uma ngabe kungakafakwa kuloMtsetfo, lapho khona noma waphi emaphepha, lwatiso noma umbiko lekudzingeke kutsi umuntfu losemtsetfweni kufanele awukhiphe, awuvete, noma awunikete noma awetfule ngaphansi kwaloMtsetfo kufanele ukhishwe, 10 uniketwe noma wetfulwe;
- (j) angatfutfkisa sikhatsi lapho khona emaphepha, lwatiso noma imibiko kufanele yetfulwe kunobhala, ngekutfola imvume lebhaliwe levela kumuntfu losemtsetfweni;
- (k) anganiketa tinkhombandlela kulesicelo kanye nasekuchazweni kwalo- 15 Mtsetfo;
- (l) angatsatsa noma tiphi tindlela lekatibona tifanele kwentela kusebenta kahle kanye nekwenta imisebenti yakhe noma lekayalelwé kona, noma kwentela kusetjentiswa kwaloMtsetfo;
- (m) angavumela noma bani noma bantfu labatsite kutsi bangatsintfa 20 nguloMtsetfo uma ngabe nobhala aneliseka kutsi—
- (i) lokusetjenisa kwaleso sigaba lekuhkulunya ngaso sitawenta kutsi lofaka sicelo noma emaklayenti alofaka sicelo ngekwetimali noma lobunye bumatima noma kungalungi; kanye
  - (ii) kuniketwa kwemvume yekungatsintseki angeke— 25
  - (aa) kwangcubutana netishinsekelo tahulumende; noma
  - (bb) kuhlukumete kuphumelela kwaletinjongo taloMtsetfo; kanye
- (n) kufanele kwatiswe Ngcongcoshe kanye neMbusi nganoma ngaluphi ludzaba le ngekwembono wanobhala, kungaletsu bungoti kutinhlelo tetimakethe temnotfo; kanye 30
- (o) kufanele kwentiwe emalungiselelo ekusebentisana ngemphumelelo neMbusi ngekuya ngekulawulwa netindlela tebungoti bekuvikela.
- (4) (a) Nobhala, kute kutsi acinisekise kwentiwa kanye nekulawulwa kwaloMtsetfo, kuhambisana naloMtsetfo noma ngekutsi letinjongo taloMtsetfo tiyafinyeleka, anikete buholi kunoma ngubani, kufaka ekhatsi umuntfu losemtsetfweni,— 35
- (i) kwenta tintfo letitsite, inchubo noma tindlela;
  - (ii) kutsatsa tinyatselo letibonakalako noma tindlela tsite;
  - (iii) kuyekela kwenta tento letibonakalako, tindlelo, tinchubo, tento noma tindlela; noma
  - (iv) kuvikela letinye tintfo letitsite, tindlela, tinchubo, tento kanye netinkhambiso. 40
- (b) inkhomba lebalwe kundzima (a) anga—
- (i) setjentiswa ngunoma ngubani, bantfu labasemtsetfweni noma tinstita temasheya nje;
  - (ii) kusebenta kumuntfu lotsite, umuntfu losemtsetfweni noma imisebenti yemasheya; noma
  - (iii) valeleka ekusetjentisweni kuluhlobo lolutsite lwemuntfu, umuntfu losemtsetfweni noma lusito ngemasheya. 45
- (c) Umyalelo lokhishwe ngekwendzima (a) ucala kusebenta ngalolusuku loluncu-nywe ngunobhala kulumyalelo, kantsi ungasebenta ngekushesha.
- (d) Nobhala angacitsa noma akhansele leminye imiyalelo yangaphambilini leyake yakhishwa. 50
- (5) Nobhala kufanele, lapho kunekuniketwa kungasebenti noma umyalelo ufaka ekhatsi bonkhe bantfu, bantfu labasemtsetfweni noma netinsita temasheya ngalokutayelekile, kuhishwe lomlayelo *kuGazethi* kuwebhu lesemtsetfweni, kantsi ikhophi yalokuvunyelwa noma umyalelo kufanele yetfulwe ePhalamende. 55
- (6) (a) Nobhala anga—
- (i) sebentisana nanoma ngabe ngubani lophetse kutindzaba letitsinta bantfu ngalokufanako;
  - (ii) angacocisana getivumelwano nanoma ngabe bobani labaphetse kutsi bachumanise futsi bente indlela yekubika ihambisané kanye naleminye imisebenti yemuntfu lobekiwe, tingucuko tangaphandle, sikhungo lesigunyatako sangaphandle, sikhungo semasheya lasemkhatsini 60

its subsidiary or holding company including, but not limited to, circumstances which may indicate systemic risk;	
(iii) assist any supervisory authority in regulating and enforcing any laws of that supervisory authority that are similar to this Act;	
(iv) participate in the proceedings of any supervisory authority; and	5
(v) advise or receive advice from any supervisory authority.	
(b) The registrar, without detracting from the generality of paragraph (a), may enter into a written agreement, including a memorandum of understanding, with a supervisory authority, which agreement may include—	
(i) a provision that the registrar may conduct an on-site examination or an inspection of a regulated person, on the request of a supervisory authority, and that the supervisory authority may assist the registrar in such on-site examination or inspection;	10
(ii) a provision that the registrar and supervisory authority may share information relating to the financial condition and conduct of a regulated person, an external exchange, an external authorised user, an external clearing house, an external clearing member, an external central securities depository or an external participant or its subsidiary or holding company including, but not limited to, circumstances which may indicate systemic risk;	15
(iii) a provision that the registrar or supervisory authority—	20
(aa) be informed of adverse assessments of qualitative aspects of the operations of a regulated person, an external exchange, an external authorised user, an external clearing house, an external clearing member, an external central securities depository, an external participant or its subsidiary or holding company including, but not limited to, circumstances which may indicate systemic risk; or	25
(bb) may provide information regarding significant problems that are being experienced within a regulated person, an external exchange, a trade repository, an external authorised user, an external clearing house, an external clearing member, an external central securities depository, an external participant or its subsidiary or holding company including, but not limited to, circumstances which may indicate systemic risk;	30
(iv) such other matters as the registrar may deem relevant.	
(7) The registrar may, in accordance with the requirements prescribed by the Minister under section 5(1)(a),—	35
(a) prescribe criteria for the authorisation of persons providing securities services in respect of unlisted securities;	
(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;	40
(c) prescribe standards in accordance with which securities services in respect of unlisted securities must be carried on;	
(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;	45
(e) prescribe criteria for the authorisation of issuers of unlisted securities; and	
(f) prohibit a person from providing any securities services in respect of unlisted securities if that person provides securities services in a manner which defeats one or more of the objects of this Act referred to in section 2.	50
(8) In relation to the persons in the category prescribed by the Minister under section 5(1)(b), the registrar may—	
(a) prescribe criteria for the authorisation of such persons;	
(b) prescribe conditions and requirements for the provision of securities services by such persons including, but not limited to, prescribing a code of conduct and imposing reporting requirements;	55
(c) prescribe standards in accordance with which securities services by such persons must be carried on; and	
(d) prohibit such persons from providing securities services or undertaking any activities which may frustrate the objects of the Act.	60

- lesingaphandle noma labanye noma inkhampani lelibambela kufaka ekhatsi kodvwa kungavimbeli, tintfo letingafaka ekhatsi luhlelo lwebungoti;
- (iii) sita noma bani lophetse ekushayeni umtsetfo kanye nekusebentisa noma mippi imitsetfo yalowo lophetse lehambisana naloMtsetfo;
  - (iv) ngenelela kunoma ngutiphi tinchubo tanoma ngubani lophetse; kanye 5
  - (v) nekubonisa noma kutfolo imibono kunoma ngubani lophetse.
- (b) Nobhala, ngaphandle kwekuba netinsolo ngalokushiwo yindzima (a), angangena esivumelwaneni lesibhalwe phansi, kufaka ekhatsi sivumelwano leshicilelwe, nemphatsi lapho khona lesivumelwano singafaka ekhatsi—
- (i) ligunya lekutsi nobhala, angahlala ngekhatsi noma kuhlola kwemuntfu 10  
losemtsetfweni, uma ngabe kunesicelo salophetse, nekutsi lona lophetse angasita nobhala kuloko kuhlola lokusemagunjini;
  - (ii) umyalelo wekutsi nobhala kanye nalabaphetse bangaba lwati loluphat selene nesimo setimali kanye nekutiphatka kwalabasetfweni, ligatja langaphandle, umsebentisi losemtsetfweni longaphandle, sikhungo sangaphandle 15  
lesigunyatako, lilunga leligunyatiwe lelingaphandle, sikhungo semasheya lasemkhatsini lesingaphandle noma labangenelelako labangaphandle noma lenye inkapani noma leyo lelibambela kufaka ekhatsi kodvwa kungavimbeli, tintfo letingafaka ekhatsi luhlelo lwebungoti ;
  - (iii) umyalelo wekutsi nobhala noma umphatsi— 20  
(aa) atiswe ngekungahlola kahle kwetintfo letiphatsekako temsebenti wemuntfu losemtsetfweni, ligatja langaphandle, umsebentisi losemtsetfweni longaphandle, sikhungo sangaphandle lesigunyatako, lilunga leligunyatiwe lelingaphandle, libhang lemasheya lasemkhatsini langaphandle, labangenelelako labangaphandle noma lenye inkapani 25  
noma lelibambela kufaka ekhatsi kodvwa kungavimbeli, tintfo letingafaka ekhatsi luhlelo lwebungoti ; noma
- (bb) anganiketa lwatiso ngalokuphat selene netinkhinga lekuhlangab etwana nato ngumuntfu losemtsetfweni, ligatja lelingaphandle, indzawo yekuhwebelana, umsebentisi losemtsetfweni longaphandle, sikhungo 30  
sangaphandle lesigunyatako, lilunga leligunyatiwe lelingaphandle, libhang lemasheya lasemkhatsini langaphandle, labangenelelako labangaphandle noma lenye inkapani noma lelibambela;
- (iv) letinye tindzaba njengoba nobhala angatibona tifanelekile.
- (7) Nobhala anga, ngekuhambisana netidzingo letibekwe nguNgcongcoshe ngaphansi kwasigaba 5(1)(a),— 35
- (a) abeke indlela yekuba semtsetfweni kwalabo bantfu;
  - (b) abeke imibandzela netidzingo temibandzela yemisebenti yemasheya ngulabo bantfu kufaka ekhatsi, kungashiyi ngaphandle, kusho indlela yekutiphatsa nekubeka indlela ledzingekako yekubika;
  - (c) kubeka emazinga latawuham bisana nemisebenti yemasheya ngekuhambisana nemasheya langakabhalis wa leku fanele kusetjentwe ngawo;
  - (d) abeke imibandzela netidzingo ngindlela leku fanele kutsi imisebenti yemasheya ngalokuphat selene nalatsite langakabhalis wa leku fanele aniketwe, kufaka ekhatsi, kutsi kungashiyi ngaphandle, indlela kugunyata 45  
nekukhokheleka kwalawo masheya kufanele kwenteke ngayo;
  - (e) kubeka indlela yekugunyatwa kwebanikeli bemasheya labangakabhalis wa; kanye
  - (f) kuvinbela umuntfu kutsi anikete noma muphi umsebenti wemasheya ngalokuphat selene nemasheya langakabhalis wa uma ngabe lowo muntfu aniketa umsebenti wemasheya ngendlela lehlulekisa yinye noma ngetulu taletinjongo taloMtsetfo letibalwe kusigaba 2. 50
- (8) Ngalokuphat selene nalabantfu lababalwe kulomkhakha lobekwe nguNgcongcoshe ngaphansi kwasigaba 5(1)(b), nobhala anga—
- (a) kubeka indlela yekugunyatwa kwalabo bantfu;
  - (b) kubeka imibandzela netidzingo talemibandzela yemisebenti yemasheya ngulabo bantfu kufaka ekhatsi, kungashiyi ngaphandle, kubeka indlela yekutiphatsa nekubeka lokudzingekako uma ngabe kubikwa;
  - (c) kubekwe emazinga laphat selene netindlela imisebenti yemasheya leku fanele tisetjentwe ngayo ngulabo bantfu; kanye
  - (d) kuvinbela bantfu labanjalo ekuniketen i misebenti yemasheya noma kwenta noma ngabe mippi imisebenti lengasebentisa kabi tinjongo taloMtsetfo. 60

## CHAPTER III

### EXCHANGES

#### *Licensing of exchange*

##### **Application for exchange licence**

- 7.** (1) An exchange must be licensed under section 9. 5
- (2) A juristic person may apply to the registrar for an exchange licence in respect of one or more types of securities.
- (3) An application for an exchange licence must—
- (a) be made in the manner and contain the information prescribed by the registrar;
  - (b) show that the applicant complies with the requirements listed in section 8; 10
  - (c) be accompanied by—
    - (i) a copy of the proposed exchange rules that must comply with section 17;
    - (ii) a copy of the proposed listing requirements that must comply with section 11;
    - (iii) a copy of the founding documents of the applicant; 15
    - (iv) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;
    - (v) the application fee prescribed by the registrar;
  - (d) be supplemented by any additional information that the registrar may reasonably require. 20
- (4) (a) The registrar 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 website.
- (b) The notice must state—
  - (i) the name of the applicant;
  - (ii) where the proposed exchange rules and listing requirements may be inspected by 25 members of the public; and
  - (iii) the period within, and the process by, which objections to the application may be lodged with the registrar.

##### **Requirements applicable to applicant for exchange licence and licensed exchange**

- 8.** (1) Subject to subsection (2), an applicant for an exchange licence and a licensed exchange must— 30
- (a) subject to the requirements prescribed by the Minister have assets and resources in the Republic, which resources include financial, management and human resources with appropriate experience, to perform its functions as set out in this Act; 35
  - (b) have governance arrangements that are clear and transparent, promote the safety and efficiency of the exchange, 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 are 40 met by the applicant, or the licensed exchange, as the case may be, its directors and senior management;
  - (d) have made arrangements for the efficient and effective surveillance of all transactions effected through the exchange and for the supervision of authorised users so as to identify possible market abuse and ensure 45 compliance with the exchange rules and exchange directives and this Act;
  - (e) have made arrangements for the efficient and effective monitoring of compliance by issuers of securities listed on the exchange with the exchange's listing requirements;

## SAHLUKO III

### EMAGATJA

#### *Kuniketwa lileyisensi kweligatja*

##### **Kufaka sicelo sekugucula lileyisensi**

7. (1) Ligatja kufanele libe nelayisensi ngekwasigaba 9. 5

(2) Umuntfu losemtsetfweni angafaka sicelo kunobhala kutsi atfole ilayisensi yeligatja ngalokuphat selene neluhlobo lunye noma ngetulu lwemasheya.

(3) Sicelo selayisensi yeligatja kufanele—

(a) sentiwe ngendlela kanye nekucuketsa Iwati lolubekwe ngunobhala;

(b) kuhombisa kutsi lofake sicelo uyahambisana nalokudzingekako lokubalwe 10 kusigaba 8;

(c) kuhambisane ne—

(i) khophi yalemitsenfo yeligatja leliphakanyisiwe lekufanele ihambisane nesigaba 17;

(ii) ikhophi yalokudzingekako lokuphakanyisiwe kute ubhaliswe lekufanele 15 ihambisane nesigaba 11;

(iii) ikhophi yemapheda ekucala alofake sicelo;

(iv) lolo Iwatiso ngalokuphat selene nemalunga emtimba lolawulako walabafake ticelo njengoba kungabekwa ngunobhala;

(v) linani lemali yekufaka sicelo lebekwe ngunobhala; 20

(d) inetetelwe nganoma ngabe nguluphi Iwatiso lolungetelelwe nobhala langahle aludzinge.

(4) (a) Nobhala kufanele akhiphe satiso sesicelo sekuba nelayisensi yeligatja kumaphedhandzaba lamabili lafundvwa velonkhe lokutawuba tindleko talona lofaka sicelo, kanye nakuwebhu lesemtsetfweni. 25

(b) Lesatiso kufanele—

(i) sisho ligama lalofake sicelo;

(ii) lapho kufanele kuhlolwe khona lemitsetfo yeligatja lephakanyisiwe kanye nalokudzingekako kute ubhaliswe ngalokuhlolwe malunga emmango; kanye

(c) isho lesikhatsi, kanye nenchubo, lapho kungabekwa khona lokuphikisa sicelo 30 lesibekwe ngunobhala.

##### **Tidzingo letikhona kulfaka sicelo ngingucuko telayisensi yeligatja**

8. (1) Ngekuya ngesigatjana (2), lofake sicelo selayisensi yeligatja kanye neligatja lelibhalisiwe kufanele—

(a) ngekuya ngetidzingo letibalwe nguNgcongcoshe, kuba netimpahla kanye 35 netinsita kuRiphabhuliki, letinsita letifaka ekhatsi imali. Kulawula, kanye nekucashwa kwebasebenti labanelwati lolufanele, kute kwentiwe umsebenti noma imisebenti njengoba kuvetiwe kuloMtsetfo;

(b) kuba emalungiselelo ekubusa lacacile nalakhanyako, latfutfukisa kuvikeleka kanye nekuphumelela kweligatja, nekusekela kusimama yeluhlelo lonkhe 40 lwetimali, lokunye lokufanele lokufaka ekhatsi tinshisekelo temmango, kanye netinjongo talabatsintsekako labafanele;

(i) netinsita tetimali; kanye

(ii) nekuphatfwa netinsita temisebenti ngelwati loludzingekako, Lokufanele kube khona ekusebenteni kweligatja ngekwaloMtsetfo; 45

(c) kuhombisa kutsi letidzingo letifanele letibekwe ngunobhala lofake sicelo uyatifeza, noma ligatja lelibhalisiwe, njengoba kungabe kubekiwe, bacondzisi balo kanye nebaphatsi labasetulu;

(d) wente emalungiselelo ekuhambisa kahle nangemphumelelo kuhlolwa kwawo wonkhe umsebenti lowentiwe kuleligatja kanye nekulawulwa kwebasebentis labagunyatiwe kute kutsi kubonakale kungaphatfwa kahle kwetimaketh kanye nekucinisekisa kuhambisana nalementsetfo yeligatja kanye netinkhomba teligatja kanye naloMtsetfo; 50

(e) kwentiwe emalungiselelo ekuhlola ngemphumelelo nakahle kutsi bayahambisana nemasheya lakhishiwe labhaliwe kuligatja lahambisana 55 netidzingo tekukhipha kweligatja;

- (f) implement arrangements to efficiently and effectively manage the material risks associated with the operation of an exchange;
  - (g) have made arrangements for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange;
  - (h) have insurance, a guarantee, compensation fund or other warranty in place to enable it to provide compensation, subject to the exchange rules, to clients;
  - (i) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and for the management of settlement risk;
  - (j) have made arrangements for the efficient and effective supervision of authorised users so as to ensure compliance with the Financial Intelligence Centre Act; and
  - (k) implement an effective and reliable infrastructure to facilitate the trading of securities listed on the exchange.
- (2) The registrar may—
- (a) require an applicant or a licensed exchange to furnish such information, or require such information to be verified, as the registrar may deem necessary to determine whether the applicant or the exchange meets the requirements of subsection (1);
  - (b) take into consideration any other information regarding the applicant or the exchange, derived from whatever source, including any other supervisory authority, if such information is disclosed to the applicant or the exchange, as the case may be, 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.

### Licensing of exchange

**9.** (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 7(4) and subject to any conditions which the registrar may consider appropriate, grant an exchange a licence to perform the functions referred to in section 10 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 an exchange licence.

(2) An exchange licence must specify the terms and conditions of the licence, the categories of securities that may be listed on that exchange, the registered office of the exchange in the Republic and the places where the exchange may be operated, and stipulate that the exchange may not be operated at any other place without the prior written approval of the registrar.

(3) An exchange may at any time apply to the registrar for an amendment of the terms of its licence or the conditions subject to which the licence was granted.

(4) (a) The registrar 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 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 registrar.

### *Functions of licensed exchange*

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### Functions of licensed exchange and power of registrar to assume responsibility for functions

**10.** (1) A licensed exchange must conduct its business in a fair and transparent manner with due regard to the rights of authorised users and their clients.

- (f) kwenta emalungiselelo kanhle nangemphumelelo nekuphatsa kahle imphahla lesengotini lephat selene nekusebenta kweligatja;
- (g) kwentiwa kwemalungiselelo ekuvikeleka kahle nangemphumelelo kanye netindlela tekulandzelela kucinisekisa sifunti semarekhodi ematransekshini lentiwe kuleligatja;
- (h) kuba nemshwalensi, siccineko, sikhwama sesincepheteliso noma lenye iwaranti lekhona kute kutsi kukhonakale kuniketa sincepheteliso, ngekuya ngemitsetfo yeligatja, kumaklayenti;
- (i) kwenta emalungiselelo ekugunyata kahle nangemphumelelo kanye nekukhokhelwa kwematsanekshini lekentiwe kuleligatja kanye nekulawula 10 bunoti bekukhokhela;
- (j) kwenta emalungiselelo ekusebentisa kahle nangemphumelelo kulawulwa kwebasebentisi labagunyatiwe kute kutsi kucinisekiswe kuhambisana ne-*Financial Intelligence Centre Act*; ne
- (k) kwenta indlela lekahle naletsembekile yelusitonchanti kute kulandzelelw 15 kutsengiswa kwemasheya labhaliswe kuligatja.
- (2) Nobhala kufanele—
- (a) acele lofake sicelo noma ligatja lelibhalisiwe kutsi anikete lolo lwatiso, noma acele kutsi lolo lwatiso lucinisekiswe, njengoba nobhala angakubona kufanele kutsi ancume kutsi lofake sicelo noma ligatja liyahambisana nalokudzingeka 20 kusigatjana (1);
- (b) anake noma luphi lwatiso loluphat selene nalofaka sicelo noma ligatja, lalutfolo kunoma ngumuphi umtfombo, kufaka ekhatsi noma ngabe ngumuphi umlawuli, uma ngabe lolo lwatiso lukhishiwe kulo fakte sicelo noma egatjeni, njengoba kungabe kubekiwe kantsi lokwe kugcina kuniketwe litfuba 25 lelivakalako kutsi baphendvule; kanye
- (c) kuniketa noma ngabe ngukuphi lokudzingekako lokubalwe kusigatjana (1) ngalokugcweli.

### Kuniketwa ilayisensi kweligatja

9. (1) Nobhala anganiketa ligatja ilayisensi kutsi lente imisebenti lebalwe kusigaba 30 10, ngemuva kwekubuka noma kuphi kungavumelani lokutfolakale nganca yesatiso lesibalwe kusigaba 7(4) kanye nangekuya ngunoma ngumuphi imibandzela lengabonwa ngunobhala kutsi ifanele—

- (a) lofake sicelo ahambisane netidzingo letifanele taloMtsetfo; kanye
- (b) netinjongo taloMtsetfo letibalwe kusigaba 2 titawuchutjekiswa ngekuniketwa 35 kwelaisensi yeligatja.

(2) Ilayisensi yeligatja kufanele ivete imigomo nemibandzela yelaisensi, lemazinga emasheya lelingabalwa kulu hla lweligatja, lelihovisi lelibhalisiwe laleligatja eRiphabhuliki kanye netindzawo lapho khona leligatja kungafanele lisebentele khona, bese iyachaza kutsi leligatja angeke lasebenta kunoma nguyiphi indzawo ngaphandle 40 kwemvume lebhalwe phansi yanobhala.

(3) Ligatja lingafaka sicelo kunobhala noma nini kutsi kuchitjiywle imiyalelo yelaisensi yalo kanye nemibandzela leyachaza kutsi nguyiphi ilayisensi lebayitfola.

(4) (a) Nobhala kufanele akhiphe satiso sesicelo kwentela kuchibiyela imitsetfo yelaisensi yeligatja noma imibandzela ngekuya ngekutsi nguyiphi ilayisesni leyanikwa 45 kumaphephandzaba avelonkhe lamabili, ngetindleko talona lofake sicelo, kanye nakuwebhu lesemsetfweni.

(b) Lesatiso kufanele sisho—

- (i) ligama lalofake sicelo;
- (ii) indlela lebayiphakamisile leba funa kuchibiyela ngayo; ne
- (iii) sikhatsi lapho kuphikisana nalesicelo kungentiwa ngaso ngekufaka sicelo 50 kunobhala.

### Imisebenti yeligatja lelibhalisiwe

#### Imisebenti yeligatja nemandla anobhala ekucala umisebenti

10. (1) Ligatja lelibhalisiwe kufanele lente umsebenti walo ngendlela lecacile 55 nalekhanyako ngekuhambisana nemalungelo ebasesentisi labasemtsetfweni nebasebenti babo.

- (2) A licensed exchange—
- (a) must provide an infrastructure for the trading of securities listed on that exchange;
  - (b) must issue exchange rules in accordance with section 17;
  - (c) must supervise compliance by its authorised users with the exchange rules and exchange directives;
  - (d) must supervise compliance with this Act by its authorised users and issuers of securities listed on that exchange, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
  - (e) must enforce the exchange rules, listing requirements and exchange directives; 10
  - (f) must, as soon as it becomes aware thereof inform the registrar of any matter that may pose systemic risk to the financial markets;
  - (g) may issue exchange directives;
  - (h) may amend or suspend the exchange rules in terms of section 71, and may 15 amend its listing requirements in terms of section 11(6)(a);
  - (i) (i) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;
  - (ii) may appoint an associated or independent clearing house licensed under Chapter V to clear or settle transactions or both clear and settle 20 transactions on behalf of the exchange;
  - (iii) must consult with an appointed associated clearing house when making or amending the exchange rules in accordance with which the associated clearing house will clear or settle transactions on behalf of the exchange;
  - (j) must, if it has not appointed a clearing house to clear transactions on behalf of 25 the exchange,—
    - (i) establish and maintain an infrastructure for the clearing of transactions effected through the exchange; and
    - (ii) manage the clearing of transactions effected through the exchange, in relation to those transactions which the exchange rules determine will be 30 cleared;
  - (k) must supervise compliance by issuers of securities listed on that exchange with that exchange's listing requirements;
  - (l) must notify the registrar as soon as it commences an insolvency proceeding or 35 an insolvency proceeding is commenced against it, or when it has received a notification regarding insolvency proceedings against authorised users;
  - (m) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Act.
- (3) (a) The registrar may assume responsibility for one or more of the regulatory or supervisory functions referred to in subsection (2) if the registrar considers it necessary 40 in order to achieve the objects of this Act referred to in section 2.
- (b) The registrar must, before assuming responsibility for a function as contemplated in paragraph (a)—
- (i) inform the exchange of the registrar's intention to assume responsibility;
  - (ii) give the exchange the reasons for the intended assumption; and 45
  - (iii) call upon the exchange to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar.

### **Listing of securities**

- 11.** (1) An exchange must, to the extent applicable to the exchange in question, make listing requirements which prescribe—
- (a) the manner in which securities may be listed or removed from the list or in which the trading in listed securities may be suspended;
  - (b) the requirements with which issuers of listed securities and of securities which are intended to be listed, as well as such issuers' agents, must comply;
  - (c) the standards of conduct that issuers of listed securities and their directors, officers and agents must meet; 55
  - (d) the standards of disclosure and corporate governance that issuers of listed securities must meet;

- (2) Ligatja lelibhalisiwe—
- (a) kufanele banikete tinsitanchanti tekutsengisa emasheya labhaliswe egatjeni;
  - (b) kufanele kuniketwe imitsetfo yeligatja ngekuhambisana nesigaba 17;
  - (c) kufanele balawule sivumelwano lesentiwe basebentisi labagunyatiwe ngemitsetfo yeligatja kanye nemiyalelo yeligatja;
  - (d) kufanele alawule sivumelwano naloMtsetfo ngebasebentisi labagunyatiwe kanye nemasheya labhaliswe kulelo gatja, kubika kungavumelani kunobhala nekusita nobhala ekusebentiseni loMtsetfo;
  - (e) kufanele asebentise imitsetfo yeligatja, lokudzingekako kute ubhaliswe kanye nemiyalelo yeligatja;
  - (f) ngekushesha ngalesikhatsi sebati kufanele batise nobhala kanye neMbusi nganoma luphi ludzaba lolungabangela bungoti kuloluhlelo kutimakethe temnotfo;
  - (g) anikete imiyalelo yeligatja;
  - (h) kufanele achibiyele noma acitse imitsetfo yeligatja ngekwesigaba 72, kantsi 15 kungachitjiyelwa lokudzingekako kute ubhaliswe ngekwesigaba 10(6)(a);
  - (i) (i) kufanele bente imibandzela yekugunyata nekubhadala kwematralsekshini kumasheya labhalisiwe lekentiwe ngekusebentisa emagatja;
  - (ii) angabeka ligatja leligunyatiwe lelibhalisiwe lelibambisanako noma lelitimele ngaphansi kweSahluko V kugunyata noma kubhadala ematralsekshini noma kokubili kugunyata nekubhadala ngekumelela ligatja;
  - (iii) kufanele atsintsane nendlu legunyatoko lebekiwe ngalesikhatsi enta noma achibiyla imitsetfo yeligatja ngekuhambisana nekutsi lendlu legunyatoko itawugunyata noma ibhadale ematransekshini ngekumelela ligatja;
  - (j) kufanele, uma ngabe bangakabeki indlu legunyatoko kutsi igunyate ematralsekshini ngekumelela ligatja—
    - (i) basungule futsi balawule lusitonchanti kute kutsi kugunyatwe ematransekshini lentiwe kuleligatja; kanye
    - (ii) kulawulwe kugunyatwa kwematranskshini lentiwe ngekusebentisana 30 neligatja, ngalokuphatselelere nalowo matransekshini imitsetfo yeligatja incuma kutsi atawugunyatwa;
  - (k) kufanele balawule tivumelwano letikhishwe ngulabakhipa emasheya labhaliswe kulelo gatja kulokudzingekako kute ubhaliswe;
  - (l) kufnele atise nobhala ngekushesha uma ngabe acala inchubo yekuhlakata noma nasekucalwe inchubo yekuhlakata ngekumelana nalo, noma uma ngabe sebatfole satiso ngalokuphatselelere nenchubo yekuhlakata ngekumelana nebasebentisi labasemtselfeni;
  - (m) angenta tonke tintfo lekfanele atente, ngeliphutsa noma ngebdlela lefanele kute kusebente kahle leligatja kanye nalokungangcubutani naloMtsetfo.
- (3) (a) Nobhala angacala umsebenti ente munye noma longetulu webalawuli noma lababukelele balemisbenti lebalwe kusigatjana (2) uma ngabe nobhala akubona kufanele kute kutsi atfole tizatfu taloMtsetfo lobalwe kusigaba 2.
- (b) Nobhala kufanele, ngembi kwekucala umsebenti lotawentiwa njengoba kuvetiwe kundzima (a)—
- (i) atise ligatja ngenhoso yanobhala yekucala umsebenti;
  - (ii) kuniketa leligatja tizatfu talokucala lokuhlosiwe; kanye
  - (iii) nekubita leligatja kutsi likhombise sizatfu ngesikhatsi lesibekwe ngnobhala nekutsi kungani umsebenti kungafanele wentiwe ngnobhala.

**Kubhalwa phansi kwalokungenile**

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**11. (1)** Ligatja kufanele, kulelizinga lelifanele leligatja lekukhulunya ngalo, lente lokudzingekako kute kubhaliswe lokubekiwe—

- (a) indlela emasheya lekangabhaliswe ngayo noma akhishwe kuloluhla noma ngendlela kutsengiswa kwemasheya labhalisiwe lekungakhishwa ngayo;
- (b) lolokudzingekako kulabo labaniketa emasheya labhalisiwe kanye nemasheya labahlose kuwabhalisa, kanye nebasebenti labawaniketako, kufanele bahambisane nemtsetfo;
- (c) emazinga ekutiphatса ebanikeli bemasheya labhalisiwe kanye nebacondzisi, basebenti netifunyuwa kufanele bafinyelele;
- (d) emazinga ekuveta nekubusa ngekubambisana lekfanele bakhokhi 60 bemasheya labhalisiwe kufanele bakwente;

- (e) such details relating to the listed securities as may be necessary;
- (f) the steps that must be taken by the exchange, or a person to whom the exchange has delegated its disciplinary functions, for the investigation and discipline of an issuer, or director, officer or employee of an issuer, that contravenes or fails to comply with the listing requirements; 5
- (g) for any contravention of or failure to comply with the listing requirements, any one or more of the following penalties that may be imposed by the exchange or by a person to whom the exchange has delegated its disciplinary functions:
- (i) A reprimand; 10
- (ii) a fine not exceeding R7.5 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa;
- (iii) disqualification, in the case of a natural person, from holding the office of director or officer of a listed company for any period of time; 15
- (iv) suspension or termination of listing; or
- (v) any other penalty that is appropriate in the circumstances.
- (2) The listing requirements may prescribe that—
- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, other national newspapers, the website of the exchange or through the news service of the exchange; 20
- (b) any person who contravenes or fails to comply with the listing requirements may be ordered to pay the costs incurred in an investigation or hearing;
- (c) an exchange may take into account at a hearing information obtained by the registrar in the course of an on-site visit or inspection conducted under section 95 or obtained by the directorate in an investigation under section 84, read with section 85. 25
- (3) If a person fails to pay a fine referred to in subsection (1)(g), the exchange may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the exchange for a liquid debt in the amount specified in the statement. 30
- (4) The listing requirements must prescribe the purpose for which a fine referred to in subsection (1)(g) must be appropriated.
- (5) Listing requirements and any other conditions of listing are binding on an issuer and an authorised user and their directors, officers, employees and agents. 35
- (6) (a) An exchange may amend its listing requirements in accordance with the consultation process set out in the listing requirements, which process must provide for—
- (i) the persons who are to be consulted; and 40
- (ii) the manner in which consultation will happen, including the time period or periods allowed for consultation.
- (b) An exchange must submit any proposed amendment of its listing requirements, after licensing, together with an explanation of the reasons for the proposed amendment, and any concerns or objections raised during the consultation process, to the registrar for approval. 45
- (c) The registrar must, as soon as possible after the receipt of a proposed amendment, publish—
- (i) the amendment on the official website; and
- (ii) a notice in the *Gazette* that the proposed amendment is available on the official website, calling upon all interested persons who have any objections to the proposed amendment, to lodge their objections with the registrar within a period of 14 days from the date of publication of the notice. 50

- (e) leyo mininingwane lephatselene nemasheya labhalisiwe njengoba kungabe kudzingekile;
- (f) letinyatselo lekfanele titsatfwе ligatja, noma umuntfu lapho khona leligatja linikele imisebenti yalo yekucondzisa kwetigwegwe, kwentela kuphenya nekucondzisa kwetigwegwe kwalona loniketako, loko kuphatamisa noma kuhluleka kuhambisana nalokudzingekako kute ubhaliswe; 5
- (g) nonoma kuphi kungenelala noma kuhluleka kuhambisana nalokudzingekako kute ubhaliswe, sinye noma letinyenti taletigwebo lekfanele tibekwe ligatja noma umuntfu lapho khona ligatja liniketele khona ngemandla alo ekucodzisa tigwegwe: 10
- (i) kucondzisa;
  - (ii) inhlawulo lengadluli kutigidzi letingu-R7.5, kantsi tingalungiswa ngunobhala njalo ngemnyaka kute tikhombise Linani Lelinemkhawulo Lolinganisiwe, njengoba kukhishwe Betelubalo LwaseNingizimu Afrika;
  - (iii) kukhishelwa ngaphandle, uma ngabe kungumuntfu, ekutseni asebente ehhovisi lemcondzisi noma sisibenti senkapani leseluhleni nganoma sikhatsi lesingakanani;
  - (iv) kumiswa noma kuvalwa kwekfakwa eluhleni; noma
  - (v) noma ngabe nguyiphi inhlawulo lefanele kuleto tehlakalo. 20
- (2) Lolokudzingekako kute ubhaliswe kungahle kusho kutsi—
- (a) imininingwane legcwele yekuniketwa kwsigwebo ingakhishwa *kuGazethi*, lamanye emaphephandzaba avelonkhe, iwebhusayithi yeligatja noma kubetindzaba balelo gatja; 25
  - (b) noma ngabe ngubani lophatamisa noma ahluleke kuhambisana nalokudzingekako kute ubhaliswe angatjelwa kutsi akhokhe letindleko latidalile kuluphenyo noma nakutsanyelwe licala;
  - (c) ligatja linganaka ngalesikhatsi kutsanyelwe licala lwatiso lebelutfolakele kunobhala ngalesikhatsi ahambe ngekwemsebenti noma khatsi ayohlolola ngalokugunyatwe sigaba 95 noma lokutfolwe lihhovisi lemcondzisi kuluphenyo ngaphansi kwsigaba 84 sifundvwe nesigaba 85. 30
- (3) Uma ngabe umuntfu ahluleka kukhokhela inhlawulo lesibalwe kusigatjana (1)(g), ligatja lingafaka sicelo kunobhala wanoma yiphi inkantolo lesebentako sitatimende lesicinisekiswe ngibo njengalesikahle, sisho lelinani lalehawulo lebekiwe lekfanele sikhokhwe, leso sitatimende sinemiphumela yelicala lembango nemphumela lotawube uniketwe ngekwemtsetfo kuleyo nkantolo ngekumelana nalowo muntfu kodvwa sivuna ligatja kutsi liniketwe leso samba lesibhalwe kulesitatimende. 35
- (4) Lolokudzingekako kute ubhaliswe kufanele kuvete injongo lekfanele inhlawulo levetwe kusigatjana (1)(g) iniketwe khona.
- (5) Lolokudzingekako kute ubhaliswe kanye nalemente imibandzela yekubhalisa asibopho kulowo lokhiphako kanye nemsebentisi losemtsetfweni nebacondzisi babo, basebenti, tisebenti netigijimi. 40
- (6) (a) Ligatja lingachibiyela lokudzingekako kute ubhaliswe ngekuhambisana nenchubo yekuchumana lechazwe kulokudzingekako kute ubhaliswe, lapho lenchubo kufanele— 45
- (i) isho lomuntfu lekfanele atsintfwе; kanye
  - (ii) lendlela kubhaliswa lekfanele kwenteke ngayo, kufaka ekhatsi lesikhatsi noma tikhatsi letibekiwe tekuchumana.
- (b) Ligatja kufanele letfule noma ngabe yini lechitjiyelwe kwalokudzingekako kute ubhaliswe, ngemuva kwekfola ilayensi, ihambisane netinchazelo taletizatu talokuchitjiyelwa lokuphakanyisiwe, nalokunye lokubatsintsako noma kungavumelani lokuvele ngalesikhatsi kuchunywana, tinikwe nobhala kutsi ativumele. 50
- (c) Nobhala kufanele ngekushesha ngemuva kwekutsi kukhishwe tichibiyelo letiphakanyisiwe—
- (i) lokuchitjiyelwa kwewebhusayithi; kanye
  - (ii) nesatiso *kuGazethi* kutsi letichibiyelo letiphakanyisiwe tiyatfolakala kuwebhusayithi lesemsetfweni, kubitwa bonkhe bantfu labanenshisekelo labangavumelani nganoma yini lekuletichibiyelo letiphakanyisiwe kutsi babeke kungavumelani kwabo kutsi baletse kungavumi kwabo kunobhala kungakapheli sikhatsi lengemalanga lali-14 kusukela ngalelilanga lekukhishwa kwesatiso. 55
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(d) If there are no such objections, or if the registrar 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 must publish—

- (i) the amendment and the date on which it comes into operation on the official 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 website and the website of the exchange; and
  - (cc) the date on which the amendment of the listing requirements will come into operation.

(7) (a) The registrar may, by notice in the *Gazette* and on the official website, amend the listing requirements of an exchange—

- (i) if there is an urgent imperative under exceptional circumstances;
- (ii) if it is necessary to achieve the objects of this Act referred to in section 2; and
- (iii) after consultation with the exchange concerned.

(b) Where the registrar has amended the listing requirements of an exchange in terms of paragraph (a), the registrar must—

- (i) inform the Minister of the amendment, giving reasons for the amendment and explaining the imperative referred to in paragraph (a)(i); and
- (ii) publish the reasons for the amendment, and the imperative for such amendment in the *Gazette* and on the official website.

(c) Subsection (6) does not apply to an amendment by the registrar under this subsection.

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(8) An exchange—

- (a) must keep a list of the securities which may be traded on the exchange;
- (b) must receive and consider, and may grant, defer or refuse, subject to its listing requirements, applications for the inclusion of securities in the list;
- (c) may, when granting an application referred to in paragraph (b) or at any time thereafter, in consultation with the registrar, delay compliance by an issuer of securities with a specific provision of the listing requirements for a limited period and on conditions determined in the approval, if—
  - (i) practicalities impede the strict application of a specific provision; or
  - (ii) the delay is justified in furtherance of the national government's objective to encourage participation in the financial markets:

Provided that the delay in compliance does not impede the objectives of this Act;

- (d) may, when granting an application referred to in paragraph (b) or at any time thereafter, in consultation with the registrar, impose conditions in addition to those provided for in the listing requirements, on an issuer of securities, if—
  - (i) necessary or desirable to facilitate the sustainability of that issuer; or
  - (ii) it is justifiable in furtherance of the national government's objective to encourage participation in the financial markets;

- (e) may include securities issued by it in its own list subject to the approval of and the conditions prescribed by the registrar; and

- (f) may, despite any arrangement entered into before or after the commencement of this Act according to which listed securities may be bought and sold on the exchange, charge the fees provided for in the listing requirements or the exchange rules.

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(9) An exchange must, before refusing an application to include securities in the list—

- (a) inform the issuer of its intention to refuse the application;
- (b) give the issuer the reasons for the intended refusal; and
- (c) call upon the issuer to show cause within a period specified by the exchange why the application should not be refused.

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(d) Uma ngabe kungekho lophikisako, noma uma ngabe nobhala akutsetse lokungavumelani, uma ngabe kwenteka, kufanele atsintsane neligatja kanye nemuntfu lophakamise lokungavumelani kantsi ancume kuvumela noma kuchibiyela lokuphakanyisiwe, nobhala kufanele akiphe—

- (i) lokuchibiyela kanye nalolusuku lekucala ngalo kusebenta kuwebhu 5  
lesemtnsetfweni; kanye
- (ii) nesatiso ku*Gazethi*, lapho lesatiso kufane shisho kutsi—  
(aa) lokuchitjiyelwa kwalokudzingekako kute ubhaliswe sekuvunyelwe;  
(bb) lolokudzingekako kute ubhaliswe njengoba kuchitjiyelwe kuyatfolakala  
kuwebhusayithi lesemtnsetfweni kanye nakuwebhusayithi yeligatja; 10  
(cc) lolusuku lapho khona lokuchitjiyelwa kwalokudzingekako kute  
ubhaliswe kutawucala kusebenta.

(7) (a) Nobhala angachibiyela lokudzingekako kute kubhaliswe ligatja, ngekwesatiso ku*Gazethi* nakuwebhu lesemtnsetfweni—

- (i) uma ngabe kukhona lokubalulekile ngaphansi kwetizatfu letitsite; 15
- (ii) uma ngabe kubalulekile kuphumelelisa tinjongo taloMtsetfo lobalwe  
kusigaba 2; kanye
- (iii) ngemuva kwekutsintsana neligatja lelitsintekako.

(b) Lapho khona nobhala achibiyele lolokudzingekako kute kubhaliswe ligatja 20  
ngekwendzima (a), nobhala kufanele—

- (i) kwatisa Ngcongcoshe ngalokuchibiyela, ngekuniketa tizatfu talokuchibiyela  
nekuchaza kubaluleka lokubalwe kundzima (a)(i); kanye
- (ii) nekukhipha tizatfu tekuchibiyela, kanye nekubaluleka kwaloko kuchibiyela  
ku*Gazethi* kanye nakuwebhu lesemtnsetfweni.

(c) Sigatjana (6) akasebenti uma ngabe kuchibiyele nobhala ngaphansi kwalesi- 25  
gatjana.

(8) Ligatja—

- (a) kufanele agcine luhla lwemasheya lolungatsengiswa egatjeni;
- (b) kufanele atfole abuye atsatse, kantsi anganiketa, noma ale, ngekuya  
ngalokudzingekako kute ubhaliswe, ticeko tekufakwa kwemasheya kuloluhla; 30
- (c) anga, ngalesikhatsi aniketwa sicelo lesibalwe kundzima (b) noma ngasiphi  
sikhatsi ngemuva kwaloko, ngekutsintsana nanobhala, kubambelela  
kuhambisana nalowo loniketa emasheya ngemibandzela leniketiwe kuloku-  
dingekako kute ubhaliswe ngeskhati lesibekiwe kanye nemibandzela  
lencunyewe kulemvume, uma ngabe— 35
- (i) tintfo tsite tivimbela lokufakwa kwesicelo sembandzela lotsite; noma
- (ii) lokuphuta kuyavakala uma ngabe kutufufukisa tinholo tahulumende  
tekukhutsata kungenelela kutimakethe temnotfo; nekutsi lokuphuta  
akuphazamisi letinjongo taloMtsetfo.

- (d) anga, ngalesikhatsi aniketwa sicelo lesibalwe kundzinyana (b) noma ngasiphi  
sikhatsi ngemuva kwaloko, ngekutsitsana nanobhala, abeke imibandzela  
ngekungeta kulawo laniketiwe kwaloko lokudzingekako kute ubhaliswe,  
kulokhipha emasheya, uma ngabe— 40

- (i) kunesidzingo noma kufanele ahambise kahle lokusimama kwalowo  
lokhiphako; noma
- (ii) kuyameleleka ngekutfufukisa tinjogo tahulumende wavelonkhe kute  
kugcugcutelwe kungenelela kutimakethe temnotfo;

- (e) angafaka emasheya lakhishwe ngibo kuluhla ngekuya ngekwemvume  
nemibandzela yanobhala; kanye

- (f) anga, ngaphandle kwanoma ngabe ngukuphi lokuheliwe lokungenelelw  
kuko ngembi noma ngemuva kwekucala kusebenta kwaloMtsetfo lapho  
khona emasheya labhalisiwe angatsengwa abuye atsengiswe egatjeni,  
kubitwe lemalu levetwe kulokudzingekako kute ubhaliswe noma kumitsetfo  
yeligatja.

(9) Ligatja kufanele, ngembi kwekukhahlela sicelo sekufaka emasheya kuluhla— 55

- (a) latise lokhiphako ngenhlosa yekwala lesicelo;
- (b) linikete lokhiphako sizatfu salenhlosa yekwala; kanye
- (c) nekubita lokhiphako kutsi akhombise imbangela kungakadluli sikhatsi  
lesibekwe ligatja kutsi kungani lesicelo singaliwa.

### **Removal of listing and suspension of trading**

**12.** (1) An exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list, even to the extent that a removal may have the effect that an entire board or substantial portion of the board on the exchange is closed, or suspend the trading in listed securities, if it will further one or more of the objects of this Act referred to in section 2.

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(2) An exchange must, subject to subsection (3), before a removal or suspension referred to in subsection (1)—

- (a) inform the issuer of its intention to remove or suspend;
- (b) give the issuer the reasons for the intended removal or suspension; and
- (c) call upon the issuer to show cause, within a period specified by the exchange, why the removal or suspension should not be effected.

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(3) If the listing requirements, any conditions imposed under section 11(8)(c) or (d) or the exchange rules are not complied with or if a circumstance arises which the exchange rules or the listing requirements envisage as a circumstance justifying the immediate suspension of trading, an exchange may, subject to subsection (1), order an immediate suspension referred to in that subsection for a period not exceeding 30 days, which period may be extended for further periods of 30 days.

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(4) If the trading of listed securities has been suspended in terms of this section, an exchange may, despite subsections (1) and (3), permit authorised users to buy and sell those securities for the sole purpose of fulfilling their obligations entered into in relation to those securities before the suspension.

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(5) (a) If an issuer requests an exchange to remove its securities from the list but the exchange considers the securities to be eligible for continued inclusion in the list, the removal must be approved by the holders of those securities in a manner specified by the exchange and the exchange must be satisfied on reasonable grounds that the interests of minority holders of the securities have been considered.

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(b) An issuer must provide reasons for the request contemplated in paragraph (a).

(6) (a) If an exchange refuses an application for the inclusion of securities in the list under section 11(8)(b), or under subsection (1) removes securities from the list, the exchange concerned must immediately notify every other exchange in the Republic of the reasons for and date of the refusal or removal.

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(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 by the appeal board in terms of section 105.

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(c) If an exchange withdraws a refusal or removal before the expiry of the six months, it must notify the issuer and every other exchange in the Republic.

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### **Application of amended listing requirements to previously listed securities**

**13.** (1) Amended listing requirements may be applied by the exchange to securities listed before the amendment of the listing requirements, by notice in writing to the issuer of such listed securities.

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(2) Listing requirements so applied take effect from a date determined by the exchange, which date must not be earlier, except when special circumstances justify an earlier date, than one month after the date on which the exchange so notifies the issuer, but the exchange may postpone the former date on written request by the issuer.

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(3) If an exchange refuses a request for a postponement in terms of subsection (2) the issuer concerned may make representations in writing to the registrar, and if the request for a postponement is reasonable, the registrar may, after consultation with the

### **Kukhishwa eluhlweni kanye nekumiswa kwekutsengiselana**

12. (1) Ligatja linga, ngekuhambisana nalesigaba, imitsetfo yeligatja kanye nalokudzingekako kute ubhaliswe, kukhishwe emasheya kuloluhla, noma kungafinyelela ezingeni lekutsi lokukhishwa kungaba nemtselela wekutsi ibhodi yonkhe kuleligatja ivalwe, noma imise kutsengisa emasheya labhalisiwe, uma ngabe itawufeza sinye noma ngetulu kuletizatfu taloMtsetfo letibalwe kusigaba 2. 5
- (2) Ligatja kufanele, ngekuya ngesigaba (3), ngemuva kwekukhipha noma kumiswa lokubalwe kusigatjana (1)—
- (a) atise banikeli ngenhloso yekukhipha noma kumisa;
  - (b) anikete lomnikeli tizatfu talenjongo yekukhipha noma yekumisa; kanye 10
  - (c) abite umnikeli kutsi atokhombisa sizatfu, ngesikhatsi lesibalwe ligatja, kutsi kungani lokukhishwa noma kumiswa kungafanele kwentiwe.
- (3) Uma ngabe lolokudzingekako kute ubhaliswe, noma yiphi imibandzela lebekwe ngaphansi kwesigaba 11(8)(c) noma (d) semitsetfo yeligatja akukahanjiswa nayo noma uma ngabe kuba netizatfu tsite lapho khona imitsetfo yeligatja noma 15 lokudzingekako kute ubhaliswe kubonwa njengesizatfu lesimelela lokumiswa ngekushesha kwekutsengisa, ligatja linga, ngekuya ngesigaba (1), bacele kutsi kumiswe ngekushesha ngalokubalwe kuleso sigatjana sikhatsi lesingadluli emalanga langema-30, leso sikhatsi singabuye sikhuliswe ngalamanyemalanga langema-30.
- (4) Uma ngabe kutsengisa kwemasheya labhalisiwe sekumiwi ngekwalesigaba, 20 ligatja linga, ngaphandle kwsigatjana (1) na (3), lingavumela basebentisi labagunyatiwe kutsi batsenge babuye batsengise lawo masheya kwentela sizatfu sinye sekuphumelelisa imisibenti yabo lebangene kuyo ngalokuphat selene nalawo masheya ngembi kwekumiswa.
- (5) (a) Uma ngabe umnikeli acela ligatja kutsi likhiphe masheya kuluhla kodvwa 25 ligatja libone lamasheya njengalafanele kutsi achubeke afakwe kuloluhla, lokukhishwa kufanele kuvunyelwe ngulabaphetse lawo masheya ngendlela lebalwe nguleligatja kantsi neligatja kufanele lineliseke ngetizatfu letivakalako kutsi inshisekelo yelindlazana lelinemasheya kufanele linakwe.
- (b) Umnikeli kufanele anikete tizatfu talesicelo lesivetwe kundzima (a). 30
- (6) (a) Uma ligatja lala kutsatsa sicelo kutsi kufakwe emasheya kuloluhla ngaphansi kwesigaba 11(8)(b), noma ngaphansi kwesigatjana (1) kukhishwe emasheya kuloluhla, leligatja lelitsitsekako kufanele latise ngekushesha onkhe lamanye emagatja eRiphahulikhi ngaletizatfu talokwaliwa kanye nelusuku lalokukhishwa.
- (b) Uma ngabe lokwala kutsi kufakwe emasheya eluhleni kubangelwe kukhohlakala 35 noma bugebengu lobentiwe nglonikelako, noma lenye yetintfo letikhiphe kabi sitatimende lesikhulumna ngesimi setimali noma kungavetwa noma yini lephat selene nemphahla, noma kukhishwa kwemasheya kubangelwe kuhluleka kuhambisana nalokudzingekako kute ubhaliswe kuligatja, alikho lelinye ligatja eRiphahulikhi lelinga, sikhatsi lesingalinganisewa kutinyanga letisitfupha kusukela ngalolusuku lolubalwe kundzima (a), anikete sicelo sekutsi kufakwe emasheya latsintsekako kuloluhla lolugcinwe ngilo, livumele kutsengisa kwalawo masheya, ngaphandle kwekutsi lokwala noma lokukhishwa kususwe ligatja lekucala noma kubekelwe eceleni ngekufaka sikhalo lobhodi letikhalo ngekuya ngesigaba 105.
- (c) Uma ngabe ligatja lihocisa kwala noma kukhishwa ngembi kwekutsi kuphele 45 tinyanga letisitfupha, kufanele latise lomnikeli kanye nawo onkhe emagatja eRiphahulikhi.

### **Kusetjentiswa kweluhlu loluchitjiyw kubemasheya lebebabbalisiwe**

13. (1) Kuchitjiyw lokudzingekako kute ubhaliswe kungasetjentiswa ligatja kumasheya labhalisiwe ngembi kwekuchibiyela lolokudzingekako kute ubhaliswe, 50 ngesatiso lesibhaliwe kumnikeli walawo masheya labhalisiwe.
- (2) Lokudzingekako kute ubhaliswe kutawucala kusebenta ngelusuku lolutawuncunywa ligatja, lapho khona lusuku akufanele lube sedvute, ngaphandle kwekutsi kunetizatfu letibangela kutsi lusuku lube sedvute, kunenyanga yinye kulolusuku lapho khona ligatja kufanele latise umnikeli, kodvwa ligatja lingahocisa lolusuku lebelubekwe ekucaleni ngesicelo lesibhalwe phansi ngumnikeli. 55
- (3) Uma ngabe ligatja lingatsatsi sicelo ngekuhociwa ngekuhambisana nesigatjana (2) lomnikeli lotsintsekako angenta tetfulo ngalokubhaliwe anikete nobhala, uma ngabe sicelo sekuhlehliswa siyavakala, nobhala anga, ngemuva kwekutsintsana neligatja, ahlehlise lusuku lapho khona lolokudzingekako kute ubhaliswe kutawucala kusebenta 60

exchange, postpone the date on which the listing requirements take effect by not more than three months and must inform the exchange accordingly in writing.

#### **Disclosure of information by issuers of listed securities**

**14. (1) (a)** An exchange may require an issuer of listed securities to disclose to it any information at the issuer's disposal about those securities, or about the affairs of that issuer, if such disclosure is necessary to achieve one or more of the objects of this Act referred to in section 2. 5

(b) An exchange may require the issuer to disclose that information to the registered holders of the securities, within a period specified by the exchange.

(c) If the issuer refuses to disclose the information to the exchange or the registered holders of the securities, the exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the exchange. 10

(2) When an issuer discloses information in terms of this section to the registered holders of securities that may influence the price of those securities, the issuer must at the same time make the information available to the public. 15

#### **Maintenance of insurance, guarantee, compensation fund or other warranty**

**15. (1)** An exchange may impose a fee on any person involved in a transaction in listed securities affected through the exchange for the purpose of administering and maintaining the insurance, guarantee or compensation fund or other warranty contemplated in section 8(1)(h). 20

(2) Any funds received or held by an exchange for purpose of maintaining the insurance, guarantee or compensation fund or other warranty contemplated in section 8(1)(h), 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. 25

#### **Funds of mutual exchange**

**16.** A mutual exchange may require its authorised users to contribute towards the funds of the exchange for the purpose of carrying on the business of the exchange.

#### *Exchange rules*

#### **Requirements with which exchange rules must comply**

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**17. (1)** The exchange rules must be consistent with this Act.

(2) The exchange rules must provide—

(a) for equitable criteria for authorisation and exclusion of authorised users and, in particular, that no person may be admitted as an authorised user or allowed to continue such person's business as an authorised user unless the person— 35

(i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and  
(ii) complies, or, in the case of a corporate body, is managed by persons or employs persons who comply, with the standards of training, experience and other qualifications required by the exchange rules; 40

(b) for the authorisation and criteria for authorisation of the securities services that authorised users may provide, and if—

(i) there are different categories of—  
(aa) authorised users, for the authorisation and criteria for 45 authorisation of the securities services that each category of authorised user may provide;

(bb) securities listed on an exchange, for the authorisation and criteria for authorisation of the categories in respect of which

kungakadluli ttinyanga letintsatfu kantsi kufanele batise ligatja ngalokufanele ngalokubhalwe phansi.

### **Kukhishwa kwelwatiso lebeluflhakele ngulabaneluhlu lebemasheya**

**14. (1) (a)** Ligatja lingadzinga kutsi umnikeli wemasheya labhalisiwe kutsi alivetele noma laphi Iwatiso loluvela kumnikeli loluphatsele naamasheya, noma ngalokuphatsele netindzaba talowo mnikeli, uma ngabe loko lokuvetiwe kufanele kutsi kungafeza sinye noma letinye taletizatfu taloMtsetfo lekucondziswe kuto kusigaba 2.

**(b)** Lingagatja lingacela kutsi umnikeli avete Iwatiso kulabhalisiwe kumasheya, ngesikhatsi lesibalwe ligatja.

**(c)** Uma ngabe umnikeli angavumi kuveta Iwatiso egatjeni noma banikati bemasheya, ligatja linga, ngaphandle kwekutsi umnikeli atfole umyalelo wenkhantolo imvikela kutsi avete loko, amise kutsengisa kulawo masheya kuze kufike lesi sikhatsi lokuvetwa lekubekelwe sona ngekuleniseka kweligtja.

**(2)** Uma ngabe umnikeli aveta Iwatiso ngekwalesigaba kubanikati lababhalisiwe bemasheya loko kungaba nemtselela kumanani alawo masheya, lomnikeli kufanele ngesikhatsi lesifanako ente lolwatiso Iwatiwe kubantfu.

### **Kuphatfwa kwemshwalense, siciniseko, sikhwama sekuncepheteliswa noma lenye iwaranti**

**15. (1)** Ligatja lingabeka imali kunoma ngubani lotsintsekako kumtransekshini kumasheya labhalisiwe latsintseka kuleligatja kwentela tinjongo tekulawula kanye nekugcina lomshwalensi, kucinisekisa noma sikhwama sesincepheteliso noma imali yesincepheteliso noma noma yiphi iwaranti levetwe kusigaba 7(1)(h).

**(2)** Noma ngabe ngutiphi timali letitfolakele noma letibanjwe ligatja kwentela tizatfu tekugcina umshwalense, siciniseko noma sincepheteliso noma lenye iwaranti levetwe kusigaba 8(1)(h), kwentela tonkhe tinjongo letitsetfwe njengaleti “yimphahla yebatsenjwa” njengoba ichazwe ku-*Financial Institutions (Protection of Funds) Act* kantsi nalowo Mtsetfo uyasebenta kuleto timali.

### **Timali teligatja letetayelekile**

**16.** Ligatja leletayelekile lingadzinga basebentisi labagunyatiwe kanye nemaklayenti abo kutsi afake sandla kuletimali teligatja kwentela tizatfu tekuchubeka nelibhizinisi laleligatja.

### ***Imitsetfo yeligatja***

### **Tidzingo lekfanele Imitsetfo yeligatja ihambisane nato**

**17. (1)** Lemitsetfo yeligatja kufanele ihambisane naloMtsetfo.

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**(2)** Lemitsetfo yeligatja kufanele inikete—

**(a)** kwentela indlela yekuvumela nekukhipha basebentisi labagunyatiwe kanye, ikakhulukati, kutsi akekho umuntfu longatsatwa umsebentisi losemtsetfweni noma avunyelwe kuchuba ibhizinisi yalowo muntfu njengemsebentisi losemtsetfweni ngaphandle kwekutsi umuntfu—

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(i) yetento letihle kanye nebhinisi lesezingeni lelipakeme noma, uma ngabe kulibhizinisi, kuphatfwa bantfu labatiphetse kahle kanye nalabanemabhzinisi lahloniphekile; kanye

(ii) ihambisane noma, uma ngabe kungumtimba walabaphetse, iphetfwe ngebantfu noma icasha bantfu labahambisana nemazinga ekucecesha, Iwati lwemsebenti kanye nalatinje ticu letidzingwa mitsetfo yeligatja;

**(b)** kuvunyelwa kanye nendlela yekuvunyelwa kwemsebenti wemasheya kutsi basebentisi labagunyatiwe banganketa, kantsi uma ngabe—

(i) kunemazinga lahlukene—

(aa) basebentisi labagunyatiwe, kwentelwa kuvunyelwa nendlela yekuvunyelwa kwemashaya kutsi lihlangotsi linye lemsebentisi losemtsetfweni linganiketa;

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(bb) emasheya labhalwe kuligatja, kwentelwa kuvunyelwa nendlela yekuvunyelwa kulihlangotsi ngalokuphatsele nemsebentisi

an authorised user may provide one or more securities services;	
(ii) the exchange authorises its authorised users to perform securities services in respect of securities not listed on the exchange, for the authorisation and criteria for authorisation of the categories of such securities in respect of which an authorised user may provide one or more securities services;	5
(c) (i) for the capital adequacy, guarantee and risk management requirements with which an authorised user must comply;	10
(ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of authorised users or different activities of an authorised user's business;	
(d) for an efficient, honest, transparent and fair manner in which and terms and conditions subject to which transactions in listed securities must be effected by authorised users, whether for own account or on behalf of other persons;	15
(e) for the manner in which transactions in listed securities must be cleared and settled;	
(f) if the exchange has not appointed a clearing house for the clearing of transactions effected through the exchange,—	20
(i) for the determination as to which transactions will be cleared by the exchange;	
(ii) for the circumstances in which the exchange may refuse to clear a transaction in securities which would otherwise be cleared in terms of the rules in subparagraph (i);	
(iii) for the monitoring of settlement obligations of authorised users and their clients;	25
(g) for the regulation of transactions in listed securities entered into as a result of any first communication made to a person without an express or tacit invitation from such person;	
(h) subject to the provisions of section 38(3) and section 41, for the circumstances in which a transaction in listed securities may be declared void by the exchange;	30
(i) that no authorised user may conduct business with a person whom the authorised user believes or suspects requires approval as a nominee under section 76 or approval to undertake management of securities in terms of any law, without having taken reasonable measures to ascertain that such person has the necessary approval;	35
(j) for the approval by the exchange of a nominee of an authorised user which nominee holds securities in a securities account or central securities account as defined in Chapter IV;	40
(k) for the manner in which the exchange monitors compliance by its authorised users with this Act, and the exchange rules and exchange directives;	
(l) for the conditions subject to which an officer or employee of an authorised user may, in relation to the buying and selling of listed securities, advise on or conclude any transaction on behalf of an authorised user in the course of that authorised user's business and for the circumstances in which an officer or employee of an authorised user may be denied access to the exchange;	45
(m) for the circumstances in which trading in any listed security may be suspended or halted;	
(n) for the manner in which an authorised user is required to conduct the securities services for which it is authorised generally;	50
(o) for the operation by an exchange or authorised user of a trust account contemplated in section 21;	
(p) for the manner in which authorised users must comply with section 22;	
(q) for the—	55
(i) recording of transactions effected through the exchange;	
(ii) monitoring of compliance by authorised users with the exchange rules and exchange directives; and	

- losemtsetfweni anganiketa umsebenti munye noma ngetulu wetinsita temasheya;
- (ii) leligatja livumela basebentisi labagunyatiwe kutsi bente umsebenti lophat selene nemasheya ngekwemasheya langabhalisa kuleligatja, kwentelwa kuvunyelwa nendlela yekuvunyelwa kwalawo masheya lapho khona umsebentisi losemtsetfweni anganiketa noma leminye imisebenti yemasheya;
- (c) (i) kwentela kuneliseka ngekwetimali, siccisekiso kanye netidzingo tekulawulwa kwebungoti lapho khona umsebentisi losemtsetfweni kufanele kuhambisane; 10  
(ii) loko kuneliseka ngekwetimali, sicciseko netidzingo tekulawulwa kwebungoti kufanele kunakiswe noma ngabe kungahluka ngekuya ngetigaba tebasebentisi labagunyatiwe noma imisebenti lehlukene yemabhzinisi emsebentisi losemtsetfweni;
- (d) kwentela kuhambiswa kahle, kutsembeka, kucaca nendlela lengavuni lapho khona imigomo nemibandzela ngekuya ngekutsi ematransekshini kumasheya labhalisiwe kufanele acalwe basebentisi labagunyatiwe, noma ngabe batentela bona noma ngalokuphat selene nalabanye bantfu; 15  
(e) lendlela emasheya labhalisiwe lekufanele agunyatwe nobe akhokheleke ngayo; 20  
(f) uma ngabe ligatja lingakabeki indlu legunyatako kwentela kugunyatwa kwematransekshini itawugunyatwa ligatja;  
(i) kwentela sincumo lapho khona itransekshini itawugunyatwa ligatja;  
(ii) kwentela tizatfu lapho khona ligatja lingala kugunyata itransekshini yemasheya langagunyatwa ngekwemtsetfo wendzinyana (i); 25  
(iii) kwentela kulawula kwekukhokha ngalokugcwele kwebasebentisi labasemtsetfweni kanye nemaklayenti;
- (g) kwentela kumiselwa kwemtsetfo wematransekshini kumasheya labhalisiwe lekungenelwe kuko ngenca yesizatfu yanoma kuphi kuchumana kweku cala lokwentelwe umuntfungaphandle kwesimemo lesivetiwe lesivila kulowo muntfu; 30  
(h) ngekuya ngemibandzela yesigaba 38(3) nesigaba 41, kwentela letimo lapho khona itransekshini yemasheya labhalisiwe kungacinekiswa njengalokungasebenti nguleligatja;  
(i) kutsi akekho umsebentisi losemtsetfweni longenta umsebenti nemunfu le umsebentisi losemtsetfweni lekakholelwa noma asolela kutsi udzinga imvume njengalophakanyisiwe ngaphansi kwsigaba 76 noma imvume yekulawula emasheya ngekuhambisana nanoma muphi umtsetfo ngaphandle kwekutsatsa tindlela letiphatsekako tekucinisekisa kutsi lowo muntfu unemvume lefanele; 35  
(j) kwentela kuvunyelwa ligatja lelipakanyisiwe lemsebentisi losemtsetfweni lapho khona lophakanyisiwe anemasheya ku-akhawunti yemasheya noma kumasheya ku-akhawunti yemasheya lesemkhatsini njengoba ichazwe kuSahluko IV;  
(k) ngalendlela leligatja lelihlola ngayo kuhambisana nemtsetfo kwebasebentisi labagunyatiwe ngaloMtsetfo, nemitsetfo yeligatja netinkhomba teligatja; 45  
(l) kwentela lemibandzela ngekuya ngekutsi sicelo noma sisebenti sembentisi losemtsetfweni anga, ngalokuphat selene nekutsenga nekutsengiswa kwemasheya labhalisiwe, aluleke noma acedzelele itransekshini ngekubambisana nelibhizinisi lemsebentisi losemtsetfweni nekwentela imiphumela lapho khona umsebenti noma sisebenti semsebentisi losemtsetfweni angalelwa kutsi angene egatjeni; 50  
(m) kwentela tindlela lapho khona kutsengiselwana kunoma ngabe nguwaphi emasheya laseluhlweni angahle amiswe noma akhishwe;  
(n) lendlela umsebentisi losemtsetfweni lekufanele ente ngayo umsebenti wemasheya lapho ubekwe khona emtsetfweni ngalokutayelekile; 55  
(o) lokusebenta kweligatja noma umsebentisi losemtsetfweni nge-akhawunti yebatsenjwa levetwe kusigaba 21;  
(p) Ngalendlela basebentisi labagunyatiwe kufanele bahambisane nesigaba 22;  
(q) kwentela—  
(i) kurekhodwa kwematransekshini lentiwe kuleligatja;  
(ii) kulandzelela kwekuhambisana nemtsetfo kwebasebentisi labagunyatiwe nemitsetfo yeligatja kanye netinkhomba teligatja; kanye 60

- (iii) surveillance of any matter relevant for the purposes of this Act, and the exchange rules and exchange directives;
- (r) for the circumstances and manner in which an authorised user may advertise or canvass for business;
- (s) for a process whereby complaints by authorised users against the exchange in respect of the exercise of functions by the exchange may be made, considered and responded to;
- (t) for the manner in which complaints against an authorised user or officer or employee of an authorised user must be investigated;
- (u) for the steps to be taken by the exchange, or a person to whom the exchange has delegated its investigative and disciplinary functions, to investigate and discipline an authorised user or officer or employee of an authorised user who contravenes or fails to comply with the exchange rules, the interim exchange rules or the exchange directives, and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings; 10
- (v) for the manner in which an authorised user, officer or employee of an authorised user who is believed to—
  - (i) be able to furnish any information on the subject of any investigation referred to in paragraphs (u); or 20
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject, may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (w) in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 8(1)(h), for—
  - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty; and
  - (ii) the amount of the fee imposed by the exchange for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty; 30
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty; and
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty; 35
- (x) that authorised users must disclose to their clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; 40
- (y) that authorised users may charge a fee for different categories of transactions;
- (z) for the purposes for which, and the process by which, an exchange may issue exchange directives;
- (aa) for supervisory measures that enable the exchange to comply with section 10(2)(c), (d) and (e); 45
- (bb) for the authority of, and the manner in, and circumstances under which—
  - (i) an exchange may limit the revocation of any settlement instruction given by an authorised user or its client;
  - (ii) on the commencement of insolvency proceedings, an authorised user or client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the exchange rules, but prior to settlement; 50
  - (iii) an exchange or an authorised user may terminate transactions on the commencement of insolvency proceedings;
- (cc) for the arrangements to be made in relation to the administration of securities and funds held for own account or on behalf of a client by an authorised user, including the settlement of unsettled transactions, under insolvency or default proceedings in respect of that authorised user; 55

- (iii) kuhlolisiswa kwanoma luphi ludzaba lolubalulekile kwentela tinjongo taloMtsetfo, nemitsetfo yeligatja netinkhomba teligatja;
- (r) kwentela tindlela nemiphumela umsebentisi losemtsetfweni angakhankasa ngato noma akhangise ibhizinisi; 5
- (s) kwentela inchubo lapho khona tikhalo letifakwe ngekumelana nebasebentisi labagunyatiwe basegatjeni ngalokuphatselene nekwentiwa kwemsebenti waleligatja kungentiwa, kunakwe futsi kuphendvulwe; 10
- (t) kwentela tinyatselo lekfanele titsatfwie ligatja, noma umuntfu lobekwe ligatja lelimnikete umsebentisi wekuphenya noma wekubuyisa endleleni, kutsi aphenye abuye acondzise tigwegwe temsebentisi losemtsetfweni noma umsebentisi noma sisebentisi semsebentisi losemtsetfweni lophula noma lohluleka kuhambisana nemitsetfo yeligatja, lemitsetfo yeligatja lekhona netinkhomba teligatja kwentela nemibiko kulokwenteka uma ngabe kucondziswa tigwegwe lekfanelwe kuniketwe nobhala kungakapheli emalanga langema-30 ngemuva kwekucedza kwaleyoye misebenti; 15
- (u) ngalendlala umsebentisi losemtsetfweni, umsebentisi noma umsebentisi wemsebentisi losemtsetfweni lokukholelwia kutsi—
- (i) akhone kuniketa nanoma luphi lwatiso ngalokuphatselene nganoma luphi luppenyo lolucondziswe kutigatjana (t) na (u); noma
  - (ii) abe nanoma namaphi emaphepha noma abe ngaphansi kwalowo muntfu lolawulako lekanemtselela kuloko lokukhulunywa ngako, angacelwa kutsi avele kumuntfu lowenta luppenyo, kutsi atotselwa ngemibuto noma akhiphe lawo maphepha; kanye 20
- (v) ngalophatselele nemshwälense, siccisekiso, sikhwama sesincepheteliso noma iwarsnti lebalwe kusigaba 8(1)(h),—
- (i) kwentela lomuntfu lekfanele afake sandla ekugcineni lowo mswalensi, siccisekiso, sikhwama sesicepheteliso noma iwaranti;
  - (ii) lelinani lemalii lebekiwe nguleligatja kwentela letizatfu;
  - (iii) emazinga emakleyimu lahlukene langaletfwa nekumelana nalomshwälensi, siccisekiso, sikhwama sekuncephetelisa noma lenye iwaranti; 30
  - (iv) imibandzela ngekwelinani lanoma yiphi ikleyimu;
  - (v) kulawula nekuphatsa kwemshwälense, siccisekiso, sikhwama sekuncephetelisa noma lenye iwaranti;
  - (vi) lokuphatfwa kwalomshwälense, siccisekiso, sikhwama sekuncephetelisa noma lenye iwaranti; 35
- (w) kutsi basebentisi labagunyatiwe kufanele bavete kumaklayenti abo timali tekwenta imisebenti yabo;
- (x) kutsi basebentisi labagunyatiwe bangabita imali kumazinga lahlukene ematransekshini, lokuvetwa kufanele kunikete emanani email emsebenti ngamunye lowentiwe; noma uma ngabe leso samba singancumeki kalula, lolokuphatselene nalokubala; 40
- (y) kwentela tizatfu lapho khona, ligatja linganiketa imiyalelo yeligatja;
- (z) kwentela tizatfu tekulawula letenta kutsi ligatja lihambisane nesigaba 10(2)(c), (d) na (e);
- (aa) kwentela imitsetfo, netindlela, kanye netimo le ngaphansi kwato— 45
- (i) Ligatja lingehlisa lizinga lingacitsa noma ngabe nguyiphi imiyalelo y kuhokhelwa leniketwe ngumsebentisi losemtsetfweni noma emaklayenti akhe;
  - (ii) Ngalesikhatsi kuchubeka tingcogco tekuhlakata, umsebentisi losemtsetfweni noma iklayenti ingacitsanoma nguyiphi imiyalelo yekukhokhelwa ngembi kwalesikhatsi lapho khona kuhokhelwa kungasacitseki njengoba kuncunyiwe kumitsetfo yeligatja, kodwva ngembi kwekukhokhelwa;
  - (iii) ligatja noma umsebentisi losemtsetfweni angamisa itransekshini ngalesikhatsi kucala tingcogco tekuhlakatwa; 55
- (bb) kute kutsi kwentiwe emalungiselelo ngalokuphatselene nekulawulwakwemasheya netimali letibanjewi i-akhawunti yakho noma ngalokuphatselene neklayenti nemsebentisi losemtsetfweni, kufaka ekhatsi kuhokhelwa kwemtransekshini lebekangakakhokhelwa, lahlakatwako kungakhokhelwa ngekumelana nalowo msebentisi losemtsetfweni; 60
- (cc) lokulawulwa ligatja ngekuhambisana nemisebenti leniketwe basebentisi labagunyatiwe yi-*Financial Intelligence Centre Act*.

- (dd) for the manner in which an authorised user who is acting as an inter-dealer broker is required to conduct its inter-dealer broking services, including the manner in which the inter-dealer broker broadcasts bids and offers that it receives, if applicable;
- (ee) for the circumstances in which an authorised user may or may not transact in listed securities using the services of an inter-dealer broker who is not an authorised user;
- (ff) that authorised users must notify the exchange as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and
- (gg) for the supervision by an exchange of compliance with the duties imposed on its authorised users by the Financial Intelligence Centre Act.
- (3) (a) Any rules made in terms of subsection 2(e) or 2(bb) or 2(cc) must have due regard for, and not be in conflict with, any applicable depository rules.
- (b) Any rules made in terms of subsection 2(bb) and (cc) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.
- (4) (a) Subject to section 5(1)(c) and (2) and the requirements prescribed by the registrar, the exchange rules may provide for the approval of external authorised users to be authorised users of the exchange.
- (b) If the exchange rules provide for this, the rules must provide, in accordance with paragraph (a), for the identification of those securities services that will be authorised and regulated by the exchange in terms of the exchange rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external authorised user is authorised and supervised.
- (5) The exchange rules made under this section apply to an authorised user only to the extent that those rules apply to—
- (a) all authorised users generally; and
- (b) the securities service or services for which that authorised user has been authorised by the exchange.
- (6) An exchange may, with the approval of the registrar, make exchange rules on additional matters that are not inconsistent with this Act.
- (7) An exchange rule made under this section is binding on—
- (i) the exchange;
- (ii) the authorised users of the exchange;
- (iii) issuers of securities listed on that exchange;
- (iv) the officers and employees of the exchange, its authorised users and issuers; and
- (v) clients of its authorised users.

#### *Authorised users*

#### **Restriction on borrowing against and repledging of securities belonging to other persons**

- 18.** No authorised user may—
- (a) borrow against pledged listed securities an amount in excess of the outstanding balance of any amount which the authorised user may have lent the pledgor against the pledged securities;
- (b) repledge listed securities without the written consent of the pledgor.

#### **Marking of or recording details of securities**

- 19.** When a document of title relating to listed securities comes into the possession of an authorised user, the authorised user must, as soon as possible—
- (a) mark it; or
- (b) record and store the necessary details, in a manner which will render it possible at any time thereafter readily to establish the identity of the owner of those securities.

#### **Restriction on alienation of securities**

- 20.** Subject to the exchange rules, an authorised user may only alienate listed securities deposited with the authorised user if the person who deposited them has authorised such alienation in writing.

- (dd) ngalendlela umsebentisi losemtsetfweni losebenta njengalobolekisako kudzingeka kutsi ente umsebenti wakhe wekuba ngumbolekisi losemkhatsini amemetela emabhidi kanye nemanani lawatfolako, uma ngabe kufanele;
- (ee) kutindlela lapho khona umsebentisi losemtsetfweni angatsenga noma angatsengi emasheya asebentisa imisebenti yembolekisi losemtsetfweni lekangasuye umsebentisi losemtsetfweni;
- (ff) kutsi basebentisi labasemtsetfweni kufanele batise ligatja ngekushesha uma ngabe kucala inchubo yekuhlakata ngekumelana nabo;
- (3) (a) Nima miph iimitsetfo leyentiwe ngekwasigaba 2(e), 2(bb) noma 2(cc) kufanele ibe ingakakhokhelwa, kantsi ingangcubutani, nanoma miph iimitsetfo yesikhungo.
- (b) Noma miph iimitsetfo leyentiwe ngekwasigatjana 2(bb) na (cc) kufanele kutsi isebente ngalokufanako, futsi ingagcubutani nesigaba 8 se-National Payment System Act.
- (4) (a) Ngekuya ngesigaba 5(1)(c) na (2) kanye netidzingo letibekwe ngunobhala, nemitsetfo yeligatja inganiketela kuvumeleka kwebasebentisi labagunyatiwe labangaphandle kutsi babe basebentisi labagunyatiwe beligatja.
- (b) Uma ngabe iimitsetfo yeligatja iniketela kuloku, iimitsetfo kufanele iniketele, ngekuambisana nendzima (a), ngekuvetwa kwaleyo misebenti yemasheya leyitawugunyatwa ibuye ilawulwe ligatja ngekwemitetfo yeligatja kanye naleyo letawugunyatwa kantsi ilawulwe kumlawuli losemtsetfweni walelive lapho lemitsetfo yemsebentisi losemtsetfweni wangaphandle iseomba futsi ilawulwa khona.
- (5) Lemitsetfo yeligatja leyentiwe ngaphansi kwalesigaba iseomba kumsebentisi losemtsetfweni kuhphela ngekutsi leyo mitsetfo—
- (a) bonkhe basebentisi labagunyatiwe ngalokujwayelekile; kanye
- (b) umsebenti wemasheya noma imisebenti lapho khona lomsebentisi losemtsetfweni agunyatwe ligatja.
- (6) Lingatja lingahle, ngekwemvume yanobhala, lente iimitsetfo yeligatja ngetindzaba letinje letingahambisani naloMtsetfo.
- (7) Umtsetfo weligatja lowentiwe ngaphansi kwalesigaba usibopho—
- (i) kuleligatja,
- (ii) basebentisi labagunyatiwebaleligatja,
- (iii) banikeli bemasheya lababhalwe kuluhla lalelo gatja kanye nakustisebenti nebasebenti balo, njalo njalo
- (iv) nemaklayenti ebasebentisi labagunyatiwe.

### *Basebentisi labagunyatiwe*

#### **Imitsetfo lecinile ngekuboleka noma kutsatsa usebentise bekuvikela labangebalomunye umuntfu**

- 18.** Akekho umsebentisi losemtsetfweni langa—
- (a) aboleke emasheya labhalisiwe ekubanjiswe ngawo langetulu kwelinani lelibekiwe laleinani lemali lesele lapho khona lomsebentisi losemtsetfweni angabe aboleke lolobambisako ngekumelana nalamasheya labanjisiwe;
- (b) kubambisa kabusha emasheya labhalisiwe ngaphandle kwemvume lebhalwe phansi yalobambisako.

#### **Kumaka kwe noma kubhalwa kwemininingwane yebemasheya** 45

- 19.** Uma ngabe umculu welitatiyela lophatselene nemasheya labhalisiwe ufika kumsebentisi losemtsetfweni, umsebentisi losemtsetfweni kufanele, ngekushehsa—
- (a) awamake; noma
- (b) awabhale abuye abeke imininingwane lefanele, ngendlela lengawaniketela njengalasebentisekako nanoma nini ngemuva kwaloko ngemuva kwaloko alungele kusungula imvelaphi yemnikati walawo masheya.

#### **Kuvimbela kwehlukana kwemasheya**

- 20.** Ngekuya ngemitsetfo yeligatja, umsebentisi losemtsetfweni angahlukanisa kuhphela emasheya labhalisiwe lafakwe kumsebentisi losemtsetfweni uma ngabe lomuntfu lawafakile abhale phansi kutsi ahlukaniswe.

### Segregation of funds

**21.** (1) (a) Every authorised user must open and maintain a trust account at a bank designated for client funds, or may use such an account opened and maintained by an exchange, into which any instruments of payment or cash received from a client must be deposited on the day of receipt: Provided that any deposit that is made by a client directly into an authorised user's own account, or any deposit that is received after banking hours, must be transferred into such trust account by the start of business on the next day.

(b) A trust account referred to in this subsection may contain only funds of clients and not those of an exchange or authorised user.

(2) Funds received from a client need not be deposited into a trust account if payment—

- (a) is made to the authorised user by a buyer of listed securities—
  - (i) against delivery of such securities to the buyer; or
  - (ii) against such securities being marked or recorded as the property of the buyer; or
- (b) is preceded by a payment made by the authorised user to the seller of listed securities against delivery of such securities to the authorised user; or
- (c) is made to pay a debt due to the authorised user: Provided that a debt arising from the purchase of listed securities which have not been marked or recorded as the property of the buyer of the securities, may not be regarded as a debt due for this purpose; or
- (d) is made in terms of any other law or exchange rule which specifically provides for such payment to be deposited into some other account.

(3) Funds held in a trust account and any funds which have not been deposited into a trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, are considered to be "trust property" as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those funds, subject to this section.

(4) Funds deposited into a trust account may only be withdrawn by an authorised user for the purpose of making payment—

- (a) to the person entitled to the payment; or
- (b) in terms of any other law or the exchange rules:

Provided that if, after the withdrawal, any deposited cheque, draft or other instrument against which the withdrawal was made is not subsequently honoured, the authorised user must pay the shortfall arising from the default into the trust account immediately.

(5) All bank charges accruing in respect of a trust account are for the account of the authorised user except that bank charges specifically relating to a deposit or withdrawal of the funds of a client are for that client's own account.

(6) Any interest accruing to the funds in a trust account is payable to the owner of the funds after any fees owed to the authorised user or exchange has been deducted.

(7) Any excess remaining in a trust account after payment of or provision for all claims of persons whose funds have or should have been deposited in the trust account, is not trust property as contemplated in subsection (3).

(8) The division of the High Court of South Africa having jurisdiction over an authorised user may, on the application of an exchange, the registrar or any other person having a claim against a trust account of the authorised user, on good cause shown, prohibit the authorised user from operating the trust account, and may appoint a curator to control and administer the trust account with such rights, powers and duties in relation thereto as the court may consider necessary.

### Segregation of securities

**22.** (1) Every authorised user must deposit securities held for its own account and for or on behalf of its clients in separate securities accounts or other accounts, maintained by the person who holds or otherwise safeguards such securities on behalf of the

### Kuhlukaniswa kwetimali

- 21.** (1) (a) Wonkhe umsebentisi losemtsetfweni kufanele avule abuye agcine i-akhawunti yebatsenjwa ebbange leyentelwe timali temaklayenti, noma angasebentisa leyo akhawunti levulwe yabuye yagcinwa ligatja, lapho khona noma ngabe liphi lithulusi lekukhokhela noma imali letfolakele lengukhesi letfolwe ivela kuklayenti kufanele ifakwe ngalolusuku letfolakala ngalo: Inkhanji nje uma ngabe noma yini lefakiwe kwafakwa yiklayenti ku-akhawunti yemsebentisi losemtsetfweni iya kuye, noma ngabe yini lefakwa ngemuva kwemahora ekusebenta kwelibhange, kufanele idluliselwe kule-akhawunti yebatsenjwa ekucaleni kwelusuku lolulandzelako. 5
- (b) I-akhawunti yetitsenjwa lebalwe kulesigatjana ingacuketsa timali kuphela 10 temaklayenti hayi leto teligatja noma umsebentisi losemtsetfweni.
- (2) Imali letfolwe ivela kuklayenti akufanele ifakwe ku-akhawunti yebatsenjwa uma ngabe loko kukhokhelwa—
- (a) ifakwe kumsebentisi losemtsetfweni ngumtsengi wemasheya labhalisiwe— 15
    - (i) ngekumelana nekuletfwa kwalawo masheya kulona lotsengako; noma
    - (ii) ngekumelana nalawo masheya lamakiwe noma labhalwe njengemphahla yalolotsengako; noma
  - (b) ilandzelwa inkhokhelo leyentiwe umsebentisi losemtsetfweni kulotsengisa emasheya labhalisiwe ngekumelana nekuletfwa kwalawo masheya kumsebentisi losemtsetfweni; noma 20
  - (c) yentiwe kutsi kukhokhelwe sikweleti semsebentisi losemtsetfweni: Inkhanji nje uma ngabe lawo masheya labhalisiwe avela kulawo langakamakwa noma abhaliswe njengemphahla yemtsengi wemasheya angeke atsatfwa njengesikweleti ngenca yalesizatfu; noma
  - (d) yentiwe ngekuhambisana nanoma muphi umtsetfo noma umtsetfo weligatja 25
    - loniketela loko kukhokhelwa kutsi kufakwe kulenye i-akhawunti.
- (3) Timali letifakwe ku-akhawunti yebatsenjwa njengoba kobonakele kusigatjana (1) kodvwa lokubonakala njengalokukwalomunye umuntfu, kubonakala “njengemphahla yebatsenjwa” njengoba kuchaziwe ku-*Financial Institutions (Protection of Funds) Act* kantsi lowo Mtsetfo usebenta kuleto timali, letihambisana nalesigaba. 30
- (4) Timali letifakwe ku-akhawunti yebatsenjwa tingakhishwa kuphela ngumsebentisi losemtsetfweni kwentela tinjongo tekubhadala—
- (a) kulomuntfu lekfanele kutsi akhokhelwe; noma
  - (b) ngalokuhambisana nanoma ngumuphi umtsetfo noma imitsetfo yeligatja. 35
- Ngekuya ngekutsi, ngemuva kwekukhipha, noma ngabe nguliphi lisheke lelifakiwe, luhlaka noma lelinye lithulusi lelimelele nalokukhishwa lokwentiwe bekungakanonishwa, umsebentisi losemtsetfweni kufanele akhokhele lolokushodako lokuvetwa ngulokungakhokhi kule-akhawunti yebatsenjwa ngekushesha.
- (5) Tonkhe tindleko telibhange letikhule ngenca ye-akhawunti yebatsenjwa titawuniketwa umsebentisi losemtsetfweni ngaphandle kwekutsi tindleko telibhange ikakhulukati letiphatselene nekufaka noma kuhishwa kwemali yeklayenti tale-akhawunti yaleyo klayenti. 40
- (6) Noma ngabe nguyiphi intalo lengenile kuletimali tale-akhawunti yebatsenjwa titawukhokhelwa umnikati waletimali ngemuva kwekutsi timali letikweletwa umsebentisi losemtsetfweni noma ligatja liyikhiphile. 45
- (7) Noma ngabe yini lesele ku-akhawunti yebatsenjwa ngemuva kwekukhokhela noma kuniketela onkhe emakleyimu emuntfu timali takhe lekfanele betifikwe ku-akhawunti yebatsenjwa, akusiyo imphahla yebatsenjwa njengoba bekushiwo kusigatjana (3).
- (8) Lokuhlukanisa kweNkhantolo Lephakeme yase Ningizimu Afrika lenemtsetfo wekulawula kumsebentisi losemtsetfweni inga, ngesicelo lesifakwe ligatja, nobhala noma lomunye umuntfu lofake ikleyimu ngekumelana ne-akhawunti yebatsenjwa yemsebentisi losemtsetfweni, ngesento lesihle lasibonisile, vimbela umsebentisi losemtsetfweni kutsi asebentise le-akhawunti yebatsenjwa, kantsi angabeka umlawuli kutsi alawule abuye aphatse le-akhawunti yebatsenjwa ngalawo malungelo, emandla nemisebenti ngekuhambisana naloko njengoba inkhantolo ingakubona kufanele. 50 55

### Kwehlukaniswa kwemasheya

- 22.** (1) Wonkhe umsebentisi losemtsetfweni kufanele afake emasheya lanawo ku-akhawunti yakhe kanye nalakawabambele emaklayenti akhe kuma-akhawunti lahlukene noma lamanyi ema-akhawunti, lephatfwa ngulomuntfu loyibambile noma 60

authorised user, and must ensure that securities held for or on behalf of its clients are identifiable as belonging to specific persons.

(2) (a) Every authorised user must balance and reconcile the aggregate number of each security reflected in securities accounts maintained by the authorised user, and held by a participant, another third party, or a licensed central securities depository if so authorised by the registrar, on behalf of the authorised user and its clients, with the number of securities held by the participant, other third party or licensed central securities depository, whichever may be applicable, on a daily basis unless otherwise provided for in the exchange rules. 5

(b) Any reconciling differences must be rectified within the time period prescribed in the exchange rules. 10

(3) Any securities held by an authorised user for or on behalf of another person must be identifiable as belonging to a specific person and are considered to be trust property as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those securities. 15

### *General provisions in relation to listed securities*

#### **Use of designation “stockbroker” and related designations**

**23.** (1) A stockbroker may use the designation “stockbroker”, “stockbroker (South Africa)” or “stockbroker (SA)”. 20

(2) A person who is not a stockbroker, may not—

- (a) purport to be a stockbroker; or
- (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act implying, or tending to induce the belief, that such person is a stockbroker.

(3) A person to whom the rules of an external exchange apply, and whose business is substantially similar to that of a stockbroker, may use the designation “stockbroker” if the country in which the use of the designation authorised is indicated after the designation. 25

#### **Buying and selling listed securities**

**24.** A person may only carry on the business of buying or selling listed securities if that person— 30

- (a) is an authorised user and acts in compliance with the relevant exchange rules;
- (b) effects such buying or selling through an authorised user in compliance with the relevant exchange rules;
- (c) is not an authorised user, but is a financial institution transacting as principal with another financial institution also transacting as principal, subject to section 25; or
- (d) is a person who, subject to any condition that the registrar may prescribe, buys or sells listed securities in order to—
  - (i) give effect to a reconstruction of a company or group of companies by the issue or reallocation of shares, or a takeover by one company of another or an amalgamation of two or more companies; or
  - (ii) effect a change in the control over management or the business of a company.

#### **Reporting of transactions in listed securities**

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**25.** (1) Any transaction in listed securities resulting in a change of beneficial ownership of those securities that is concluded outside of an exchange by—

- (a) a financial institution referred to in section 24(c); or
- (b) a person referred to in section 24(d),

must be reported by that financial institution or person, as the case may be, to the registrar. 50

(2) The registrar may, in respect of a report referred to in subsection (1), prescribe—

- (a) the information required in respect of any transaction; and

lokungenani logadza lawo masheya ngekubambela umsebentisi losemtsetfweni, kantsi kufanele acinisekise kutsi emasheya lawabambele emaklayenti akhe achazwe njengewalabo bantfu.

(2) (a) Wonkhe umsebentisi losemtsetfweni kufanele asimamise ahlanganise silinganiso nombolo selisheya ngalinye lelikhonjiswe ku-akhawunti yemasheya lenakwa ngumsebentisi losemtsetfweni, yaphatfwa ngulabangenelelako, kusilulu semasheya lesisemkhatsini lesibhalisiwe noma lenye incenye yesitsatfu ngekumelela umsebentisi losemtsetfweni kanye nenombolo yemasheya laphetfwe ngulabangenelelako, silulu semasheya lesisemkhatsini lesibhalisiwey noma besitsatfu lokungahle kube khona, malanga onkhe ngaphandle kwekutsi kuniketelwe kumitsetfo yeligatja.

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(b) Noma ngabe ngumuphi umehluko lohlukanisiwe kufanele ulungiswe ngalesikhatsi lesibalwe kumitsetfo yeligatja.

(3) Noma maphi emasheya labanjwe umsebentisi losemtsetfweni awabambele lomunye umuntfu kufanele kutsi atiwe kutsi abani kantsi atsatfwe njengemphahla yebatsenjwa njengoba achazwe ku-*Financial Institutions (Protection of Funds) Act* 15 naloMtsetfo usetjentiswa usetjentiswa kulawo masheya.

### *Imibandzela letayelekile ngalokuphatselene nemasheya labhalisiwe*

#### **Kusetjentiswa kwesikhundla “semtsengisi wemashezi” kanye naletinye tikhundla**

**23.** (1) Umtsengisi wemasheya angasebentisa leligama “umtsengisi wemasheya”, “umtsengisi wemasheya (Ningizimu Afrika)” noma “umtsengisi wemasheya (SA)”. 20

(2) Umuntfu longasuye umtsengisi wemasheya angeke—

- (a) atibita ngemtsengisi wemasheya; noma
- (b) asebentise noma liphi ligama lelibalwe kusigatjana (1) noma ngabe nguliphi ligama, simeligama, inchazelo noma luhawu, noma ente noma ngabe yini lechaza, noma lengabangela kutsi kukholelw, kutsi lowo muntfu 25 ngumtsengisi wemasheya.

(3) Umuntfu lapho khona kusebenta imitsetfo yeligatja langaphandle, kantsi nemsebenti wakhe ufana ngalokugcwele nalowo wemtsengisi wemasheya, angasebentisa leligama “umtsengisi wemasheya” uma ngabe lelive lasebentisa kulo leligama liniketiwe imvume kantsi libaliwe ngemuva kwalelogama. 30

#### **Kutsenga nekutsengisa emasheya laseluhlweni**

**24.** Umuntfu angachubeka nebhizinisi yekutsenga noma kutsengisa emasheya labhalisiwe uma ngabe lowo muntfu—

- (a) ngumsebentisi losemtsetfweni kantsi usebenta ngekuhambisana nemitsetfo yeligatja;
- (b) wenta loko kutsenga nekutsengiselana ngekusebentisana nemsebentisi losemtsetfweni ngekuhambisana nemitsetfo yeligatja;
- (c) akusuye umsebentisi losemtsetfweni, kodvwa sikhungo setimali sisebenta njengalesikhulu kanye nalesinye sikhungo sisebenta njengalesikhulu, ngekuya ngesigaba 25; noma
- (d) ngumuntfu, ngekuya nganoma nguyiphi imibandzela nobhala langayibeka, atsenge abuye atsengise emasheya labhalisiwe kute kutsi—
  - (i) kucalwe kwakhiwa kabusha kwenkhapani noma licembu letinkhapani ngekuniketwa noma kuniketwa kabusha kwemashesi, noma kutsatsa kwenkhapani yinye kunaleny noma kuhlanganisa kwetinkhapani 45 letimbili noma ngetulu; noma
  - (ii) kube nelushintjo ekulawuleni kwalabaphetse noma umsebenti wenkhapani.

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#### **Kubikwa kwetintfo letentekile kumasheya labhalisiwe**

**25.** (1) Noma ngabe nuwaphi ematransekshini emasheya labhalisiwe latawubangela 50 kuntjitjwa kwebunikati balawo masheya lekucedzelelw ngaphandle kweligatja—

- (a) sikhungo setimali lesibalwe kusigaba 24(c); noma
- (b) umuntfu lobalwe kusigaba 24(d); kufanele kubikwe sikhungo setimali noma umuntfu, njengoba kungabe kubekiwe, ngunobhala.

(2) Nobhala anga, ngekuhambisana nembiko lobalwe kusigatjana (1), abeke—

- (a) Iwatiso loludzingekako ngalokuphatselene nanoma yiphi itransekshini; kany

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- (b) the manner in and time within which reports are to be rendered.
- (3) (a) The registrar must disclose information about a transaction reported in terms of subsection (1) to the exchange on which the securities are listed.
- (b) The registrar may disclose information about a transaction reported in terms of subsection (1) to the public, if the registrar is satisfied that such disclosure will enhance the objects of this Act referred to in section 2 or regulatory effectiveness and transparency.
- (4) The exchange referred to in subsection (3) may publish any information disclosed to it in terms of that subsection.

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## CHAPTER IV

10

### CUSTODY AND ADMINISTRATION OF SECURITIES

#### Definition

**26.** For purposes of this Chapter, unless the context indicates otherwise, “**securities**” means uncertificated securities, including money market securities.

#### Licensing of central securities depository

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#### Application for central securities depository licence

**27.** (1) A central securities depository must be licensed under section 29.

(2) A juristic person may apply to the registrar for a central securities depository licence.

(3) An application for a central securities depository licence must—

- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements referred to in section 28;
- (c) be accompanied by—
  - (i) a copy of the proposed depository rules that must comply with section 35;
  - (ii) a copy of the founding documents of the applicant;
  - (iii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar; and
  - (iv) the application fee prescribed by the registrar;
- (d) be supplemented by any additional information that the registrar may reasonably require.

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(4) (a) The registrar 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 website.

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(b) The notice must state—

- (i) the name of the applicant;
- (ii) where the proposed depository rules may be inspected by members of the public; and
- (iii) the period within and the process by which objections to the application may be lodged with the registrar.

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#### Requirements applicable to applicant for central securities depository licence and licensed central securities depository

**28.** (1) An applicant for a central securities depository licence and licensed central securities depository must—

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- (a) subject to the requirements prescribed by the Minister have assets and resources in the Republic, 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 central securities depository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of the relevant stakeholders;

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(b) indlela kanye nesikhatsi lapho khona imibiko kufanele iniketwe khona.

(3) (a) Nobhala kufanele avete Iwatiso loluphat selene nematransekshini labikwe ngekwasigatjana (1) kuleligatja lapho lamashaya abhaliswe khona.

(b) Nobhala angaveta Iwatiso ngembiko wetransekshini lebikwe ngekwasigatjana (1) kubantfu, uma ngabe nobhala uyanelseka kutsi loko kuveta kutawutfutfukisa tinjongo taloMtsetfo letibalwe kusigaba 2 noma kulawuleka kahle ngekwemtsetfo noma ngalokucacile.

(4) Ligatja lelibalwe kusigatjana (3) lingakhipha Iwatiso lebavetelwe lona ngekwalesigatjana.

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## SAHLUKO IV

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### KUGGINWA NEKULAWULWA KWEMASHEY

#### Tinchazelo

**26.** Kwentela tizatfu taleSahluko, ngaphandle kwekutsi ingcikitsi ikubeke ngaleny indlela, “emasheya”, kushiwo emasheya langekho emtsefweni, kufaka ekhatsi emasheya asemakethe yetimali.

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#### *Kuniketwa kwemalayisensi kwemasheya kulibhange lelisemkhatsini*

#### **Kufaka sicelo selayisensi yebuninati kulibhange lelisemkhatsini**

**27.** (1) Sikhungo semasheya lesisemkhatsini kufanele sibhaliswe ngaphansi kwesi-gaba 29.

(2) Umuntu lobekwe ngekwemtsetfo angafaka sicelo kunobhala kutfola ilayisensi 20 yesikhungo semasheya lesisemkhatsini.

(3) Sicelo semvume selibhange lelisemkhatsini lemasheya—

(a) abe ngalolo hlobo kantsi abe nelwatiso lolubhalwe ngunobhala;

(b) akhombie kutsi lofaka sicelo uyahambisana netidzingo letibhalwe kusigaba 28;

(c) kuhambisane—

(i) nekhophi yesiphakamiso semitsetfo yesikhungo lekfanele ihambisane nesigaba 35;

(ii) emaphepha ekusungula alona lofaka sicelo;

(iii) lolo Iwatiso ngalokuphat selene nemalunga alomtimba lolawulako alona 30 lofaka sicelo njengoba kungabe kubekwe ngunobhala; kanye

(iv) linali lemalu yekufaka sicelo njengoba ibekwe ngunobhala;

(d) kuhambisane nanoma luphi Iwatiso nobhala langaludzinga.

(4) (a) Nobhala kufanele akhiphe satiso sesicelo selayisensi yesikhungo semasheya lesisemkhatsini kumaphephandzaba lamabili avelonkhe, ngetindleko letitawukho- 35 khelwa ngulofake sicelo, kanye nakuwebhu lesemtsetfweni.

(b) Satiso kufanele sivete—

(i) ligama lalofake sicelo;

(ii) lapho lemitsetfo yesikhungo lephakanyisiwe ingahlolwa malunga emmango; 40 kanye ikhophi ye

(iii) nesikhatsi nenchubo lapho kungaphikiswa khona khona kungavumelani nalesicelo kunobhala.

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#### **Lokudzingekako kubafaki sicelo kutfola emalayisensi asebhange lelisemkhatsini**

**28.** (1) Lofaka sicelo selayisensi yesikhungo semasheya lesisemkhatsini nesilulu semasheya lesisemkhatsini lesibhalisiwe kufanele—

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(a) kutawuya nbgetidzingo letibalwe nguNgcincoshe, kuba nemphahla netinsita kumitfombolusito eRiphahulikhi, leto tinsita tifaka ekhatsi imali, kulawula nekuphatfwa kwetisebenti letinelwati lolufanele, kutsi bente imisebenti yabo njengoba kubekiwe kulomtsetfo;

(b) kube nemalungiselelo ekubusa lacacile nalakhanyako, kutfutfukiswe 50 kuphepha nekufinyelela kulibhange lemasheya lelisemkhatsini, nekusekela kusimama kwaloluhlelo Iwetimali lonkhe, kutsatfwa kwaletinye tinshisekelo tebantfu letifanele, kanye netinjongo talabatsintsekako labafanele;

- (c) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, or the licensed central securities depository, as the case may be, its directors and senior management;
  - (d) have made arrangements for the efficient and effective monitoring of compliance by participants with the depository rules;
  - (e) have the infrastructure necessary for the sustained operation of a central securities depository in terms of this Act;
  - (f) have arrangements in place to manage operational risk associated with the operation of a central securities depository;
  - (g) make provision to the satisfaction of the registrar for settlement of 10 transactions and for the management of settlement risk; and
  - (h) have made arrangements for security and back-up procedures to ensure the integrity of its records.
- (2) The registrar may—
- (a) require an applicant or a licensed central securities depository to furnish such 15 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 or a licensed central securities depository, derived from whatever source, including any other supervisory authority, if such information is disclosed to the 20 applicant or a central securities depository 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.

### **Licensing of central securities depository**

- 29.** (1) The registrar may, after consideration of any objection received as a result of 25 the notice referred to in section 27(4) and subject to the conditions which the registrar may consider appropriate, grant a central securities depository licence to perform the functions referred to in section 30 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 30 of such a licence.
- (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 prior written approval of the registrar.
- (3) A central securities depository may at any time apply to the registrar for an amendment of the terms of its licence and the conditions subject to which its licence was granted.
- (4) (a) The registrar 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 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 registrar.

### *Functions of licensed central securities depository*

#### **Functions of licensed central securities depository and power of registrar to assume responsibility for functions**

**30.** (1) A licensed central securities depository must conduct its business in a fair and transparent manner with due regard to the rights of participants and their clients, and issuers.

(2) A licensed central securities depository—

- (c) kukhombisa lokudzingekako lokulungele lokubekwe ngunobhala lofake sicelo uyafinyelela kulo, kusilulu semasheya lesisemkhatsini lesibhalisiwe njengoba kungabe kubekiwe, bacondzisi babo kanye nebaphatsi labaphakeme; 5
- (d) bente emalungiselelo ekulawula kahle nangemphumelelo ngekuhambisana nemitsetfo kwalabangenelelako ngekwemitsetfo yesikhungo;
- (e) kube neluhlakanchanti lolufanele lwalokusebenta kwesikhungo semasheya lesisemkhatsini ngekwaloMtsetfo; 10
- (f) kubenemalungiselelo lakhona ekulawula bungoti bekusebenta lobuhambelana nekusebenta kwelibhange lemasheya lelisemkhatsini;
- (g) kwenta imibandzela leyanelisa nobhala ngekubhadeleka kwematransekshini nekulawulwa kwebungoti bekubhadalwa; kanye 10
- (h) kwentiwe emalungiselelo ekuvikela newekulandzeleta kucinisekisa sitfunti semarekhodi aso.
- (2) Nobhala anga— 15
- (a) cela lofake sicelo noma silulu semasheya lesisemkhatsini lesibhalisiwey kutsi simnikete lolo lwatiso lolungetive, noma acele kutsi lolo lwatiso lucinisekiswe, njengoba nobhala angakubona kufanele;
- (b) anake noma luphi lwatiso loluphat selene nalofake sicelo noma into silulu semasheya lesisemkhatsini lesibhalisiwe, lesisuselwa kunoma ngumuphi umtfombo, kufaka ekhatsi noma ngabe ngubaphi labaphetse, uma ngabe lolo lwatiso luvetwe kulofake sicelo sikhungo semasheya lesisemkhatsini kantsi nako lolokugcinile kuniketwe lituba lelivisisekako kutsi kuperhendvulwe kuko; kanye 20
- (c) kusho letinye taletintfo letidzingekako letibalwe kusigatjana (1) ngeminini- 25 ngwane legcwele.

### Kuniketwa kwemalayisensi kwemasheya kulibhange lelisemkhatsini

29. (1) Nobhala anga, ngemuva kwekutsatsa noma kuphi kungavumelani lokutfolakele njengemphumela walesatiso lobhalwe kusigaba 27(4) nangekuya ngemibandzela lengatsatfwा ngunobhala njengalefanele, anikete ilayisensi yesikhungo 30 semasheya lesisemkhatsini kutsi sente lemisebenti lebalwe kusigaba 30 uma ngabe—
- (a) lolofake sicelo uyahambisana naletidzingo letifanele taloMtsetfo; kanye
- (b) naletinjongo taloMtsetfo letibalwe kusigaba 2 titawuchutjekiswa ngekuniketa lelayisensi lenjalo.
- (2) Lelayisensi kufanele ibhalwe lelihovisi lelibhalisiwe kusikhungo semasheya lasemkhatsini eRiphabhulikhi naletindzawo lapho khona lesikhongo semasheya lesisemkhatsini kufanele sibe khona, nekutsi lesikhungo semasheya lesisemkhatsini angeke sasetjentiswa kunoma ngabe nguyiphi indzawo ngaphandle kwemvume yangaphambilini lebhalwe ngunobhala. 35
- (3) Sikhungo semasheya lesisemkhatsini singabhalela noma nini kunobhala kute kutsi kuchitjiwelwe lemigomo yalelayisensi kanye nemibandzela ngekuuya ngekutsi 40 ilayisensi beyiniketiwe.
- (4) (a) Nobhala kufanele akhiphe satiso ngekuchitjiwelwa kwemigomo yelayisensi yesikhungo semasheya lesisemkhatsini nemibandzela lapho khona ilayisensi beyiniketiwe kumaphephandzaba lamabili avelonkhe ngekwetindleko talofake sicelo 45 kanye nakuwebhu lesemtfootwensi.
- (b) Satiso kufanele shisho—
- (i) ligama lalofake sicelo;
- (ii) simo setichibiyelo letiphakanyisiwe; kanye
- (iii) lesikhatsi lapho khona lokungavumelani ngalesicelo kungadluliselwa 50 kunobhala.

### Imisebenti yemabhange emasheya lasemkhatsini

#### Imisebenti yemabhange emasheya lasemkhatsini kanye nemandla anobhala kucala umtfwalo umsebenti

30. (1) Silulu semasheya lesisemkhatsini lesibhalisiwe kufanele sente umsebenti waso ngendlela lecacile nalekhanyako ngekuhambisana nemalungelo alabangenelelako nemaklayenti abo, nalabaniketako. 55
- (2) Silulu semasheya lesisemkhatsini lesibhalisiwe kufanele—

- (a) must constitute, maintain and provide an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities;
- (b) must constitute, maintain and provide an infrastructure, which infrastructure will include a securities settlement system;
- (c) must perform custody and administration in respect of a central securities account;
- (d) must issue depository rules in accordance with section 35;
- (e) must supervise compliance by participants with the depository rules and depository directives;
- (f) must supervise compliance with this Act by its participants, report any non-compliance to the registrar and assist the registrar in enforcing this Act;
- (g) must enforce the depository rules and depository directives;
- (h) must as soon as it becomes aware thereof, inform the registrar of any matter that it reasonably believes may pose systemic risk to the financial markets;
- (i) may issue depository directives;
- (j) may amend or suspend the depository rules in terms of section 71;
- (k) must maintain a central securities account with due regard to the interests of the participant and its clients;
- (l) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities account;
- (m) must notify a participant in writing or as otherwise agreed of an entry made in the central securities account of the relevant person;
- (n) must balance and reconcile the total number and where applicable, the nominal value of each kind of uncertificated securities held on its uncertificated securities register with the records of the relevant issuer—
- (i) in respect of certificated securities of the same kind reflected in the central securities account, not less than once every six months;
- (ii) in respect of uncertificated securities of the same kind—
- (aa) if that aggregate has not changed, not less than once every month;
- (bb) if that aggregate has changed, on the business day after such change;
- (o) must administer and maintain a record of uncertificated securities deposited with it;
- (p) is entitled to access to the records of uncertificated securities administered and maintained by its participants to perform the functions for which it is licensed;
- (q) may, if the central securities depository is licensed as a clearing house under Chapter V, clear transactions in securities in accordance with its clearing house licence;
- (r) must disclose to persons for whom central securities accounts are kept, participants and issuers the fees and charges required by it for its services, and which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) must on request disclose to—
- (i) the registrar information about the securities held in a central securities account;
- (ii) an issuer information about the securities issued by that issuer and held in central securities accounts;
- (t) must notify the registrar as soon as it becomes aware that a participant will cease or has ceased to be a participant;
- (u) subject to sections 5(1)(c) and (2) and 35(4), may enter into an agreement with an external central securities depository for the provision of securities services in the Republic by that external central securities depository;
- (v) must establish and maintain effective, efficient and sustainable infrastructure to perform the functions for which it is licensed;
- (w) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and

- (a) kufanele sibe, netinsitanchanti letilawulwako tibuye tiniketwe kute libambe emasheya langenamvume lelenta kube khona kufakwa kwalokungenako ngalokuphat selene nemasheya langakabhaliswa;
- (b) kufanele kube, kuniketwe kubuye kugcinwe tinsitanchanti, leto tinsitanchanti titawufaka ekhatsi luhlelo lwekukhokhelwa kwemasheya;
- (c) kufanele libe baphatsi nebalawuli ngalokuphat selene nema-akhawunti emasheya;
- (d) kufanele banikete imitsetfo yelibhange ngalokuhambisana nesigaba 35;
- (e) kufanele kulandzelelwe kuhambisana naloMtsetfo basebentisi bawo ngekuhambisana nemtsetfo welibhange nemiyalelo yelibhange; 10
- (f) kufanele alawule lokuhambisana naloMtsetfo ngulabo labangenelelako, kubikwe noma ngabe ngukuphi lokuhanjiswa kahle kunobhala nekusita nobhala ekusebentiseni loMtsetfo;
- (g) kufanele asebentise lemitsetfo yesikhungo kanye netinkhomba tesikhungo;
- (h) kufanele ngekushesha uma ngabe bacala kwati, atise nobhala nganoma luphi ludzaba lebalukholwako lolungabangela luhlelo lolunebungoti kutimakethe temnotfo; 15
- (i) linganiketa tinkhomba tesikhungo;
- (j) singachibiyla noma simise lemitsetfo yesikhungo ngekwesigaba 71;
- (k) kufanele kusimamiswe i-akhawunti yemasheya lasemkhatsini ngalokuphat selene nentalo yalabangenelelako kanye nemaklayenti aso; 20
- (l) angaba nawo onkhe emasheya lafanako lekafakwe ngulabangenelelako ngesikhatsi sinye ku-akhawunti yemasheya lesemkhatsini;
- (m) Kufanele atise labangenelelako ngalokubhalwe phansi noma ngalendlela lekuvunyelwene ngayo ngalokungenako lokwentiwe ku-akhawunti yemasheya lesemkhatsini yalabantfu labafanele; 25
- (n) kufanele kusimame kubuye kubuyiswe lokulingana ku-akhawunti yemasheya lesemkhatsini nemarekhodi aloniketako lokunguye—
- (i) ngalokuphat selene nemasheya lanetitifketi letifanako letikhonjiswe ku-akhawunti yemasheya lesemkhatsini, ngalokungeko ngaphansi 30 ngakunye njalo ngemuva kwetinyanga letisitfupa;
  - (ii) ngalokuphat selene nemasheya langekho emtsetfweni eluhlobo lolufanako—
    - (aa) uma ngabe lolokuphelele akukaguculwa, hayi kanye njalo nge-nyalo;
    - (bb) uma ngabe lolokuphelele kuguculiwe, ngalelo langa lebhizinisi ngemuva kwaleto tingucuko;
- (o) kufanele aphatse abuye alawule lirekhodi lemasheya langekho emtsetfweni lafakwe nalo;
- (p) kuvumelekile ekufinyeleleni kwemarekhodi emasheya langekho emtsetfweni 40 lokulawulwe kwabuye kwagcinwa ngulabangenelelako;
- (q) anga, uma ngabe sikhungo semasheya lesisemkhatsini sibhaliswe njengendlu legunyatoko ngaphansi kweSahluko V, ematransekshini ekugunyata kumasheya ngekuhambisana nemvume yendlu legunyata emasheya;
- (r) kufanele avete kubantu labo ku-akhawunti yemasheya lesemkhatsini 45 agcinwe khona, labangenelelako kanye nebanikeli betimali kanye netimali letidzingekako kwentela tinsita tabo;
- (s) ngesicelo kufanele avete—
  - (i) kunobhala Iwatiso ngemasheya labanjwe ku-akhawunti yemasheya lesemkhatsini;
  - (ii) umnikeli welwatiso ngemasheya lakhishwe ngulowo mnikeli abanjwa ku-akhawunti yemasheya lesemkhatsini;
- (t) kufanele kwatiswe nobhala ngekushesha ngaleikhatsi ati kutsi labangenelelako bayekela kuba ngulabangenelelako;
- (u) ngekuya getigaba 5(1)(c) na (2) na 35(4), bangangenelela ngesivumelwano 55 ngesikhungo semasheya lesisemkhatsini lesingaphandle ngekuniketwa kwemsebenti wemasheya eRiphabhlukhi ngulelo bhange lemasheya lelisemkhatsini lelingaphandle
- (v) kufanele kusungulwe agcine indlela lenemphumelelo, lekahle nalesimeme kutinsitancanti ekwenteni umsebenti wemasheya laniketwe imvume yabo; 60 kanye
- (w) kufanele atise nobhala ngekushesha ngalesikhatsi kucala inchubo yekuhlakata noma inchubo yekuhlakata iyacala ngekumelana naye, kanye

- (x) may do all other things that are necessary for, incidental or conducive to the proper operation of a central securities depository and that are not inconsistent with this Act.
- (3) (a) The registrar may assume responsibility for one or more of the regulatory or supervisory functions referred to in subsection (2) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2. 5
- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)—
- (i) inform the central securities depository of the registrar's intention to assume responsibility; 10
  - (ii) give the central securities depository the reasons for the intended assumption; and
  - (iii) call upon the central securities depository to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar. 15

### *Participant*

#### **Authorisation of participant**

**31.** A licensed central securities depository may authorise a person as a participant in that central securities depository in terms of the depository rules.

#### *Duties of participant* 20

#### **Duties of participant**

**32.** (1) A participant must conduct its business in a fair and transparent manner with due regard to the rights of its clients.

- (2) A participant—
- (a) must, if securities are deposited with the participant, deposit them with a licensed central securities depository; 25
  - (b) must maintain a securities account for a client in respect of securities deposited;
  - (c) must reflect the number or nominal value of securities of each kind deposited in a securities account; 30
  - (d) must administer and maintain a record of all securities deposited with it in accordance with the depository rules;
  - (e) must record all securities of the same kind deposited with it in an uncertificated securities register if so required by the depository rules;
  - (f) must disclose to clients and issuers the fees and charges required by it for its services; which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; 35
  - (g) must notify a client in writing or as otherwise agreed to by the client of an entry made in the client's securities account; 40
  - (h) must on request disclose to—
    - (i) the registrar information about the securities recorded in a securities account;
    - (ii) an issuer information about the securities issued by that issuer and recorded in a securities account in accordance with the depository rules; 45
  - (i) must have a central securities account with a licensed central securities depository, and may—
    - (i) deposit securities with or withdraw securities from that central securities depository; or
    - (ii) transfer, attach, pledge, cede or give effect to any other lawful instruction in respect of a security or an interest in securities through that central securities depository; 50
  - (j) must exercise the rights in respect of securities deposited by it with a licensed central securities depository in its own name on behalf of a client when so instructed by the client;
  - (k) must balance and reconcile the aggregate of the securities accounts with the central securities accounts on a daily basis; 55

- (x) angatenta tonkhe letinye tintfo letifanele, letincane noma letifanele kulomsebenti lekungiwo wesikhungo semasheya lesisemkhatsini nekutsi atihambisan i naloMtsetfo.
- (3) (a) Nobhala angacabangela umsebenti wamunye noma ngetulu kuphatfwa noma kulawulwa kwalemisebenti lebalwe kusigatjana (2) uma nobhala akubona kufanele kute kutsi kufinyelelwe kutinjongo talomtsetfo lobalwe kusigaba 2. 5
- (b) Nobhala kufanele, ngembi kwekutsi atsatse umsebenti njengoba kubalwe kundzima (a)—
- (i) atise sikhungo semasheya lesisemkhatsini ngetinhloso tanobhala tekucala umsebenti;
  - (ii) kuniketa sikhungo semasheya lesisemkhatsini letizatfu talokucabangela; ne
  - (iii) kucela sikhungo semasheya lesisemkhatsini kukhombisa sizatfu ngesikhatsi lesibalwe ngunobhala kutsi kungani umsebenti ungarcalwa ngunobhala. 10

### ***Labangenelelako***

#### **Kugunyatwa kwalabangenelelako**

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31. Silulu semasheya lesisemkhatsini lesibhalisiwe singagunyata, umuntfu lonjengalabangenelelako kuleso sikhungo semasheya lesisemkhatsini ngekuya ngemitsetfo yesikhungo.

### ***Umsebenti waLabangenelelako***

#### **Umsebenti walabangenelelako**

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32. (1) Longenelelako kufanele ente umsebenti wakhe ngendlela lengavuni licala nalecacile ngekuhambisana nemalungelo emaklayenti akhe.

(2) Labangenelelako—

- (a) kufanele, uma ngabe emasheya afakiwe labangenelelako, batawafaka nesilulu semasheya lesisemkhatsini lesibhalisiwe;
- (b) kufanele bagcine i-akhawunti yemasheya yemaklayenti ngekuhambisana nemasheya langenisiwe;
- (c) kufanele kukhombise inombolo yelizinga lelilinganisiwe lemasheya leluhlobo ngalunye lolufakiwe ku-akhawunti yemasheya;
- (d) kufanele alawule nekugcina emarekhodi awo onkhe emasheya lafakwe kuwo ngekuhambisana nemitsetfo yesikhungo nekulawula nekuphatsa emarekhodi awo onkhe emasheya lafakwe ngalokuphatselene nemitsetfo yesikhungo; 30
- (e) kufanele babhalise onkhe emasheya lafanako lafakiwe kumasheya langekho emtsetfweni uma ngabe kudzingwa imitsetfo yesikhungo;
- (f) kufanele batjele emaklayenti ngetimali netindleko letidzingekako kwentelwa imisebenti lokuvetwa kwayo kufanele iniketwe linani lemali lebekiwe yemsebenti ngamunye lowentiwako; noma uma ngabe lelo nani alincumeki ngaphambilini, lesisekelo salokubala; 35
- (g) kufanele atise iklayenti ngekubhala noma avunyelwe yiklayenti kulosufakwe ku-akhawunti yaleklayenti;
- (h) kufanele avete nakaceliwe—
  - (i) Iwatiso lwanobhala ngemasheya labhaliswe ku-akhawunti yemasheya;
  - (ii) Iwati llwemnikeli ngemasheya lakhishwe ngumnikeli abhaliswe ku-akhawunti yemasheya ngekuhambisana nemitsetfo yesikhungo;
- (i) abe ne-akhawunti yemasheya lesemkhatsini nesilulu semasheya lesisemkha-tsini lesibhalisiwe, kantsi anga—
  - (i) angafaka noma akhiphe emasheya kusikhungo semasheya lesisemkha-tsini; noma
  - (ii) adlulise, anamatselise, afakazele, acedze noma anikete leminye imiyalelo lesemfweni lahambisan nemasheya nentalo yemasheya kuleso sikhungo semasheya lesisemkhatsini; 50
- (j) kufanele asebentisa emalungelo ngekwalawo masheya lafakiwe kusilulu semasheya lesisemkhatsini lesibhalisiwe ngeligama lakhe ngekumelela iklayenti uma ngabe acelwe yiklayenti;
- (k) kufanele asimamise anuye ente ahambisan ne-akhawunti yemasheya laku-akhawunti yemasheya lesemkhatsini onkhe malanga; 55

- (l) must correct discrepancies which are revealed in the reconciliation of the aggregate of its securities accounts with the central securities depository, and the participant must make good or provide any reconciled shortfall for which there are reasonable grounds for concluding that the participant is responsible;
- (m) must deposit securities held by it for its own account and those held for or on behalf of its clients in separate securities accounts and must ensure that securities held for or on behalf of its clients are segregated and identifiable as belonging to a specific person;
- (n) must, on a daily basis, ensure that its securities accounts and central securities accounts do not show a debit balance;
- (o) may not alienate, invest, pledge, hypothecate, encumber or otherwise make use of securities held for or on behalf of its clients, except with the client's express consent;
- (p) must make adequate arrangements for the safeguarding of clients' ownership rights, including, but not limited to insolvency proceedings;
- (q) must notify the registrar and central securities depository as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it; and
- (r) may perform securities services to the extent necessary to perform the duties referred to in this subsection.

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### *Uncertificated securities*

#### **Uncertificated securities**

**33.** (1) Certificated securities may be converted to uncertificated securities and an issuer may, subject to subsection (2), issue uncertificated securities despite any contrary provision in—

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- (i) any other law;
- (ii) the common law;
- (iii) an agreement;
- (iv) the memorandum of incorporation of an issuer;
- (v) a prospectus; or
- (vi) any other conditions applicable to the issuing of securities.

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(2) When any new issue of listed securities is made by an issuer or when an issuer issues securities in contemplation of the listing of that issuer's securities by an exchange, the securities must be issued in uncertificated form.

(3) An issuer and a licensed central securities depository and its participants must make arrangements in accordance with depository rules for uncertificated securities to be evidenced by way of entry.

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(4) An issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

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#### **Duties of issuer of uncertificated securities**

**34.** An issuer of uncertificated securities must—

- (a) record in its securities register the total number and, where applicable, the nominal value of each kind of uncertificated securities issued by it;
- (b) maintain separate records for each central securities depository holding uncertificated securities unless all those securities are held by one central securities depository;
- (c) if required by section 36(1), record the name of that central securities depository or its wholly owned subsidiary as the registered holder of the uncertificated securities;
- (d) balance and reconcile with a central securities depository the total number and, where applicable, the nominal value of each kind of uncertificated securities issued by it and recorded in its securities register—
- (i) if the register has not changed, not less than once every month;
- (ii) if the register has changed, on the business day after such change; and

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- (l) kufanele alungis lokungahambi kahle lokuvetwe ekubuyisaneni kwesilnganiso salama-akhawunti emasheya nelibhange lemasheya lasemkhatsini, kantsi longenelelako kufanele ente kahle noma anikete noma ngabe yini leshodako lehlanganisiwe lapho khona kunesisekelo lesivakalako sekucedzelala kutsi lolongenelelako uyavisiseka; 5
- (m) kufanele afake emasheya labanjwe ngibo ku-akhawunti yabo kanye nalawo labanjenlwe iklayenti kumasheya lahlukene lanjelwe emaklayenti abo akhonjiswe njengewemunfu lotsite;
- (n) kufanele onkhe malanga acinisekise kutsi i-akhawunti yemasheya abo naku-akhawunti yemasheya lesemkhatsini akubi nebhalsi yalokukhishiwe; 10
- (o) angeke bahlukanisa, basise, bafunge, bacabangele, afake ekhatsi nboma basebentise emasheya labekwe noma ngekumelela emaklayenti, ngaphandle kwemvume leniketwe maklayenti;
- (p) kufanele bente emalungiselelo lafanele kwentela kuvikela kahle emaklayenti nemalungelo ebunikati, kufaka ekhatsi, kungashiyi ngaphandle inchubo 15 yekuhlakata
- (q) kufanele batise nobhala kanye nelibhange lemaheya lelisemkhatsini ngeku-phutfuma uma ngabe kucala nenchubo yekuhlakata noma inchubo yekuhlakata icalile ngekumelana nabo; kanye
- (r) angenta umsebenti wemasheya ngendlela lefanele yekwenta lemisebenti 20 lebhalwe kulesigatjana.

### *Emasheya langekho emtsetfweni*

#### **Emasheya langekho emtsetfweni**

**33.** (1) Emasheya lanesitifiketi angaguculwa abe emasheya langekho emtsetfweni nemnikeli anga, ngekuya ngesigatjana (2), anikete e masheya langekho emtsetfweni 25 noma kungahambisani nembandzela—

- (i) wanoma muphi umtsetfo;
- (ii) umtsetfo wemaRoma;
- (iii) Sivumelwano;
- (iv) sivumelwano sekusebentisana semnikeli;
- (v) incwajana; noma
- (vi) Noma miphni imibandzela ngekuniketwa kwemasheya.

(2) Uma ngabe kuniketwa kwanoma maphi emasheya labhalisiwe lamasha kwentiwa ngumnikeli ngekuhambisana nalelo gatja, lamasheya kufanele aniketwe ngaphandle kwesitifiketi. 35

(3) U mnikeli ne silulu semasheya lesisemkhatsini lesibhalisiwe kanye naLabange-neleklos kufanele bente emalungiselelo nemitsetfo yesikhungo semasheya langekho emtsetfweni kutsi kufakazelwe ngumtsetfo wekungena.

(4) Umnikeli unemtfwalo lofanako ngekwe masheya langekho emtsetfweni 40 ngekwemasheya lanesitifiketi ngaphandle kwekutsi asikho sitifiketi noma lithulusi lelibhaliwe lelinganiketwa ngekumelela emasheya langekho emtsetfweni.

#### **Umsebenti wemnikeli wemasheya langekho emtsetfweni**

**34.** Umnikeli wemasheya langekho emtsetfweni kufanele—

- (a) abhale kurejista yemasheya inombolo lephelele, lapho kufanele khona, lizinga lelilinganisiwe leluhlobo ngalunye lemasheya langekho emtsetfweni 45 laniketwe nguye;
- (b) abe nelirekhodi lelihlukile lesikhungo semasheya lesisemkhatsini ngasinye lesiphetse emasheya langekho emtsetfweni ngaphandle kwekutsi lamasheya aphetfwe sikhungo semasheya lesisemkhatsini;
- (c) uma ngabe kudzingwa sigaba 36(1), lirekhodi leligama lalesikhungo 50 semasheya lesisemkhatsini noma yonkhe inflo labanayo njngebanikati lababhalisiwe kumasheya langekho emtsetfweni;
- (d) kulinganisa nekucatsanisa nesikhungo semasheya lesisemkhatsini inombolo lapho kufanele khona, silinganiso sebungako bentfo ngayinye yonkhe yemasheya laniketwe ngibo nalolubhaliswe kurejista yabo yemasheya—
  - (i) uma ngabe lerejista ingakantjintji, hayi ngaphansi kwakunye ngenyanga;
  - (ii) uma ngabe intjintjile, ngalelo langa lekusebenta ngemuva kwekuntjintja;
kanye

- (e) where applicable, comply with Chapter II, Part E and Part F of the Companies Act.

***Depository rules***

**Requirements with which depository rules must comply**

<b>35.</b> (1) The depository rules must be consistent with this Act.	5
(2) The depository rules—	
(a) must provide for the manner in which transactions in securities settled through the central securities depository must be settled;	
(b) must provide for equitable criteria for authorisation and exclusion of participants and, in particular, that no person may be admitted as a participant or allowed to continue such person's business as a participant unless the person—	10
(i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and	15
(ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the depository rules;	
(c) must provide for an orderly process by which a participant ceases to be a participant;	20
(d) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;	
(e) must provide for the steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate, and discipline a participant or officer or employee of a participant who contravenes or fails to comply with the depository rules, the interim depository rules or the depository directives and must require a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings;	25
(f) must provide for the manner in which a participant who is believed to—	
(i) be able to furnish any information on the subject of any investigation; or	
(ii) have in that participant's possession or under that participant's control any document, which has bearing upon that subject,	35
may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;	
(g) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of—	
(i) the participant's actual and potential liabilities;	40
(ii) conditional and contingent liabilities to the central securities depository; and	
(iii) liabilities which existed before or accrue after a person has ceased to be a participant;	45
(h) must provide for requirements in respect of corporate actions, including, but not limited to, that—	
(i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to the central securities depository, participants or clients and, if applicable, by the central securities depository to participants, and by participants to clients;	
(ii) notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to the central securities depository, participants or clients; and if applicable, that effect is given to the lawful instructions of clients with regard to voting rights and other matters, and	50
(iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities account or securities account as the case may be;	55

- (e) lapho kufanele khona, kuhambisane ne Sahluko II, incenye E nencenye F yeCompanies Act.

***Imitsetfo Yesikhungo***

**Lokudzingekako lapho khona imitsetfo yemabhange kufanele ihambisane nako**

- 35.** (1) imitsetfo yesikhungo kufanele ihambisane naloMtsetfo. 5  
(2) Imitsetfo yesikhungo—  
(a) kufanele baniketele indlela lapho khona ematransekshini emasheya lakhokhelwe ngekusebentisa libhange lemasheya lasemkhatsini kufanele kukhokhelwe; 10  
(b) kufanele inikete indlela lekahle yekuvumela nekukhipha labangenelelako kanye, ikakhulukati, kutsi akekho umuntfu longatsatfwa njengalabangenelelako noma achubeke nebhizinisi njengalabangenelelako ngaphandle kwekutsi lomuntfu—  
(i) ukahle abe nesitfunti lesiphakeme sebhizinisi noma, uma ngabe kumtimba webhizinizi, iphetfwe bantfu labakahle nalabahloniphekile 15 emabhizinisini, kanye  
(ii) ahambisane noma, uma kumtimba wemabhizinisi, iphetfwe bantfu labahambisana nemitsetfo yekucasha, lwati kanye nalokunye lokudzingekako kumitsetfo yesikhungo; 20  
(c) aletse inchubo lehlelekile lapho labangenelelako bayekela kula ngulabangenelelako; 25  
(d) uma kunesidzingo, kufanele ente emalungelo ekutsi emasheya lanetitifiketi aguculwe abe emasheya langekho emtsetfweni nekutsi banikeli banikete emasheya langekho emtsetfweni;  
(e) anikete tinyatselo letifanele titsatfwe sikhungo semasheya lesisemkhatsini, 30 noma umutsu le sikhungo semasheya lesisemkhatsini simbeke njengemphenyi nalocondzisa tigwegwe, aphenye, acondzise labangenelelako noma sisibenti nemcashi walabangenelelako who labangahambisanio nemitsetfo yesikhungo, lemitsetfo yesikhungo lekhona noma tinkhomba te sikhungo titfole umbiko ngalenchubo lekufanele kuniketwe nobhala kungakapheli 30 emalanga langema-30 ngemuva kwekucedza lelo cala;  
(f) kufanele avete indlela labangenelelako lekufanele—  
(i) bakhone kuniketa noma luphi lwati ngaloludzaba Iweluphenyo; noma 35  
(ii) abe nemculo walabangenelelako labawuphetse noma labawulawulako, lonemtslela ngaloludzaba,  
Bacele bavele phambi kwalowenta luppenyo, bashushiswe noma baletse lomculu;  
(g) banikete tindzingo ngekusho kwalabangenelelako ngekuma kwabo etimalini kanye nekhava lekungiyo yetimali talabangenelelako lekufanele bayibbambe— 40  
(i) yalabangenelelako labanayo mbamba nemsebenti wabo;  
(ii) lebanako lokubonakalako kwesikhungo semasheya lesisemkhatsini; kanye  
(iii) lebebanako ngaphambilini noma labakutfola ngemuva kwekutsi umuntfu ayekele kuba ngulongenelelako; 45  
(h) banikete lokufunekako ngekwebhizinisi, kufaka ekhatsi, kungakhishwa, kutsi—  
(i) incenye lekhokhwe naletinye timali letikhokhwe banikeli ngalokuphatselene nemasheya kusikhungo semasheya lesisemkhatsini, Labangenelelako noma emaklayenti, uma kuhona, ngulesikhungo semasheya lesisemkhatsini kulabangenelelako, namklayenti alabangenelelako; 50  
(ii) tatiso letiphatselene nemalungelo nalokunye lokutfolakele kulabanesheya lafakwe kusikhungo semasheya lesisemkhatsini, labangenelelako noma emaklayenti, uma ngabe akhona, loku kuniketwa imiyaleleo lesemfweni adlulisewa kusikhungo semasheya lesisemkhatsini, labangenelelako noma emaklayenti, uma ngabe akhona, loku kuniketwa imiyaleleo lesemfweni 55 yeklayent ngekwemalungelo akuvota naletinye tidzingo; kanye  
(iii) emalungelo alabangenelelako awapheli ngaloludzaba Iwekutsi emasheya lebanawo noma ngekubamelela abanjwe kanye kanye kuakhawanti yemasheya lesemkhatsini noma ku-akhawanti yemasheya njengoba kungabewa; 60

- (i) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities account or central securities account, deliver a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities account or central securities account, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned; 5
- (j) must provide for requirements in respect of same day debit balances and prohibit debit balances at the end of a day in a securities account or a central securities account; 10
- (k) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
- (l) must provide for—  
(i) the duty of persons for whom securities accounts or central securities accounts are kept to disclose to a participant or central securities depository, as the case may be, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited with the participant or central securities depository, as the case may be; and 20
- (ii) the manner, form and frequency of such disclosure;
- (m) must provide for the manner in which a central securities depository or a participant must keep records of clients, or owners or beneficial owners of securities and limited or other interests in securities; 25
- (n) must provide for the manner in which participants must give instructions to a central securities depository;
- (o) if the central securities depository is appointed as a clearing house by an exchange, may regulate, in a manner consistent with the exchange rules, the clearing and settlement functions to be performed by participants in the clearing and settlement process; 30
- (p) must provide for the purposes for which, and the process by which, a central securities depository may issue depositary directives;
- (q) must provide for the manner in which a participant must hold and administer securities; 35
- (r) must provide for the approval by the central securities depository of a nominee of a participant;
- (s) must provide that no participant may open a securities account or a central securities account for a person whom the participant believes or suspects requires approval as a nominee under section 76 without having taken reasonable measures to ascertain that such person has the necessary approval; 40
- (t) must provide for supervisory measures that enable the central securities depository to comply with section 30(2)(e), (f) and (g);
- (u) must provide for the manner in which complaints against a participant or officer or employee of a participant must be addressed ; 45
- (v) must provide for a process whereby complaints by participants against the central securities depository in respect of the exercise of functions by the central securities depository may be made, considered and responded to;
- (w) must provide for the authority of, and the manner in and circumstances under which—  
(i) a central securities depository may limit the revocation of any settlement instruction given by a participant or its client;  
(ii) a participant or client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the depository rules, but prior to settlement; or 50
- (iii) a central depository or a participant may terminate transactions on the commencement of insolvency proceedings; 55

- (i) Utawucela kutsi labangenelelako, ngesicelo lesibhalwe yiklayenti bakhiphe noma banikete intalo kumasheya laku-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini, banikete sitifketi noma bufakazi lobuphatsekako, noma emasheya lasezingeni lelilinganisiwe ngeluhlobo lolufanako, ngengoba lamasheya abanjenlw leyo klayenti ku-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini, inkhani nje uma ngabe leklayenti inebhalansi leyanele njengekusho kwalabangenelelako; 5
- (j) anikete lokudzingekako ngekukhishwa kwemali kule-akhawunti angavumeli emabhalansi ekukhipha ekugcineni ku-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini; 10
- (k) anganiketa lesikhungo semasheya lesisemkhatsini imvume yekwala kubhalisa emasheya lakhishwe noma ngumuphi umnikeli ngalokuphat selene nekugunyata kanye neluhlelo lwekulungisa egatjeni ngematrasekshini kuye akhawunti; 15
- (l) kufanele anikete—
- (i) umsebenti wemuntfu lapho i-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini abekelwe kuvetwa labangenelelako noma sikhungo semasheya lesisemkhatsini, njengoba kungaba njalo, nemsebenti walabangenelelako kuwuveta kusikhungo semasheya lesisemkhatsini, Iwatiso ngebazuzi, noma lamanye emasheya lafakwe 20 kulabangenelelako noma sikhungo semasheya lesisemkhatsini, njengoba kungabe kubekiwe; kanye
  - (ii) indlela, yekuvetwa kwaloko ngekushesh;
- (m) kufanele kuniketwe indlela le sikhungo semasheya lesisemkhatsini noma labangenelelako kufanele bagcine emarekhodi eklayenti, noma banikati noma bazuzi lababanikati bemasheya noma lalinganene noma lenye inshisekelo yemasheya; 25
- (n) kufanele banikete indlela lapho labangenelelako kufanele banikete imiyalelo sikhungo semasheya lesisemkhatsini;
- (o) uma ngabe lesikhungo semasheya lesisemkhatsini sibekwe njengendlu 30 legunyatako noma ligatja, singalawula, ngekuhambiana nemitsetfo yeligatja, kugunyata neku fakwa kwemali kwalabangenelelakos kuloluhlelo Iwe kugu nyata neku hokhela;
- (p) kufanele banikete tizatfu tekkutsi, netizatfu lapho khona, sikhungo semasheya lesisemkhatsini singaniketa imiyalelo yesikhungo; 35
- (q) banikete indlela lapho labangenelelako kufanele baphatse babuye balawule emasheya;
- (r) banikete imvume lebuya kusikhungo semasheya lesisemkhatsini salopha kanyisiwe walabangenelelako;
- (s) anikete kutsi abekho labangenelelako longavula i-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini nemuntfu lapho labangenelelako bakholelwa kutsi udzinga imvume yalophakanyisiwe ngaphansi kwasigaba 78 ngaphandle kwe kutsatsa tinyatselo letifanele acinisekise kutsi lowo muntfu unemvume; 40
- (t) kwentela tindlela tek lawula sikhungo semasheya lesisemkhatsini kutsi sihambisanee nesigaba 30(2)(e), (f) kanye (g); 45
- (u) kufanele sinikete indlela tikhalo letimelene nalabangenelelako noma sisibenti noma losebentela labangenelelako kufanele kusetjentwe ngaye ngakhona;
- (v) kwentela inchubo lapho kufakwa khona tikhalo ngulabangenelelako ngekumelana nelibhang lemasheya lelisemkhatsini ngalokuphat selene nemsebenti lowentiwa libhang lemasheya lasemkhatsini, lekanakiwe avunyelwa; 50
- (w) anikete ligunya lekutsi, nendlela lekufanele—
- (i) Sikhungo semasheya lesisemkhatsini singavikelwa kucifwa kwanoma muphi umyalelo loniketwe labangenelelako noma emaklayenti abo; noma 55
  - (ii) Labangenelelako nama iklayenti ingacitsa noma ngabe ngukuphi kukhokhelwa kuba gulokungasebenti njengoba kuncunywe kumitsetfo yesikhungo, ngembi kwe kuhokhelwa;
  - (iii) sikhungo lesisemkhatsini noma labangenelelako bangamisa ematra nsekshini emasheya ngenchubo yekuhlakata; 60

<ul style="list-style-type: none"> <li>(x) must provide for—           <ul style="list-style-type: none"> <li>(i) arrangements in relation to the administration of securities held for own account or on behalf of a client by a participant, including the settlement of unsettled transactions;</li> <li>(ii) arrangements in relation to the administration of dividends and other payments made by issuers for the benefit of participants or clients; and</li> <li>(iii) the manner in which a shortfall in securities in the securities account or central securities account must be apportioned amongst the persons whose securities are held in such account;</li> </ul> </li> </ul>	5
<ul style="list-style-type: none"> <li>(y) must provide for netting arrangements if transactions in one or more categories of securities settled through the central securities depository settle on a net basis;</li> </ul>	10
<ul style="list-style-type: none"> <li>(z) must provide for the manner in which a participant is required to conduct the securities services for which it is authorised;</li> </ul>	15
<ul style="list-style-type: none"> <li>(aa) must provide for the manner in which the central securities depository monitors compliance by its participants with this Act, the depository rules and the depository directives.</li> </ul>	
<p>(3) (a) Any rules made in terms of subsection (2)(w) must have due regard for, and not be in conflict with, any applicable exchange rules.</p>	20
<p>(b) Any rules made in terms of subsection (2)(w), (x) and (y) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act.</p>	
<p>(4) (a) Subject to section 5(1)(c) and (2) and requirements prescribed by the registrar, the depository rules may provide for the approval of external participants to be participants of the central securities depository.</p>	25
<p>(b) If the depository rules provide for this, the rules must, provide for—</p> <ul style="list-style-type: none"> <li>(i) the identification of those securities services that will be authorised and regulated by the central securities depository in terms of the depository rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external participant is authorised and supervised;</li> <li>(ii) where a central securities depository has approved an external central securities depository as a participant—           <ul style="list-style-type: none"> <li>(aa) the identification of the supervisory authority that supervises that external central securities depository;</li> <li>(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.</li> </ul> </li> </ul>	30
<p>(5) A central securities depository may, with the approval of the registrar, make depository rules, that are not inconsistent with this Act, on additional matters.</p>	
<p>(6) A depository rule made under this section is binding on—</p> <ul style="list-style-type: none"> <li>(i) the central securities depository;</li> <li>(ii) participants of the central securities depository;</li> <li>(iii) issuers of securities deposited with that central securities depository;</li> <li>(iv) any other person that has a central securities account with the central securities depository;</li> <li>(v) the officers and employees of the central securities depository, its participants, issuers, and of other persons that have a central securities account with the central securities depository; and</li> <li>(vi) clients of participants.</li> </ul>	40
<p><b><i>General provisions relating to custody and administration of securities</i></b></p>	50

### Registration of securities

**36.** (1) The registrar may direct 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.

- (x) kufanele banikete—  
(i) emalungiselelo ngalokuphat selene nekulawulwa kwemasheya labanjwe ngekumelela iklayingtingulongenelelako, kufaka ekhatsi kukhokhelwa kwematranskshini langakalungiswa; 5  
(ii) emalungiselelo ngalokuphat selene ngekulawulwa kwalokuhlukani-swako nalokunye lokukhokhwako lokwentiwe banikeli kwentela kuhlomula kwalabangenelelako noma emaklayenti; kanye  
(iii) indlela lokushodako kumasheya ku-akhawunti yemasheya noma i-akhawunti yemasheya lasemkhatsini kufanele ahlukaniswe ngayo kulabantu emasheya abo lafakwe kuleyo akhawunti; 10  
(y) kufanele bente emalungiselelo uma ematransekshini kulizinga linye noma ngetulu kwemasheya alungiswe kusikhungo semasheya lesisemkhatsini acedzelelw ngekwenethi;  
(z) anikete indlela lapho labangenelelako kudingke kwenta umsebenti wemasheya lagunyatelwe kona; 15  
(aa) kufanele anikete indlela lapho sikhungo semasheya lesisemkhatsini sihola kuhambisana nalabangenelelako kuloMtsetfo, lemitsetfo yesikhungo ne imiyalelo yesikhungo.  
(3) (a) noma miph iimitsetfo leyentiwe ngekuhambisana nesigatjana (2)(w) kufanele ibe naloko, kantsi ungangcubutani, nanoma muphi umitsetfo weligatja. 20  
(b) Noma miph iimitsetfo leyentiwe ngekwesigatjana (2)(w), (x) na (y) kufanele ifake ekhatsi, futsi ingangcubutani nesigaba 8 se-National Payment System Act.  
(4) (a) Ngekuya ngesigaba 5(1)(c) na (3) kanye netidzingo letibekwe ngunobhala, imitsetfo yesikhungo inga, niketela labangenelelakokutsi bane ngulabangenelelako besikhungo semasheya lesisemkhatsini. 25  
(b) Uma ngabe lemitsetfo yesikhungo ikwenta loku, imitsetfo kufane, imiketele—  
(i) kukhomba leyo misebenti yemasheya letawugunyatwa ibuye ilawulwe sikhungo semasheya lesisemkhatsini ngekwemitsetfo yesikhungo nalabo labatawugunyatwa balawule ngumsekeli loholako wakulelive ngaphansi kwakhe imitsetfo batawulawulwa bahlolwe labangenelelako. 30  
(ii) Laphi sikhungo semasheya lesisemkhatsini sivumele sikhungo semasheya lesisemkhatsini lesitimele njengalabangenelelako,—  
(aa) lokubonwa kwaloneliguanya lekuphatsa kanye nebaphatsi baleso sikhungo semasheya lesisemkhatsini lesitimele;  
(bb) kubona imitsetfo lefanele noma imitsetfo yesikhungo leebenta kuko 35 konke kusebenta, kufaka ekhatsi, ingavimbi lemitsetfo lelawula kusebenta kahle kwebesitsatfu netindlela tekuhlakata.  
(5) Sikhungo semasheya lesisemkhatsini singa, ngemvume yanobhala, sente imitsetfo yesikhungo lengahambisani naloMtsetfo kutindzaba letingetiwe. 40  
(6) umtsetfo wesikhungo lowentiwe ngaphansi kwalesigaba usibopho—  
(i) kusikhungo semasheya lesisemkhatsini;  
(ii) Labangenelelako bemabhange emasheya lasemkhatsini latimele;  
(iii) banikeli bemasheya Sikhungo semasheya lesisemkhatsini;  
(iv) noma lomunye nje umuntfu lone akhawunti yemasheya lesemkhatsini ne sikhungo semasheya lesisemkhatsini; 45  
(v) basebenti baso netisebenti belibhange lemasheya lasemkhatsini, labangenelelako, labaniketako, kanye nalabanye bantfu labane-akhawunti yemasheya lasemkhatsini nelibhange lemasheya lasemkhatsini; kanye  
(vi) nemaklayenti alabangenelelako.

*Imibandzela leyetaryelekile lecondziswe kugcinwa nekuphatfwa kwemasheya* 50

### Kubhaliswa kwemasheya

**36.** (1) Nobhala angasho kutsi noma waphi emasheya kumabhange lasemkhatsini labanjwa sikhungo semasheya lesisemkhatsini kufanele, ngaphandle kwekutsi amathulusi, emasheya asemakethe yetimali noma barekhode emasheya langekho emtsetfweni kurejista ngekuhambisana nesigaba 50 seCompanies Act nemitsetfo yesikhungo, abhaliswe ngaleligama laleskhungo semasheya lesisemkhatsini noma lababanikati baso, njengoba kuchazwe kusigaba 1 seCompanies Act, kwavunywa ngunobhala. 55

(2) (a) No central securities depository or participant may become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of—

- (i) a deposit of securities; or
- (ii) the registration in its name of—
  - (aa) securities;
  - (bb) limited rights in securities;
  - (cc) other rights in securities;
  - (dd) benefits in respect of securities; or
  - (ee) benefits accruing to securities.

(b) Paragraph (a) also applies to a wholly owned subsidiary, as defined in section 1 of the Companies Act, of a central securities depository or participant.

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### **Ownership of securities**

**37.** (1) Where securities of any kind are deposited with a participant or with a central securities depository, or accrue to the owner of securities of the same kind held collectively by a participant, authorised user, nominee or external central securities depository in a securities account or by a central securities depository in a central securities account, the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities account or central securities account, as the case may be.

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(2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner.

(3) The interest of a co-owner in all the securities in a securities account or central securities account, as the case may be, must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner and accruing to such securities, bears from time to time to the total number or nominal value of all securities of that kind held in the securities account or the central securities account.

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(4) A written statement issued by or on behalf of a participant in respect of an owner of securities or of a client or by or on behalf of a central securities depository in respect of an owner of securities or of a participant, external central securities depository or other person as the case may be, and specifying the interest of that owner, client, participant, external central securities depository or other person, is sufficient proof of the title or interest of that person in such securities.

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(5) Any securities held by a central securities depository, participant or nominee for or on behalf of another person, must be segregated and identifiable as belonging to a specific person and are considered to be trust property as defined in the Financial Institutions (Protection of Funds) Act, and that Act applies to those securities.

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### **Transfer of uncertificated securities or interest in uncertificated securities**

**38.** (1) (a) The transfer of uncertificated securities or of an interest in uncertificated securities on the uncertificated securities register held by a central securities depository or participant must be effected in the manner provided for in Chapter 2, Part E of the Companies Act, where applicable, and the depository rules, by making the debit and credit entries respectively in the central securities account or securities account of the transferor and the transferee kept by the central securities depository or the participant, as the case may be.

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(b) The transferee of uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) is entitled to all the rights of a transferee of movable property.

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(c) Nothing in this section prejudices any power of a participant or central securities depository, as the case may be, to effect a transfer to a person to whom the right to any

(2) (a) Asikho sikhungo semasheya lesisemkhatsini noma Labangenelelako labangaba banikati, lababambisene, baniyo, bafunge ngesizatfu sekutsatsa sikweleti, kwemasheya ngoba—

- (i) kufakwe emasheya; noma
- (ii) kubhaliswa egameni le—
  - (aa) emasheya;
  - (bb) emalungelo lalinganene emasheya;
  - (cc) lamanye emalungelo emasheya;
  - (dd) inzuzo ngekwemasheya; noma
  - (ee) inzuzo lekhulako kumasheya.

(b) Indzima (a) iyasebenta kubanikati njengoba ivetiwe kusigaba *1 se-Companies Act* sesikhungo semasheya lesisemkhatsini noma Labangenelelako.

### Bunikati bemasheya

37. (1) Lapho khona emasheya anoma luphi luhibo afakwa kulabangenelelako noma ngesikhungo semasheya lesisemkhatsini, noma kukhulele emasheya emnikati yalohlobo lolubanjwa ngekubambisana ngulabangenelelako, umsebentisi losemtsetfweni, lophakanyisiwe noma emasheya langaphandle kusikhungo ku-akhawunti yemasheya noma sikhungo semasheya lesisemkhatsini ku-akhawunti yemasheya lesemkhatsini, lomuntfu longumnikati walamasheya ngalesikhatsi sekufaka noma kukhula kuba khona kuntalo njengalomunye umnikati wawo onkhe lamasheya alokufanako letfolakala kumasheya noma ku-akhawunti yemasheya lesemkhatsini, njengoba kungabe kubekiwe.

(2) Kwanyalo njengoba kunemalungelo lanemgommo ngalokuphat selene noma nguwaphi emasheya ngalesikhatsi sekufaka noma kukhula, lawo malungelo lanemgommo akhulela kulentalo yalowo lomnikati nakulamanye emasheya laniketwe lomunye lomnikati.

(3) Inshisekelo yalomunye umnikati kuwo onkhe emasheya laku-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini, njengoba kungabe kubekiwe, kufanele kubalwe ngekurefera kulesicephu leyo nombolo yalenombolo noma lizinga lelilinganisiwe lemasheya lafakwe ngekuhambisana nalowo mnikati nekukhula kwalawo masheya, kwentate ngaleso naleso sikhatsi kulenombolo lephelele noma lizinga lelilinganisiwe lawo onkhe emasheya aloluhlobo kule-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini.

(4) Sitatimende lesibaliwe lesiniketwe ngekumelela Labangenelelako ngekuhambisana nemnikati wesikhungo semasheya lesisemkhatsini ngekumelela umnikati wemasheya noma labangenelelako, sikhungo semasheya lesisemkhatsini lesingaphandle noma lomunye umuntfu njengoba kungabe kubekiwe, kukhombie intalo yalowo muntfu, iklayenti, Labangenelelako, Sikhungo semasheya lesisemkhatsini lesingaphandle noma lomunye umuntfu, bufakazi lobanele belitatiyela noma intalo yalowo muntfu kulawo masheya.

(5) Noma maphi emasheya labanjwe kusikhungo semasheya lesisemkhatsini, labangenelelako noma lophakanyisiwe ngekumelela lomunye umuntfu kufanele ahlukaniswe atsatfwie njengewemuntfu lotsite kantsi atsatfwa njengemphahla yebatsenjwa njengoba kuchazwe ku-*Financial Institutions (Protection of Funds) Act* naloMtsetfo losebenta ngalawo masheya.

### Kudlulisela emasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni

38. (1) (a) Lokudlulisela kwemasheya langekho emtsetfweni noma kwentalo yemasheya langekho emtsetfwenion nemasheya langekho emtsetfweniregister laphetfwe sikhungo semasheya lesisemkhatsini noma Labangenelelako kufanele batsintseke ngendlela leniketwe kusahluko 2, Inceny ye*Companies Act*, lapho kufanele khona, nemitsetfo yesikhungo, ngekufaka imali nekuyiboleka ngalokufanako ku-akhawunti yemasheya lesemkhatsini noma ku-akhawunti yemasheya yalolodlulisela ngulesikhungo semasheya lesisemkhatsini noma labangenelelako, njengoba kungabe kubekiwe.

(b) Lona lodlulisela emasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni labalwe kundzima (a) unemalungelo ekudlulisela.

(c) Akukho kulesigaba lokuvimbela noma maphi emandla alongenelelako noma libhangue lemasheya lasemkhatsini, njengoba kungabe kubekiwe, kutsi andlulisela

uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) has been transmitted by operation of law.

(2) A central securities depository, participant, authorised user, nominee or external central securities depository, as the case may be, must act in accordance with this section, the rules of the central securities depository and the Companies Act, where applicable, to give effect to a transfer referred to in subsection (1). 5

(3) A transfer effected in accordance with subsection (1) is effective against third parties.

#### **Pledge or cession of uncertificated securities *in securitatem debiti***

**39.** (1) (a) A pledge or cession *in securitatem debiti*, as constituted by an agreement, in respect of uncertificated securities or an interest in uncertificated securities held by a central securities depository, participant, authorised user or nominee, as the case may be, must be effected by entry in the central securities account or the securities account, as the case may be, of— 10

- (i) the pledgor in favour of the pledgee specifying the name of the pledgee, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities pledged and the date of entry; or
- (ii) the cedent in favour of the cessionary specifying the name of the cessionary, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities ceded and the date of entry, as the case may be. 20

(b) Uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) may not be transferred or otherwise dealt with, and no instruction by the pledgor or cedent may be given effect to, without the written consent of the pledgee or cessionary.

(c) The pledgee or cessionary of uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt. 25

(d) A pledge or cession *in securitatem debiti* effected in accordance with paragraph (a) is effective against third parties. 30

(e) Nothing in this section prejudices any power of a participant or central securities depository, as the case may be, to effect a pledge or cession *in securitatem debiti* to a person to whom the right to any uncertificated securities or an interest in uncertificated securities referred to in paragraph (a) has been transmitted by operation of law. 35

(2) This section does not apply to an out-and-out cession in respect of securities or an interest in securities and such a cession must be effected in accordance with section 38. 40

(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 securities account, where such an interest extends to all uncertificated securities standing to the credit of the relevant securities account at the time the pledge is effected. 45

#### **Ranking of interests in securities**

**40.** (1) Despite any other law, if more than one interest or limited interest is entered against the same securities, priority must be granted to the interest or limited interest entered first in time in the securities account or central securities account, as the case may be. 45

(2) (a) Despite subsection (1), the order of priority in any interest or limited interest may be varied by agreement between the parties.

- (b) Any variation referred to in paragraph (a) is not effective against third parties.

kulomunye umuntu lamalungelo anoma nguwaphi emasheya langenasitifiki noma intalo yemasheya langenasitifiki labalwe kundzima (a) ngaphandle kwekndlulisia ngekwemtsetfo.

(2) Sikhungo semasheya lesisemkhatsini, labangenelelako, umsebentisi losemtsetfweni, lophakanyisiwe, noma sikhungo semasheya lesisemkhatsini lesingaphandle, njengoba kungabe kubekiwe, kutawusebentisana ngekuhambisana nalamasheya ngekwalesigaba, lemitsetfo yesikhungo semasheya lesisemkhatsini ne *Companies Act*, lapho kufanele khona, kndluliselokubalwe kusigatjana (1).

(3) Kndluliselokwentiwe ngekuhambisana nesigatjana (1) kuyasebenta ngekumelana nebantfu besitsatfu.

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### Sifungo noma kuyekela kwemasheya kuvikela tikweleti

**39.** (1) (a) Sifungo noma kumiswa kute kucinisekiswe sikweleti, njengoba kufakwe ngalesivumelwano, ngekuhambisana nemasheya langekho emtsetfwenior intalo ayikaniketwa sitifiketi semasheya labanjwe ligatja lemasheya lasemkhatsini, labangenelelako, umsebentisi losemtsetfweni noma lophakanyisiwe, njengoba kungabe kubkiwe, kufanele kukhonjiswe ngalokufakiwe ku-akhawunti yemasheya lesemkhatsini noma i-akhawunti yemasheya, njengoba kungabe kubekiwe, kwe—

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- (i) lona lofake sicelo ngekumelela lona locelako, lelikasi, inombolo lelilinganisiwe lemasheya langekho emtsetfweni, lentalo yemasheya langekho emtsetfweni lafungelwe kanye nelusuku lekangene ngalo; noma 20
- (ii) lolomisiwe ngekuhambisana ngalokuyekela lokuchaza leligama lalona lomisiwe, lelikasi, inombolo lelilinganisiwe semasheya langekho emtsetfweni, intalo kumasheya langekho emtsetfweni lamisiwe kanye nelilanga lekufakwa njengoba kungabe kubekiwe.

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(b) Emasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni labalwe kundzima (a) angeke adluliselwa noma kusetjentwe ngawo, kantsi akukho sifungo noma lesekayekelile longaba nemtselela we, ngaphandle kwemvume lebhaliwe yalona loetfula bufakazi noma loyekelako.

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(c) Lona lofungako noma loyekelako wemasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni lekucondziswe kuwo kundzima (a) unemvume kuwo onkhe emalungelo alona lofungako lonemphahla lephatsekako noma lemisiwako kuinisekisa sikweleti.

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(d) Sifungo noma kumiswa kucinisekisa sikweleti lokwentiwe ngekuhambisana nendzima (a) kunemtselela kulabangenelelako besetsatfu.

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(e) Akukho kulesigaba lokucwasa noma maphi emandla alabangenelelako noma ligatja lemasheya lasemkhatsini, njengoba kungabe kubekiwe, kutsi kuphunyeleliswe sifungo noma kumiswa kwekucinisekisa sikweleti semuntfu lapho khona lilungelo lemasheya langekho emtsetfweni noma intalo yemasheya langekho emtsetfweni lekabaliwe kundzima (a) andluliselwe ngekusebenta kwemtfetfo.

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(2) Lesigaba asingeni ekucedzeni lokubekwe ngaphandle ngekuhambisana nemasheya noma intalo lekumasheya kantsi nako lokucedvwa kufanele isetjentiswe ngekuhambisana nesigaba 38.

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(3) Intalo ngalokuphatselene nemasheya langakabhalisa inganiketwa ngaphansi kwalesigaba, uma kufanele, nangendlela lekubekwe ngayo kulomtsetfo wemabhang, kantsi kusebenta ngekumelana nemacembu esitsatfu, ngalokuphatselene ne-akhawunti yemasheya, lapho khona lenshisekelo ichubekela kubo onkhe emasheya langakanisekisa lamele kuba yinzuzu yale-akhawunti yalamasheya lafanele ngalesikhtsi lesincumo sentiwa.

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### Kubekwa ezingeni kwentalo kwemasheya

**40.** (1) Ngaphandle kwanoma ngabe ngumuphi umtsetfo, uma ngabe intalo lendlula yinye noma lelinganisiwe kungenelelwa kuyo ngekumelana nemasheya lafanako, ematfuba kufanele aniketwe kulentalo noma intalo lelinganisewelengene kucala ngesikhatsi sale-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini, njengoba kungabe kubekiwe.

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(2) (a) Ngaphandle kwsigatjana (1), kulandzelana kwalokuhambembili kunoma yiphi intalo noma intalo lelinganisewelengene kufanele icinisekisa ngesivumelwano emkhatsini walamacembu.

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(b) Noma ngabe ngumuphi umehluko lobalwe kundzima (a) awunamphumelelo ngekuhambisana nemacembu langenelela kwsitsatfu.

### Acquisition by *bona fide* transferee

**41.** (1) An entry effected in terms of section 38 or 39 is valid and effective against third parties despite any fraud or illegality that may have resulted in the entry being effected, unless a transferee to the transaction resulting in the entry was a party to or had knowledge of the fraud or illegality.

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(2) This section does not modify the order of priorities determined by section 40.

(3) Section 53(4), (5) and (6) of the Companies Act applies to an entry referred to in subsection (1) with the changes required by the context.

### Withdrawal and delivery of securities

**42.** The withdrawal of uncertificated securities held in an uncertificated securities register by a central securities depository or participant, as the case may be, must be effected in the manner provided for in Chapter 2 of the Companies Act and the depository rules, where applicable. 10

### Records

**43.** If the records of a licensed central securities depository are inconsistent with those of a participant regarding securities deposited with the licensed central securities depository by the participant, the records of the central securities depository are deemed to be correct until the contrary is proved. 15

### Warranty and indemnity

**44.** (1) Every person who deposits securities with a participant or central securities depository, as the case may be, is deemed to warrant that such person is entitled to deposit the securities deposited by that person and that any document or instruction relating to such securities and lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by the participant or central securities depository arising out of such deposit or breach of warranty. 20

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(2) A central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).

(3) Every person, whether a client, participant or central securities depository, must provide the indemnities referred to in section 55 of the Companies Act. 30

### Attachment

**45.** (1) The attachment of securities or an interest in securities is only complete when—

- (a) written notice of the attachment has been given by the sheriff to the person that holds the securities in a securities account or a central securities account; and
- (b) the central securities depository, participant, authorised user or nominee, as the case may be, has made an entry of the attachment on the central securities account or securities account, as the case may be, on behalf of the sheriff. 35

(2) A central securities depository, participant or authorised user, as the case may be, must ensure that only the securities or interest in securities of the person against whom the warrant of execution was granted, are attached. 40

### **Kutfola lilungelo lekudlulisa**

**41.** (1) Lokungenako lokwentiwe ngekuhambisana nesigaba 38 noma 39 itawuba semtsetfweni ibuye isebente ngekumelana nebesitsatfu ngaphandle kwanoma kuphi kukhwabanisa noma lokusemtsetfweni lokungabangela kutsi lolokufakiwe kube nemtselela, ngaphandle kwekutsi lona lodluliselako kulamatransekshini kubangele kutsi lolokungenako kube yinceny noma abe nelwati ngalenkhohlakalo noma lokusemtsetfweni.

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(2) Lesigaba asenti kancono loluhla lwetintfo letibalulekile letincunywe sigaba 40.

(3) Sigaba 53(4), (5) na (6) se-*Companies Act* siyasebenta kulokungenelelako lokubalwe kusigatjana (1) ngaletingucuko letidzingwa kulengcikitsi.

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### **Kuhociswa kanye nekuniketwa kwemasheya**

**42.** Kuhociswa kwemasheya langekho emtsetfweni labanjwe kumasheya langekho emtsetfweni labhaliswe kusikhungo semasheya lesisemkhatsini noma labangenelelako, njengoba kungabe kubekiwe, kufanele kusetjentiswe ngendlela leniketwe kusahluko 2 se-*Companies Act* kanye nemitsetfo yesikhungo, lapho kufanele khona.

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### **Emarekhodi**

**43.** Uma ngabe emarekhodi esilulu semasheya lesisemkhatsini lesibhalisiwe awahambisani nalabo alabangenelelako ngalokuphat selene nemasheya lafakiwe kusilulu semasheya lesisemkhatsini lesibhalisiwe ngulaba labangenelelako, emarekhodi eSikhungo semasheya lesisemkhatsini kufanele kutsi ahambe kahle kute kycinisekiswe 20 lolokukhona.

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### **Iwaranti nekuvikeleka**

**44.** (1) Wonkhe umuntfu, lofaka emasheya nalabangenelelako noma ligatja lemasheya lasemkhatsini, njengoba kungabe kubekiwe, kufanele kycinisekiswe kutsi lomuntfu lonjalo kufanele afake lamasheya afakwe ngulomuntfu nekutsi noma ngabe muphi umculu noma imiyalelo lehambisana nalamasheya kanye kufakwe noma kuniketwe ngulowo muntfu kunesiciniseko futsi kukahle kuto tonkhe tindzawo kanye lomuntfu kufanele kutsi avume kycinisekisa labangenelelako noma Sikhungo semasheya lesisemkhatsini ngekumelana nanoma maphi emakleyimu lentiwe ngaphansi kwalabangenelelako noma sikhungo semasheya lesisemkhatsini kanye nangekumelana 30 kwanoma ngukuphi lokulahlekele labangenelelako noma sikhungo semasheya lesisemkhatsini lokutawuvela kuloko lokufakiwe noma kwephulwa kwesivumelwano.

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(2) Sikhungo semasheya lesisemkhatsini akukafaneli kutsi kuniketwe sivumelwano noma sincumo lesicondziswe kusigatjana (1).

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(3) Bonkhe bantfu, noima iklayenti, labangenelelako noma Sikhungo semasheya 35 lesisemkhatsini kufanele banikete bufakazi lobubalwe kusigaba 55 se-*Companies Act*.

### **Lokufakiwe**

**45.** (1) Lokufakiwe kwemasheya noma intalo yemasheya iyaphelela kuphela uma ngabe—

(a) satiso lesibhaliwe salokufakiwe siniketwe sigijimi kulomuntfu lonemasheya 40 ku-akhawunti yemasheya noma ku-akhawunti yemasheya lesemkhatsini; kanye

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(b) neligatja lemasheya lasemkhatsini, labangenelelako, umsebentisi losemtsetfweni noma lophakanyisiwe, njengoba kungabe kubekiwe, kube nalokufakiwe kwalokufakiwe kule-akhawunti yemasheya lesemkhatsini noma emakayawunti emasheya, njengoba kungabe kubekiwe, ngekumelela umgimjimi.

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(2) Ligatja lemasheya lasemkhatsini, labangenelelako noma umsebentisi losemtsetfweni, njengoba kungabe kubekiwe, kufanele kycinisekiswe kutsi utawuba ngemasheya kuphela noma intalo kumasheya alomuntfu lapho khona lesiciniseko noma kucalwa ngawo kuniketiwe kufakiwe.

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**Effectiveness in insolvency**

**46.** Any issuance, deposit, withdrawal, transfer, attachment, pledge, cession *in securitatem debiti* or other instruction in respect of securities or an interest in securities that has become effective against third parties, is effective against the insolvency administrator and creditors in any insolvency proceeding. 5

**CHAPTER V****CLEARING HOUSE***Licensing of clearing house***Application for clearing house licence**

- 47.** (1) A clearing house must be licensed under section 49. 10  
 (2) A juristic person may apply to the registrar for a clearing house licence.  
 (3) An application for a clearing house licence must—  
   (a) be made in the manner and contain the information prescribed by the registrar;  
   (b) show that the applicant complies with the requirements listed in section 48; 15  
   (c) be accompanied by—  
     (i) a copy of the founding documents of the applicant;  
     (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;  
     (iii) the application fee prescribed by the registrar;  
     (iv) in relation to an application for an associated clearing house licence, 20 particulars of the applicant's proposed appointment by an exchange; and  
     (v) in relation to an application for an independent clearing house licence, a copy of the proposed clearing house rules that must comply with section 53; and  
   (d) be supplemented by any additional information that the registrar may reasonably require. 25  
 (4) (a) The registrar 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 website.  
   (b) The notice must state— 30  
     (i) the name of the applicant; and  
     (ii) in relation to an independent clearing house, where the clearing house rules may be inspected by members of the public; and  
     (iii) the period within and the process by which objections to the application may be lodged with the registrar. 35

**Requirements applicable to applicant for clearing house licence and licensed clearing house**

- 48.** (1) An applicant for a clearing house licence and a licensed clearing house 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; 40  
   (b) governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing house, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders; 45  
   (c) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant or the licensed clearing house, as the case may be, its directors and senior management;

**Kuphumelela ekutfunjweni kwemphahla**

**46.** Noma kuphi lokuniketiwe, lokufakiwe, lokukhishiwe, lokudlulisew, lokufakiwe, sifungo, kuyekela kuvikela sikweleti noma leminye imiyalelo ngekuhambisana nemasheya noma intalo yemasheya; lesetisebenta ngekumelana nalasebenta ngekuba besitsatfu kuba nemphumelelo ngekumelana nekuhlakatwa kwekulawulwa kanye nalabaniketa tikweleti kunoma ngabe nguyiphi inchubo yekuhlakata. 5

**SAHLUKO V****INDLU LEGUNYATAKO***Ilayisensi yendlu legunyatako*

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**Kufaka sicelo selayisensi yendlu legunyatako**

**47. (1)** Indlu legunyatako kufanele iniketwe ilayisensi ngaphansi kwasigab 49;

(2) Umuntfu losemtsetfweni kufanele afafe sicelo kunobhala kwentela indlu legunyatako.

(3) Sicelo selayisensi yendlu legunyatako kufanele— 15

(a) sentiwe futsi sibe nelwatiso ngendlela lebekwe ngunobhala;

(b) sikhombise kutsi lofake sicelo uhambisana netidzingo letibhalwe kusigaba 48;

(c) Sihambisane ne—

(i) ikhophi yemiculu yebanikati bekucala;

(ii) Lolo Iwatiso ngekuhambisana nemalunga alomtimba lolawulako walofake sicelo njengoba kungabe kubekiwe ngunobhala;

(iii) imali yesicelo lebekwe ngunobhala;

(iv) ngekuhambisana nesicelo lesihambisana nelayisensi yalenye indlu legunyatako, imininingwane yalabafake sicelo neliphuzu leliphakaniswe ligatja; kanye 25

(v) nekuhambisana nesicelo lesiphatselene nelayisensi yendlu legunyatako, ikhophi yemitsetfo yendlu legunyatako lekufanele kuhambisane nesigaba 53; kanye

(d) nekusekelwa nganoma luphi Iwatiso lolungelelewe lolungadzingwa nguno- 30  
bhala.

(4) (a) Nobhala kufanele akhiphe satiso sesicelo selayisensi yendlu legunyatako kumaphephandzaba lamabili avelonke hegetindleko talofake sicelo kanye nakuwebhu lesemsetfweni.

(b) Lesatiso kufanele shisho— 35

(i) ligama lalofake sicelo;

(ii) ngalokuphat selene nendlu legunyatako letimele, lapho khona imitsetfoyendlu legunyatako ingahlolwa malunga emmango; kanye

(iii) nesikhatsi lapho khona tiphakamiso tekungavumelani nalesicelo kufanele sifakwe khona ngencubo yanobhala. 40

**Tidzingo letikhona kulabafaka sicelo sekuba nelayisensi yeligtja lendlu legunyatako**

**48. (1)** Lofake sicelo selayisensi yendlu legunyatako kanye neseligtja leligunyatiwe lelibhalisiwe kufanele—

(a) ngekuya hegetidzingo letibhalwe nguNgcongcoshe, sibe nemathulusi kanye nemifombolusito leyanele, letifaka ekhatsi imali, kulawula netebasebenti nelati lwemsebenti lolufanele, kwenta imisebenti yabo njengoba kubekiwe kuloMtsetfo; 45

(b) kuhlelwa kwekulawula lokucacile nalokukhanyako, kutfutfukisa kuphepha nekuphumelela kwendlu legunyatako, nekusekela kusimama kwetimali tonkhana, naletinye tinshisekelo temmango letifanele tinake, kanye netinjongo talabatsintsekako labafanele; 50

(c) kuhkombisa kutsi hegetidzingo letingenako naletifanele letibalwe ngunobhala tiyatfolakala kulona lofake sicelo noma ligatja leligunyatiwe lelibhalisiwe, njengoba kungabe kubekiwe, baholi bayo kanye nebaphatsi labasetulu; 55

- (d) comply with the requirements prescribed by the registrar for the clearing or settlement of transactions in securities, or both; 5
- (e) implement an effective and reliable infrastructure to facilitate the clearing of securities cleared by the clearing house;
- (f) implement effective arrangements to manage the material risks associated with the operation of a clearing house;
- (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; and
- (h) in relation to an applicant for an independent clearing house licence or a licensed independent clearing house, 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. 10
- (2) The registrar may— 15
- (a) require an applicant or a licensed clearing house 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 or a licensed clearing house, 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 20
- (c) prescribe any of the requirements referred to in subsection (1) in greater detail.

### Licensing of clearing house

49. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 47(4) and subject to the conditions which the registrar may consider appropriate, grant a clearing house licence to perform the functions referred to in section 50, if— 25
- (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 a clearing house licence. 30
- (2) The clearing house licence—
- (a) must specify the functions that may be performed by the clearing house 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 the places where the clearing house may be operated, and stipulate that the clearing house may not be operated at any other place without the prior written approval of the registrar; and 35
- (b) may specify that insurance, a guarantee, compensation fund, or other warranty must be in place to enable the clearing house to provide compensation, subject to the clearing house rules, to clients of clearing members. 40
- (3) A clearing house may at any time apply to the registrar for an amendment of the terms of the licence and the conditions subject to which the licence was granted.
- (4) (a) The registrar must publish a notice of an application for an amendment of the terms of a clearing house 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 website. 45
- (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 registrar. 50

- (d) kuhambisana netidzingo letibekwe ngunobhala kwentela kugunyata noma kucedzelelwa kwemtransekshini kumasheya, noma kokubili; 5  
(e) kusebentisa indlelas lekahle naletsembekile yetinsita kuhambisana nekugunyatwa kwemasheya lagunyatywe sikhungo lesigunyatak;  
(f) kusebentisa tivumelwano letikahle kulawula lokuyimphahla lenebungoti lehambisana nekusebenta kwendlu legunyatak;  
(g) sewente emalungiselelo ekuvikela kanye netindlela tekulandzelela kucinisekisa sitfunti semerekhodi ematransekshini lagunyatiwe, lakhishiwe noma lagunyatiwe akhokhelwa kulendlu legunyatak; kanye 10  
(h) ngekuhambisana nekfufaka sicelo selayensi yendlu legunyatiwe letimele noma sikhungo lesitimele lesigunyatiwe lesinemvume kanye nekulawulwa kwelilunga leligunyatiwe kute kutsi kucinisekise kuhambisana nemitsetfo yendlu legunyatak kanye nemibandzela yendlu legunyatak kanye naloMtsetfo. 15
- (2) Nobhala anga—  
(a) cela lofake sicelo noma ligatja leligunyatiwe lelibhalisiwe kutsi aletse lolwatiso lolunetiwe, noma adzinge lolwatiso kutsi lucinisekiswe, njengoba nobhala angakubona kufanele; kanye  
(b) nekunaka noma luphi Iwatiso loluphat selene nalofake sicelo noma ligatja leligunyatiwe lelibhalisiwe, uma ngabe lolo Iwatiso luvetiwe kulolofake 20 sicelo noma ligatja leligunyatiwe lelibhalisiwe kanye nalolokunye kuniketwe litfuba lelifanele lekuphendvula ngaloko; kanye  
(c) kubekwe noma kuphi kwalolokufunekako lokubalwe kusigatjana (1) ngemininingwane lephelele.

### Ilayisensi yendlu legunyatak 25

**49.** (1) Nobhala anga, ngemuva kwekunaka kwanoma ngukuphi lokungakavunywa lokutfolakele ngekuhambisana nesatiso lesibalwe kusigaba 47(4) nangekuya ngemibandzela lapho khona nobhala angakubona kufanele, anikete ilayisensi yendlu legunyatak kutsi kwentiwe umsebenti lobalwe kusigaba 50 uma ngabe—

- (a) lolofake sicelo uhambisana naletidzingo letifanele taloMtsetfo; kanye 30  
(b) netinjongo taloMtsetfo letibalwe kusigaba 2 titawuchutjekiswa ngekuniketwa kwelaisensi yendlu legunyatak.

- (2) Ilayisensi yendlu legunyatak—  
(a) kufanele ichaze lemisebenti lekufanele yentiwe ngulendlu legunyatak kanye nalamasheya lapho khona lemisebenti ingentiwa khona, noma ngabe nguyiphi leminye imibandzela yalelaysensi, lelihovisi laendlu legunyatak lelibaliwe naletindzawo lapho khona lendlu legunyatak kufanele ise bentele khona, nekuchaza kutsi lendlu legunyatak ingeke ise bentele kunoma ngabe nguyiphi indzawo ngaphandle kwemvume lebhalwe phansi yanobhala; kanye 35  
(b) angachaza kutsi umshwalensi, sicciseko, sikhwama sesincepheliso, noma siphie lesinye siccisekiso kufanele sibekwe kahle kwentela kutsi imitsetfo yendlu ndlu legunyatak, kumaklayenti elilunga leligunyatiwe. 40

(3) Indlu legunyatiwe ingasebentisa noma ngabe ngasiphi sikhatsi ifake sicelo kunobhala kwentela kuchitjiyelwa kwemibandzela yelaisesi nemibandzela lekwani-ketwa ngaphansi kwayo ilayisensi. 45

(4) (a) Nobhala kufanele akhiphe satiso sesicelo sekuchibiyela kwemibandzela yendlu legunyatak kanye neibandzela lekwaniketwa ilayisensi ngaphansi kwayo kumaphephandzaba lamabili avelonkhe ngekwetindleko talona lofake sicelo kanye nakuwebhu lesemsetfweni.

- (b) Lesatiso kufanele shisho kutsi—  
(i) Ligama lalona lofake sicelo;  
(ii) indlela letichibiyelo letiphakanyisiwe tibukeka ngayo; kanye  
(iii) sikhatsi lapho khona tinjongo talesicelo kufanele tifakwe kunobhala. 50

*Functions of licensed clearing house*

**Functions of licensed clearing house and power of registrar to assume responsibility for functions**

- 50.** (1) A licensed clearing house must conduct its business in a fair and transparent manner with due regard to the rights of clearing members and their clients. 5
- (2) A licensed clearing house—
- (a) must provide an infrastructure for the clearing of securities through the clearing house;
  - (b) must, as soon as it becomes aware thereof, inform the registrar of any matter that it reasonably believes may pose systemic risk to the financial markets; 10
  - (c) must manage the clearing of transactions in securities which it accepts for clearing and, if licensed to do so, the settlement of transactions in those securities;
  - (d) must, on request, disclose to the registrar information on the exposures that a clearing member underwrites with the clearing house; 15
  - (e) must have appropriate arrangements in place to—
    - (i) ensure that it has efficient and timely access to funds and assets held as collateral for the due performance of the obligations of clearing members; and
    - (ii) protect the funds and collateral of clearing members in the event of a default of a clearing member; 20
  - (f) may do all other things that are necessary for, incidental or conducive to the proper operation of a clearing house not inconsistent with this Act.
- (3) A licensed independent clearing house, in addition to the functions referred to in subsection (2)— 25
- (a) must issue clearing house rules;
  - (b) must enforce the clearing house rules;
  - (c) must supervise compliance by its clearing members with the clearing house rules and clearing house directives;
  - (d) must supervise compliance with this Act by its clearing members, report any non-compliance to the registrar and assist the registrar in enforcing this Act; 30
  - (e) may issue clearing house directives;
  - (f) may amend or suspend the clearing house rules in terms of section 71;
  - (g) may make different rules for clearing and settlement of different securities and different clearing members; 35
  - (h) must consult relevant regulated persons when making or amending clearing house rules pertaining to clearing and settlement;
  - (i) must disclose to clearing members the fees and charges required by it for its services; which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; 40
  - (j) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received notification regarding insolvency proceedings against clearing members; and
  - (k) must notify the registrar as soon as it becomes aware that a clearing member will cease to be a clearing member. 45
- (4) (a) The registrar may assume responsibility for one or more of the regulatory and supervisory functions referred to in subsections (2) and (3) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2.
- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)— 50
- (i) inform the clearing house of the registrar's intention to assume responsibility;
  - (ii) give the clearing house the reasons for the intended assumption; and
  - (iii) call upon the clearing house to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar. 55

*Imisebenti yendlu legunyatako*

**Imisebenti yeligatja leligunyatiwe lelibhalisiwe nemandla anobhala ekucala umsebenti**

- 50.** (1) Indlu legunyatako yemasheya kufanele yenta umsebenti wayo ngendlela lengavuni licala nangendlela lekhanyako ngalokuphat selene nemalungelo emaalunga lagunyatako nemaklayenti abo. 5
- (2) Indlu legunyatako—
- (a) kufanele kuniketwe tinsitancanti kwentela kuhunyatw kwemasheya lagunya-  
twe kulendlu yekugunyata; 10
  - (b) kufanele ngalesikhatsi bakwati kutsi, batise nobhala nganoma luphi ludzaba lekakholelwa ekutseni lungahle lubange tingoti teluhlelo kutimakethemnotfo;
  - (c) kufanele kulawulwe kugunyatwa kwematsekshini kumasheya lekuvunye-  
lwana ngako kute kugunyatwe kanye, uma ngabe kuniketwe ilayisensi yekwenta njalo, kucedzelelwa kwematsekshini ngalawo masheya; 15
  - (d) kufanele, ngekvesicelo, avetele nobhala Iwatiso ngekuvetwa kutsi lilunga leligunyatiwe linemvume nalendlu legunyatako;
  - (e) kufanele kube nemalungiselelo lafanele endzaweni—
    - (i) yekucinisekisa ifinyelela ngalokufanele nangesikhatsi kutimali nemphahla lebanjwe njengesivumelwano kwentela kusebentwa 20 ngalemifwalo yemalunga lagunyatako, kanye
    - (ii) kuvikela timalinekuhlanganiswa kwemalunga lagunyatako uma ngabe kunekungahambi kahle kwelilunga leligunyatako;
  - (f) angenta tonkhe letinye tintfo letifanele, ngalokuyingoti noma letifanele kwentiwa kwalomsebenti wendlu legunyatako lokungahambisani nalo- 25 Mtsetfo..
- (3) Indlu legunyatwako lengalisiwe letimele, ngekuhambisana nemisebenti ngalokubalwe kusigatjana (2)—
- (a) kufanele bakhiphe lemitsetfo yendlu legunyatako;
  - (b) kufanele basebentise imitsetfo yendlu legunyatako 30
  - (c) kufanele alawule indlela lekusetjentwa ngayo ngemalunga lagunyatiwe nemitsetfo yendlu legunyatako kanye netinkomba tendlu legunyatako;
  - (d) kufanele balawule indlela lekusetjentwa ngayo ngaloMtsetfo ngemalunga lagunyatiwe, kubikwe noma kuphi kungahambisani kunobhala nekusita nobhala ekwenteni loMtsetfo; 35
  - (e) angasebentisa tinkhomba tendlu legunyatako;
  - (f) angachibiyela noma acitse imitsetfo yendlu legunyatako ngekwasigaba 72;
  - (g) angenta imitsetfo lehlukene yekugunyata nekucedzelela emasheya lahlukene kanye nelilunga leligunyatiwe lelihlukile;
  - (i) kufanele batsintsane nebantfu labasemtsetfweni labafanele ngalesikhatsi benta noma bachibiyela imitsetfo yendlu legunyatako ngalokuphat selene nekugunyata nekucedzela; , loko kuveta kufanele kunikete lelinani lemali lekungilo lemsebenti ngamunye lowentiwe; noma uma ngabe lelo linani lingacombeleki, lesisekelo salokubala; 40
  - (j) kufanele kwatiswe nobhala ngekushesha nakualwa ngenchubo yekuhlakata noma uma inchubo yekuhlakatwa seyicalile ngekumelana nabo, noma uma ngabe sebatfole satiso ngalokuphat selene nenchubo yekuhlakata ngekumelana nemalunga lagunyatako; kanye 45
  - (k) kufanele atise nobhala ngalesikhatsi baba nelwati lekutsi lilunga leligunyatiwe litawuyekela kutsi libe lilunga leligunyatiwe.
- (4) (a) Nobhala angacula umsebenti kumunye noma lengetulu yalemisebenti yekulawulwa noma kuphatfwa lebalwe kusigatjana (2) na (3) uma ngabe nobhala akubona kufanele kute kutsi afinyelele kutinjongo taloMtsetfo lobalwe kusigaba 2.
- (b) Nobhala kufanele, ngembi kwekucala umsebenti njengoba kuvetwe kundzima 55
- (a)—
- (i) atise lendlu legunyatako ngetinjongo tanobhala tekutsi acale kwenta umsebenti;
  - (ii) anikete indlu legunyatako tizatfu talokucala lokuhlosiwe; kanye
  - (iii) kubita lendlu legunyatako kutsi ikhombise kungakapheli sikhatsi lesibekiwe ngunobhala ngalesikhatsi sekutsi kungani umsebenti kungafaneli uncunyewe ngunobhala.

### Maintenance of insurance, guarantee, compensation fund or other warranty

**51.** (1) An independent clearing house 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.

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(2) Any funds received or held by an independent clearing house 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.

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### Funds of mutual independent clearing house

**52.** A mutual independent clearing house 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.

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#### *Clearing house rules*

### Requirements with which clearing house rules must comply

**53.** (1) The clearing house rules must be consistent with this Act.

(2) The clearing house rules must provide—

- (a) for the manner in which and the terms and conditions subject to which transactions in listed and unlisted securities must be cleared or settled or cleared and settled through the clearing house; 20
- (b) for equitable criteria for authorisation and exclusion of clearing members and, in particular, that no person may be admitted as a clearing member or allowed to continue such person’s business as a clearing member unless the person—  
  - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and  
    - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the clearing house rules;
- (c) must provide for an orderly process by which a clearing member ceases to be a clearing member;
- (d) for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that a clearing member may provide and the type of securities for which a clearing member may provide clearing services or settlement services or both, and if there are different categories of—  
  - (i) clearing members, for the authorisation and criteria for authorisation of the clearing services or settlement services or both clearing services and settlement services that each category of clearing member may provide; 40
  - (ii) securities, for the authorisation and criteria for authorisation of the categories in respect of which a clearing member may provide one or more clearing services or settlement services or both clearing services and settlement services;
- (e) (i) for the capital adequacy, guarantee and risk management requirements with which a clearing member must comply;  
  - (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of clearing members or different activities of a clearing member’s business; 50

**Kuphatfwa kwemshwalense, siccineko, sikhwama sekuncepheteliswa noma leny iwaranti**

**51.** (1) Indlu legunyatako letimele ledzingeka ngaphansi kwasigaba 49(2)(b) kutsi abe nemshwalensi, siccineko, sikhwama sesincepheteliso, noma lenye iwaranti lekhona, kungabekwa imali kunoma ngubani umuntu longenelela kutransekshini kuluhla noma kumamasheya labhalisiwe lagunyatiwe noma lacedzelelwe noma kokubili ngekusebentisa indlu legunyatako ngetizatfu tekulondza lomshwalensi, siccineko, sikhwama sesincepheteliso noma lenye iwaranti.

(2) Noma tiphi timali letitfolwe noma letibanjwe yindlu letimele legunyatako kwentela tizatfu tekugcina umshwalensi, siccineko, sikhwama sekuncephetelisa noma lenye iwaranti lebalwe kusigaba 49(2)(b), kwentelwa tizatfu letsatfwa njngemphahla yebatsenjwa njengoba kuchazwe ku-*Financial Institutions (Protection of Funds) Act* kantsi lowo Mtsetfo usebenta kuleto timali.

**Timali tendlu legunyatako letimele**

**52.** Indlu legunyatako letimele ingadzinga kutsi lilunga leligunyatiwe kutsi bafake sandla kuletimali tendlu legunyatako kwentela tizatfu tekuambisa ibhizinisi yendlu legunyatako.

***Imitsetfo yendlu legunyatako***

**Tidzingo lekfanele indlu legunyatako nemitsetfo lekfanele iyilandzele**

**53.** (1) Imitsetfo yendlu legunyatako kufanele ihambisane naloMtsetfo.

(2) Imitsetfo yendlu legunyatako kufanele inikete—

(a) ngalendlela lekfanele kanye nemigomo nemibandzela lekubhaliswe ngayo ematransekshini kanye nemasheya langakabhaliswe kufanele agunyatwe noma akhokkelwe noma agunyatwe abuye akhokholwe yindlu legunyatako;

(b) indlela lesebentisekako yekuvumela kanye nekukhishwa kwelilunga leligunyatiwe kanye, ngalokufanako, kutsi akekho umuntu longatsatfwa njngelilunga leligunyatiwe noma avunyelwe kutsi achubeke nemsebenti walowo muntfu njenge lilunga leligunyatiwe ngaphandl kwekutsi lomuntfu—

(i) unesimo lesihle kanye nelizinga lelipakame kumaabhizinisi noma, uma ngabe kumtimba wemabhizinisi, uphetwe bantfu labatiphetse kahle nalabaphakeme kutemabhizinisi; kanye

(ii) kuhambisana noma, uma ngabe kungumtimba wabosomabhizinisi, ulawulwu bantfu noma ucasha bantfu labahambiana nemazinga ekucecesha, lwati kanye naletinye ticu letidzingwa mitsetfo yendlu legunyatako;

(c) kufanele kuniketwe kunchubo lehlelekile lapho khona lilunga leligunyatiwe liyekela kuba lilunga leligunyatiwe;

(d) kwentela kuvunyelwa noma indlela yekuniketa imvume yemisebenti yendlu legunyatako noma imisebenti yekucedzelela noma imisebenti yomibili yekugunyata kanye nemisebenti yekucedzelela lapho lilunga leligunyatiwe linganiketa kanye naloluhlobo lwemasheya lapho khona lilunga leligunyatiwe linganiketa tinsita tekugunyata noma tekucedzelela noma kokubili, kantsi uma ngabe kunemikhakha lehlukene ye—

(i) lilunga leligunyatiwe, kwentela kucinisekisa nendlela yekucinisekisa kwemisebenti yekugunyata noma kucedzelela noma kokubili kwekumisebenti yekugunyata nemisebenti yekucedzelela kutsi lilunga leligunyatiwe linganiketa;

(ii) Emasheya, ekucinisekisa nendlela yekucinisekisa kwalemikhakha lapho khona lilunga leligunyatiwe linganiketa kune noma ngetulu kwemisebenti yekucinisekisa noma imisebenti yekucedzelela noma kokubili imisebenti yekugunyata nemisebenti yekucedzelela;

(e) (i) Kwentela tindzaba temali, siccineko nekulawulwa kwebungoti netidzingo lapho khona lilunga leligunyatiwe kufanele lihambisane nato;

(ii) Lokuneliseka ngemali, siccineko netidzingo tekulawulwa kwebungoti kufanele kutsi kubaluleke noma ngabe kungahluka ngekuhambisana nemikhakha lehlukene yelilunga leligunyatiwe noma imisebenti lehlukene yemabhizinisi elilunga leligunyatiwe;

- (f) if there are different categories of clearing members, for the restriction of the activities of such categories subject to different conditions;
- (g) for the monitoring of settlement obligations of clearing members and their clients;
- (h) for the circumstances in which the clearing house may refuse to settle or clear a transaction in securities;
- (i) for the manner in which the clearing house monitors compliance by its clearing members with this Act, the clearing house rules and the clearing house directives;
- (j) for the manner in which a clearing member is required to conduct its business generally; 10
- (k) for the—
  - (i) recording of transactions cleared or settled by the clearing house; and
  - (ii) monitoring of compliance by clearing members with this Act, and the clearing house rules and clearing house directives;
- (l) for the manner in which complaints against a clearing member or officer or employee of a clearing member must be investigated;
- (m) for the equitable and expeditious resolution of disputes between clearing members and between clearing members and their clients in respect of the clearing or settlement of transactions in listed and unlisted securities, 20
- (n) for a process whereby complaints by clearing members against the clearing house in respect of the exercise of functions by the clearing house may be made, considered and responded to;
- (o) for the steps to be taken by the clearing house, or a person to whom the clearing house has delegated its investigative and disciplinary functions, to investigate and discipline a clearing member or officer or employee of a clearing member who contravenes or fails to comply with the clearing house rules, the interim clearing house rules or the clearing house directives and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings; 30
- (p) for the manner in which a clearing member, officer or employee of a clearing member who is believed to—
  - (i) be able to furnish any information on the subject of any investigation referred to in this subsection; or
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject, may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (q) where appropriate, in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 51, for— 40
  - (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
  - (ii) the amount of the fee imposed by the clearing house for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty;
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty;
- (r) that clearing members must disclose to clients the fees for their services, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation;
- (s) for the purposes for which, and the process by which, a clearing house may issue clearing house directives; 55

- (f) Uma ngabe kunemikhakha lehlukene yelilunga leligunyatiwe, kwentela kulawula lemisebenti yalemikhakha ngekuya ngemibandzela lehlukene; 5
- (g) Kwentela kulandzelela kwekukhokhelwa kwalokubekiwe kwelilunga leligunyatiwe kanye nemaklayenti abo;
- (h) Kwentela tikhatsi lapho khona indlu legunyatako ingahle ingavumi kucedzelela noma kugunyata itransekshini kumasheya; 10
- (i) Ngalendlela yekutsi lendlu legunyatako ilandzelela kuhambisana nemtsetfo kwelilunga leligunyatiwe naloMtsetfo, lemitsetfo yendlu legunyatako kanye netinkhambiso tendlu legunyatako;
- (j) Ngalendlela lilunga leligunyatiwe kufanele liphatse ngayo ibhizinisi 10 ngalokujwayelekile; 15
- (k) Kwentela—
- (i) Kubhalwa kwematrsekshini lagunyatiwe noma kucedzelela lokwentiwa yindlu legunyatako; kanye
  - (ii) kuhambisana nemtsetfo kwelilunga leligunyatiwe naloMtsetfo, lemitsetfo yendlu legunyatako kanye netinkhambiso tendlu legunyatako;
- (l) Ngendlela tikhalo letibekwe lilunga leligunyatiwe noma sisebenti noma umsebenti welilunga leligunyatiwe kufanele liphenywe ngayo; 20
- (m) Kwentela kusebentiseka nesisombululo lesiphutfumako sekungavisansi emkhatsini wemalunga lagunyatiwe nasemkhatsini welilunga leligunyatiwe kanye nemaklayenti abo ngekuhambisana nekugunyata nematrsekshini ladluliselako kuluhla lwemasheya labhalisiwe; 25
- (n) Kwentela inchubo lapho khona emalunga lagunyatako lamelana nendlu legunyatako ngalokuphat selene nemsebenti wendlu legunyatako kungentiwa, kunakwe kubuye kumphendvulwe; 30
- (o) Kwentela tinyatselo lekfanele titsatfwe yindlu legunyatako, noma umuntfu lapho khona lendlu legunyatako kutfunyelwe baphenyi babo kanye nemisebenti yekubuyisa endleleni, kuppenya nekubuyisa endleleni lilunga leligunyatiwe noma sisebenti noma umsebenti welilunga leligunyatiwe longahambisani noma lohluleka kulandzelela imitsetfo yendlu legunyatako, lemitsetfo yendlu legunyatako lekhona nyalo noma tinkhambiso tendlu legunyatako kanye nembiko kulenchubo yekubuyisa endleleni kutsi tigcwalisew kuno bhala kungakapheli emalanga langema-30 ngemuva kwekucedzelwa kwalenchubo; 35
- (p) Ngendlela tikhalo letibekwe lilunga leligunyatiwe noma sisebenti noma umsebenti welilunga leligunyatiwe lekutsenjwa kutsi—
- (i) Kukhona kuniketa noma luphi Iwatiso ngesihloko sanoma luphi luppenyo lolabalwe kulesigatjana; noma
  - (ii) Abenemculo lanawo kuye noma ngaphansi kwalokulawulwa nguye lokunermselela kuleso sihloko, Angahle adzingeke kutsi avele ngembi kwemuntfu lowenta luppenyo, kutsi ashushiswe noma akhiphe lowo mculu; 40
- (q) Lapho kufanele khona, ngekuhambisana nemshwalensi, siccineko, sikhwama sesincepheteliso noma lenye iwaranti lecondziswe kusigaba 50, kwentela—
- (i) Umuntfu lekfanele kutsi afake sandla kutsi agcine lomshwalensi, siccineko, sikhwama sekuncephetelisa noma lenye iwaranti;
  - (ii) Lelinani lalemali lebekwe ngulendlu legunyatako kwentela lesizatfu;
  - (iii) Imikhakha lehlukene yemakleyimu lenganiketwa ngekumelana nemshwalensi, siccineko, sikhwama sesincepheteliso noma lenye iwaranti; 50
  - (iv) Imibandzela ngelinani lanoma yiphi ikleyimu;
  - (v) Lokulawula nekuphatfwa kwemshwalense, siccineko, sikhwama sekuncephetelisa noma lewaranti;
  - (vi) lobunikati nekuphatfwa kwemshwalense, siccineko, sikhwama sekuncephetelisa noma lewaranti; 55
- (r) kutsi emalunga lagunyatako kufanele avetele ebeleni kumaklayenti kutimali temisebenti, loko kuvetela ebeleni kufanele kunikete imali lebekiwe lelinani tsite ngemsebenti munye loniketiwe; noma uma ngabe lelo nani alilinganisew kusenesikhatsi, lesisusa salokubala;
- (q) Kutsi lilunga leligunyatiwe kufanele livete kumaklayenti timali temisebenti yabo; 60
- (s) Kwentela tizatfu lapho khona, nenchubo lapho khona, indlu legunyatako inganiketa tinkhambiso tendlu legunyatako;

- (t) for supervisory measures that enable the clearing house to comply with section 50(3)(b), (c) and (d);  
(u) for the administration of securities 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  
(v) for the authority of, and the manner in, and circumstances under which—  
(i) a clearing house may limit the revocation of any settlement instruction given by a clearing member or client;  
(ii) a clearing member or its client may revoke any settlement instruction before the point in time when settlement instructions become irrevocable as determined in the clearing house rules, but prior to settlement;  
(iii) a clearing house or a clearing member may terminate transactions on the commencement of insolvency proceedings;
- (w) for the recording by a clearing member of transactions or positions cleared by that clearing member through the clearing house; 10  
(x) circumstances and manner in which a clearing member may advertise or canvass for business;  
(y) refusal by a clearing house to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities; 20  
(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. 25
- (3) Despite subsection (2), the rules of a clearing house only need to provide for matters relating to settlement if the clearing house is licensed to settle transactions in securities.
- (4) (a) Subject to section 5(1)(c) and (2) and the requirements prescribed by the registrar; the clearing house rules may provide for the approval of external clearing members to be clearing members of the clearing house. 30  
(b) If the clearing house rules provide for the approval of external clearing members to be clearing members of the clearing house, the rules must, in accordance with paragraph(a), provide for the identification of those clearing services or settlement services, or both, that will be authorised and regulated by the clearing house in terms of the clearing house rules and those that will be authorised and regulated by the supervisory authority of the country under whose laws the external clearing member is authorised and supervised. 35
- (5) A clearing house may, with the approval of the registrar, make clearing house rules on matters additional to those listed in subsection (2). 40
- (6) (a) Any rules made in terms of subsection (2)(a), (2)(u) or 2(v) must have due regard for, and not be in conflict with, any applicable depository rules.  
(b) Any rules made in terms of subsection (2)(v) must have due regard for, and not be in conflict with, section 8 of the National Payment System Act. 45
- (7) A clearing house rule made under this section is binding on—  
(i) the clearing house,  
(ii) the clearing members of the clearing house,  
(iii) the officers and employees of the clearing house and its clearing members, and  
(iv) clients of the clearing members. 50

## CHAPTER VI

### TRADE REPOSITORIES

#### Application for trade repository licence

**54.** (1) Subject to the regulations prescribed by the Minister, a trade repository must be licensed under section 56. 55

- (t) Kwentela tindlela tekulawula letivumela indlu legunyatako kutsi ihambisane nesigaba 49(2)(b) na (c);
- (u) Kwentela kulawulwa kwemasheya laphatselwe wena noma ngekuhambisana neklayenti lilunga leligunyatiwe, kufaka ekhatsi kucedzela kwematranskshini langakacedzelewa, kngaphansi kwencubo yekuhlakatwa ngekuhambisana nelilunga leligunyatiwe; kanye 5
- (v) Kwentela kuphatfwa kwe, nangalendlela lapho, nendlela lapho kwenteka khona—
- (i) Indlu legunyatako kungavimbela lokucitfwa kwanoma nguyiphi imiyalelo yekucedzelela kwelilunga leligunyatiwe noma iklayenti; 10
  - (ii) lilunga leligunyatiwe noma emaklayenti angacitsa noma kuphi lokucedzelelwako ngembi kwalesikhatsi uma ngabe imiyalelo yekucedzelela ingasajikiseki ngekwemitsetfo yendlu legunyatako, kodvwa ngembi kwekedzelela;
  - (iii) Indlu legunyatako noma lilunga leligunyatiwe angacedzelela 15 ematransekshini uma ngabe kucalwa inchubo yekuhlakatwa;
- (w) Kwentelwa kubhaliswakwematranskshini elilunga leligunyatiwe noma indzawo legunyatwe ngulelo lilunga ngekusebentisa indlu legunyatako;
- (x) Timo nendlela lapho khona lilunga leligunyatiwe lingakhangisa noma likhankasele libhizinisi; kanye 20
- (y) Kungavumeleki lokwentiwa yindlu legunyatako kutsi yamukele emasheya lakhishwa ngunoma ngumuphi loniketa emasheya ngalokuphatselene nekugunyata nekucedzelela emalungiselelo eligatja kwentela ematransekshini kulawo masheya.
- (z) kwentela kuhlukanisa nekusebentiseka kwetimaliu nemasheya labanje 25 ndzawonye kanye
- (aa) nekutsi emalunga lagunyatako kufanele atise lendlu legunyatako ngekushesha uma ngabe icala inchubo yekuhlakata noma inchubo yekuhlakata ngekumelana nayo.
- (3) Ngaphandle kwsigatjana (2), lemitsetfo yendlu legunyatako idzinga kuniketa 30 kuphela tindzaba letiphatselene nekudlulisewa uma ngabe lendlu legunyatako iniketwe ilayisensi kute kukhokhelwe ematransekshini lakumasheya.
- (4) (a) Ngekuya ngesigaba 5(1)(c) na (2), lemitsetfo yalendlu legunyatako ingahle inikete kutsi kuvunyelwe lilunga leligunyatiwe langaphandle kutsi libe lilunga leligunyatiwe lendlu legunyatako. 35
- (b) Uma ngabe imitsetfo yendlu legunyatakokwentela kuvumelwa kwelilunga leligunyatiwe langaphandle kutsi libe lilunga leligunyatiwe lendlu legunyatako, lemitsetfo kufanele, ngekuhambisana nendzima (a), kuniketela kukhomba kwalemisebenti yekugunyata noma imisebenti yekudlulisela, noma kokubili, lokutawugunyawa kubuye kulawulwe yindlu legunyatako kanye naleyo letawentiwa ibe semtsetfweni ngulabaphetse labaholako balelive ngaphansi kwemitsetfo yelilunga leligunyatiwe langaphansis liseimsetfweni noma lilawulwa khona. 40
- (5) Indlu legunyatako inga, ngemvume yanobhala, lente imitsetfo yendlu legunyatako ngetindzaba lettingetelewe kulabo lababhaliswe kusigatjana (2).
- (6) (a) Noma mippi imitsetfo leyentiwe ngesigatjana (2)(a), (2)(u) noma 2(v) 45 kufanele kutsi ihambisane, ingangcubutani, nanoma mippi imitsetfo yelibhange.
- (b) Noma mippi imitsetfo leyentiwe ngekwsigatjana 2(v), kufanele kutsi ihambisane, ingangcubutani nesigaba 8 se-National Payment System Act.
- (7) Umsetfo wendlu legunyatako lowentiwe ngaphansi kwsigaba usibopho 50
- (i) kulendlu legunyatako,
  - (ii) emalunga lagunyatako alendlu legunyatako,
  - (iii) umsebenti netisebenti tendlu legunyatako nemalunga ayo lagunyatako, kanye
  - (iv) emaklayenti endlu legunyatako.

## SAHLUKO VI

### EMABHANGE LAHWEBELANAKO

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#### Kufaka sicelo selayisensi yendzawo yekuhwebelana

**54.** (1) ngekuya ngemitsetfo lemisiwe lebekwe nguNgcongcoshe indzawo yekuhwebelana kufanele iniketwe ilayisensi ngaphansi kwsigaba 56.

(2) A juristic person may apply to the registrar for a trade repository licence for one or more types of unlisted securities.

(3) An application for a trade repository licence must—

- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements listed in section 55; 5
- (c) be accompanied by—
  - (i) a copy of the founding documents of the applicant;
  - (ii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar; and
  - (iii) the application fee prescribed by the registrar; 10
- (d) be supplemented by any additional information that the registrar may reasonably require.

(4) (a) The registrar 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 website. 15

(b) The notice 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 registrar.

#### **Requirements applicable to applicant for trade repository licence and licensed trade repository** 20

**55.** (1) Subject to subsection (2), an applicant for a trade repository licence and a licensed trade repository must—

- (a) subject to the requirements prescribed by the Minister, have assets and resources, which resources include financial, management and human resources with appropriate experience, to perform its duties as set out in this Act; 25
- (b) have governance arrangements, that are clear and transparent, promote the safety and efficiency of the trade repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders; 30
- (c) demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management;
- (d) have made arrangements for reliable and secure systems with adequate and scalable capacity for the sustained operation of a trade repository; 35
- (e) have made arrangements for security and back-up procedures to ensure the integrity of its records of transactions;
- (f) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems; 40
- (g) have objective, non-discriminatory and publicly disclosed requirements for access and participation;
- (h) identify sources of operational and business risks and adopt processes and procedures to mitigate and manage those risks; and
- (i) establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the trade repository's obligations. 45

(2) The registrar may—

- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; 50
- (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. 55

(2) umunfu losemtsetfweni angafaka sicelo kunobhala ifune ilayisensi yendzawo yekuhwebelana kuluhlobo lunye noma lamanyenti yemasheya labhalisiwe labalwe kulenchazelo yemasheya.

(3) Sicelo semvume yekuhwebelana kufanele—

- (a) Kwentiwa ngendlela nekutfolia lwatiso loluvetwe ngunobhala; 5
  - (b) Kukhombisa kutsi lolofake sicelo uyahambisana naletidzingo letibalwe kusigaba 55;
  - (c) Kuhambisane ne—
    - (i) Imiculo yekucala yalofake sicelo;
    - (ii) Lolwatiso lolunjalo ngekuhambisana nemalunga alomtimba lolawulako 10 alona lofake sicelo njengoba kungabekwa ngunobhalangalenchubo; kanye
    - (iii) Imali yekufaka sicelo lebekwe ngunobhala;
  - (d) Kunetetelwa nganoma kuphi lokungetelelwé lokulwatiso lokungadzingwa 15 ngunobhala.
- (4) (a) Nobhala kufanele akhiphe satiso sesicelo selayisensi yendzawo yekuhwebelana kumaphephandzaba lamabili avelonkhe, ngekwetindleko tesicelo, kanye nakuwebhu lesemstfweni.
- (b) Lesatiso kufanele shisho kutsi—
  - (i) Ligama lalofake sicelo; kanye 20
  - (ii) Lesikhatsi lapho khona tiphakamiso letimelana nesicelo tingavetwa nanobhala.

### **Tidzingo letifunekako kusicelo selayisensi yendzawo yekuhwebelana**

- 55.** (1) Ngekuya ngesigatjana (2), lofake sicelo sendzawo yekuhwebelana kufanele—
- (a) kutawuya ngetidzingo letibalwe nguNgcongcoshe, kube nemphahla netinsita, 25 leto tinsita tifaka ekhatsi imali, kulawula kanye netemisebenti nelwati lolufanele, kutsi bente umsebenti wabo njengoba kubekiwe kuloMtsetfo;
  - (b) kuba netinhlelo tekubusa, leticacile naletikhanyako, kututfukisa kuphepha nekufinyella kwemasheya ekuhwebelana, nekusekela kusimama kweluhlelo lwetimali lonkhe, letinye tinshisekelo letifanele titsatfwé, kanye netinjongo talabanye labatsintsekako labafanele; 30
  - (c) Kukhombisa kutsi letidzingo lekungito naletifanako letibhalwe ngunobhala kufinyelelwá kuto ngulofake sicelo, bacondzisi bakhona nebaphatsi labasetulu;
  - (d) Kwentiwe emalungiselelo kwentela tinhlelo tekucinisekisa ngemandla lalinganene nalalinganisekako kwentela umsebenti losimeme wasendzaweni 35 yekuhwebelana;
  - (e) Kwentiwe emalungiselelo etekuvikela kanye netinchubo tekusekela kucinisekisa sizitsa semarekhodi ematransekshini;
  - (f) Kube netindlela letibonakalako tekulawula nekulandzelela, tindlela tekulawula ngekhatsi, tindlela letifanele tekuhlolwa kwebungoti, kanye 40 nekulawula lokufanele kanye nekuvikela emalungiselelo kutinhlelo tekucubungula lwatiso;
  - (g) Kuba nenjongo, tidzingo letingacwasi kanye naletivetelwe bantfu kute kufinyelelwé kubuye kungenelelwé;
  - (h) Kukhomba imitombo yekusebentela kanye nebungoti bebhizinisi nekutsatsa 45 tinchubo netindlela tekuvikela nekulawula leto tingoti;
  - (i) Kusungula, kwenta nekulawula ibhizinisi lesebentako yenchubomgomó kanye nesehlakalo seluhlelo iwekubuyeketa loluhlose ekucinisekiseni lokongiwa kwemisebenti yako, lokubuyela kahle kwemisebenti kanye nalokufeza kwemitsfeto yendzawo yekuhwebelana; 50
- (2) Nobhala anga—
- (a) kudzingeka kutsi lofaka sicelo kutsi anikete lolwatiso lolunetiwe, noma kudzingeka lolwatiso kutsi lucinisekiswe, njengoba nobhala angakubona kufanele; kanye
  - (b) Kunakisiswa nanoma luphi lwatiso loluphatselene nalofake sicelo, 55 lokutfolakala kunoma muphi umtfombo, kufaka ekhatsi noma liphi ligunya lekulawula, uma ngabe lolo lwatiso luvetwa kulofake sicelo kanye nalokunye kuniketwe litfuba lelifanele kutsi baphendvule kuloko; kanye
  - (c) Kubeka noma tiphi taletidzingo letibalwe kusigatjana (1) ngemininingwane leyanele. 60

**Licensing of trade repository**

- 56.** (1) Subject to subsection (2) and regulations prescribed by the Minister, the registrar may, after consideration of any objection received as a result of the notice referred to in section 54(4), and subject to the conditions which the registrar may consider appropriate, grant a trade repository a licence to perform the duties referred to in section 57. 5
- (2) A licence referred to in subsection (1) may only be issued to a trade repository 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 a trade repository licence. 10
- (3) The trade repository licence must—  
(a) specify the services that may be provided by the trade repository and the unlisted securities in respect of which those services may be provided;  
(b) specify any other terms and conditions of the licence;  
(c) specify the registered office of the trade repository; and  
(d) specify the places where the trade repository will be operated. 15
- (4) A trade repository must obtain the prior written approval of the registrar to operate or conduct any of its activities outside the Republic, and if such approval is granted, adhere to any additional requirements the registrar may prescribe. 20
- (5) A trade repository may at any time apply to the registrar for an amendment of the terms of its licence and the conditions subject to which its licence was granted. 20
- (6) (a) The registrar 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 website. 25  
(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 registrar. 30

**Duties of licensed trade repository**

- 57.** (1) A licensed trade repository must conduct its business in a fair and transparent manner.  
(2) A licensed trade repository must—  
(a) employ timely, efficient and accurate record keeping procedures; 35  
(b) make the information prescribed by the registrar available to the registrar, other relevant supervisory authorities and other persons, subject to the requirements prescribed by the registrar under section 58 regarding the manner, form, and frequency of disclosure;  
(c) monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies; 40  
(d) publicly disclose the prices and fees associated with services provided, which disclosure must give the specific monetary amount for each service rendered; or if such amount is not pre-determinable, the basis of the calculation; 45  
(e) ensure the confidentiality, integrity and protection of the information received;  
(f) provide the registrar with any information requested to monitor and mitigate systemic risk; and  
(g) must notify the registrar as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it. 50
- (3) The registrar may prescribe additional duties to those referred to in subsection (2) in greater detail.

**Reporting obligations**

- 58.** Subject to regulations prescribed by the Minister, the registrar may prescribe reporting obligations in respect of transactions or positions in unlisted securities which must be reported to a trade repository, including—  
(a) the types of unlisted securities to which reporting requirements apply;  
(b) the entities to whom such reporting requirements apply; 55

### Kubhaliswa kwendzawo yekuhwebelana

- 56.** (1) Ngekuya ngesigatjana (2) kanye nemitsetfosimiso lebekwe nguNgcongcoshe, nobhala anga, ngekuva kwekutsatsa noma kuphi kungavumelani lokutfolakele nganca yesatiso lesivetwe kusigaba 54(4), nangekuhambisana netimo lapho khona nobhala angakubona kufanele, kuniketa ilaytisensi yendzawo yekuhwebelana kutsi kwentiwe umsebenti lobalwe kusigaba 57. 5
- (2) Ilayisensi lebalwe kusigatjana (1) inganiketwa kuphela kundzawo yekuhwebelana uma ngabe—
- (a) Lolofake sicelo uhambisana netidzingo letifanele taloMtsetfo;
  - (b) Netinjongo taloMtsetfo letibalwe kusigaba 2 titawuchutjekiswa ngekuniketwa 10 kwelayisensi.
- (3) Ilayisensi yendzawo yekuhwebelana kufanele:
- (a) Kubalwe imisebenti lenganiketwa ngekuhambisana nemasheya labhalisiwe lapho khona lemisebenti binganiketwa khona;
  - (b) Kusho leminye imibandzela yalelayisensi; 15
  - (c) Kubala lelihovisi lelibhalisiwe lendzawo yekuhwebelana; kanye
  - (d) Kusho letindzawo lapho khona indzawo yekuhwebelana itawusetjentiswa.
- (4) Indzawo yekuhwebelana kufanele ifole imvume yangaphambilini lebhalwe phansi yanobhala kusebenta noma kwenta noma muphi umsebenti ngaphandle kweRiphabhlukhi, uma ngabe lemvume iniketiwe, ilandzelewa kunoma ngabe 20 ngukuphi lokungetiwe lokudzingekako kunobhala langakubeka.
- (5) Indzawo yekuhwebelana ingasebenta nona nini kunobhala kwentela kuchibiyela kwemibandzela yelayisensi kanye nemigomo ngekuya ngalendlela lekwaniketwa ngayo lelayisensi.
- (6) (a) Nobhala kufanele akhiphe satiso sesicelo selayisensi yendzawo 25 yekuhwebelana kumaphephandzaba lamabili avelonkhe, ngekwetindleko tesicelo, kanye nakuwebhu lesemtsetfweni.
- (b) Lesatiso kufanele shisho kutsi—
  - (i) Ligama lalofake sicelo;
  - (ii) simo saletichibiyelo letiphakanyisiwe; kanye 30
  - (iii) Lesikhatsi lapho khona tiphakamiso letimelana nesicelo tingavetwa nanobhala.

### Imisebenti yendzawo yekuhwebelana

- 57.** (1) Indzawo yekuhwebelana kufanele yenta umsebenti wayo ngendlela lengavuni licala nalekhanyako.
- (2) Indzawo yekuhwebelana lesemtsetfweni kufanele— 35
- (a) Isebentise ngaso sonkhe sikhatsi nekubeka kahle emarekhodi;
  - (b) Kwenta lolwatiso lolubekwe ngunobhala letfolakala kunobhala kanye nalementye imitsetfo lefanele;
  - (c) kulawula nekuhlola kufaneleka nekuphumelela kwetinhlelo tabo, indlela yekulawula nekuhlela nekutsatsa tindlela letifanele tekusebenta nganoma 40 kuphi lokungahambi;
  - (d) Kuveta kubantu emanani netindleko letihambisana nemisebenti leniketwako;
  - (e) Kucinisekisa kuvikeleka, kuhlonipheka nekuvikelwa kwelwatiso lolutfolakele; kanye.
  - (f) Kuniketa Umphatsi ngelwatiso lolucelwe kute kulawulwe kungenelelw 45 kutinhlelo tebungoti.
  - (g) kufanele batise nobhala ngekuphutfuma ngalesikhatsi basebentisa inchubo yekuhlakata noma inchubo yekuhlakata lecaliwe ngekumelana nabo.
- (3) Nobhala angabeka leminte imisebenti noma leminte yalemisebenti lebalwe kusigatjana (1) ngalokucacile. 50

### Imitfwalo yekubika

- 58.** Ngekuya ngemitsetfo lemisiwe lebalwe nguNgcongcoshe, nobhala, angabeka imitfwalo yekubika ngekuya ngetransekshini noma simo kumasheya labhalisiwe lekfanele abikwe endzaweni yekuhwebelana kufaka ekhatsi—
- (a) Tinhlobo temasheya labhalisiwe lapho khona tidzingo tekubika tisebenta 55 khona;
  - (b) Letikhungo lapho kubikwa khona kungasebenta loku lokudzingekako;

- (c) the manner and frequency of reporting; and
- (d) any other matter to ensure adequate reporting.

## CHAPTER VII

### GENERAL PROVISIONS APPLICABLE TO MARKET INFRASTRUCTURES

<b>Annual assessment</b>	<b>5</b>
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- 59.** The registrar must annually assess, whether a licensed market infrastructure—
- (a) complies with this Act and the rules of the market infrastructure;
  - (b) where applicable, complies with directives, requests, conditions or requirements of the registrar in terms of this Act; or
  - (c) where applicable, gives effect to decisions of the appeal board in terms of section 105.

### **Cancellation or suspension of licence**

- 60.** (1) The registrar may cancel or suspend a licence if—
- (a) the market infrastructure has failed to—
    - (i) comply with this Act or its rules;
    - (ii) comply with a directive, request, condition or requirement of the registrar in terms of this Act; or
    - (iii) give effect to a decision of the appeal board in terms of section 105;
  - (b) after an inspection in terms of section 95 of the affairs of the market infrastructure, the registrar is satisfied on reasonable grounds that the manner in which it is operated is—
    - (i) not in the best interests of clearing members of independent clearing houses, authorised users or participants, or users or members of the market infrastructure, as the case may be, and their clients; or
    - (ii) defeating the objects of this Act referred to in section 2;
  - (c) the market infrastructure has ceased to operate or has failed to commence operating within a reasonable period after being licensed; or
  - (d) the registrar is satisfied on reasonable grounds that the licence was obtained through misrepresentation.
- (2) The registrar must, before cancelling or suspending a licence—
- (a) inform the market infrastructure of the registrar's intention to cancel or suspend;
  - (b) give the market infrastructure the reasons for the intended cancellation or suspension; and
  - (c) call upon the market infrastructure to show cause within a period specified by the registrar why its licence should not be cancelled or suspended.
- (3) The registrar must, subject to subsection (4), cancel the licence of a market infrastructure upon submission to the registrar of a request by the market infrastructure for cancellation.
- (4) If the registrar cancels or suspends a licence, the registrar must take such steps and may impose such conditions as are necessary to achieve the objects of this Act referred to in section 2, which steps may include—
- (a) the transfer of the business of the market infrastructure to another similar market infrastructure; or
  - (b) the winding-up of the market infrastructure in terms of section 100.

### **Carrying on of additional business**

- 61.** (1) A market infrastructure may not conduct any additional business which may introduce systemic risk.

- (c) Indlela nesivinini sekubika; kanye
- (d) Noma ngabe nguluphi ludzaba lolutawucinisekisa kubika kahle.

## SAHLUKO VII

### IMIBANDZELA LEYETAYELEKILE LEHAMBISANA NETINSITANCHANTI TETIMAKETHE

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#### **Kuhlolwa mnyaka wonkhe**

- 59.** Nobhala kufanele ahlole njalo ngemnyaka, kutsi tinsitanchanti temakethe—
- (a) tiyahambisana naloMtsetfo kanye nemitsetfo yetinsitanchanti temakethe;
  - (b) lapho kufanele khona, kuhambisana nemiyalelo, ticelo, imibandzela noma tidzingo tanobhala ngekwaloMtsetfo; noma
  - (c) lapho kufanele khona, kuhambisana ngekuhambisana naloMtsetfo; noma

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ngekwesigaba 105.

#### **Kukhanselwa noma kumiswa kusebenta kwelayisensi**

- 60.** (1) Nobhala angakhansela noma amise ilayisensi uma ngabe—
- (a) tinsitanchanti temakethe tihlulekile ku—
    - (i) Kuhambisana naloMtsetfo noma imitsetfo;
    - (ii) Kuhambisana netinkhomba, sicelo, simo noma ngekuhambisana naloMtsetfo; noma
    - (iii) Kuhambisana nesincumo sebhodi yetikhalo ngekuhambisana nesigaba 105.;
  - (b) Ngemuva kwelucwaningo ngekuhambisana nesigaba 95 setindzaba tinsitanchanti temakethe nobhala uyaneliseka ngetizatfu letivakalako kutsi lendlela lekusetjentwa ngayo—
    - (i) Akukho kushisekelo lebalulekile yelilunga leligunyatiwe yendlu legunyatako letimele, basebentisi labagunyatiwe noma labangenelelako noma basebentisi noma emalunga etinsitanchanti temakethe, njengoba kungabe kubekiwe, kanye nemaklayenti abo; noma
    - (ii) Kumelana netinjongo taloMtsetfo letibalwe kusigaba 2;
  - (c) tinsitanchanti temakethe tiyekelile kusebenta noma ihlulekile kucala kusebenta ngesikhatsi lesifanele ngemuva kweuniketwa ilayisensi; noma
  - (d) Nobhala uyaneliseka ngetindlela letifanele kutsi lelayisensi itfolakele ngekungameleleki kahle.
- (2) Nobhala kufanele, ngembi kweukhansela noma kumisa ilayisensi—
- (a) Atise tinsitanchanti temakethe ngetinhlosu tanobhala tekukhansela noma kumisa;
  - (b) Kuniketa tinsitanchanti temakethe tizatfu talokukhansela lokuhlosiwe noma kumiswa; kanye (c) kubita inhlango letilawulako kutsi ikhombise ngesikhatsi lesibekwe ngunobhala kutsi kungani ilayisensi yabo ingeke yakhanselwa noma yamiswa.
- (3) Nobhala kufanele, ngekuya ngesigatjana (4), asule lelayisensi yetinsitanchanti temakethe ngalesikhatsi yetfulwa kunobhala ngekwesicelo salenhlangano letilawulako kutsi kuhanselwe.
- (4) Uma ngabe nobhala akhansela noma amisa ilayisensi nobhala kufanele atsatse leto tinyatselo kantsi anganiketa ngaleylo mibandzela njengoba ingaba ngulefanele kufinyelela kuletinjongo talomtsetfo lobalwe kusigaba 2, lapho khona tinyatselo tingafaka ekhatsi—
- (a) lokudlulisewa kwalelibhizinisi lalenhlangano letibusako liyise kuletinye tinsitanchanti temakethe; noma
  - (b) lokuhanjisa kwalenhlangano letibusako ngekwesigaba 102.

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#### **Kwenta lomunye umsebenti longetiwe**

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- 61.** (1) Tinsitanchanti temakethe angeke tenta lamanye emabhzinisi langangenisa bungoti beluhlelo.
- (i) longaba nemtselela lomubi kuletinhlangano letitilawulako kutsi tikhone kwenta imisebenti noma;
  - (ii) kubangela kungcubutana kwetinshisekelo noma kungcubutana lokubonakalako kwetinshisekelo ngekuya ngekubukisia kwabo kwekulawula kwebasebentisi

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- (2) A market infrastructure must consult the registrar prior to conducting any business, function or service not provided for under section 10, 30 or 50, that may—  
 (a) adversely impact on the market infrastructure's ability to meet or perform its regulated obligations or functions; or  
 (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be.
- (3) The registrar may, if the registrar is of the opinion that the business, function or service referred to in subsection (1) may—  
 (a) impact on the regulated obligations or functions of a market infrastructure; or  
 (b) give rise to a conflict of interest or perceived conflict of interest in respect of its regulatory oversight of authorised users, participants or clearing members, as the case may be,  
 prohibit or lay down requirements in respect of the carrying on of such business, function or service.
- (4) Where the registrar has prohibited or laid down requirements in respect of such business, function or service as referred to in subsection (3), the registrar must give reasons for the prohibition or requirements to the market infrastructure in writing within 14 days of the prohibition or requirements being made.
- Conflicts of interest** 20
- 62.** A market infrastructure must, where applicable, take necessary steps to avoid, eliminate, disclose and otherwise manage possible conflicts of interest between its regulatory functions and its commercial services, which steps must include—  
 (a) the implementation of appropriate arrangements, which arrangements must comply with the requirements prescribed by the registrar, be documented and be publicly available; and  
 (b) an annual assessment, in the manner prescribed by the registrar, of the arrangements referred to in subparagraph (a), the results of which must be published.
- Demutualisation of an exchange, central securities depository, or independent clearing house** 30
- 63.** (1) An exchange, central securities depository, or independent clearing house 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 and subject to the conditions that the registrar may prescribe. 35  
 (2) If a conversion referred to in subsection (1) takes place—  
 (a) the exchange, central securities depository, or independent clearing house 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 in consultation with the exchange, central securities depository, or independent clearing house in question; 40  
 (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 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 from the date on which it was first licensed by the registrar is unaffected and any actions of the exchange, central securities depository, or independent clearing house before its conversion 45 remain effectual; 50

labagunyatiwe , labangenelelako noma lilunga leligunyatiwe, njengoba kungabe kubekiwe.

(2) Tinsitanchanti temakethe kufanle titsintse nobhala ngembi kwekwenta noma tiphi ibhizinisi, umsebenti longakafakwa kusigaba 10, 30 noma 50, lokungenta kutsi—

(i) ba nemtselela kulemisebenti lesemtsetfweni noma imisebenti yenhangano letilawulako; noma 5

(ii) kube khona kungcubutana kwetinshisekelo noma kungcubutana kwetinshisekelo lokubonakalako ngekubukisisa kabanti kulawula kwebasebentisi labagunyatiwe , labangenelelako noma lilunga leligunyatiwe, njengoba kungabe kubekiwe, kuvimbela noma kubeka phansi lokudzingekako ngalokuphatselene 10 nekwentiwa kwalowo msebenti, ibhizinisi nalokwentiwako.

(3) Nobhala anga, uma ngabe nobhala analomcondvo wekutsi lebhizinisi, lomsebenti lobalwe kusigatjana, lomsebenti lobalwe kusigatjana (1) unga—

(i) kuba nemtselela kulemitfwalo lesemtsetfweni noma imisebenti wetinsitanchanti tetimakethe; noma 15

(ii) kutuftukisa kungcubutana kwetinshisekelo noma abone kungcubutana kwetinshisekelo ngalokuphatselene kubuyeketwa kwekulawulwa kwebasebentisi labagunyatiwe, bangeneleli noma emalunga lagunyatako, njengoba kungabe kubekiwe, kuvimbela noma kubeka kucace lokudzingekako ngalokuphatselene nekuhambisa lelo bhizinisi, noma umsebenti. 20

(4) Lapho khona nobhala avimbele noma abeke lokudzingekako ngalokuphatselene nebhizinisi, umsebenti lobalwe kusigatjana (3), nobhala kufanele anikete tizatfu talokuvinjelwa noma tidzingo taletinsitanchanti temakethe ngalokubhaliwe kungapheli emalanga lali-14 kwalokuvinjelwa noma letidzingo letentiwe.

### Kungcubutana kwetinshisekelo

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**62.** Tinsitanchanti tetimakethe kufanele uma kunesidzingo itsatse tinyatselo letifanele tekuvimbela, kwehlisa, kuveta kanye nekulawula kungcubutana lokungahle kube khona emkhatsini wemisebenti lebayilawulako kanye nemisebenti yemabhzinisi, lapho khona tinyatselo kufanele tifake ekhatsi—

(a) lokusetjentiswa kwemalungiselelo lafanele, lapho khona emalungiselelo 30 kufanele ahambisane netidzingo letibekwe ngunobhala abhalwe phansi avetwe kuwonkhe wonkhe; kanye

(b) kuhlola ngemnyaka kwalamalungiselelo labalwe kundzima (a), imiphumela yakhona kufanele ikhishwe.

### Kuguculwa kwenhangano letilawulako, libhange lemasheya lelisemkhatsini, 35 nendlu legunyatako letimele

**63.** (1) Ligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako lekungasilo inkapani yahulumende noma inkapani letimele njengoba kuchazwe kusigaba 1 se-*Companies Act* kungaguculwa kuba yinkapani yahulumende noma letimele ngemvume yanobhala nangekuya ngemibandzela yekutsi nobhala angakubona 40 kufanele.

(2) Uma ngabe letingucuko letibalwe kusigatjana (1) tenteka—

(a) kuligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako lebalwe kusigatjana (1) ivunyelwe kutsi kube ligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako lebalwe kusigatjana (1) ifanele kutsi ibe yinkapani lehlanganiswe ngekuhambisana ne *Companies Act* kusukela ngelusuku loluncunywe ngunobhala ngekutsintsana nenhlangano letilawulako; 45

(b) leTinkapani kanye neNkhomishana Yemphahla Yebuhlakani, lesungulwe ngekwesigaba 185 se-*Companies Act*, kufanele atsatse lesatiso lesifakiwe sekuhlanganisa sale ligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako ngekwalesigaba 13 saloMtsetfo nekubhalisa lenhlangano lekukhulunyuwa ngayo njengenkhapani ngekwesigaba 14 saloMtsetfo ngalolusuku lolubalwe kundzima (a); 50

(c) lokuchubeka kube khona kwelibhizinisi leligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako kusukela ngalolusuku leyaniketwa ngalo ilayisensi yekucala ngunobhala alikatsintseki naleminye imisebenti yalenhangano letilawulako ngembi kwekuguculwa kuhlala kunemandla;

- (d) the terms and conditions of service of employees of the exchange, central securities depository, or independent clearing house are not affected;
- (e) all the assets and liabilities of the exchange, central securities depository, or independent clearing house, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the exchange, central securities depository, or independent clearing house to cover any liabilities of the clearing members of independent clearing houses, 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 as the company may designate; 5
- (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 immediately before its conversion; 10
- (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 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; 15
- (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 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; 20
- (i) any claim, right, debt, obligation or duty accruing to any person against the exchange, central securities depository, or independent clearing house or owing by any person to such exchange, central securities depository, or independent clearing house is enforceable against or owing to the company, subject to any law governing prescription; 25
- (j) any legal proceedings that were pending or could have been instituted against the exchange, central securities depository, or independent clearing house before the conversion may be continued or instituted against the company, subject to any law governing prescription; and 30
- (k) the licence of the exchange, central securities depository, or independent clearing house remains vested in the company if the company complies with all the requirements of this Act in respect of a exchange, central securities depository, or independent clearing house. 35

#### **Amalgamation, merger, transfer or disposal**

- 64.** (1) (a) The registrar must approve—
- (i) any amalgamation or merger referred to in Chapter 5 of the Companies Act that involves a market infrastructure as one of the principal parties to the amalgamation or merger; and 40
- (ii) any transfer or disposal of more than 25 per cent of the assets, liabilities or assets and liabilities of a market infrastructure to another person.
- (b) A market infrastructure must—
- (i) prior to the making of any compulsory disclosures under any rules or national legislation in respect of any transaction referred to in paragraph (a), inform the registrar of the proposed transaction; 45
- (ii) clearly state in any compulsory disclosures under any rules or national legislation, or any announcement or press release in respect of a transaction referred to in paragraph (a), that the transaction is subject to the approval of the registrar; and 50
- (iii) on conclusion of the transaction, seek the approval of the registrar in accordance with this subsection and the conditions prescribed by the registrar.

- (d) lemibandzela yekusebenta kwebasebenti labatilawulako ayitsintseki;;
- (e) tonkhe timphahla kanye nemitfwalo yenkhapani letilawulako, kufaka ekhatsi noma muphi umshwalelense, siciweiseko, sikhwama sekuncephetelisa noma lenye iwaranti lephetfwe noma legcinwe yinhangano kuvala noma muphi umtfwalo yalelilunga leligunyatiwe yendlu legunyatako letimele, basebentisi labagunyatiwe noma Labangenelelako, njengoba kungabe kubekiwe, kumaklayenti, kutawuhlala kubekwe futsi kusibopho kulenkhapani noma kulesinye sikhungo lesivumelekile kunobhala njengoba inkhapani ingabe ibekile; 5
- (f) inkhapani inemalungelo lafanako kantsi iya ngemisebenti lebeyiphetfwe noma isibopho kuligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako ngekushesha ngembi kwekuhlangana; 10
- (g) tonkhe tivumelwano, kuncuma ngetinsuku, ematransekshini kanye nemiculu lekukhulunya ngayo, leyentiwe, lesunguliwe noma ledvwtjiwe, ngekuhambisana neligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako nalesebenta ngekushesha ngembi kwalokugucula lokuhlala kukhona nalokunemphumelelo, kantsi kwentelwa tonkhe tidzingo njengoba kungabe kuvunyelwene, kwentiwe, kucaliswe noma kudvwetjwe ngu, ngekumelana nenkhapani, njengoba kungabe kubekiwe; 15
- (h) noma yini lehlanganisiwe, sifungo, siciweiseko noma lelinye lithulusi kucinisekisa lokungenteka ngalokutako, tindzawo noma imisebenti lekwentiwa tinhlangano letimele lebeyisbenta ngekushesha ngembi kwetingucuko letitawuhlala tikhona, kantsi kutsatfwa njengebhondi, sifungo, siciweiseko noma lithulusi leliniketwe ngekuhambisana nenkhapani, njengoba kungabe kubekiwe; 20
- (i) noma yiphi ikleyimu, lilungelo, sikweleti, umtfwalo noma umsebenti lotalela noma bani ngekumelana naligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako noma lekukweletwa ngunoma ngubani kuleyo nhlangano kutawucindzetelwa ngekumelana noma kukweletwa ngunoma ngubani kulenkhapani, ngekuya nganoma ngumuphi umtsetfo lolawula lolokubekiwe; 25
- (j) noma ngabe nguyiphi inchubo lesemsetfweni lebeyingakapheeli noma ingabe ibekiwe ngekumelana naleligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako ngembi kwaletingcogco kungachutjekwa noma letibekwe ngekumelana nenkhapani, ngekuya nganoma muphi umtsetfo lolawula lokubekwako; kanye 30
- (k) ilayisensi yaleligatja, libhange lemasheya lelisemkhatsini, noma indlu letimele legunyatako itawuhlala ibekwe emandleni alenkapani uma ngabe lenkhapani ihambisana nato tonkhe tidzingo taloMtsetfo ngekuya ngenhlangano letilawulako. 35
- 40

### Kuhlanganisa, kudlulisela noma kususa

**64.** (1) (a) Nobhala kufanele avume—

- (i) noma kuphi kuhlangana noma kuba munye lokubalwe kuSahluko 5 se-*Companies Act* lekufaka ekhatsi tinsitanchanti tetimakethe njengenceny lebalulekile kulokuhlangana noma kuba munye; kanye 45
- (ii) noma kuphi kudlulisela noma kuhishwa kalokudlula kumaphesenti lali-25 Iwempahla, umtfwalo noma imphahla nemitfwalo yetinsitanchanti tetimakethe kulumunye umuntfu.
- (b) Tinsitanchanti tetimakethe kufanele—
- (i) ngembi kwekwentiwa kwanoma ngukuphi lokuvetwako lokufanele kuhishwe ngaphansi kwanoma muphi umtsetfo noma umtsetfo loshayiwe wavelonke ngalokuphatsele nganoma waphi ematransekshini labalwe kundzima (a) kwatiswe nobhala ngeatransekshini lephakanyisiwe; 50
- (ii) kukhombisa ngalokucacile kunoma kuphi lokuvetwako ngalokufanele ngaphansi kwanoma muphi umtsetfo noma umtsetfo loshayiwe velonkhe, noma noma kuphi lokumenyetlwako nnoma lokuhishwe betindzaba ngalokuphatsele netrancsekshini lebalwe kundzima (a), kutsi letransekshini itawuya ngekuvunyelwa ngunobhala; kanye 55
- (iii) ekucedvweni kwaletransekshini, kufuneka imvume yanobhala ngalokuhambisana nalesigatjana nalemibandzela lebekwe ngunobhala. 60

(2) The 25 per cent referred to in subsection (1)(a)(ii) must be calculated by aggregating the amount of the transferred assets, liabilities or assets and liabilities together with any previous transfer of assets, liabilities or assets and liabilities within the same financial year of the market infrastructure concerned.

(3) (a) Subsection (1) does not apply if only assets are transferred and the amount of the transferred assets, together with any previous transfer of assets within the same financial year, aggregates to an amount that is more than 10 per cent but less than 25 per cent of the total on-balance-sheet assets of the transferring market infrastructure. 5

(b) A market infrastructure must notify the registrar of a transfer referred to in paragraph (a). 10

(4) The registrar may give approval referred to in subsection (1), if the registrar is satisfied that the transaction in question will not be detrimental to the objects of this Act.

(5) Upon the coming into effect of a transaction effecting an amalgamation, merger or the transfer of such part of the assets, liabilities or assets and liabilities as approved in terms of subsection (1)— 15

(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, 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 as the parties to the amalgamation may designate; 20

(b) the amalgamated entity, or in the case of a transfer of assets and liabilities, the entity taking over such assets and liabilities, has the same rights and is subject to the same obligations as were, immediately before the amalgamation or transfer, applicable to or binding upon the amalgamating entities or, as the case may be, the entity by which the transfer has been effected; 25

(c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamated entities or, as the case may be, the entity by which the transfer has been effected, and in force immediately before the amalgamation or transfer, remain in force 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 amalgamated entity or, as the case may be, the entity taking over the assets and liabilities in question; 30

(d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating entities or, as the case may be, the entity transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, remains in force and is construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities; and 40

(e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating entities or owing by any person to any of such entities, is 45

(2) Lamaphesenti lange-25 labalwe kusigatjana (1)(a)(ii) kufanele abalwe ngekulinganisa lelinani letimpahla letindlulisiwe, lemitfwalo noma imphahla kanye nemitfwalo nasekuhlangene nanoma kuphi lokwadluliselwa lokuyimphahla, imitfwalo noma timphahla kanye nemitfwalo ngekhatsi kwalomnyaka timali kuletinsitanchanti tetimakethe letifanele.

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(3) (a) Sigatjana (1) asisebenti uma ngabe kudluliselwe imphahla kuphela, kanye nalenye imphahla leyadluliselwa ngaphambilini kuwo lomnyaka timali, lokulinganiselwa emalini lengetulu kwemaphesenti lali-10 kodvwa ngaphansi kwemaphesenti langema-25 kulelishithi lekulinganisa timphahla taletinsitanchanti tetimakethe ledluliselako.

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(b) Tinsitanchanti tetimakethe kufanele yatise nobhala ngekudluliselwa lokubalwe kundzima (a).

(4) Nobhala anganiketa sicianiseko ngalokubalwe kusigatjana (1), uma ngabe nobhala anelisekile kutsi letransekshini lekukhulunywa ngayo angeke ibe nemtselela kuletinjongo taloMtsetfo.

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(5) Uma ngabe kucala kusetjentiswa ematransekshini latawubangela kutsi kube nekuhlangana, kuba munye noma kudluliselwa kwaleyo ncenyre yetimphahla, imuitfwalo noma timphahla kanye nemitfwalo njengoba kuvunyelwe ngekwesigatjana (1)—

(a) yonkhe imphahla kanye nemitfwalo yalokuhlanganisa kwetinhlangano 20

(noma uma ngabe kunalokudluliselwako Ikuyimphahla noma umtfwalo, walenhlangano lapho khona lokudluliselwa kusetjentiswa khona), kufaka ekhatsi noma muphi umshwälense, sicianiseko, sikhwama sekuncephetelisa noma iwaranti lekungeyalomunye wabo noma loyilawulako kutsi ifake ekhatsi noma muphi imitfwalo yelilunga leligunyatiwe yendlu yekugunyata letimele, basebentisi labagunyatiwe noma Labangenelelako, njengoba kungabe kubekiwe, kumaklayenti, kutawuhlala futsi kutawuba sibopho kulenhlangano lehlanganisiwe noma, njengoba kungabe kubekiwe, lenhlangano letawube ise bentisa leto timphahla nemitfwalo noma lokunye lokukhona kuleligatja lokuvumelekile kubobhala njengoba letinhlangano 30 kulokuhlanganisa kungabekwa;

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(b) lenhlangano lehlanganisiwe, noma uma ngabe kudluliselwa timphahla noma umtfwalo, lenhlangano letsatsa leto timphahla nemtfwalo, inemalungelo lafanako kantsi kuya ngemibandzela lefanako njengoba beyinjalo, ngekushesha ngembi kwalokuhlanganisa noma kudluliselwa, lokutsetfwe ngu noma kunesibopho ngalokuhlangana kwetinhlangano noma, njengoba kungabe kubekiwe, lenhlangano lapho lokudluliselwa kungahle kube kune mtselela;

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(c) tonkhe tivumelwano, tikhatsi letibekiwe, ematransekshini nemiculu lekuvunyelwene ngayo, leyentiwe, lecaliwe noma lwkentiwe ngu, 40 ngalokuhlangana noma kuhambisana netinhlangano noma, njengoba kungabe kubekiwe, lenhlangano lapho lokudluliselwa kwentiwe khona, kanye nangekucinisekisa ngekushesha ngembi kwalokuhlangana noma kudluliselwa kuhlala kukhona kantsi kwentelwa tonkhe tindlela njengoba kungavunyelwana ngako, kwentiwe, kucale noma kudvwetjwe, ngekumelana nenhlangano noma, njengoba kungabe kubekiwe, lenhlangano letsatsa letimphahla kanye nalomtfwalo lekukhulunywa ngawo;

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(d) noma ngabe ngukuphi kuhlangana, sifungo, sicianiseko noma lamany emathulusi ekucinisekisa likusasa lephumelelo, tindzawo nemisebenti kwanoma ngukuphi kwalokuhlangana kwetinhlangano noma, njengoba kungabe kubekiwe, lenhlangano lapho lokudluliselwa kwentiwe khona, kanye nangekucinisekisa ngekushesha ngembi kwalokuhlangana noma kudluliselwa kuhlala kukhona kantsi kwentelwa tonkhe tindlela njengoba kungavunyelwana ngako, kwentiwe, kucale noma kudvwetjwe, ngekumelana nenhlangano noma, njengoba kungabe kubekiwe, lenhlangano letsatsa letimphahla kanye nalomtfwalo lekukhulunywa ngawo; kanye 50

(e) noma ngabe nguaphi emakleyimu, lilungelo, sikweleti, umtfwalo noma umsebenti lokutalela noma muphi umuntfu ngekumelana nanoma nguyiphi yaletinhlangano letihlanganisiwe noma lokukweletwa ngunoma ngubani kunoma ngutiphi taletinhlangano ticindzelwelwa ngekumelana netinhlangano letiohlanganisiwe noma kukweleta kutsi lowo muntfu kunoma ngutiphi tinhlangano kusetjentiswa ngekumelana noma kukweletwa kulenhlangano 55 60

<p>enforceable against or owing to the amalgamated entity or, as the case may be, the entity taking over such assets and liabilities.</p> <p>(6) Upon the coming into effect of a transaction effecting an amalgamation or merger, the licences of the individual market infrastructure that were parties to the amalgamation or merger are deemed to be cancelled, and the registrar must license the market infrastructure created by the amalgamation or merger.</p>	5
<b>Duty of members of controlling body</b>	
<b>65.</b> (1) The provisions of the Companies Act relating to the duties of a director apply, with the necessary changes, to each member of the controlling body of a market infrastructure, whether it is a company or not.	10
(2) The members of the controlling body of a market infrastructure owe a fiduciary duty of care and skill to the market infrastructure, in the exercise of the functions as a market infrastructure.	
<b>Appointment of members of controlling body</b>	
<b>66.</b> (1) No person may be appointed as a member of the controlling body of a market infrastructure if that person—	15
(a) may not be appointed or act as a director in terms of section 69 of the Companies Act;	
(b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a market infrastructure, which contravention involved dishonesty; or	20
(c) does not meet the fit and proper requirements prescribed by the registrar.	
(2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.	25
(3) A market infrastructure must, within 14 days of the appointment of a new member to its controlling body, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require.	
(4) The provisions of subsection (3) may not be construed so as to render the appointment of a member of the controlling body of a market infrastructure subject to the approval of the registrar.	30
(5) If it appears to the registrar that a member is disqualified in terms of subsection (1), the registrar may, subject to subsection (6), instruct the market infrastructure to remove that member from its controlling body.	
(6) The registrar must, before giving an instruction in terms of subsection (5)—	35
(a) in writing inform the market infrastructure and the particular member of the registrar's intention to give such an instruction;	
(b) give the market infrastructure and the particular member written reasons for the intended instruction; and	
(c) call upon the market infrastructure and the particular member to show cause within a period of 14 days why the instruction should not be given.	40
(7) If the registrar instructs the market infrastructure to remove a member from its controlling body, the market infrastructure must so remove the member within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the market infrastructure.	45
(8) If a market infrastructure fails to comply with subsection (7), the registrar may, in respect of such failure, impose a fine not exceeding R5 000 to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa, for every day in respect of which such failure continues.	50
(9) Section 97(2), (3) and (4) is, with the changes required by context, applicable to the imposition of a fine under subsection (8).	

lehlanganiswako noma, njengoba kungabe kubekiwe, lenhlangano letsatsa letimpahahla noma lemitfwalo.

(6) Uma ngabe kuba khona itranekshini lebangela kutsi kube nekuhlangana noma kuba munye, lokuniketwa kwelayisensi yemuntfu munye wetinsitanchanti tetimakethe lebekayincenyne yalokuhlangana noma kuba munye kufanele akhanselwe kantsi bobhala kufanele anikete tinsitanchanti tetimakethe ilayisensi lebangelwe ngulokuhlangana noma kuba munye.

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### **Umsebenti wemalunga emtimba lophetse enhlangano letilawulako**

**65.** (1) Imibandzela ye-*Companies Act* lehambisana nalemisebenti yemcondzisi isebeanta, ngaletingucuko letifanele, kulilunga ngalinye lelilawulako kulomtimba 10 wetinsitanchanti tetimakethe noma kungaba yinkapani noma cha.

(2) Lamalunga alomtimba lophetse etinsitanchanti tetimakethe lekweleta budlelwano emkhatsini walabanemasheya kute banakekele nelikhono kuletinsitanchanti tetimakethe, ekwenteni imisebenti njengenhlhangano letimele.

### **Kubekwa kwemalunga emtimba lophetse inhlangano letilawulako**

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**66.** (1) Akekho umuntfu longabekwa njengelilunga lalomtimba lolawulako wetinsitanchanti tetimakethe uma ngabe lomuntfu—

- (a) angeke acashwe noma asebente njengemcondzisi ngekuhambisana nesigaba 69 se-*Companies Act*;
- (b) uhlawulisiwe kunchubo yekubuyiswa endleleni kwentela kuphula umtsetfo 20 yanoma yiphi inhlangano lesamtsetfweni, kufaka ekhatsi tinsitanchanti tetimakethe, lokuphula umtsetfo kufaka ekhatsi kungatsembeki; noma
- (c) akufinyeleli kuletidzingo tekuvele ungene letibekwe ngunobhala.

(2) Umuntfu lotsatsa sikhatsi lesibekiwe ngekuphula sigatjana (1) wenta licala kantsi utawugwetjwa ahlawuliswe noma aboshwe sikhatsi lesingadluli iminyaka lembili, 25 noma ahlawuliswe ngalesikhatsi aboshiwe.

(3) Tinsitanchanti tetimakethe kufanele, kungakapheli emalanga lali-14 ngalesikhatsi sekutsatfwe lilunga lelisha kumtimba walo lolawulako, latise nobhala ngalokucashwa kwelilunga lelisha lelilawula lomtimba, latise nobhala ngalokucashwa nekuniketa nobhala ngelwatiso lolunjalo njengoba nobhala angaludzinga.

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(4) Lemibandzela yesigatjana (3) angeke yafundvwa njengaleniketwa lokucashwa kwelilunga lalomtimba lolawulako letinsitanchanti tetimakethe ngekuya ngekuvunyelwa kwanobhala.

(5) Uma ngabe kuvela kunobhala kutsi lilunga limisiwe ngekwasigatjana (1), nobhala anga, ngekuya ngesigatjana (6), kutjela letinsitanchanti tetimakethe kukhipha lelo lunga 35 kulomtimba lolawulako.

(6) Nobhala kufanele, ngembí kwekuniketa imiyalelo ngekuhambisana nesigatjana (5)—

- (a) ngekubhala phasi atise letinsitanchanti tetimakethe kanye nalelilunga lelifanele ngetinjongo tanobhala kutsi anikete lomyalelo;
- (b) kuniketa letinsitanchanti tetimakethe kanye netizatfu letibhalwe phansi talelilunga kwentela lemyalelo lehlosiwe; kanye
- (c) kubita letinsitanchanti tetimakethe kanye nalelo lunga kutsi bakhombise kungakapheli sikhatsi lesingemalanga lali-14 kutsi kungani lomyalelo kungafanele unuketwe.

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(7) Uma ngabe nobhala aniketa letinsitanchanti tetimakethe umtsetfo kutsi isuse lilunga kulomtimba leliwulawulako, letinsitanchanti tetimakethe kufanele kutsi isuse lelilunga kungakapheli sikhatsi lesingemalanga lali-14 kantsi kufanele kucinisekiswe kutsi lomuntfu lekukhulunywa ngaye angeke nganoma yiphi indlela, noma ngco noma ngalokungakaondzi, angenelele ekulawulweni kwaletinsitanchanti tetimakethe.

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(8) Uma ngabe inhlangano letilawulako ihluleka kuhambisana nalesigatjana (7), nobhala anga, ngalokuphat selene naloko kuhluleka, akhiphe inhlawulo lengadluli ku R5 000 kufanele ilungishwe ngunobhala njalo ngemnyaka kute ikhombise Silinganiso Selinani Lebatsengi, njengoba ikhishwe beTelubalo baseNingizimu Afrika onkhe malanga ngalesikhatsi loko kuhluleka kuchubeka.

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(9) Sigaba 97(2), (3) na (4) si, ngaletingucuko letidzingekako kulengcikisti, kube khona kutsi kuniketwe inhlawulo ngaphansi kwesigatjana (8).

**Limitation on control of and shareholding or other interest in market infrastructures**

- 67.** (1) For the purposes of this section, “associate”, in relation to—
- (a) a natural person, means—
    - (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person; 5
    - (ii) a child of that person, including a stepchild, an adopted child and a child born out of wedlock;
    - (iii) a parent or stepparent of that person;
    - (iv) a person in respect of which that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first-mentioned person; 10
    - (v) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii) to (iv);
    - (vi) a person who is in a commercial partnership with that person; 15
    - (vii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the market infrastructure in question;
  - (b) a juristic person— 20
    - (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof as defined in section 1 of the Companies Act;
    - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in 25 section 1 of that Act;
    - (iii) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company—
      - (aa) had it been a company; or
      - (bb) where that other juristic person is not a company either, had both it 30 and that other juristic person been a company;
    - (iv) means any person in accordance with whose directions or instructions its board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts; 35
  - (c) in relation to any person—
    - (i) means any juristic person whose board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person, acts in accordance with its directions or instructions;
    - (ii) means a trust controlled or administered by it.
- (2) For the purposes of this section, a person controls a market infrastructure— 40
- (a) that is a company, if that person, alone or with associates—
    - (i) holds shares in the market infrastructure of which the total nominal value represents more than 15 per cent of the nominal value of all the issued shares thereof; 45
    - (ii) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise, or
    - (iii) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board;
  - (b) that is a close corporation, if that person, alone or with associates, owns more than 15 per cent of the members’ interest, or controls directly, or has the right to control, more than 15 per cent of members’ votes in the close corporation; or 50

**Tihibe tekulawula nalamanye emasheya noma lenye intalo kunhlangano tsite letilawulako**

**67.** (1) Kwentela tinjongo talesigaba, “losebentisana naye”, ngekuhambisana ne—

- (a) muntfu, kushwo—
- (i) umuntu lonakwa ngekwemtsetfo noma lohlala naye ngekwenholelo yekutsi ungumlingani, masihalisane noma loshade naye ngekwestilungu; 5
  - (ii) umntfwana walowo muntfu, kufaka ekhatsi umntfwana lokungasuye wakhe, umntfwana lotsetfwe kute ondiwe kanye nelivetandlebe;
  - (iii) umtali noma umtali lekungasuye walowo muntfu;
  - (iv) umuntu lapho khona lowo muntfu uyanakwa ngekwemtsetfo noma 10 acashwe yinkhantolo njengemuntfu lobekwe yinkhantolo njengemuntfu losemtsetfweni kutsi alawule tindzaba noma kufinyelela kutidzingo tamalanga onkhe talomuntfu loshiwe kwekulaca;
  - (v) umuntu longumlingani ngalokuphelele noma masihalisane noma umshado losemtsetfweni wemuntfu lobalwe kundzinyane (ii) kuya (iv); 15
  - (vi) umuntu lonebudlelwano bemali nalowo muntfu;
  - (vii) lomunye umuntu longenele kusivumelwano noma kulokuhleliwe nalowo muntfu, kuya ngekukhishwa, kubamba noma kuvetwa kwe, noma kusetjentiswa emalungelo ekuvota ngalokuphatselene ne, emasheya tinsitanchanti tetimakethe lekukhulunywa ngayo; 20
- (b) umuntu wemtsetfo—
- (i) lokusho kutsi yinkapani, lokusho lehambisana nayo kanye nenkapani leyamele nayo njengoba ichazwe kusigaba 1 se-*Companies Act*;
  - (ii) lekuyinkapani lenebunikati lobulishumi lebhaliswe ngaphansi kwe-*Close Corporations Act*, 1984 (Umtsetfo Nom. 69 wanga 1984), 25 kushwo noma liphi lilunga lelinjalo lelichazwe kusigaba 1 salowo Mtsetfo;
  - (iii) lekungasiyo inkapani noma inkapani lenebunikati lobulishumi kushwo lomunye umuntu losemtsetfweni lebekufanele abe ngulobamelele noma lolibambela lenkapani— 30
    - (aa) uma ngabe kuyinkapani; noma
    - (bb) ngaleso sikhatsi lapho khona lomuntfu losemtsetfweni angasiyo inkapani, uma ngabe kokubili kanye nalolomunye losemtsetfweni kube yinkapani;
  - (iv) kushwo noma muphi umuntu lohambisana naletinkhomba noma imiyalelo yebalawuli labaphetse noma, noma lapho khona lomuntfu kungasiyo inkapani, umtimba lolawulako walowo lolawulako, tento; 35
- (c) ngalokuphatselene nanoma ngabe ngubani—
- (i) kushwo noma ngabe ngubani losemtsetfweni baphatsi bakhe noma, uma ngabe lowo muntfu losemtsetfweni akusiyo inkapani, umtimba 40 walabaphetse walowo muntfu, usebenta ngekuhambisana netinkhomba noma imiyalelo;
  - (ii) kushwo sikhwama lesilawulwa noma siphatfwa ngibo.
- (2) Kwentela tizatfu talesigaba, umuntu lolawula tinsitanchanti tetimakethe—
- (a) leyo yinkapani, uma ngabe lowo muntfu, yedvwa noma nalahlanganyela 45 nabo,—
- (i) kuba nemasheya kutinsitanchanti tetimakethe lapho khona lizinga lelilinganisiwe leliphelele limelele kundlula kumaphesenti lali-15 yelizinga lelilinganisiwe kuwo onkhe emasheya laniketiwe;
  - (ii) uyakhona kutilolonga ngalokucondzile nalokungakacondzi kulokudlula 50 kumaphesenti lali-15 kumalungelo ekuvota lahambisana nemasheya aleyo nkapani, noma kulandzelela sivumelwano semnini masheya noma kunjalo noma
  - (iii) ube nelilungelo lekubeka noma kukhetsta, noma kulawula lokucashwa noma kukhetfwa kwe, bacondzisi baley nkapani labalawula 55 lokungetulu kwemaphesenti lali-15 emavoti emhlanganweni webhodi;
- (b) leyo yinkapani lenebulunga lobudlula kulishumi, uma ngabe lowo muntfu, ayedvwa noma nalahambisana nabo, unebunikati bentalo yemalunga lendlula kumaphesenti lali-15, noma kulawula ngco, noma unelilungelo lekulawula, lokungetulu kwemaphesenti lali-15 lemavoti emalunga kunkapani lebulunga 60 lobulishumi; noma

- (c) that is a trust, if that person, alone or with associates, has the ability to control more than 15 per cent of the votes of the trustees or to appoint more than 15 per cent of the trustees, or to appoint or change more than 15 per cent of the beneficiaries of the trust.

(3) A person may not, without the prior approval of the registrar, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control within the meaning of subsection (2) over the market infrastructure. 5

(4) A person may not, without the prior approval of the registrar, acquire shares or any other interest in a market infrastructure in excess of that approved under subsection (3), 10 but not exceeding 49 per cent.

(5) (a) A person may not, without the prior approval of the Minister, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in the per cent referred to in subsection (2) exceeding 49 per cent.

(b) Any request for approval referred to in paragraph (a) must be submitted through 15 the registrar to the Minister.

(6) The approval referred to in subsection (3), (4) or (5)—

(a) may be given subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the registrar; 20

(b) may not be given if it will defeat the objects of this Act referred to in section 2; and

(c) may be refused if the person concerned, alone or with his or her associates, has not owned shares in the market infrastructure—

(i) of the aggregate nominal value; and

(ii) for a minimum period, not exceeding 12 months, that the registrar or the Minister, as the case may be, may determine. 25

(7) If the registrar or the Minister, as the case may be, is satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure, the registrar or the Minister, as the case may be, may apply to the court in whose area of jurisdiction the main office of the market infrastructure is situated, for an order— 30

(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, of the total nominal value of all the issued shares of the market infrastructure; and 35

(b) limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his or her shareholding or other interest in the market infrastructure, to 15 or 49 per cent of the voting or other rights attached to the shares or other interests, as the case may be. 40

(8) An application referred to in subsections (3), (4) or (5) must be made in the manner and form prescribed by the registrar.

#### Delegation of functions

**68.** (1) A market infrastructure may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the market infrastructure, or a division or department of the market infrastructure, subject to the conditions that the market infrastructure may determine. 45

(2) Before delegating or assigning functions as contemplated in subsection (1) to an external party, the market infrastructure must obtain the approval of the registrar. 50

(3) The registrar may delegate or assign any function entrusted to the registrar by or under this Act, subject to the conditions that the registrar may determine.

(4) A market infrastructure or the registrar, as the case may be, is not divested or relieved of a function delegated or assigned under subsections (1) and (2), and

(c) leso sikhwama, uma lowo muntfu, ayedvwa noma analahambisana nabo, unelikhono lekulawula lokudlula kumaphesenti lali-15 lebanemasheya, noma kubeka noma kugucula lokudlula kumaphesenti lali-15 lababanemasheya, noma kucasha noma kugucula labazuzako kusikhwama langetulu kwemaphesenti lali-15.

(3) Umuntfu angeke, ngaphandle kwemvume yanobhala, afune noma abe nemasheya noma lokunye lokuyintalo kutinsitanchanti tetimakethe, uma ngabe lolokufunekako noma abe nemiphumela ngalowo muntfu, ngco noma ngalokuyamile, ayedvwa noma nalasebentisana naye, asebentisa kulawula ngenchazelo yesigatjana (2) kulenhangano letilawulako.

(4) Umuntfu angeke, ngaphandle kwemvume yangaphambilini yanobhala, afune emasheya noma lenye intalo kutinsitanchanti tetimakethe, kutfola loko lokuvunyelwe ngaphansi kwsigatjana (3), kodvwa kungandluli kumaphesenti langema-49.

(5) (a) Umuntfu angeke, ngaphandle kwemvume yangaphambilini yaNgcongcoshe, kutfola noma kuba nemasheya noma nomi yiphi lenye intalo kutinsitanchanti tetimakethe, uma ngabe lokutsatfwa noma kubanjwa kwemiphumela kuleliphesenti lelibalwe kusigatjana (2) kudlula kumaphesenti langema-49.

(b) Noma ngabe siph i siculo salokuvunyelwe lokubalwe kundzima (a) kufanele kwetfulwe kunobhala kuye kungcongcoshe.

(6) Lemvume lecondziswe kusigatjana (3), (4) noma (5)—

(a) inganiketwa ngekuya ngemibandzela lekusti lelizinga lelilinganisiwe lalamasheya lanawo lomuntfu lotsintsekako kanye nalaba lahambisana nabo angeke landlula lawo maphesenti njengoba kungancunywa ngunobhala;

(b) angeke baniketwa uma ngabe kutawumelana netinjongo taloMtsetfo letibalwe kusigaba 2; kanye

(c) angeke kwalika uma ngabe lomuntfu lotsintsekako, yedvwa noma nalahambisana nabo, akakabi nemasheya kuletinsitanchanti tetimakethe—

(i) kulelizinga lelilinganisiwe; kanye

(ii) kwentela sikhatsi lesilinganiselwa, kungandluli tinyanga leti-12, kutsi nobhala noma Ngcongcoshe, njengoba kungabe kubekiwe, angancuma.

(7) uma ngabe nobhala noma Ngcongcoshe, njengoba kungabe kubekiwe, wanelisekile ngemazinga labekiwe kutsi lokulondvwa kwekuba nemasheya noma lenye intalo ngumuntfu lotsite kutawuba semtsetfweni kuletinsitanchanti tetimakethe, nobhala noma Ngcongcoshe, njengoba kungabe kubekiwe, angabhalela kulenkantolo yalapho kunelihhovisi khona laletinsitanchanti tetimakethe kutsi atfole umyalelo—

(a) acindzetele lowo muntfu kutsi anciphise, ngesikhatsi lesincunywe yinkhantolo, lokuba nemasheya noma lenye intalo kuletinsitanchanti tetimakethe kulanemasheya lonelizinga lelilinganisiwe lelingandluli emaphesenti lali-15 noma 49 nasekaphelele, njengoba kungabe kubekiwe kulelizinga lelilinganisiwe leliphelele yawo onkhe emasheya laniketiwe kutinsitanchanti tetimakethe; kanye

(b) kuvimbela, ngalokuphutfumako, kuvota noma lamanye emalungelo langasetjentiswa ngulowo muntfu ngesikhundla sakhe sekuba nemasheya noma lenye intalo kulenhangano letilawulako kumaphesenti lali-15 noma 49 alokuvota noma lamanye emalungelo lafakwa kulamasheya noma lenye intalo, njengoba kungabe kubekiwe.

(8) Siculo lesibalwe kusigatjana (3), (4) noma (5) kufanele sentiwe ngendlela lebekwe ngunobhala.

### Kuniketwa kwemisebenti

**68.** (1) Tinsitanchanti tetimakethe tinganiketa noma yendlulisele noma muphi umsebenti loniketwe bona ngekwaloMtsetfo noma imitsetfo yabo kumuntfu noma licembu lebantfu, noma likomidi lelivunyelwe ngumtimba lolawulako walenhangano letilawulako, noma inceny noma litiko lalenhangano letilawulako, ngekuya ngemibandzela yekutsi lenhangano letilawulako ingancuma.

(2) Ngembii kwekutsi kuniketwe emandla noma umsebenti njengoba kuvetiwe kusigatjana (1) kulicembu langaphandle, letinsitanchanti tetimakethe kufanele itfole invume yanobhala.

(3) Nobhala angatfumela noma anikete noma muphi umsebenti wakhe loniketwe nobhala ngaphansi kwaloMtsetfo ngekuya ngemibandzela lengancunywa ngunobhala.

(4) Tinsitanchanti tetimakethe noma nobhala, njengoba kungabe kubekiwe, abakatfulwa umtfwalo ngalomsebenti loniketwe labanye noma lodlulisiwe ngaphansi

may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

#### Report to registrar

**69.** Within four months after the financial year-end of a market infrastructure, that market infrastructure must submit to the registrar an annual report containing the details prescribed by the registrar and audited annual financial statements that fairly present the financial affairs and status of the market infrastructure. 5

#### Attendance of meetings by, and furnishing of documents to, registrar

**70.** (1) The registrar or a person nominated by the registrar may attend any meeting of the controlling body of a market infrastructure or a committee of the controlling body, and may take part, but may not vote, in all the proceedings at such meeting. 10

(2) A market infrastructure must furnish the registrar with all notices, minutes and documents which are furnished to members of the controlling body of the market infrastructure or a committee of the controlling body, as if the registrar were a member of that body or committee. 15

#### Manner in which rules of certain market infrastructure may be made, amended or suspended, and penalties for contraventions of such rules

**71.** (1) The registrar must as soon as possible after issuing a licence to a market infrastructure that is required to issue rules, cause the rules made by that entity to be published in the *Gazette* at the expense of the entity concerned. 20

(2) (a) A market infrastructure may, subject to this section, amend or suspend its rules in accordance with the consultation process set out in the rules, which process must provide for—

- (i) the persons who are to be consulted; and
- (ii) the manner in which consultation will happen, including the time period or periods allowed for consultation. 25

(b) The registrar may, subject to this section, amend the rules or issue an interim rule.

(3) (a) A proposed amendment, other than a suspension, of the rules must be submitted to the registrar for approval and must be accompanied by an explanation of the reasons for the proposed amendment and any concerns or objections raised during the consultation process. 30

(b) The registrar must as soon as possible after the receipt of a proposed amendment publish—

- (i) the amendment on the official website; and
- (ii) a notice in the *Gazette* that the proposed amendment is available on the official website, 35

calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the registrar 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 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 must publish— 40

- (i) the amendment and the date on which it comes into operation on the official 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 website and the website of the market infrastructure; and
  - (cc) the date on which the amendment will come into operation. 45

(4) (a) The registrar, by notice in the *Gazette* and on the official website, may amend the rules of that market infrastructure—

- (i) if there is an urgent imperative under exceptional circumstances;
- (ii) if it is necessary to achieve the objects of this Act referred to in section 2; and

kwalesigatjane (1) na (2) kantsi banga, uma kufanele, bahocise lokuniketwa noma lomsebenti nganoma sippi sikhatsi ngesatiso lesiphatsekako.

### **Umbiko wanobhala wenhlangano letilawulako**

**69.** Ngemuva kwetinyanga letine nasekuphele umnyaka timali wetinsitanchanti tetimakethe, letinsitanchanti tetimakethe kufanele tetfule kunobhala umbiko wemnyaka wonkhe locuketse imininingwane lebhalwe ngunobhala kanye netitatinende temnyaka temali letiholiwe letikhombisa simo setimali kanye nesimo saletinsitanchanti tetimakethe. 5

### **Kungenelwa kwemihlangano ngunobhala, kanye nekuniketwa kwemiculu**

**70.** (1) Nobhala noma umuntfu lokhetfwе ngunobhala angangenelela kunoma muphi umhlangano yalomtimba lolawulako yetinsitanchanti tetimakethe noma likomidi lalomtimba lolawulako kantsi ungaba yincenye, kodvwa angeke avote, kuko konkhe lokuchubeka kumhlangano lonjalo. 10

(2) Tinsitanchanti tetimakethe kufanele inikete nobhala tonkhe tatiso, emaminithi nemiculu leniketwa emalunga alomtimba lolawulako kuletinsitanchanti tetimakethe, 15 kwenteka kwangatsi nobhala bekalilunga lalowo mtimba noma likomidi.

### **Indlela imitsetfo yenhlangano letilawulako kufanele yentiwe ngayo, ichitjiyelwe noma ihociswe kanye netinhlawulo tekwephula leyo mitsetfo**

**71.** (1) Nobhala kufanele ngekushesha ngemuva kwekuniketa ilayisensi yetinsitanchanti tetimakethe ente imitsetfo leyentiwe nguleyo nhlangano kutsi 20 kukhishwe kuGazethi ngetindleko talenhlangano letsintsekako.

(2) (a) Tinsitanchanti tetimakethe tinga, ngekuya ngalesigaba, achibiyele noma acitse imitsetfo ngalokuphat selene nalenchubo yekutsintsana lekhona kulemitsetfo, lapho khona lenchubo kufanele inikete—

- (i) labantu leku fanele batsintfwe; kanye 25
- (ii) indlela labatawutsaintfwa ngayo, kufaka ekhatsi lesikhatsi noma tikhatsi letivumelekile kutsi kutsintfwane.

(b) Nobhala anga, ngekuya ngalesigaba, kuchibiyela lemitsetfo noma kukhipha umtsetfo wesikhashane.

(3) (a) Kuchibiyela lokuphakanyisiwe, ngaphandle kwalokucitsako, kwalemitsetfo 30 kufanele kwetfulwe kunobhala kute kuvunyelwe kantsi kufanele kuhambisane nenchazelo yalokuchitjiyelwa lokuphakanyisiwe nalokunye lokubatsintsako noma tinkhinga letiphakanyisiwe ngalesikhatsi kutsintfwana.

(b) Nobhala kufanele ngekushesha ngemuva kwekutfolu tichibiyelo letiphakanyisiwe tikhishiwe— 35

- (i) kuchitjiyela kwewebhu lesemsetfweni; kanye
- (ii) satiso kuGazethi kutsi lokuchibiyela lokuphakanyisiwe kuyatfolakala kuwebhu lesemsetfweni, kubita bonkhe bantfu labanenshisekelo labaphikisanako naletichibiyelo letiphakanyisiwe kutsi bafake tikhalo tabo nganobhala kungakapheli emalanga lali-14 kusukela ngalelilanga lekushicilelwа 40 kwa lesatiso.

(c) Uma ngabe kungekho lokuphikiswako, noma uma ngabe nobhala akutsetse loku lokuphikiswako kanye, uma kufanele, atsintsene netinsitanchanti tetimakethe kanye nalomuntfu lophikisako kanye naloncumе kuvuma noma kuphakamisa sichibiyelo, nobhala kufanele ashicilele— 45

- (i) lokuchibiyela nelusuku lapho kucala khona kusebenta kuwebhu lesemsetfweni; kanye
- (ii) ngesatiso kugazethi, lapho khona lesatiso kufanele sisho kutsi—
  - (aa) lokuchibiyela kwalemitsetfo kuvunyelwe;
  - (bb) kutsi lemitsetfo njengoba ichitjiyelwe ikhona kuwebhu lesemsetfweni 50 yaletinsitanchanti tetimakethe; kanye
  - (cc) lolusuku lokuchitjiyelwa lekutawusetjentiswa ngalo.

(4) (a) Nobhala, ngekwasatiso kuGazethi kanye nakuwebhu lesemsetfweni, kungachitjiyelwa lemitsetfo yaletinsitanchanti tetimakethe—

- (i) uma ngabe kukhona lokjubaluleke kakhulu ngaphansi kwetimo letikhetskile; 55
- (ii) uma ngabe kunesidzingo kutsi kufinyelelwe kutinjongo taloMtsetfo letibalwe kusigaba 2; kanye

- (iii) after consultation with the market infrastructure concerned.
- (b) Where the registrar has amended the rules of a market infrastructure under paragraph (a), the registrar must—
- (i) inform the Minister of the amendment, giving reasons for the amendment and explaining the imperative referred to in paragraph (a)(i); and
  - (ii) give reasons for the amendment, and explain the imperative referred to in paragraph (a)(i), in the *Gazette* and on the official website.
- (5) (a) Subject to prior approval of the registrar, 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 website. 10
- (b) The registrar may, for the period of such suspension, issue an interim rule by notice in the *Gazette* to regulate the matter in question.
- (c) Any contravention of or failure to comply with an interim rule, has the same legal effect as a contravention of or failure to comply with a rule.
- (6) (a) The rules may prescribe that a market infrastructure, or a person to whom the market infrastructure has delegated its disciplinary functions, may where appropriate impose any one or more of the following penalties for any contravention thereof or failure to comply therewith: 15
- (i) A reprimand;
  - (ii) a censure;
  - (iii) a fine not exceeding R7.5 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa;
  - (iv) suspension or cancellation of the right to be a clearing member of an independent clearing house, 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, 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, an authorised user or a participant may conduct business or may utilise an officer, employee or agent; 20
  - (vii) suspension or cancellation of the authorisation of an officer or employee of a clearing member of an independent clearing house, an authorised user or a participant to perform a function in terms of the rules;
  - (viii) any other penalty that is appropriate in the circumstances.
- (b) The rules may prescribe that— 30
- (i) full particulars regarding the imposition of a penalty must be published on the website of the market infrastructure or through the news service of the market infrastructure or through a market notice, if any;
  - (ii) any person who has contravened or failed to comply with the rules, may be ordered to pay the costs incurred in an investigation or hearing conducted in terms of the rules;
  - (iii) a market infrastructure may take into account at a disciplinary hearing any information obtained by the registrar in the course of an inspection conducted under section 95;
  - (iv) a market infrastructure, or a person to whom a market infrastructure has delegated its disciplinary functions, may, upon good cause shown, and subject to the conditions it may impose, vary or modify any penalty which it may previously have imposed upon any person, but that in varying or modifying such penalty, the penalty may not be increased. 40
- (7) If a person fails to pay a fine referred to in subsection (6)(a), the market infrastructure may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the market infrastructure for a liquid debt in the amount specified in the statement. 45 50 55

- (iii) ngemuva kwekutsintsana netinsitanchanti tetimakethe letitsintsekako.
- (b) Lapho khona nobhala achibiyele imtsetfo yetinsitanchanti tetimakethe ngaphansi kwendzima (a), nobhala kufanele—
- (i) atise Ngcongcoshe ngalokuchibiyela anikete tizatfu talokuchibiyela achaze nalokubaluleka lokubalwe kundzima (a)(i); ne 5
  - (ii) kuniketa tizatfu talokuchibiyela, nekuchaza kubaluleka lokubalwe kusigaba (a)(i), ku*Gazethi* kanye nakuwebhu lesemtnfweni;
- (5) (a) Ngekuya ngemvume yangaphambilini yanobhala, tinsitanchanti tetimakethe ingamisa noma muphi yalemitselfo yalenhlangano kwentela sikhatsi lesingadluli emalanga langema-30 ngesikhatsi ngemuva kwasatiso lesivakalako salokumiswa 10 lokuphakanyisiwe kukhangiswe kuwebhu lesemtnfweni.
- (b) Nobhala anga, kulesikhatsi sekumiswa, kube khona umtsetfo wesikhashane ngekwasatiso kugazethi kulawula loludzaba lekukhulunywa ngalo.
- (c) Noma kuphi kungenelela noma kuhluleka kuhambisana nalementsetfo yesikhashane kunemtselela lofanako wemtsetfo njengekungenelela noma kuhluleka kulandzela 15 umtsetfo.
- (6) (a) Imitsetfo ingabeka kutsi tinsitanchanti tetimakethe, noma umuntfu lapho tinsitanchanti tetimakethe letimtfumile kutsi ente umsebenti lapho kufanele khona wekubuyisa endleleni, angatfuma noma bani noma lokunye kwalokulandzelako lokusigwebo kunoma kuphi kungenelela lokukhona noma kuhluleka kuhambisana 20 naloko—
- (i) kuncandza;
  - (ii) kungavumeli;
  - (iii) inhlawulo lengadluli tigidzi leti-R7.5, kufanele ilungiswe ngunobhala njalo ngemnyaka kukhombisa Silinganiso Selinani Lemtsengi, njengoba kuvetwe 25 beLubalo lwaseNingizimu Afrika;
  - (iv) kumiswa noma kukhansela kwelilungelo lekuba lilunga leligunyatiwe lendlu letimele legunyatako, umsebentisi losemtsetfweni noma labangenelelako;
  - (v) kungasavumeli, uma ngabe kungumuntfu, kutsi aphatse lihhovisi lemcondzisi noma abe sisebenti selilunga leligunyatiwe sendlu letimele legunyatiwe, 30 umsebentisi losemtsetfweni noma labangenelelako, njengoba kungabe kubekiwe, nganoma sikhatsi lesingakanani;
  - (vi) imitsetfo levimbela indlela lilunga leligunyatiwe yendlu letimele legunyatako, umsebentisi losemtsetfweni noma labangenelelako bangenta umsebenti noma bangasebentisa umsebenti, sisebenti ne ejenti; 35
  - (vii) kumisa noma kukhansela kweligunya lesisebenti noma umsebenti welilunga leligunyatiwe wendlu letimele legunyatiwe, an umsebentisi losemtsetfweni noma labangenelelako kutsi bente umsebenti ngekuhambisana nalementsetfo;
  - (viii) noma ngabe nguyiphi inhlawulo lefanele lesimo.
- (b) Lemitsetfo ingabala kutsi—
- (i) imininingwane lephelele lephat selene nekuniketwa kwenhlawulo kufanele ikhishwe kuwebhu lesemtnfweni yanhangano letilawulako noma kubeluhlelo lwetindzaba tenhlanganbo letilawulako noma ngesatiso kumakethe, uma sikhona; 40
  - (ii) noma ngabe ngubani lophule noma lohluleke kuhambisana nemitsetfo angatjela kutsi akhokhe tindleko letibangelue luppenyo noma kutsetfwa kwelicala lokwentiwe ngaphansi kwalomtsetfo;
  - (iii) tinsitanchanti tetimakethe tingatsatsa noma luphi Iwatiso lelical lelitsetsiwe lolutfolwe ngunobhala ngalesikhatsi kuhlolwa ngaphansi kwesigaba 95;
  - (iv) tinsitanchanti tetimakethe, noma umuntfu lapho inhangano letilawulako 50 andlulisele emandla ekubuyisa endleleni, anga, uma akhombise kwenta kahle, nangekuhambisana nemibandzela layikhombisile, abuke noma ente kabusha noma ngabe nguyiphi inhlawulo lengahle ibe ibekelwe noma bani kodvwa lehlukile noma lelungiswe kabusha leyo nhlawulo angeke yakhuliswa.
- (7) Uma ngabe umuntfu ahluleka kukhokhela inhlawulo lebalwe kusigatjana (6)(a) 55 tinsitanchanti tetimakethe tingafayela namabhalane noma nanobhala wanoma yiphi inkhantolo lesebentako sitatimende lesiniketwe ngiyo njengalesikahle, sisho linani lenhlawulo leniketiwe, kanye nesitatimende lesinjalo sinemtselela yonke welicala leliniketiwe ngalokusemtsetfweni kuleyo nkhantolo ngekumelana nalowo muntfu ngalokutsandvwa tinsitanchanti tetimakethe ngesikweleti semanti ngelinani lelibekwe 60 kulesitatimende.

(8) This section does not prejudice the common law rights of a person aggrieved by a contravention of or failure to comply with a rule to claim any amount except to the extent that any portion of such amount has been recovered under subsection (6).

(9) The rules must prescribe the purpose for which a fine referred to in subsection (6) must be appropriated.

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### **Limitation of liability**

**72.** (1) No market infrastructure, chief executive officer, director, official, other officer, employee or representative of a market infrastructure or any member of a controlling body or committee of a controlling body of a market infrastructure, is liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by—

(a) the market infrastructure, chief executive officer, other officer, employee, representative or member in the *bona fide* performance of an obligation or function under or in terms of this Act, the listing requirements of an exchange or exchange, depository or clearing house rules or directives; or

(b) a clearing member, an authorised user or participant.

(2) An authorised user that fails to comply with the rules issued in terms of section 17(2)(i) or a participant that fails to comply with the rules issued in terms of section 35(2)(s) does not incur liability to a third party for financial loss or damages because of that failure, unless the failure was grossly negligent or wilful.

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### **Disclosure of information**

**73.** (1) No market infrastructure or chief executive officer, other officer, employee, representative or member of a market infrastructure may, subject to subsection (2), disclose to any person any confidential information obtained in the performance of functions under this Act, unless—

(a) the person to whom the confidential information relates has given consent;

(b) disclosure is required or permitted in terms of a law or a court order;

(c) disclosure is necessary to carry out his, her or its functions or in the course of performing duties under any law; or

(d) disclosure is required for the purposes of legal proceedings.

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(2) Despite subsection (1), a market infrastructure may disclose information relating to or arising from its functions to any market infrastructure or supervisory authority, whether domestic or foreign, if such disclosure will further one or more of the objects of this Act referred to in section 2.

## **CHAPTER VIII**

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### **CODE OF CONDUCT**

#### **Code of conduct for regulated persons**

**74.** (1) The registrar may in an appropriate consultative manner prescribe a code of conduct for—

(i) authorised users, participants or clearing members of independent clearing houses;

(ii) any other regulated person, where the required standard of conduct is not prescribed in another law or code of conduct, and a code of conduct is necessary or expedient for the achievement of the objects of this Act.

(2) A code of conduct is binding on authorised users, participants or clearing members

of independent clearing houses or any other regulated person in respect of whom the code of conduct was prescribed, as the case may be, and on their officers and employees and clients.

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(8) Lesigaba asicwasi emalungelo emtsetfo wakuleli yemuntfu lolilako ngenga yekuphula noma kuhluleka kuhambisana nemtsetfo wekukleyma noma sippi samba ngaphandle kwelizinga lekutsi noma yiphi incenye yaleso samba itfolakele ngaphansi kwesigatjana (6)

(9) Lemitsetfo kufanele ibeke injongo lapho khona inhlawulo lebalwe kusigatjana (6) 5 kufanele isetjentiswe.

### Tihibe netingcinamba

**72.** (1) Atikho tinsitanchanti tetimakethe, indzawo yekuhwebelana, umphatsi lophakeme, lesinye sisebenti, umcondzisi, umsebenti noma lomele tinsitanchanti tetimakethe noma indzawo yekuhwebelana, noma lelinye nje lilunga lemtimba 10 lolawulako noma likomidi lemtimba letinsitanchanti tetimakethe lendzawo yekuhwebelana, utawuba nemtfwalo walokutawulahleka noma kulimala lokutawenteka kunoma ngubani ngenga yemphumela yanoma yini leyentiwe noma lesuswe—

(a) tinsitanchanti tetimakethe, indzawo yekuhwebelana, umphatsi lomkhulu, lesinye sisebenti, sisebenti, lomele noma lilunga leisemtsetfweni noma 15 kwenta umsebenti ngaphansi ngekwaloMtsetfo, lokudzingekako kute kubhaliswe ligatja noma ligatja, sikhungo noma imitsetfo imibandzela yendlu legunyatako; noma

(b) lilunga leligunyatiwe, umsebentisi losemtsetfweni noma labangenelelako.

(2) Umsebentisi losemtsetfweni lohluleka kuhambisana naemitsetfo lekhishwe 20 ngekuhambisana nesigaba 17(2)(i) noma labangenelelako labahluleka kuhambisana nemitsetfo lekhishwe ngekwesigaba 35(2)(s) akukubangeli umtfwalo kulabangenelelako besitsatfu ekulahlekelweni yimali noma umonakalo ngenga yaloko kuhluleka, ngaphandle kwekutsi lokuhluleka kube budlabha lobungebuhle noma ngamabomu.

### Kuvetwa kwelwatiso

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**73.** (1) Tinsitanchanti tetimakethe noma umphatsi lophakeme, lesinye sisebenti, sisebenti, lomele noma lilunga letinsitanchanti tetimakethe linga, ngekuya ngekwesigatjana (2), kuvetela noma ngubani noma luphi lwatiso loluyimfihlo lolutfolakele ekwentiweni kwemsebenti ngaphansi kweMtsetfo, ngaphandle kwekutsi

(a) lomuntfu lekanalolwatiso loluyimfihlo uniketa imvume;

(b) kuveta kuyadzingeka noma kuvumelekile ngekwemtsetfo noma umyalelo wenkhantolodisclosur;

(c) kuveta kubalulekile kutsi uchubeke wente umsebenti wakho noma ngalesikhatsi wenta imisebenti ngaphansi kwanoma muphi umtsetfo; noma

(d) kuveta kuyadzingeka kwentela inchubo yemtsetfo.

(2) Ngaphandle kwesigatjana (1), tinsitanchanti tetimakethe tingaveta lwatiso loluphat selene noma lokuvetwa misebenti kuletinje tinsitanchanti tetimakethe noma labagunyatiwe labaphetse, noma bakuleli noma bangaphandle, uma ngabe lokuvetwa kutawuchubekisa kunye noma lokunyenti kwaletinjongo taloMtsetfo lekucondziswe kuto kulesigaba 2.

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## SAHLUKO VIII

### INDLELA YEKUTIPHATSA

#### Indlela yekutiphatsa kwebantfu labasemtsetfweni

**74.** (1) Nobhala angesta ngendlela lefanele yekutsintsana anikete indlela yekutiphatsa—

(i) yebasebentisi labagunyatiwe, labangenelelako noma lilunga leligunyatiwe lendlu letimele legunyatako;

(ii) noma ngabe ngubani umuntfu losemtsetfweni, lapho khona lizinga lelidzingekako lekutiphatsa alikabekwa kulomunye umtsetfo noma indlela yekutiphatsa, kantsi indlela yekutiphatsa iyadzingeka noma iyaphutfuma 50 kwentela kuphumelela kwaletinjongo taloMtsetfo

(2) Indlela yekutiphatsa iyabopha kubasebentisi labagunyatiwe, labangenelelako noma lilunga leligunyatiwe lendlu letimele legunyatako noma lomunye umuntfu losemtsetfweni lona lewakhishelwa indlela yekutiphatsa, njengoba kungabe kubekiwe, nakutisebenti kanye nebasebenti nemaklayenti.

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### Principles of code of conduct

**75.** (1) A code of conduct for authorised users, participants or clearing members of independent clearing houses must be based on the principle that—

- (a) an authorised user, participant or clearing member of an independent clearing house must—
    - (i) act honestly and fairly, with due skill, care and diligence and in the interests of a client;
    - (ii) uphold the integrity of the financial markets;
    - (iii) have and effectively employ the resources, procedures and technological systems for the conduct of its business;
  - (b) an authorised user, in addition to paragraph (a), must—
    - (i) seek information from a client regarding his or her financial position, investment experience and objectives where appropriate to the category of securities services provided and to the business of the client; and
    - (ii) act fairly in a situation of conflicting interests.
- (2) A code of conduct for regulated persons, other than the regulated persons mentioned in subsection (1), must be based on the principle that the regulated person must—
- (i) act honestly and fairly, with due skill, care and diligence and, where applicable, in the interests of a client or member; and
  - (ii) uphold the integrity of the financial markets.
- (3) A code of conduct may provide for—
- (a) the disclosure to a client of relevant material information, including the disclosure of actual or potential own interests;
  - (b) proper record-keeping;
  - (c) avoidance of fraudulent and misleading advertising, canvassing and marketing;
  - (d) proper safekeeping of transaction documents of clients;
  - (e) proper separation and protection of funds and securities of clients; and
  - (f) any other matter which is necessary or expedient to be regulated in a code of conduct for the achievement of the objects of this Act.

## CHAPTER IX

### PROVISIONS RELATING TO NOMINEES

#### Approval of nominee

**76.** (1) (a) A nominee of an authorised user must be approved as a nominee by the exchange in terms of exchange rules and comply with the requirements set out in the rules.

(b) A nominee of a participant must be approved as a nominee by the central securities depository in terms of depository rules and comply with the requirements set out in the rules.

(2) The criteria for the approval of a nominee of an authorised user or a participant must be equivalent to that applied by the registrar when approving a nominee under subsection (3).

(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.

(b) The registrar must maintain a list of all nominees approved under this section.

### Imigomo yekutiphatsa

75. (1) Indlela yekutiphatsa yebasebentisi labasemtsetfweni, labangenelelako, noma emalunga lagunyatiwe latimele endlu legunyatako kufanele icondziswe kulomgomou wekutsi—

- (a) umsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe 5  
lendlu letimele legunyatako kufanele—  
(i) basebente ngekititsema nakahle, ngelikhono lelifanele, kunakekela  
nesizitsa kanye nangenshisekelo yeklayenti;  
(ii) kugcina sizotsa setimakethe temnotfo;  
(iii) kuba nekucasha kahle imitfombolusito, tindlela netinhlelo tetheknoloji 10  
ngekuphatsa libhizinisi labo;
- (b) umsebentisi losemtsetfweni, ngekungetela kundzima (a), kufanele—  
(i) kufuna Iwati kuklayenti ngalokuphat selene nesimo setimali, Iwati  
Iwekusisa kanye netinjongo lapho kufanele khona kulelizinga  
lemisebenti yemasheya leniketwe nakumsebenti weklayenti; kanye 15  
(ii) asebente ngekutsembeka kusimo setinshisekelo lettingcubutanako.
- (2) Indlela yekutiphatsa yebaqntfu labasemtsetfweni, ngaphandle kwalaba labasemtsetfweni lababalwe kusigatjana (1), kufanele icondziswe kumigomo yekutsi lomuntfu losemtsetfweni kufanele—  
(i) asebente ngekutsembeka nalokungavuni licala, ngemakhono lafanele, anakekele 20  
abuye atimisele kanye, lapho kufanele khona, anake tinshisekelo teklayenti  
noma lilunga; kanye  
(ii) aphakamise sizotsa setimakethe temali.
- (3) Indlela yekutiphatsa inganiketa—  
(a) lokuvetela iklayenti ngelwatiso loluyimphahla, kufaka ekhatsi lokuvetwe 25  
ngaphandle noma longahle ube nenshisekelo kuko;  
(b) kukhipha kahle emarekhodi;  
(c) kuvimbela kwekuhangisa lokungasikahle nalokungahambi ngendlela,  
kukhankasa nekutsengisa;  
(d) kugcina kahle endzaweni lephephile, kwematrsekshini nemiculu yemakla- 30  
yenti;  
(e) kuhlukanisa kahle nekuvikela timali nemasheya emaklayenti; kanye  
(f) noma ngabe yiphi lenye indzaba lefanele noma lekufanele ilawulwe  
ngekushesha yendlela yekutiphatsa ngekuphumelelisa tinjongo taloMtsetfo.

### SAHLUKO IX

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## IMIBANDZELA LEYETAYELEKILE LECONDZISWE KULABAKHESTIWE

### Kuvunyelwa Kwalabakhetsiwe

76. (1) (a) Lophakanyisiwe wemsebentisi losemtsetfweni kufanele avunyelwe njangalophakanyisiwe nguleligatja ngekuhambisana nemitsetfo yeligatja nekuhambisana naletidzingo letibalwe kulemitsetfo; 40

(b) Lophakanyisiwe walabangenelelako kufanele aniketwe njengalophakanyisiwe ngulesikhungo semasheya lesisemkhatsini ngekuhambisana nemitsetfo yesikhungo nekuhambisana naletidzingo letibalwe kulemitsetfo.

(2) Lendlela yekuvunyelwa kwalophakanyisiwe wemsebentisi losemtsetfweni noma labangenelelako kufanele kuhambisane nalolokubhalelwe ngunobhala ngalesikhatsi avumela lophakanyisiwe ngaphansi kwsigatjana (3). 45

- (3) (a) Nobhala angabeka tidzingo—  
(i) tekuvunyelwa kwalophakanyisiwe longakavunyelwa kutsi aphakanyiswe  
ngekwsigatjana (1), kanye  
(ii) labaphakanyisiwe labavunyiwe  
(b) Nobhala kufanele agcine luhla Iwako konkhe lokuvunyelwe kwa lophakanyi- 50  
siwe ngaphansi kwalesigaba.

## CHAPTER X

### MARKET ABUSE

#### Definitions

- 77.** In this Chapter, unless the context indicates otherwise—
- “claims officer” means the person appointed by the board to be responsible for considering and determining claims in terms of section 82(4), (5) and (6); 5
  - “deal” includes conveying or giving an instruction to deal;
  - “executive director” means a person appointed as such in terms of section 85(12);
  - “inside information” means specific or precise information, which has not been made public and which— 10
    - (a) is obtained or learned as an insider; and
    - (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;
  - “insider” means a person who has inside information— 15
    - (a) through—
      - (i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or
      - (ii) having access to such information by virtue of employment, office or profession; or
    - (b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);
  - “market abuse rules” means the rules made under section 84(2)(f);
  - “market corner” means any arrangement, agreement, commitment or understanding involving the purchasing, selling or issuing of securities listed on a regulated market— 25
    - (a) by which a person, or a group of persons acting in concert, acquires direct or indirect beneficial ownership of, or exercises control over, or is able to influence the price of, securities listed on a regulated market; and
    - (b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of the securities listed on a regulated market, as reflected through the facilities of a regulated market, is or is likely to be abnormally influenced or dictated by such person or group of persons in that the said trading price deviates or is likely to deviate from the trading price which would otherwise likely have been reflected through the facilities of the regulated market on which the particular securities are traded; 30 35
  - “person” includes a partnership and any trust; and
  - “regulated market” means any market, domestic or foreign, which is regulated in terms of the laws of the country in which the market conducts business as a market for dealing in securities listed on that market.

*Offences* 40

#### Insider trading

- 78.** (1) (a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence. 45
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—
    - (i) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider; or 50

## SAHLUKO X

### KUPHATFWA KABI KWETIMAKETHE

#### Tinchazelo

77. KuleSahluko, ngaphandle kwekutsi ingcikitsi ikubeke ngalenyne indlela—  
“lihhovisi lemakleyimu” kushiwo umuntfu lobekwe yibhodi kutsi abe nemse- 5  
benti wekunaka nekuncuma ngemakleyimu ngekwalesigaba 82(4), (5) na (6);  
“kutsengiselana” kuniketwa imiyalelo yekutsi utsengise;  
“umcondzisi lomkhulu” umuntfu lobekwe njengaloko ngekwesigaba 85(12);  
“Iwati Iwangekhatsi” Iwatiso ngco, lolungakakhishelwa ngaphandle—  
(a) lutfolakala noma lufundvwe njengalolungekhatsi; kanye 10  
(b) uma ngabe bekwatiwa nguwonkhe umuntfu bekungaba nemtselela wemphahlal kulelinani noma bungako banoma maphi emasheya kumakethe lelawulwako;  
“ngekhatsi” kushiwo umuntfu lonelwatiso Iwangekhatsi;  
(a) ngoba— 15  
(i) angumcondzisi, umsebenti noma lonemasheya kantsi angumniketi wemasheya labhalisiwe kumakethe lesemsetfweni lapho lolwatiso Iwangekhatsi luhambisana khona; noma  
(ii) akhona kufinyelela kulwatiso lolunjalo ngekwekucashwa kwakhe, lihhovisi noma ticu; noma 20  
(b) lapho khona umuntfu uyati kutsi lomtfombo lekungiwo ngco noma loseceleni walowatiso bekungulomuntfu lobalwe kundzima (a);  
“imitsetfo yekungaphatsi kahle imakethi” kushiwo imitsetfo leyentiwe ngaphansi kwesigaba 84(2)(f);  
“imakethi lesekhoneni” kushi noma luphi luhlelo, sivumelwano, kutinikela 25 noma kuvisisa lokufaka ekhatsi kutsenga, kutsengisa noma kuniketwa emasheya labhalisiwe kumakethe lesemsetfweni —  
(a) lapho khona umuntfu, noma licembu lebantfu labangenele kumbukiso, badzinga kuhlomula ngco noma lokweyamile, noma bakhombise kulawula, noma uyakhona kujikisa intsengo, yemasheya labhalisiwe kumakethe 30 lelawulwako; kanye  
(b) lapho khona lomtselela walokulungisa, sivumelwano, kutinikela noma kuvisisa noma kutawuya ngekutsi lelinani lekutsengiswa ngalo lamasheya labhalisiwe kumakethe lesemsetfweni, njengoba kukhonjiswe kulesikhungo semakethe lesemsetfweni, singahle sitsikametwe ngalokungakafaneli noma siniketwe imiyalelo ngulowo muntfu noma licembu lebantfu lebatsi linani lekuhwebelana liyahluka noma lingahle lehluke kulelinani lekuhwebelana lebelingabe likhonjiswe kuletisnita talemakethe lesemsetfweni lapho kuhwebelwana ngalamasheya latsite; 35  
“umuntfu” kushiwo budlelwano kanye nanoma sippi sikhwama; kanye 40  
“imakethi lesemsetfweni” kushiwo noma yiphi imakethi, noma yakuleli noma ngaphandle, lelawula ngekuhambisana nemitsetfo yalelive lapho lemakethi isebentela khona njengemakethi lesebenta ngemasheyalabhalwe kuleyo makethi.

#### Emacala

#### Kuhwebelana ngekhatsi 45

78. (1) (a) Longekhatsi lowatiko kutsi unelwatiso Iwangekhatsi nalosebenta ngco noma pheceleti noma ngekuhambisana ne ejenti kutentela yena kumasheya labhalisiwe kumakethe lesemsetfweni lapho khona lolwatiso lolungekhatsi luhambisana noma lutawubangela kutsi abe nelicala.  
(b) Longekhatsi, ngaphandle kwendzima (a), akanacula nganoma liphi licala 50 lelivetwe kuleyo ndzima uma ngabe lowo longekhatsi acinisekisa ekusimameni kwemsebenti le yena—  
(i) abe ngulongekhatsi ngemuva kwekutsi anikete imiyalelo yekusebenta ngemsebentisi lesemsetfweni kanye nelwatiso lolungakaguculwa nganoma yiphi indlela ngemuva kwekutsi ube ngekhatsi; noma 55

- (ii) was acting in pursuit of a transaction in respect of which—  
(aa) all the parties to the transaction had possession of the same inside information;  
(bb) trading was limited to the parties referred to in subparagraph (aa); and  
(cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security, or a related security, resulting from the inside information.
- (2) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly or through an agent for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—  
(i) is an authorised user and was acting on specific instructions from a client, and did not know that the client was an insider at the time;
- (ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider; or
- (iii) was acting in pursuit of a transaction in respect of which—  
(aa) all the parties to the transaction had possession of the same inside information;  
(bb) trading was limited to the parties referred to in subparagraph (aa); and  
(cc) the transaction was not aimed at securing a benefit from exposure to movement in the price of the security, or a related security, resulting from the inside information.
- (3) (a) Any person who deals for an insider directly or indirectly or through an agent in the securities listed on a regulated market to which the inside information possessed by the insider relates or which are likely to be affected by it, who knew that such person is an insider, commits an offence.
- (b) A person is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if the person on whose behalf the dealing was done had any of the defences available to him or her as set out in subsection (2)(b)(ii) and (iii).
- (4) (a) An insider who knows that he or she has inside information and who discloses the inside information to another person, commits an offence.
- (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 and that he or she at the same time disclosed that the information was inside information.
- (5) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence.
- Publication**
- 79.** For the purposes of the definition of “inside information”, information is regarded as having been made public in circumstances which include, but are not limited to, the following:
- (a) When the information is published in accordance with the rules of the relevant regulated market; or
- (b) when the information is contained in records which by virtue of any enactment are open to inspection by the public; or
- (c) when the information can be readily acquired by those likely to deal in any listed securities—  
(i) to which the information relates; or  
(ii) of an issuer to which the information relates; or
- (d) when the information is derived from information which has been made public.

- (ii) bakasebenta ngekufuna ematransekshini ngekuhambisana—  
 (aa) tonkhe tinhlangano kuletransekshini babe nalolwatiso lolufanako Iwangekhatsi;  
 (bb) kuhwebelana kulinganiselwe kutinhlangano letibalwe kundzinyana (aa);  
 (cc) letransekshini beyingakacondziswa ekucinisekiseni inzuzo yekuvetela lophakamisa linani lemasheya, noma lisheya lelihambelanako, loluvela kulwatiso lolungekhatsi.
- (2) (a) Longekhatsi lowatiko kutsi unelwatiso Iwangekhatsi nalotsengisa, ngalokucondzile noma lokuncikile noma ngekumelela i-ejenti yanoma ngumuphi umuntfu kulamasheya labhaliwe kumakethe lesemtsetfweni lapho khona lolwatiso lolungekhatsi luhlose khona noma nalekungafanele lutsintfwе ngyio kubangela licala. 10  
 (b) Umuntu longekhatsi, kungasiyo indzinyana (a), utfolakala anelicala lelivetwe kuleyo ndzima uma ngabe lowo longekhatsi acinisekisa ngekulingana kwalokudzingekako kutsi—  
 (i) umsebentisi losemtsetfweni kantsi bekasebentisa imiyalelo levela kuklayenti, kantsi akatanga kutsi leklayenti beyingekhatsi ngaleso sikhatsi;  
 (ii) ube ngekhatsi ngalesikhatsi sekukhishwe lomyalelo wekutsengiselana nemsebentisi losemtsetfweni kantsi lomyalelo bewungakaguculwa nganoma yiphi indlela ngemuva kwekutsi abe ngekhatsi; noma 20  
 (iii) bekalandzelela itransekshini lephatselene—  
 (aa) tonkhe tincenyе kuletransekshini tinalolwatiso lolufanako Iwangekhatsi;  
 (bb) kuhwebelana kuncishiselwe kulamacembu labalwe kundzinyana (aa); ne  
 (cc) transekshini beyingakacondziswa ekuvikeleni kulokuhlyulwako kutsi kuvetwe ekubekweni kwelinani lekuvikela inzuzo kutsi ingavetwa kute kubekwe linani lelisheya, noma lisheya lelifanako, nganca yalolwatiso Iwangekhatsi.
- (3) (a) Noma ngabe ngubani lotsengiselana nemuntfu longekhatsi noma ngekumelela yena noma ngekusebentisa i-ejenti kulamasheya labhalisiwe kumakethe lesemtsetfweni lapho khona Iwatiso lalosekhatsi lolucukeffwe ngulolosekhatsi luhambelana nalo noma lutawutsintfwе ngyilo, lowatiko kutsi umuntu lonjalo ungekhatsi, unelicala. 30  
 (b) Umuntu, kungabukwa indzima (a), akanacala lelibekwe ngekwalandzima uma ngabe lomuntfu lebekamelele lokuhwebelana ukwente ngalokuvikeleka lokukhona njengoba kubekiwe kusigatjana (2)(b)(ii) na (iii).  
 (4) (a) Longekhatsi lowatiko kutsi unelwatiso Iwangekhatsi kanye nalokhipha Iwatiso Iwangekhatsi kulomunye umuntu unelicala. 35  
 (b) Umuntu longekhatsi, kkungabukwa indzima (a), akanacala lelivetwe kundzima uma ngabe lona longekhatsi uyacinisekisa ngalokwanele kutsi uluvetile lolwatiso lolungekhatsi ngoba bekufanele kutsi ente njalo kute kutsi kusebenteke kahle emsebentini wakhe, ehhovisi noma emsebentini kutintfo lettingahlobananga nekuhwebelana kunoma nguaphi emasheya lahambisanako laseluhlweni Iwasemakethe lesemtsetfweni nekutsi ngaleso sikhatsi uvete kutsi lolwatiso bekulwatiso Iwangekhatsi. 40  
 (5) Umuntu longekhatsi lowatiko kutsi unelwatiso Iwangekhatsi nalogcugcutela noma abangele lomunye umuntu kutsi ahwebelane noma advumate noma amise lomunye umuntu kutsi ahwebelane kulamasheya laseluhlweni kumakethe lesemtsetfweni ho lolwatiso Iwangekhatsi lubhekise khona noma uma kungatsintfwе ngyilo angaba nelicala. . 45

### Lushicilelo

- 79.** Kwentela tizatfu talenchaelo “yelwatiso lolungekhatsi”, Iwatiso sitsi lukhishelwe ngaphandle uma ngabe lufaka ekhatsi, kodywa aluvimbeli, loku lokulandzelako: 50  
 (a) uma ngabe lolwatiso lukhishwe nemitsetfo yalemakethe lesemtsetfweni; noma  
 (b) uma ngabe lolwatiso lukumarekhodi lengekwemtsetfo asetjentiselwa kutsi avulelekile kutsi angahlolwa; noma  
 (c) uma ngabe lolwatiso lungatfolakala kulabo lesebavele balungele kuhwebelana ngemasheya labhalisiwe—  
 (i) lolwatiso lolucondziswe kuko; noma  
 (ii) kulokhiphako lolwatiso lolucondziswe kuye; noma  
 (d) uma ngabe lolwatiso lutfolakele kulwatiso leseluvele lukhishelwe ngaphandle. 60

### Prohibited trading practices

- 80.** (1) No person—  
(a) may, either for such person's own account or on behalf of another person, knowingly directly or indirectly use or participate in any practice which has created or is likely to have the effect of creating—  
(i) a false or deceptive appearance of the demand for, supply of, or trading activity in connection with; or  
(ii) an artificial price for, that security;  
(b) who ought reasonably to have known that he or she is participating in a practice referred to in subparagraph (a), may participate in such practice.  
(2) A person who contravenes subsection (1)(a), commits an offence.  
(3) Without limiting the generality of subsection (1), the following are contraventions of subsection (1):  
(a) Approving or entering on a regulated market an order to buy or sell a security listed on that market which involves no change in the beneficial ownership of that security, with the intention of creating—  
(i) a false or deceptive appearance of the trading activity in; or  
(ii) an artificial market price for, that security; 15  
(b) approving or entering on a regulated market an order to buy or sell a security listed on that market with the knowledge that an opposite order or orders at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating—  
(i) a false or deceptive appearance of the trading activity in; or 20  
(ii) an artificial market price for, that security;  
(c) approving or entering on a regulated market orders to buy a security listed on that market at successively higher prices or orders to sell a security listed on that market at successively lower prices for the purpose of unduly influencing the market price of such security; 25  
(d) approving or entering on a regulated market an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of a security listed on that market;  
(e) approving or entering on a regulated market an order to buy or sell any security which order will be included in any auction during an auction call period and cancelling such order immediately prior to the auction matching, for the purpose of creating—  
(i) a false or deceptive appearance of the demand for or supply of such security; or 30  
(ii) an artificial price for such security; 40  
(f) effecting or assisting in effecting a market corner;  
(g) maintaining, at a level that is artificial, the price of a security listed on a regulated market.  
(4) For the purpose of subsection (1), the employment of price-stabilising mechanisms that are regulated in terms of the rules or listing requirements of an exchange does not constitute a practice which creates an artificial price for securities which are subject to such price-stabilising mechanisms. 45  
(5) For the purposes of subsection 3(a), a purchase or sale of listed securities does not involve a change in beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with that person in relation to those securities, has an interest in the securities after the purchase or sale. 50

### False, misleading or deceptive statements, promises and forecasts

- 81.** (1) No person may, directly or indirectly, make or publish in respect of securities traded on a regulated market, or in respect of the past or future performance of a company whose securities are listed on a regulated market—  
(a) any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect 55

### Kuhwebelana ngekhatsi lokungakavumeleki

- 80.** (1) Akekho umuntfu—
- (a) longahle ngekumelela lowo muntfu noma amealele lomunye umuntfu lowatiko, ngalokucondzile nome lokweyamile asebentise noma angenelele kunoma yiphi indlela yekwentisa, lengemanga noma lekhohlisako—  
 (i) kuvetwa kwekuhwebelana lokumanga noma lokukhohlisako; noma  
 (ii) intsengo lekungasiyo, yalawo masheya;
  - (b) lonetizatfu tekutsi bekangati kutsi ungenelela kuleso sento lesivetwe kundzinyana (a), angangenelela kuleso sento.
- (2) Umuntfu lowephula sigatjana (1)(a) unelicala. 10
- (3) Ngaphandle kwekwhlisa kusebenta kwesigatjana (1), loku lokulandzelako kwephula sigatjana (1):
- (a) kucinisekisa noma kungena emakethe lesemsetfweni kute utsenge noma utsengise lisheye leliseluhleni kuleyo makethe lengafaki tingucuko kulongumnikati lozuzako ngetizatfu tekwenta—  
 (i) kuvela lokungemanga noma lokukhohlisako kwemsebenti wekuhwebelana; noma  
 (ii) linani lemakethe lekungasilo leliliciniso lalawo masheya;
  - (b) kuvumela noma kungena emakethe lesemsetfweni kute utsenge noma utsengise emasheya laselluhlweni ngelwatis Iwekutsi kunemyalelo lomunye noma imiyalelo yekutsi abe ngemanani lafanako, atawungeniswa noma angeniswe bantfu labafanako noma labahlukene ngemali lelingenanako ngekufuna kwakha—  
 (i) kuhwebelana kwebantfu lokungemanga noma lokukhohlisako ngekuhambisana ne; noma  
 (ii) linani lasemakethe lekungasilo, lelo lisheya;
  - (c) kuvumla noma kungena emakethe lesemsetfweni kute utsenge lisheya lelibhalisiwe kuleyo makethe ngemanani laphakeme noma ufune kutsengisa lisheya lelibhalisiwe kuleyo makethe ngemanani laphansi kwentela kukohlisa imakethe ngalelo lisheya; 30
  - (d) noma kungena emakethe lesemsetfweni nasekutawuvalwa emakethe, sizatfu sakhona lesibalulekile kube kutsi kugucula noma kugcina lelinani lekuvala kwelisheya lelibhalisiwe kulemakethe;
  - (e) kuvumela noma kungena emakethe lesentsetfweni kute utsenge noma utsengise emasheya leso sizatfu sitawufakwa kunoma kuphi endalini ngalesikhatsi kumemetelwa indali neukhanselwa kwaleli oda ngekushesha ngembi kwekucatsanisa lendali, kwentela kwakha—  
 (i) kuvela lokungemanga noma lokukhohlisako kwemyalelo wekuniketwa kwalelo lisheya; noma  
 (ii) linani lekungelona, lalelo lisheya; 40
  - (f) kwenta noma kusita ekwenteni likona lemakethe;
  - (g) kugcina linani ezingeni lekungasilo lemasheya labhalwe emakethe lesemsetfweni;
- (4) Kwentela tinjongo tesigatjana (1), uma ngabe lokubekwa kwelinani lelilinganisiwe llekulawulwa ngekuhambisana naletikohhlisako noma lokudzingekako kute ubhalisiwe kuligatja akuveti indlela leveta linani lekungasilo mbamba lemasheya lelitawuya ngendlela yekusimamisa linani. 45
- (5) Kwentela tinjongo tesigatjana 3(a), kutsenga noma kutsengisa kwemasheya labhalisiwe akufaki ekhatsi bunikati balohlomulako uma ngabe umuntfu lonenshisekelo ngembi kwalokutsengwa noma kutsengisa, noma umuntfu losondzelene nalowo muntfu ngalokuphatselene nalawo masheya, unenshisekelo ngemuva kwalokutsengisa noma kutsengwa. 50

### **Titatimende letingemanga, letilahlekisako naletikhohlisako, titsembiso kanye nelikusasa**

- 81.** (1) Akekho umuntfu, ngalokucondzile noma ngalokweyamile, langenta noma akhiphe ngalokuphatselene nemasheya latsengisiwe emakethe lesemsetfweni, noma ngalesekudlulile noma sento salokutako semkhapani emasheya ayo labhalisiwe emakethe lesemsetfweni—
- (a) noma sippi titatimende, sitsembiso noma silinganiso, ngalesikhatsi noma ngekubona simo lesentiwe ngaphansi kwaso, singemanga noma siyakhohlis 60

- of any material fact and which the person knows, or ought reasonably to know, is false, misleading or deceptive; or
- (b) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the person knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.
- (2) A person who has made a statement as contemplated in subsection (1) and who was unaware that the statement was false, misleading or deceptive, and who becomes aware of the fact that such statement was false, misleading or deceptive, must, without delay, publish a full and frank correction with regard to such statement.
- (3) A person who contravenes subsection (1), or who fails to comply with subsection (2), commits an offence.

### *Insider trading sanction*

#### **Liability resulting from insider trading**

**82.** (1) Subject to subsection (3), any person who contravenes section 78(1), (2) or (3) of this Act is liable to pay an administrative sanction not exceeding—

- (a) the equivalent of the profit that the person, such other person or such insider, as the case may be, made or would have made if he or she had sold the securities at any stage; or the loss avoided, through such dealing;
  - (b) an amount of up to R1million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
  - (c) interest; and
  - (d) cost of suit, including investigation costs, on such scale as determined by the Enforcement Committee.
- (2) Subject to subsection (3), any person who contravenes section 78(4) or (5) of this Act is liable to pay an administrative sanction not exceeding—
- (a) the equivalent of the profit that such other person made or would have made if he or she had sold the securities at any stage, or the loss avoided, through such dealing, if the recipient of the information, or such other person, as the case may be, dealt directly or indirectly in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
  - (b) an amount of up to R1 million, to be adjusted by the registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);
  - (c) interest;
  - (d) cost of suit, including investigation costs, on such scale as determined by the Enforcement Committee; and
  - (e) the commission or consideration received for such disclosure, encouragement or discouragement.

(3) If the other person referred to in section 78(2), (3), (4) and (5) is liable as an insider in terms of section 78(1), the insider referred to in section 78(2), (3), (4) and (5) is jointly and severally liable together with that other person to pay the amounts set out in subsections (1)(a), (c), (d) and (2)(a), (c) and (d), as the case may be.

(4) Any amount recovered by the board as a result of the proceedings contemplated in this section must be deposited by the board directly into a specially designated trust account and—

- (a) the board 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);

nganoma yiphi imphahla leyatiwa ngulomuntfu, noma lekufanele ayati, ingemanga, iyakhohlisa noma iyalahlekisa; noma

- (b) noma siph i sitatimende, sitsembiso noma silinganiso, ngalesikhatsi noma ngekubona simo lesentive ngaphansi kwaso, singemanga noma siyakhohlisa nganoma yiphi imphahla leyatiwa ngulomuntfu, noma lekufanele ayati, ingemanga, iyakhohlisa noma iyalahlekisa ngekukhishwa kwaloko lokuliciniso.

(2) Umuntu lowente sitatimende njengoba sivetwe kusigatjana (1) nalebekangati kutsi lesitativende besingemanga. Sikhohlisa noma singesilo liciniso, nalebese sewuyati kutsi lesi sitatimende besingemanga, sijohohlisa, kufanele, ngaphandle kwekubambeleka, akhiphe sitatimende lesinjengaleso lesiliciniso nalesilungisako.

(3) Umuntu lowephula sigatjana (1), noma lohluleka kulandzelela sigatjana (2) unelicala.

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***Kucindzeteleka lokubangelwa kuhwebelana ngekhatsi***

**Imibandzela yekuncepheteliswa lokubangelwe kuhwebelana ngekhatsi**

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82. (1) Ngekuya ngesigatjana (3), noma ngabe ngubani lowaphula sigana 78(1), (2) or (3) saloMtsetfo kufanele kutsi akhokhe inhlawulo yekulawula lengadluli—

- (a) lelinganiselwa kulenzozo lowo muntfu, lomunye umuntu noma longekhatsi, njengoba kungabe kubekiwe, layentile noma lekufanele kutsi ngabe uyentile uma ngabe atsengise lamasheya noma nini; noma lokulahlekelwa lengabe 20 kuvinjelwe, ngaloko kuhwebelana;
- (b) linani lelilinganiselwa kusigidzi R1, lesingalungiswa ngunobhala njalo ngemnyaka kute likhoimbise Linani Lelibekiwe Lebatsengi lelikhishwe beLubalo baseNingizimu Afrika, kanye nalesamba lesiphindvwe katsatfu lesibalwe kundzima (a);
- (c) intalo; kanye
- (d) tindleko tenkhantolo, kufaka ekhatsi tindleko teluphenyo, ngalelo lizinga njengoba lingancunyuwa Likomidi Lelibeka Umtsetfo.

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(2) Ngekuya ngesigatjana (3), noma ngabe ngubani lowephula sigaba78(4) noma (5) saloMtsetfo utawukhokhiswa inhlawulo yekulawula lengandluli—

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- (a) lokulinganiswa nenzozo lowo muntfu langabe ayentile noma lebekufanele ngabe uyentile uma ngabe bekatsengise lamasheya noma nini, noma kulahlekelwa lebekungabe kuvinjelwe, ngaloko kuhwebelana, uma ngabe lona lotfole lolwatiso, noma lowo muntfu, njengoba kungabe kubekiwe, kusetjntwe ngako ngco noma ngendlela leyamile kulamasheya labhalisiwe 35 kumakethe lebhaliwi lapho khona lolwatiso lumphatselene noma lebangatsintseka ngalo;
- (b) linani lelilingafinyelela kusigidzi R1, lelingalungiswa ngunobhala njalo ngemnyaka kukhombisa Linani Lemali Lelibekiwe, njengoba likhishwe beTelubalo baseNingizimu Afrika, kanye nelinani leliphindvwe katsatfu 40 lelibalwe kundzima (a);
- (c) intalo;
- (d) tindleko tenkhantolo, kufaka ekhatsi tindleko teluphenyo, ngalelo lizinga njengoba lingancunyuwa Likomidi Lelibeka Umtsetfo
- (e) ikhomishani noma sivumelwano lesitfolakele saloko kuvetwa, kukhutsatwa 45 noma kucwayiswa ngekuyekeliswa.

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(3) Uma ngabe labanye bantfu lababalwe kusigaba 78(2), (3), (4) na (5) babonakala njengalabangekhatsi ngekwasigaba 78(1), lona longekhatsi lobalwe kusigaba 78(2), (3), (4) na (5) bobabili banemtfwalo noma bayatsintseka kanye nalabanye bantfu kutsi bakhokhele lamanani latawubekwa kutigatjana (1)(a), (c), (d) na (2)(a), (c) na (d), 50 njengoba kungabe kubekiwe.

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(4) Noma ngabe nguliphi linani lelibekwe yibodi njengemphumela walenchubo levetwe kulesigaba kufanele ifakwe ku-akhawunti leyakhelwe loko yyibodi kube yi-akhawunti yebatsenjwa—

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- (a) ibhodi, njengoba ngiyo yekucala lemelene ne-akhawunti yebatsenjwa, inemvume yekuntjintjela tonkhe tindleko letitfolakele ngalokungakhonakala ngekutsi yenta leto tinchubo nangekulawula lokusatjalaliswa lokwentiwe ngulabafake tikhalo temali ngekwasigatjana (5);

- (b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (5) in accordance with subsection (6);  
 (c) any amount not paid out in terms of paragraph (b) accrues to the board.
- (5) The balance referred to in subsection (4)(b) must be distributed to all claimants who—
- (a) submit claims to the directorate within 90 days from the date of publication of a notice in one national newspaper or on the official website inviting persons who are affected by the dealings referred to in section 78(1) to (5) to submit their claims; and  
 (b) prove to the reasonable satisfaction of the claims officer that—
- (i) they were affected by the dealings referred to in section 78(1) to (5); and
  - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in section 78(1), (2) and (3), or the other person referred to in section 78(4) and (5) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or
  - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day as the insider or other person referred to in subparagraph (ii);
  - (iv) it would be equitable for their claim to be included in a distribution in terms of subsection (4)(b).
- (6) Subject to subsection (7), a claimant must receive an amount—
- (a) equal to the difference between the price at which the claimant dealt and the price, determined by the Enforcement Committee, that the claimant would have dealt at if the inside information had been published at the time of dealing; or
- (b) equal to the pro rata portion of the balance referred to in subsection (2)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (3) by claimants,
- whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.
- (7) An amount awarded in proceedings contemplated in section 87 must be deducted from any amount claimed in terms of this section.
- (8) The common law principles of vicarious liability apply to the liability established by this section.

### ***Procedural matters***

#### **Attachments and interdicts**

**83.** On application by the board, 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.

### ***Administration of Chapter***

#### **Powers and duties of Financial Services Board**

- 84.** (1) The board is responsible for the supervision of compliance with this Chapter.  
 (2) In addition to its powers in terms of the Financial Services Board Act the board may, subject to section 85—
- (a) investigate any matter relating to an offence or contravention referred to in sections 78, 80 and 81, including insider trading in terms of the Insider

- (b) lelinani lelisele, uma likhona, kufanele lisatjalaliswe sisebenti semakleyimu kulabo labafake tikhalo lababalwe kusigatjana (5) ngekuhambisana nesigatjana (6);  
 (c) noma ngabe nguliphi linani lelingakkohkelwa ngekwendzima (b) nentalo kubhodi.
- (5) Lemali lesele lebalwe kusigatjana (4)(b) kufanele isatjalaliswe kubo bonkhe labafake ticelo temali—
- (a) batfumelo emakleyimu ehhovisi kungakapheli emalanga lali-90 kusukela ngalelilanga lekukhishwe ngalo satiso ephephandzabeni lavelonkhe noma kuwebhu lesentsetfweni kumenya bantfu labatsintsekako ngekuhwebelana lokubalwe kusigaba 78(1) kuya (5) kutsi batfumele emakleyimu; kanye  
 (b) bavumele ngekwenetiseka lokufanele kusibenti semakleyimu lekufanele—  
 (i) bebatsintsekile ngalokuhwebelana lokubalwe kusigaba 78(1) kuya (5); kanye  
 (ii) nalapho khona Iwatiso Iwangkhatsi Iwentiwe Iwatiwa nguwonkhe umuntfu kungakapheli emalanga lasihlanu ekutsengisa kusukela ngaleso sikhatsi lona longekhatsi lobalwe kusigaba 78(1), (2) and (3), or the other person referred to in section 78(4) na (5) kusetjentwe ngaso, basebenta ngemasheya lafanako noma nganoma sikhatsini ngemuva kwekutsi lona longekhatsi noma lomunye umuntfu asebente ngawo nangembi kwekutsi lolwatiso lolungekhatsi beselwentiwa Iwatiwa nguwonkhe umuntfu; noma  
 (iii) nganoma luphi ludzaba, basebente ngemasheya lafanako ngesikhatsi lesifanako noma nini ngemuva kwaloko ngelilanga lelifanako ngalesikhatsi lona longekhatsi noma labanye bantfu lababalwe kundzinyana (ii);  
 (iv) kutawulingana lekleyimu kutsi ifakwe kulokukhishwako ngekuya ngesigatjana (4)(b).
- (6) Ngekuya ngesigatjana (7), lona lofakie ikleyimu kufanele atfole samba—
- (a) kulokulinganiswe ngumehluko emkhatsini welinani lapho lona lofakie sicelo naelinani, lencunywe Likomidi Lekubeka Umtsetfo, kutsi lona lofakie ikleyimu kusetjentiswe Iwatiso Iwangkhatsi luhkhishwe ngalesikhatsi sekutsengiselana; noma  
 (b) ngekuya ngencenza yangaleso sikhatsi yesamba lesibalwe kusigatjana (2)(b), lelibalwe ngekuhambisana nelinani lelivetwe kundzima (a) lilinganiselwe kuwo onkhe emanani lancinisekisiwe ngekwasigatjana (3) ngulabafake ticelo, noma kuphi lokungaphansi, ngaphandle kwekutsi lona losebenta ngemakleyimu ngekuncuma kwakhe ancume kutsi lona lofakie sicelo kufane atfole ngaphansi noma angatfoli lutfo.
- (7) Imali leniketwe kunchubo levetwe kusigaba 87 kufanele ikhishwe kunoma liphi linani lelikleyinywe ngaphansi kwalesigaba.
- (8) Umtsetfo lowetayelekile wenchobo yemtfwalo usebenta kumtfwalo losungulwe ngekwasigaba.

### **Lokuphatselene nenchubo**

#### **Lokufakiwe netivimbo**

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**83.** Ngesicelo lesifakwe yibhodi, inkantolo inganiketa incwadzi yekubitela enkhantolo ngalokuhambelana naloludzaba lolubalwe kuSahluko X noma ngeluhlelo lwalemphahla lefakiwe noma bufakazi bekuvikela lokufihliwe, lokukhishiwe, lokungahambi kahle noma lokuphatamisako.

### **Kulawulwa kweSahluko**

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#### **Emandla nemisebenti yeBhodi yemisebenti yetimali**

**84.** (1) Ibhodi inemsebenti wekulawula kulandzelela lesahluko.  
 (2) Kungeta kumandla labanawo ngekuhambisana ne *Financial Services Board Act* ibhodi inga, ngekuya ngesigaba 85—

- (a) bahole noma luphi ludzaba loluphatselene nelicala noma kungenelela lelicondziswe kusigaba 80, 78 ne 81, kufaka ekhatsi *Insider Trading Act*, 1998

- 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;
- (b) at the request of a supervisory authority, investigate or assist that supervisory authority in an investigation into possible offences similar to those referred to in paragraph (a), regulated in terms of the laws of a country other than the Republic that the supervisory authority administers; 5
- (c) institute such proceedings as are contemplated in this Chapter;
- (d) administer the proof of claims and distribution of payments in terms of section 82; 10
- (e) by notice on the official website or by means of any other appropriate public media, make known—
- (i) the status and outcome of an investigation referred to under paragraph (a) or (b);
- (ii) the details of an investigation if disclosure is in the public interest; 15
- (f) make market abuse rules after consultation with the directorate—
- (i) concerning the administration of this Chapter by the board and the directorate;
- (ii) concerning the manner in which investigations in terms of this Chapter are to be conducted; 20
- (iii) concerning the notification of amounts received in terms of section 82, the procedure for the lodging and proof of claims, the administration of trust accounts and the distribution of payments in respect of claims;
- (iv) concerning meetings of the directorate;
- (v) which are generally designed to ensure that the board and the directorate 25 are able to perform their functions in terms of this Chapter;
- (vi) dealing with the manner in which inside information should be disclosed and, generally, with the conduct expected of persons with regard to such information;
- (g) after consultation with the relevant regulated markets in the Republic, require 30 such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter.
- (3) Despite the provisions of any other Act, the board, when investigating a matter referred to in subsection (2)(a) and (b), may—
- (a) summon any person who is believed to be able to furnish any information on the subject of any investigation or to have in such person's possession or under such person's control any document which has bearing upon that subject, to lodge such document with the board, or to appear at a time and place specified in the summons, to be interrogated or to produce such document; and 35
- (b) interrogate any such person under oath or affirmation duly administered, and examine or retain for examination any such document: Provided that any person from whom any document has been taken and retained under this subsection must, so long as such document is in possession of the board, at that person's request and expense be allowed to make copies thereof or to take extracts therefrom at any reasonable time and under the supervision of the 40 person in charge of the investigation; 45
- (c) in relation to a matter investigated, on the authority of a warrant, without prior notice—
- (i) enter any premises and require the production of any document;
- (ii) enter and search any premises for any document; 50
- (iii) open any strongroom, safe or other container which he or she suspects contains any document;
- (iv) examine, make extracts from and copy any document or, against the issue of a receipt, remove such document temporarily for that purpose;
- (v) against the issue of a receipt, seize any document;
- (vi) retain any seized document for as long as it may be required for criminal or other proceedings, 55
- but the board may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph.

- nemacala lacondziswe kuSahluko VIII se-Securities Services Act, 2004 lokwentiwe ngembi kwekucitfwa kwaleyo mitsetfo;
- (b) ngesicelo semphatsi lolawulako, kuhlola noma kusita lomphatsi lolawulako kuloluphenyo lwemacala lakhona lafanako kulabo lababaliwe kulendzima (a), lokulawulwe ngekwemitselof yelive kungasiyo iRiphahulikhi lelawula ngulomphatsi losesikhundleni; 5
- (c) kubeka letinchubo njengoba kuvetwe kuSahluko;
- (d) kulawula lobufakazi bemakleyimu neukhishwa kwetimali letikhokhiwe ngekxesigaba 82;
- (e) ngekxesatiso kuwebhu lesemitselof noma ngekusebentisa noma luphi 10 luhlobo lwetindzaba, kwenta kutsi kwatiwe—
  - (i) simo nemphumela weluphenyo lobalwe ngaphansi kwendzima (a) noma (b);
  - (ii) lemininingwane yeluphenyo uma ngabe kukhiphela ebaleni kuyinshise-kelo yebantfu;
- (f) kwenta imitselof yekuhlukumeta timakethe ngemuva kwekutsintsana nelihhovisi—
  - (i) lokuphat selene nekulawulwa kwaleSahluko yibodi kanye nelihhovisi;
  - (ii) ngekuya ngendlela luphenyo lekfanele Iwentiwe ngayo ngekusho kwaleshluko;
  - (iii) lokuphat selene ngesatiso semali letfolakele ngekxesigaba 82, indlela yekufaka nebufakazi bemakleyimu, kulawulwa kwesikhwama nemakkawunti kanye nekusabalaliswa kwemali lekhokhelwe ngalokuphat selene nemakleyimu;
  - (iv) ngalokuphat selene nemihlangano yelihhovisi;
  - (v) lekakhelwe kucinisekisa kutsi ibhodi kanye nelihhovisi lemcondzisi bakhona kwenta imisebenti yabo ngekwaleSahluko;
  - (vi) kusebenta ngalendlela Iwatiso Iwangekhatsi kufanele luvetwe ngayo kanye, ngalokujwayelekile, ngalendlela lelindzelekile yebantfu ngalokuphat selene nalolwatiso;
- (g) ngemuva kwekutsintsana netimakethe letisemtselof letifanele eRiphahulikhi, kudzingeka kutsi timakethe letinjalo kutsi tente leto tinhlelo njengoba kufanelekile kute kulawulwe kahle neukhomba kungenelela lokungahle kuge khona kuleSahluko.
- (3) Ngaphandle kwekutsi lemibandzela yaleminye Imitsetfo, ibhodi, uma ngabe iphenya ngeludzaba lolubalwe kusigatjana (2)(a) na (b), anga— 35
- (a) bita noma ngubani longabonakala kutsi anganiketa noma luphi Iwatiso kulendzaba Iwanoma luphi luphenyo noma kuba nalo kulowo muntfu noma ngaphansi kwekulawulwa ngulowo muntfu lolawula noma muphi umculu lokunemtselela ngaphansi kwaleso sihloko, kufaka leyo miculu nebhodi, 40 noma kuvela ngesikhatsi nendzawo lebhawle kulencwadzi yekubitwa, kutsi utophenywa ngemibuto noma kutokhipha leyo miculu; kanye
- (b) kushushisa lowo muntfu ngaphansi kwemtsetfo noma sicciseko lesibekiwe, nekuhlola noma kubambela kuhlolisa leyo micul: Uma ngabe noma ngubani lekuvela kuye noma muphi umculu nalobanjwe ngaphansi kwalesigatjana kufanele, inkhani nje uma ngabe lowo mculuphetfwe yibodi, kantsi nesicelo salowo muntfu neukhokha kwakhe kuvunyelwe kutsi ente emakhophi ngaloko noma atsatse lokutsite lapho nganoma sippi sikhatsi lessfanele nangaphansi kweekulawulwa kwalomuntfu lophetse loluphenyo;
- (c) Ngalokuphat selene neludzaba loluphenye, ngeliguanya lewaranti, nga-phandle kwsatiso sangaphambilini— 50
  - (i) angene noma kuphi afune kutsi bamnike noma muphi imiculu;
  - (ii) angene abuye aseshe noma kuphi abuke imiculu;
  - (iii) avule noma sippi indlu yesisefo, sisefo noma lenye indzawo yekubeka lekacabanga kutsi iphetse imiculu;
  - (iv) ahlole, akhiphe lakufunako kumiculu ente nemakhophi noma, ngekuniketwa irisiphi, akhiphe lemiculu kwesikhashane kwentela lesizatfu;
  - (v) ngekuniketwa irisiphi, ayekete noma muphi umculu;
  - (vi) abambe noma muphi imiculu lebekiwe ngekwemtsetfo inkhani nje uma ngabe isadzingeka ecaleni lebugebengu noma lokunye, kodvwa ibhodi ingachubeka ngaphandle kwewaranti, uma ngabe lomuntfu lolawula noma yiphi indzawo aniketa imvume kuletento letivetwe kulendzima.

(4) (a) Any person who has been duly summoned under subsection (3)(a) and who, without sufficient cause—

- (i) fails to appear at the time and place specified in the summons;
- (ii) fails to remain in attendance until excused from further attendance;
- (iii) refuses to take the oath or to make an affirmation as contemplated in subsection (3)(b);
- (iv) fails to answer fully and satisfactorily any question lawfully put to him or her under subsection (3)(b); or
- (v) fails to furnish information or to produce a document in terms of subsection (3)(a),

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(b) A warrant contemplated in subsection (3)(c) may be issued, on application by the board, by a judge or magistrate who has jurisdiction in the area where the premises in question are located.

(c) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the matter being investigated in terms of subsection (2)(a) or (b) is kept at the premises in question.

(d) Any entry upon or search of any premises in terms of subsection (3)(c) must be conducted with strict regard to decency and good order, including—

- (i) a person's right to, respect for and the protection of dignity;
- (ii) the right of a person to freedom and security; and
- (iii) the right of a person to personal privacy.

(e) An investigator may be accompanied and assisted by a police officer during the entry and search of any premises under subsection (3)(c).

(f) Any entry and search under subsection (3)(c) must be executed by day, unless the execution thereof by night is justifiable and necessary.

(g) Any person from whom a document has been seized under subsection (3)(c)(v), or such person's authorised representative, may examine such document and make extracts therefrom under the supervision of the board during normal office hours.

(5) The board may, subject to the conditions it may determine, delegate the power to investigate an alleged contravention of this Chapter to any fit person.

(6) The board must cause the publication in the *Gazette* of a notice of any proposed market abuse rule or amendment of such a rule, calling upon all interested persons who have any objections to the proposed rule or amendment, to lodge their objections with the board within 14 days from the date of publication of the notice.

(7) If there are no such objections or if the board has, after consultation with the directorate, considered the objections and has decided to introduce the proposed rule or amendment in the form published in the *Gazette* in terms of subsection (6), the rule or amendment comes into operation on a date determined by the board by notice in the *Gazette*.

(8) If the board has, after considering such objections, decided after consultation with the directorate to amend the proposed rule or amendment as published in the *Gazette* in terms of subsection (6), the proposed rule or amendment thus amended must be published by the board in the *Gazette* and comes into operation on a date determined by the board by notice in the *Gazette*.

(9) A rule made under subsection (2)(f) is binding on regulated persons and members of the public.

(10) If the Director of Public Prosecutions declines to prosecute for an alleged offence in terms of this Chapter, the board may prosecute in respect of such offence in any court competent to try that offence, and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to such a prosecution.

(11) The board must, at the request of the directorate, investigate any matter and summon and interrogate any person in respect of the matters referred to in subsection (2)(a) and (b).

(12) No self-incriminating answer given or statement made to a person exercising any power in terms of this Act is admissible as evidence against the person who gave the answer or made the statement in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in

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- (4) (a) Noma bani lekabitelwe licala ngapgansi kwasigatjana (3)(a) kanye nalo, ngaphandle kwsizatfu lesanele—  
(i) ahluleke kuvela ngalesikhatsi nasendzaweni lebekwe kulamasamanisi;  
(ii) ahluleke kuta kuze kufike sikhatsi lapho ayekeliswa khona kutsi angeta;  
(iii) ahluleke kufunga noma ayekele kucinisekisa njengoba kuvetiwe kusigatjana (3)(b);  
(iv) ahluleke kuphendvula ngalokuphelele nangalokunelisako noma muphi umbuto lekabutse wona ngekwemtsetfo ngaphansi kwasigatjana (3)(b); noma  
(v) ahluleke kuniketa lwatiso noma kuniketa umculu ngekwesigatjana (3)(a), ente licala kantsi kufanele ahlawuliswe noma aboshwe sikhatsi lesingadluli iminyaka 10 lemibili noma kokubili inhlawulo nekuboshwa.
- (b) Iwaranti lebalwe kusigatjana (3)(c) inganiketwa, ngekufaka sicelo kubhodi, lijji noma ngumantji lonemandla ekubusa kuleyo ndzawo lapho lendzawo lekukhulunywa ngayo itfolakala khona.
- (c) Leyo waranti inganiketwa uma ngabe ivela kulwatiso ngaphansi kwesifungo kutsi 15 kunesizatfu sekusitsema kutsi umculu lohambelana naloludzaba loluphenywako ngekwesigatjana (2)(a) noma (b), kugcinwe endzaweni lekukhulunywa ngayo.
- (d) Kungena noma kusesha endzaweni ngekwesigatjana (3)(c) kufanele kwentiwe ngendlela yemandla nangendlela lekahle, kufaka ekhatsi—  
(i) lilungelo lemuntfu, lekuhlonipha nekuvikela sitfunti; 20  
(ii) lilungelo lemuntfu lenkhululeko nekuvikeleka; kanye  
(iii) lilungelo lemuntfu lekuba nemfhilo.
- (e) Umphenyi angahle apheleketelwe abuye asitwe ngemaphoyisa ngalesikhatsi angena nekuhlola lendzawo ngaphansi kwasigatjana (3)(c).
- (f) kungena nekusesha ngaphansi kwasigatjana (3)(c) kufanele kwentiwe emini, 25 ngaphandle kwekusti lokusesha ebusuku kuyasekelwa futsi kuyavakala.
- (g) Noma bani lapho umculu utsetfwe khona ngaphansi kwasigatjana (3)(c)(v), noma lomele lowo muntfu ngekwemtsetfo, angabuka lomculu ente emakhophi lapho ngaphansi kweliso lelibukhali lebhodi ngesikhatsi lesitayelekile sekusebenta,
- (5) ibhodi inga, ngaphansi kwemibandzela labangayincuma, inikete emandla 30 ekuphenya lokubonakala ngatsi kungenelela naleSahluko ngenhloso yekwenta inzuzzo.
- (6) Ibhodi kufanele ibangele kutsi kukhishwe kuGazethi satiso sanoma kuphi kuhlukunyetwa kwemitsetfo yemakethe, ibite bonkhe bantfu labanenshisekelo labaphikisako kulomtsetfo lophakanyisiwe noma kuchibiyela, kutsi bafake kuphikisa kwabo kubhodi kungakapheli emalanga lali-14 kusukela ngalolusuku lekukhishwe 35 ngalo lesatiso.
- (7) Uma ngabe kungekho lophikisako noma uma ngabe ibhodi, ngekuva kwekutsintsana nelihhovisi, litsetse lokuphikisa kantsi lincume kungenisa lomtsetfo lophakanyisiwe noma lokuchibiyela *njengeGazethi* lekhishiwe ngekwesigatjana (6), lomtsetfo wekuchibiyela ucalu kusebenta ngelusuku loluncunywe yibhodi 40 ngesatiso *kuGazethi*.
- (8) Uma ngabe ibhodi, ngemuva kwekubona lokuphikisa, lokuncunywe ngemuva kwekutsintsana nelihhovisi kute kuchitjiwelwe lomtsetfo lophakanyisiwe noma kuchibiyela njengoba kukhishwe *kuGazethi* ngekwesigatjana (6), lomtsetfo lophakanyisiwe noma kuchibiyela kutsi lokuchibiyela kufanele kukhishwe yibhodi 45 *kuGazethi* kantsi utawucala kusebenta ngelusuku loluncunywe yibhodi ngesatiso *kuGazethi*.
- (9) Umtsetfo lowentiwe ngaphansi kwasigatjana (2)(f) kusibopho kubantu labasemtsetfweni nemalunga emmango.
- (10) Uma ngabe Umcondzisi weBashushisi angafuni kushushisa kulicala leliswako 50 ngekwalesahluko, ibhodi ingahle ishushise ngekwalelicala kunoma yiphi inkhantolo lekfanele itsetse lelicalu kunoma yiphi inkhantolo lefanele ngekwesigaba 8(2) na (3) *se-Criminal Procedure Act, 1977* (Umtsetfo Nom. 51 wanga 1977), awusebenti kulokushushiswa.
- (11) ibhodi kufanele, ngesicelo selihhovisi, iphenye noma luphi ludzaba bese ibita 55 ibuye iphenyte noma bani ngalokuphat selene naloludzaba lolubalwe kusigatjana (2)(a) na (b).
- (12) Ayikho imphendvulo yekutibophelela leniketiwe noma sitatimende lesentiwe kumuntfu losebentisa emandla ngekwaloMtsetfo bungatsatfwa njengebufakazi ngekumelana nemuntfu lonikete lemphendvulo noma lowente lesitatimende noma kuyiphi inchubo yenkhantolo, ngaphandle uma kulicala lebugebengu lekucamba emanga noma lapho khona lomuntfu ashushiswa ngelicala lelivetwe kulesigaba, noma

this section, and then only to the extent that the answer or statement is relevant to prove the offence charged.

### 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. 5

(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. 10

(c) The directorate exercises the powers of the board—

(i) to institute any civil proceedings as contemplated in this Chapter; 15

(ii) to investigate any matter relating to an offence referred to in section 84(2)(a) and (b); and

(iii) to institute proceedings contemplated in section 84(2)(c) in the name of the board. 15

(d) The directorate is not intended to act as an administrative body when exercising its powers referred to in paragraph (c). 15

(2) (a) The directorate consists of the chairperson and other members and alternate members appointed by the Minister. 20

(b) A member and an alternate member hold office for such period, not exceeding three years, as the Minister may determine at the time of his or her appointment and is eligible for reappointment upon the expiry of his or her term of office: Provided that if on the expiry of the term of office of a member 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. 25

(c) The Minister may remove the chairperson from his or her office or terminate the membership of any other member on good cause shown and after having given the chairperson or member, as the case may be, sufficient opportunity to show why he or she should not be removed or why his or her membership should not be terminated. 30

(3) The Minister must appoint as members of the directorate—

(a) the executive officer of the board or his or her deputy, and may appoint both; 30

(b) one person and an alternate from each of the licensed exchanges in the Republic; 35

(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; 40

(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; 45

(h) one person of appropriate experience and an alternate nominated by any organisation that represents shareholders' rights or any other similar organisation chosen by the Minister;

(i) one person of appropriate experience and an alternate nominated by the South African Reserve Bank; and 50

(j) two other persons of appropriate experience and alternates.

(4) The persons referred to in subsection (3) are nominated by reason of their availability and knowledge of financial markets and may not be practising authorised users. 55

(5) The directorate must designate from its members 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 his or her functions.

(6) The members of the directorate may co-opt one or more persons as additional members of the directorate. 55

(7) 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.

(8) The meetings of the directorate are held at such times and places as the chairperson may determine, but four members of the directorate may by notice in 60

kuphela ngalokulinganisela kutsi lempgendvulo noma sitatimende sifanele kucinisekisa lelicalal elibekiwe.

### Kwakheka nemsebenti yalabaphetse

**85.** (1) (a) Lihhovisi lelisungulwe ngekwasigaba 12 se-*Insider Trading Act*, 1998 (Umsetfo Nom. 135 wanga 1998), nalelichubeka libe khona ngaphansi kwe-*Securities Services Act*, 2004, liyachubeka nekuba khona ngaphansi kweligmama Lihhovisi Lemphatsi Wekuhlukunyetwa Kwetimaketh, noma ngabe kungacitfwa leMitsetfo.

(b) Ireferensi yeLihhovisi Lekuhwebelana lelingekhatsi kunoma muphi umtsetfo kufanele, ngaphandle kwekutsi nalingahambi kahle, litsatfwe njengebufakazi kuLihhovisi Lekuhlukunyetwa Kwetimaketh. 10

(c) Lelihhovisi litawusebentisa emandla ebhodi—

- (i) kutsi lihambise noma yiphi inchubo yemtsetfo njengoba ivetwe kulesahluko;
- (ii) kuphenya noma luphi ludzaba loluphat selene nelicala lelibalwe kusigaba 84(2)(a) na (b); kanye
- (iii) nalekuvetwe kusigaba 84(2)(c) egameni lebhodi. 15

(d) Lomcondzisi akukafaneli kutsi asebente njengemtimba lolawulako uma ngabe asebentisa emandla laniketwe wona kundzima (c).

(2) (a) Lelihhovisi linasihlalo nalamanye emalunga nemalunga lantjintjwako labekwe ngungcongosche.

(b) Lilunga nelilunga lelijikeletako libamba lihhovisi sikhatsi lesingangaleso, 20 kungadluli iminyaka lemitsatfu, njengoba Ngcongcoshe angancuma ngalesikhatsi acashwa nakuphela sikhatsi sakhe ehhovisi: Uma ngabe ekupheleni kwsikhatsi sasehhovisi kwelilunga angeke lacashwa kabusha noma lilunga lelisha angeke lacashwa, lelilunga lakucala kufanele lihlale ehhovisi sikhatsi lesingandluli ttinyanga letisifupha. 25

(c) Ngcongcoshe angakhipha sihlalo ehhovisi lakhe noma acedze bulunga hbanoma liphi lilunga ngekusebenta kahle lokukhonjiswe nangemuva kweuniketa sihlalo noma lilunga, njengoba kungabe kubekiwe, litfuba lelanele kukhombisa kutsi kungani kungafanele akhishwe noma kungani bulunga bakhe kungakafaneli busulwe. 30

(3) Ngcongcoshe kufanele abeke njengemalunga elihhovisi—

- (a) lophetse lomkhulu ehhovisi lolawula ibhodi noma lolisekela lakhe, kantsi angabeka bobabili;
- (b) umuntfu munye kanye nalontjintjana naye kulinye leligatja lelibhalisiwe eRiphabhulikhi;
- (c) ummeli munye losebenta ngetimali lonelwati lolubanti kanye nalantjintjana 35 naye;
- (d) munye losebenta ngetimali lonelwati lolubanti nalekantjintjana naye;
- (e) umuntfu munye lonelwati lolubanti nalekantjintjana naye kumbhoni yemshwalense;
- (f) umuntfu munye lonelwatiso lolubanti kanye nalantjintjana naye losebenta 40 ebhang;
- (g) umuntfu munye lonelwati lolubanti nalekangantjintjana naye kubetimboni labalawula sikhwama;
- (h) umuntfu munye lonelwati lolubanti kanye nalantjintjana naye lokhetfwe noma ngabe nguyiphi inhlango lemele emalungelo alabanemasheya noma 45 lenye inhlango lefanako lekhettwe nguNgcongcoshe;
- (i) umuntfu munye lonelwati lolubanti kanye nalantjintjana naye lokhetfwe Libhange Ngodla laseNingizimu Afrika; kanye
- (j) lanbanye bantfu lababili labanelwati lolufanako labantjintjanako.

(4) Lomuntfu lobalwe kusigatjana (3) bakhetfwe ngesizatfu sekutsi bakhona kanye 50 nelwati lwetimaketh temnotfo kantsi bangahle bangabi basebentisi labagunyatiwe .

(5) Lihhovisi kufanele libeke kuwo lamalunga sekela sihlalo lowenta imisebenti yasilhlarlaluma ngabe lihhovisi lasihlalo lingenaunfunoma uma ngabe sihlalo ahluleka kwenta imisebenti yakhe.

(6) Lilunga lelihhovisi lingaphakamisa lomunye noma labanye bantfu njengemalunga 55 langettelako kulelihhovisi.

(7) Onkhe malunga alelihhovisi, anelivoti linye ngalokuphatselene netindzaba letinakwa lihhovisi, kodvwa lilunga lelivalako linelivoti uma ngabe lingekho emhlanganweni kulowo lomelwe ngulelilunga lelivala lomunye.

(8) Imihlangano yelihhovisi ibanjwa ngetikhatsi nendzawo lengancunywa ngusihlalo, 60 kodvwa emalunga lamane elihhovisi ngekwasatiso lesibhalwe phansi siya kusihlalo

writing to the chairperson of the directorate demand that a meeting of the directorate be held within seven business days of the date of such notice.

(9) The chairperson must determine the procedure of a meeting of the directorate.

(10) The decision of a majority of the members of the directorate constitutes the decision of the directorate.

(11) No proceedings of the directorate are invalid by reason only of the fact that a vacancy existed on the directorate or that any member was not present during such proceedings or any part thereof.

(12) The directorate is, in the performance of its functions, assisted by an executive director who is appointed by the board after consultation with the directorate and who may attend all meetings of the directorate but may not vote at such meetings. 10 10

### **Financing of directorate**

**86.** The costs of performing the functions of the board and those of the directorate in terms of this Chapter are paid out of levies imposed by the board on exchanges under section 15A of the Financial Services Board Act. 15

### *General provisions*

#### **Protection of existing rights**

**87.** Nothing in this Chapter prejudices the common law rights of any person aggrieved by any dealing or offence contemplated in this Chapter to claim any amount save to the extent that any portion of such amount has been recovered by such person under section 82. 20 20

#### **Confidentiality and sharing of information**

**88.** The directorate may share information concerning any matter dealt with in terms of this Chapter with the institutions which have nominated persons to the directorate, the Takeover Regulation Panel, established by section 196 of the Companies Act, the South African Reserve Bank, the Independent Regulatory Board for Auditors constituted in terms of the Auditing Profession Act, a licensed exchange, a licensed central securities depository, or a licensed independent clearing house, 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. 25 30

## **CHAPTER XI**

### **AUDITING**

#### **Auditor**

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**89.** (1) Despite the provisions of any law, a regulated person must appoint and at all times have an auditor who engages in public practice and who has no direct or indirect financial interest in the business in respect of which the auditor is so appointed.

(2) No firm of auditors, or a member of such firm, in which a regulated person or director, officer or employee of a regulated person has any financial interest, may be appointed as an auditor of a regulated person. 40

(3) The registrar must approve the appointment of the auditor of every market infrastructure and may withdraw the approval if it is necessary.

#### **Accounting records and audit**

**90** A regulated person must—

- (a) maintain on a continual basis the accounting records prescribed by the registrar 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;

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welihhovisi acele kutsi umhlangano welihhovisi ubanjwe emalangeni lasikhombisa aleso satiso.

(9) Sihlalo kufanele ancume indlela yemhlangano welihhovisi.

(10) Sincumo semalunga lamanyenti ehhovisi sifaka ekhatsi sincumo salelihhovisi.

(11) Akunatinchubo talelihhovisi letingekho emtsetfweni ngekxesizatfu sekutsi sikhala lebesikhona kulelihhovisi noma kutsi noma liphi lilunga belingekho ngalesikhatsi salemihlangano noma incenye yawo. 5

(12) Lelihhovisi, ekwenteni imisebenti yalo, lisitwe ngumcondzisi lophakeme locashwe yibhodi ngemuva kwekutsintsana nelihhovisi nalekangangenelela yonkhe imihlangano yalelihhovisi kodvwa angeke avote kuleyo mihangano. 10

### **Kusitwa ngetimali kwalabaphetse**

**86.** Tindleko tekwenta lemisebenti yebhodi kanye naletu telihhovisi ngekwaleSahluko tikhokhelwa kuntsela lebekwe yibhodi kumagatja ngaphansi kwesigaba 15A se-*Financial Services Board Act*.

### *Imibandzela leyetayelekile*

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### **Kuvikelwa kwemalungelo lasavele akhona**

**87.** Akunalutfo kulesahluko lolucwasa emalungelo emtsetfo wanoma muphi umuntfu lofake sikhalo nganoma kuphi kutsengiselana noma licala lelivetwe kulesahluko kukleyima noma malini ngaphandle kwelizinga lekutsi noma yiphi incenye yalesamba seyitfolakele ngulowo muntfu ngaphansi kwesigaba 20.

### **Kubamba imfihlo nekwabelana ngelwatiso**

**88.** Lihhovisi lingabelana ngelwatiso loluhambisana nanoma luphi ludzaba kulesetjentwe ngalo ngekwalesahluko netikhungo letinebantfu labakhetselwe kulelihhovisi, leLitsimba Lekudlulisela Umsebenti, lelisungulwe ngekxesigaba 196 se-*Companies Act*, Libhange Ngodla lase Ningizimu Afrika, Ibhodi yeligatja lelinemvume, libhange lemasheya lelisemkhatsini, noma indlu letimele lenemvume yekugunyata Yebahloli Mabhuku leyakhiwe ngekwe *Auditing Profession Act*, tonkhe tinhlangano letitibusako, *Financial Intelligence Centre Act*, Betimali Telive, Ngcongcoshe kanye nebantfu, lapho khona ekhatsi eRiphabhulikhi noma kulenyi indzawo, losebenta kulawula. Kuphenya noma kushisa kuhwebelana ngekhatsi, 30 kutsengiselana lokungakavunyelwa kanye nalokunye kuhlukunyetwa kwetimakethe.

## **SAHLUKO XI**

### **KUHLOLWA EMABHUKU**

#### **Umhloli mabhuku**

**89.** (1) Ngaphandle kwemibandzela yanoma muphi umtsetfo, umuntfu logunyatiwe kufanele acashe kantsi ngaso sonkhe sikhatsi abe nemhloli mabhuku longenelela emsebentini wemmango longenansisekelo ngalokucondzile noma ngalokuyamile etimalini talebhizinisi lapho kucashwe khona lomhloli mabhuku. 35

(2) Ayikho imboni yebahloli mabhuku, noma lilunga laleyo mboni, lapho lomuntfu logunyatiwe noma umcondzisi, sisibenti noma umsebenti wemuntfu logunyatiwe lonenshisekelo yetimali, angacashwa njengemhloli mabhuku wemuntfu losemtsetfweni. 40

(3) Nobhala kufanele avumele lokucashwa kwemhloli mabhuku wato tonkhe tinsitanchanti tetimakethe nato kantsi bangamisa lemvume uma ngabe kufanele.

#### **Emarekhodi etimali nekuhlolwa kwemabhuku**

**90.** Umuntfu losemtsetfweni kufanele—

- (a) agcine njalo emarekhodi etimali lekakhishwe ngunobhala abuye alunginge titatimende temalyaka wonkhe lekuhambisana nalokubika ngetimali lokubekwe ngaphansi kwe-*Companies Act* kantsi kube nalolwatiso lolungakhishwa ngunobhala;

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- (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 or such later date as the registrar may allow on application by a regulated person; and
- (c) preserve such records, which may be in electronic form, in a safe place for a period of not less than five years as from the date of the last entry therein. 5

### Functions of auditor

**91.** (1) The auditor must audit the annual financial statements of the regulated person in accordance with the International Standards on Auditing to obtain sufficient evidence that the financial statements are in accordance with the underlying records, and are prepared in accordance with the International Financial Reporting Standards and the requirements of the Companies Act and this Act so as to fairly present the financial position, cash-flows and the results of the operations of the regulated person. 10

(2) 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 in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house, and on request to the registrar— 15

- (a) to the effect that the auditor has completed the audit of the annual financial statements in accordance with the International Standards on Auditing and in the manner required by this Act and that in the auditor's considered opinion they fairly present the financial position, cash-flows and results of the operations of the regulated person; and 20
- (b) on the matters prescribed by the registrar, including matters relating to the nominees of those regulated persons. 25

(3) If the auditor is unable to make such a report or to make it without qualification, the auditor must include in the auditor's report a statement explaining the facts or circumstances that prevented the auditor from making a report or from making it without qualification.

(4) When the auditor of a regulated person furnishes copies of a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, the auditor must, despite any contrary law, also furnish a copy thereof to the registrar, if the auditor is the auditor of a market infrastructure, or to the exchange, central securities depository, or independent clearing house in question, if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house. 30

(5) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must— 35

- (a) submit to the registrar, if the auditor is the auditor of a market infrastructure, or to the exchange, central securities depository, or independent clearing house in question if the auditor is the auditor of an authorised user, participant or clearing member of an independent clearing house, a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination; 40
- (b) if the auditor would, but for that termination, have had reason to submit to the regulated person a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, submit such a report to the registrar or the exchange, central securities depository or independent clearing house, as the case may be. 45

(6) An auditor must inform the registrar or the exchange, central securities depository or independent clearing house, as the case may be, in writing of any matter relating to the affairs of the regulated person of which the auditor became aware in the performance of the auditor's functions and which, in the opinion of the auditor, is irregular or may prejudice the regulated person's ability to meet its liabilities at all times. 50

- (b) abangele kutsi lawo marekhodi etimali kanye netitativemende temnyaka wonkhe tihlolwe ngumhloli mabhuku locashwe ngaphansi kwasigaba 89, ngesikhatsi lesibekwe ngunobhala noma lolo lusuku lwamuva lolungavunyelwa ngunobhala ngesicelo lesifakwe ngumuntfu losemtsetfweni; kanye (c) kugcina lawo marekhodi, langaba ku-elektronikhi, endzaweni lephephile ngesikhatsi lesingekho ngaphansi kweminyaka lesihlanu kusuka ngalesikhatsi sekungena kwekugcina.

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### Imisebenti yemhloli mabhuku

91. (1) Umhloli mabhuku kufanele ahlole titativemende temali temnyaka talomuntfu logunyatiwe ngekuhambisana Nemazinga Ekuhlola Emabhuku Amhlaba wonkhe kutsila bufakazi lobanele kutsi letitativemende temali tiyahambisana nalamarekhodi, kantsi tilungiswe ngekuhambisana ne *Financial Reporting Standards and the requirements se- Companies Act* naloMtsetfo kute kutsi umele kahle lesimo setimali, kuphatfwa kwemali nemiphumela yekusebenta kwalomuntfu logunyatiwe.

(2) Uma ngabe umhloli mabhuku wemuntfu losemtsetfweni ahlole emabhuku ngekwesigatjana (1), umhloli mabhuku kufanele, ngekuya ngesigatjana (3), abike kulomuntfu losemtsetfweni noma ligatja, libhange lelisemkhatsini lemasheya noma leyondlu legunyatako letimele uma ngabe umhloli mabhuku ngumhloli mabhuku wemsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe wendlu letimele legunyatako, kanye nangescicelo lesifakwe ngunobhala—

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- (a) ngalomtselela wekutsi umhloli mabhuku ucedzelele lokuhlolwa kwemabhuku kwetitativemende temnyaka temali ngekuhambisana Nemazinga Ekuhlola Emabhuku Amhlaba wonkhe nangendlela lefuneka kuloMtsetfo kanye nangembono lobekwe ngumhloli mabhuku batawumelela lesimo setimali, kungena kwemali nemiphumela yekusebenta kwalomuntfu logunyatiwe; 25 kanye

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- (b) ngaletindzaba letibekwe ngunobhala, kufaka ekhatsi tindzaba letiphatselene nalophakanyisiwe walabo bantfu labasemtsetfweni.

(3) Uma ngabe umhloli mabhuku akakhoni kwenta lombiko noma kwenta ngaphandle kweticu, lomhloli mabhuku kufanele afake kulombiko wemhloli mabhuku sitativemende lesichaza ngemaciniso noma tindlela letivikela umhloli mabhuku kutsi ente umbiko noma awente ngaphandle kwekuwahlola.

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(4) Uma ngabe umhloli mabhuku kungumuntfu losemtsetfweni aniketwa emakhophi embiko lovetwe kusigaba 45(1)(a) na (3)(c) se-*Auditing Profession Act*, umhloli mabhuku kufanele, ngaphandle kwekutsi kube nemtsetfo longcubutanako, abuye anikete ikhophi ngalokunjalo kunobhala, uma ngabe lomhloli mabhuku ngumhloli wetinsitanchanti tetimakethe lekukhulunywa ngato, uma ngabe lomhloli mabhuku kungumhloli mabhuku wemsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe wendlu letimele legunyatako.

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(5) Uma ngabe kucashwa kwemhloli mabhuku kumisiwe nganoma sippi sizatfu, 40 kufaka ekhatsi kuyekela umsebenti, umhloli mabhuku kufanele—

- (a) anikete nobhala, uma ngabe lomhloli mabhuku kungumhloli mabhuku tinsitanchanti tetimakethe noma egatjeni, libhange lemasheya lelisemkhatsini noma indlu letimele legunyatako lekukhulunywa ngayo uma ngabe lomhloli mabhuku kungumhloli mabhuku wemsebentisi losemtsetfweni, 45 labangenelelako noma lilunga leligunyatiwe wendlu letimele legunyatako, sitativemete sekutsi tiyini tizatfu, talokumiswa;

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- (b) uma ngabe lomhloli mabhuku atawu, kwentela lokumiswa, abe nesizatfu sekwetfula lombiko kulomuntfu losemtsetfweni lovetwe kusigaba 45(1)(a) na (3)(c) we-*Auditing Profession Act*, atfule lowo mbiko kunobhala noma egatjeni, libhange lemasheya lelisemkhatsini noma indlu letimele legunyatako njengoba kungabe kubekiwe.

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(6) Umhloli mabhuku kufanele atise nobhala noma inhlango letilawulako, njengoba kungabe kubekiwe, ngalokubhalwe phansi nganoma luphi ludzaba lolucondziswe kulomuntfu logunyatiwe lapho khona lomhloli mabhuku ati khona ngekusebenta kwalomhloli mabhuku nalapho khona, ngekwembono wemhloli mabhuku, akuhambisani noma angadvonsela phansi umtfwalo walomuntfu logunyatiwe kutsi afinyelele ekwenteni umsebenti wakhe ngato tonkhe tikhatsi.

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**Furnishing of information in good faith by auditor**

**92.** The auditor must provide any report or information as required in terms of this Act despite the provisions of any contrary law or a provision of a code of professional conduct to which the auditor is subject.

**Power of registrar to request audit**

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**93.** (1) The registrar may at any time by written notice direct a regulated person to have its accounts, records and financial statements audited and to submit the results of such an audit to the registrar within the time specified in the notice.

(2) A person who, pursuant to subsection (1), gives information, an explanation or access to records knowing that the information, explanation or records are false or misleading, commits an offence. 10

**CHAPTER XII****GENERAL PROVISIONS***Powers of registrar and court***General powers of registrar**

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**94.** (1) If the registrar 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 has reason to believe that such a contravention or failure is taking place, the registrar may investigate the matter by directing that respondent in writing to— 20

- (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.

(2) Despite any contrary law, the registrar may, if an advertisement, brochure or other document relating to securities 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. 25

**Powers of registrar to conduct on-site visit or inspection**

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**95.** (1) The registrar may—

- (a) authorise any suitable person to conduct an on-site visit of the business and affairs of a regulated person to determine compliance with this Act; or
- (b) instruct an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). 35

(2) A person conducting an on-site visit in terms of paragraph (a) may—

- (a) at any time during business hours—
  - (i) enter the premises of the regulated person and the regulated person must upon request provide any document;
  - (ii) search the premises of the regulated person for any document;
  - (iii) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;
  - (iv) seize any document against the issue of a receipt, which may furnish proof of any failure to comply with the provisions of this Act;
- (b) require the regulated person to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the regulated person; 45
- (c) require any person that is holding or is accountable for any document, to provide information and an explanation of that information.

### **Kucedzelelwa kwelwatiso ngendlela lekahle icedzelelwa ngumhloli mabhuku**

**92.** Umhloli mabhuku kufanele kutsi anikete umbiko noma Iwatiso njengoba kudzingeka ngekwaloMtsetfo ngaphandle kwalemibandzela kwanoma kuphi kungcubutana ngekwemtsetfo noma umbandzela wemazinga ekutiphatsa kwetisebenti lapho khona lomhloli mabhuku asebenta khona. 5

### **Emandla anobhala ekucela emabhuku lahloliwe**

**93.** (1) Nobhala noma ngabe nini ngesatiso lesibhalwe phansi acondzise umuntfu losemtsetfweni kutsi ema-akhawunti akhe, emarekhodi netitatimende temali tihlolwe nekuhambisa imiphumela yalolo luhlolo kunobhala ngalesikhatsi lesibalwe kulesatiso. 10

(2) Umuntfu, ngekulandzela sigatjana (1), uniketa Iwatiso, inchazelo noma kufinyelela kumarekhodi wati kutsi lolwatiso, inchazelo noma emarekhodi angemanga noma ayalahlekisa, wenta licala. 10

## **SAHLUKO XII**

### **IMIBANDZELA LEYETAYELEKILE**

#### *Emandla anobhala nenkhantolo*

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### **Emandla latayelekile anobhala**

**94.** (1) Uma ngabe nobhala atfola sikhalo, kubekwa licala noma kucatjangelwa kutsi umuntfu (lapha njengoba abekwe njengalotiphendvulelako) loniketa umsebenti wemasheya (noma ngabe lona lophendvulako unelayisensi noma ugunyatiwe ngekwaloMtsetfo noma cha) uphula noma uyahluleka kuhambisana nanoma miphimibandzela yaloMtsetfo, noma uma ngabe nobhala anesizatfu sekukholwa kutsi lokungenelela noma lokuhluleka kuyenteka, nobhala angaphenya loludzaba ngekutsi acondzise lolophendvulako ngekumbalela kutsi— 20

(i) anikete nobhala noma luphi Iwatiso, imiculu noma emarekhodi ladzinga ngunobhala ngalemisebenti; 25

(ii) avele ngembi kwanobhala ngesikhatsi nendzawo layibekile.

(2) Ngaphandle kwekutsi kube nemtsetfo longcubutanako, nobhala anga, uma ngabe sikhango, incwajana noma leminye imiculu lephatselene nemasheya iyalahlekisa noma nganoma siphisiyatphi iyaphikiseka, ngoba lesikhango, incwajana noma lomunye umsculu ungakakhishwa noma lokukhishwa kwawo kumiswe noma letio tichibiyelo njengoba nobhala akubona kufanele kwentiwe. 30

### **Emandla anobhala ekuvakashela ngekhatsi noma ekuhlola**

**95.** (1) Nobhala anga—

(a) gunyata bantfu labafanele kutsi bente luvakasho Iwangekhatsi lalelibhizinisinetindzaba temuntfu losemtsetfweni kutsi batobuka kutsi uyahambisana naloMtsetfo; noma 35

(b) kutjela umhloli ngaphansi kwsigaba 3 se-*Inspection of Financial Institutions Act, 1998.*

(2) Umuntfu lowente luvakasho Iwangekhatsi ngekwalandzima (a) anga—

(a) noma sikhatsini ngesikhatsi sekusebenta— 40

(i) angene kulenzawo yalomuntfu losemtsetfweni kantsi lona losemtsetfweni ngekufaka sicelo anikete noma miphimiculu;

(ii) aseshe lendzawo lehlala lomuntfu losemtsetfweni kunoma miphimiculu;

(iii) abuke, akhiphe emaphephabuye akhophe noma miphimiculu noma, 45 ngekumelana nekuniketwa irisiphi, asuse kwsikhashane lomculu;

(iv) amise noma muphi umculu lomelana nekuniketwa kwerisiphi, lengaba bufakazi bekuhluleka noma kuphi ekuhambisaneni naloMtsetfo;

(b) kudzingeke lomuntfu losemtsetfweni kutsi akhiphe ngesikhatsi lesibekiwenendzawo imiculu noma imiculu letawube ichaziwe lekanayo noma lengaphansi kwalomuntfu lolawulako; 50

(c) kudzingeke kutsi noma bani losehhovisi noma losebenta nganoma muphi umculu, kutsi anikete Iwatiso kanye nenchazelo yalolwatiso.

(3) The registrar may, at the request of a supervisory authority, investigate or assist that supervisory authority in an investigation into possible contraventions or failures similar to contraventions or failures that may occur under this Act that are regulated in terms of the laws of a country other than the Republic that that supervisory authority administers.

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### Powers of registrar after on-site visit or inspection

**96.** After an on-site visit or inspection has been conducted under section 95, the registrar may, in order to achieve the objects of this Act referred to in section 2—

- (a) if the respondent is a company—
  - (i) apply to the court under section 81 of the Companies Act for the winding-up of the respondent as if the registrar were a creditor of the respondent;
  - (ii) apply to the court under section 131 of the Companies Act to begin business rescue proceedings in respect of the respondent as if the registrar were a creditor of the respondent;
- (b) subject to section 5 of the Financial Institutions (Protection of Funds) Act, apply to the court for the appointment of a curator for the business of the respondent;
- (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 on-site visit or inspection: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act.
- (d) direct the respondent to prohibit or restrict specified activities, performed in terms of this Act, of a director, managing executive, officer or employee of the respondent, if the registrar believes that the director, managing executive, officer or employee is not fit and proper to perform such activities;
- (e) hand the matter over to the National Director of Public Prosecutions, provided that the contravention or failure constitutes an offence in terms of this Act; or
- (f) by notice on the official website or by means of any other appropriate public media, make known—
  - (i) the status and outcome of an inspection;
  - (ii) the details of an inspection if disclosure is in the public interest;
  - (iii) the outcome and details of an on-site visit if disclosure is in the public interest.

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### Power of registrar to impose penalties

**97.** (1) The registrar may impose a fine in the case of any failure by a regulated person to submit to the registrar within any period specified by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, of an amount to be prescribed by the registrar for every day that the failure continues.

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(2) The registrar must, before imposing a fine, by written notice to the regulated person—

- (a) inform the regulated person of the registrar's intention to impose a fine;
- (b) specify the particulars of the alleged failure;
- (c) set out the reasons for the intended imposition of a fine;
- (d) specify the amount of the fine intended to be imposed; and
- (e) call upon the regulated person to show cause within a period specified by the registrar why the fine should not be imposed.

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(3) If the registrar, after consideration of representations made by the regulated person, decides to impose a fine, the registrar must by written notice inform the regulated person that, not later than 30 days after the date of the notice, the regulated person may—

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(3) Nobhala angaphenya noma asite kutsi lophetse logunyatiwe kuluphenyo ngekungenelela lokungahle kube khona mnoma kuhluleka lokufana nekungenelela noma kuhluleka lokungaba khona ngaphansi kwaloMtsetfo lokulawula ngekuhambi-sana nemtsetfo wakulelive lekungasiyo iRiphabhulki lelilawula ngulola lophetse logunyatiwe, ngesicelo salabaphetse labagunyatiwe.

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### Emandla anobhala ngemuva kwekuvakashela ngekhatsi noma kwekuhlola

**96.** Ngemuva kwekuvakashela ngekhatsi noma kuhlola sekwentiwe ngekwesigaba 97, nobhala angenta loku kute kutsi afinyelele kuletinjongo taloMtsetfo letibalwe kusigaba 2—

- (a) uma ngabe lona lophendvulako kuyinkhapani— 10  
(i) afake sicelo enkhantolo ngaphansi kwesigaba 81 se-*Companies Act* kwentela kushushiwa kwalophendvulako kubukeke kwangatsi nobhala bekangumbolekisi walophendvulako;  
(ii) abhalele inkhantolo ngaphansi kwesigaba 131 se-*Companies Act* kutsi acale kuhlenga ibhizinisi ngalokuhambisana nalona lophendvulako kute kubukeke ngatsi lonobhala bekangulobolekisako kulona lophendvulako;
- (b) ngekuya ngesigaba 5 se-*Financial Institutions (Protection of Funds) Act*, afake sicelo enkhantolo kute kucashwe umphatsi webhizinisi lalolophendvulako; 15
- (c) acondzise lolophendvulako kutsi atsatse noma tiphi tinyatselo, noma angasenti noma achubeke kwena noma yini, kute acedze noma alungise lokungakahambi kahle noma simo setintfo letivetwe ngulebebavakashele ngekhatsi noma labatohlola: Uma ngabe nobhala angeke ente siphakamiso lesivetwe kusigaba 6D(2)(b) se-*Financial Institutions (Protection of Funds) Act*. 20
- (d) acondzise lolophendvulako kutsi avimbele noma avale imisebenti letsite, leyentiwa bngaphansi kwaloMtsetfo, kumcondzisi, umphatsi losetulu, sisibenti noma umsebenti walophendvulako, uma ngabe nobhala atsemba kutsi umcondzisi, sisibenti noma umsebenti akakakulungeli kwenta lomsebenti; 25
- (e) kudluliselwe loludzaba Kumcondzisi Wemshushisi Wemphakatsi Velonke uma ngabe lokungenelela noma lokuhluleka kufaka ekhatsi licala laloMtsetfo; noma 30
- (f) Ngesatiso kuwebhu lesemsetfweni noma nganoma luphi luhlobo Iwekusakatela ummango, atise— 35  
(i) simo kanye nemphumela weluhlolo;  
(ii) iminininingwane yeluhlolo uma ngabe lokuvetiwe kuyinshisekelo yemmango;  
(iii) imiphumela nemininingwane yeluvakasho Iwangekhatsi luyinshisekelo yemmango. 40

### Emanadla anobhala ekubeka tinhlawulo

**97.** (1) Nobhala angabeka inhlawulo uma ngabe kukhona lohlulekile lolawulako kutsi etfule kunobhala nganoma sippi sikhatsi lesibekiwe ngaloMtsetfo kunoma sippi sitatimende, umbiko, imphendvulo noma lomunye umculunoma Iwatiso loludzingeka ku noma ngaphansi kwaloMtsetfo kutsi kwetfulwe, linani lelibekwe ngunobhala onkhe malanga ngalesikhatsi lokuhluleka kuyachubeka.

(2) Nobhala kufanele, ngembi kwekutsi abeke inhlawulo, ngesatiso lesibaliwe kumuntfu losemtsetfweni—

- (a) kwatiswe lomuntfu losemtsetfweni ngetinjongo tanobhala kutsi abeke inhlawulo; 50  
(b) asho iminininingwane yalokuhluleka;  
(c) abeke ebeleni tizatfu taloku lokuhlosiwe kwalenhlawulo;  
(d) asho linani lenhlawulo lekfanele ibekwe; kanye  
(e) kubitwe lomuntfu losemtsetfweni kutsi akhombise sizatfu ngesikhatsi lesibekiwe ngunobhala kutsi kungani kungabekwa lenhlawulo. 55

(3) Uma ngabe nobhala, ngemuva kwekubona lokumeleleka lokwentiwe ngulomuntfu losemtsetfweni, afune kubeka inhlawulo, nobhala kufanele ngekwesatiso lesibaliwe atise lomuntfu losemtsetfweni kutsi, kungakapheli emalanga langema-30 ngemuva kwalolosuku Iwalesatiso, lomuntfu logunyatiwe kufanele—

- (a) pay the fine; or  
 (b) appeal in terms of section 105 against the imposition of the fine to the appeal board.
- (4) If a regulated person fails to pay the fine or note an appeal in terms of subsection (3), the registrar may file with the clerk or registrar of any competent court a statement certified by him or her as correct, stating the amount of the fine imposed on the regulated person, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board for a liquid debt in the amount specified in the statement. 5
- Power of court to declare person disqualified** 10
- 98.** (1) If a court—  
 (a) convicts an authorised user, participant or clearing member of an independent clearing house, or an officer or employee of those entities, of an offence under this Act or of an offence of which any dishonest act or omission is an element; or  
 (b) finds, in proceedings to which a person referred to in paragraph (a) is a party or in which his or her conduct is called into question, that he or she has been guilty of reckless or dishonest conduct, the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the person concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on business or being employed in a capacity of trust. 15  
 (2) The court may, on good cause shown, vary or revoke a declaration made under subsection (1).  
 (3) The registrar of the court that has made a declaration under subsection (1) or varied or revoked a declaration under subsection (2), must as soon as possible notify the registrar, and the exchange, central securities depository, or independent clearing house concerned, thereof. 20  
 (4) No declaration made under subsection (1) affects any power of an exchange, central securities depository, or independent clearing house to take disciplinary action in terms of its rules against the person concerned. 25 30

#### *Enforcement committee*

#### **Referral to enforcement committee**

**99.** The registrar may, despite and in addition to taking any step he or she may take under this Act, refer any contravention of this Act and any directives to the enforcement committee. 35

#### *Winding-up, business rescue and curatorship*

#### **Winding-up or sequestration by court**

- 100.** (1) Despite any other law, an order for the winding-up or sequestration of the estate of a regulated person may be granted by the court on the application of—  
 (a) the regulated person;  
 (b) one or more of the regulated person's creditors;  
 (c) if the regulated person is an exchange, a central securities depository or an independent clearing house, one or more authorised users, participants or clearing members, as the case may be; 40  
 (d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);  
 (e) the business rescue practitioner of the regulated person;  
 (f) the provisional curator or curator of a regulated person; or  
 (g) the registrar.  
 (2) A regulated person which is a company or other corporate body may be wound up, subject to section 102, according to the Companies Act, and the estate of a regulated 50 45

- (a) akhokhele lenhlawulo; noma
- (b) afake sikhalo ngekwasigaba 105 ngecumelana nalokubekwa kwalenhlawulo kubhodi yetikhalo.

(4) Uma ngabe umuntfu losemtsetfweni ahluleka kukhokha inhlawulo noma abhala sikhalo ngekwasigatjana (3), nobhala angafaka kumabhalane noma nobhala wanoma yiphi inkantolo lesebentako sitatimende lesicinisekisiwe nguye njengalokukahle, kushiwo lelinani lalenhlawulo leniketwe lomuntfu losemtsetfweni, kanye nalesitatemende lesolesinalemitselela wesincumo senkhantolo lesiniketwe ngekwemtsetfo lesiniketwe kuleyo nkantolo ngekuhambisana nebhodi ngemali loyikweleda kwesi-khashane lotayikhokhela kulesamba lesibaliwe kulesitatimende.

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### **Emandla enkhantolo ekucinisekisa kutsi umuntfu ukhishiwe**

**98. (1) Uma inkantolo—**

- (a) abeka licala umsebentisi losemtsetfweni, labangenelelako noma lilunga leligunyatiwe yendlu letimele legunyatako, noma sisebenti noma umsebenti waleti tinhlangano, welicala ngaphansi kwaloMtsetfo noma nelicala lapho khona kungatsembeki noma kukhishwa kuyintfo lekhona; noma
- (b) atfolo, getinchubo lapho khona umuntfu lobalwe kundzima (a) uyinceny noma lapho kutiphatsa kwakhe kungatjatwa khona, kutsi unelicala lelungahambisi kahle noma akakatsembeki, inkantolo inga (ngekungeta, kulicala lelibalwe kundzima (a), kunoma siphi sigwebo lesinganiketwa) ibone lomuntfu lotsintsekako njengalongakafaneli, sikhatsi lesibekiwe noma sikhatsi lesitsite lesibekwe yinkantolo, kutsi ente ibhizinisi noma acashwe njengemtsenjwa.

(2) Inkantolo inga, ngendlela lenhle lekhonjisiwe, ihlukanise noma icitse sincumo lesentiwe ngaphansi kwasigatjana (1).

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(3) Nobhala wenkhantolo wente simemetelo ngaphansi kwasigatjana (2), kufanele ngekushesha atise nobhala, kanye neligatja, libhange lemasheya lelisemkhatsini noma indlu letimele legunyatako 1 letsintsekako, ngaloko.

(4) akunasimemetelo lesentiwe ngaphansi kwasigatjana (1) lesitsinta noma maphi emandla eligatja, libhange lemasheya lelisemkhatsini noma indlu letimele legunyatako litsatsa tinyatselo tekucondzisa tigwegwe ngekwemtsetfo yayo ngecumelana nalomuntfu lotsintsekako.

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### **Likomidi lelicinisekisako**

#### **Kudlulisewa kulikomidi lelicinisekisako**

**99.** Nobhala anga, ngaphandle nangekungelela ekutsatseni noma siphi sinyatselo langasitsatsa ngaphansi kwaloMtsetfo kanye nanom liphi Likomidi Lekusebenta.

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### **Kubuyeketa, kuhlengwa kwelibhizinisi nemlawuli**

#### **Kubuyeketa noma kumukwa imphahla kwesikhashane yinkantolo**

**100. (1)** Nanoma kunamuphi lomunye umtsetfo, umyalelo wekubukisisa noma kwabiwa kwelifa lemuntfu losemtsetfweni kunganiketwa yinkantolo uma kunesicelo se—

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- (a) muntfu losemtsetfweni;
- (b) munye noma labangetulu bebacondzisi balomuntfu losemtsetfweni;
- (c) uma ngabe lomuntfu losemtsetfweni kuligatja, sikhungo semasheya lesimkhatsini noma indlu legunyatiwe letimele, munye noma labangetulu basebentisi labagunyatiwe, labangenelelako noma lilunga leligunyatiwe, njengoba kungabe kubekiwe;
- (d) ngekuhlanganyela, noma yiphi yaletinhlangano letibalwe kundzima (a), (b) na c;
- (e) sisebenti sekuhlenga libhizinisi lemuntfu losemtsetfweni;
- (f) umphatsi loniketiwe noma umphatsi wemuntfu losemtsetfweni; noma
- (g) nobhala.

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(2) Umuntfu losemtsetfweni lapho inkapani noma lomunye umtimba wabosomabhzinisi ungambeka, ngekuya ngesigaba 102, ngekuya nge-*Companies Act*, nelifa

person who is a natural person or partnership may be sequestrated according to the Insolvency Act.

(3) Despite the Companies Act—

- (a) any resolution or court application made under the Companies Act in respect of a regulated person must be filed with or served on the registrar, as the case may be, and must be approved by the registrar prior to the filing or serving thereof;
- (b) in relation to a court application in respect of a regulated person, the registrar may file affidavits and other documents relating to, and may appear and be heard at the hearing of, the application;
- (c) a company may file a resolution under section 80 of the Companies Act in respect of a regulated person only after the registrar has approved the resolution; and
- (d) the certificate referred to in section 82(1) of the Companies Act in respect of a regulated person must also be filed with the registrar.

(4) A court may not grant a liquidation order in respect of a regulated person without the approval of the registrar.

(5) If the registrar does not approve the resolutions of the regulated person made under section 80 of the Companies Act, the registrar may apply—

- (a) for the liquidation and winding-up of the regulated person under section 81 of that Act; or
- (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

(6) A regulated person may not be placed in liquidation or sequestration while under curatorship, unless the curator applies for such liquidation or sequestration.

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### **Business rescue**

**101.** (1) The court may grant a business rescue order in respect of a regulated person which is a company or other corporate body on the application of the persons referred to in section 100(1), except a curator referred to in section 102(1).

(2) (a) Section 100(3), (4), (5) and (6) apply, with the changes required by the context, to a court application for or a resolution on business rescue.

(b) For the purpose of paragraph (a), any reference to section 80 of the Companies Act in section 100(3), (4), (5) and (6) must be construed as a reference to section 129 of that Act and any reference to liquidation or sequestration in those sections must be construed as a reference to business rescue.

(3) The Companies Act applies, subject to section 103, to business rescue proceedings relating to a regulated person that is a company.

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### **Appointment of curator**

**102.** (1) Despite any other law, the court may appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any regulated person.

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(2) The Financial Institutions (Protection of Funds) Act applies to the management and control of a regulated person by a curator appointed under this section.

(3) If a curator is appointed under this section, no business rescue or liquidation proceedings under the Companies Act or sequestration proceedings under the Insolvency Act may be commenced in respect of that regulated person until the appointment of the curator is terminated, or with the leave of the court.

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### **Appointment of business rescue practitioner or liquidator and approval of business rescue plan**

**103.** (1) Despite the provisions of the Companies Act, the registrar must approve the appointment of a business rescue practitioner or liquidator of a regulated person and must approve the business rescue plan referred to in section 150 of the Companies Act.

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(2) Despite the provisions of the Companies Act, if the registrar does not approve the business rescue plan referred to in section 150(1) of the Companies Act, the registrar may apply—

lemuntfu losemtsetfweni lekungumuntfu nje noma budlelwano bungahlakatwa ngekuhambisana ne *Insolvency Act* ngalokuphatselene nemuntfu losemtsetfweni.

(3) Ngaphandle kwe-*Companies Act*,—

- (a) noma siphisombululo noma sicelo sasenkantolo lesentiwe ngaphansi kwe-*Companies Act* kufanele sigcwaliswe nge noma siyiswe kunobhala, njengoba kungabe kubekiwe, kantsi kufanele kuvunyelwe ngunobhala ngaphambi kwekfaka noma kuniketwa lokutawuba khona;
- (b) ngalokuhambisana nesicelo sasenkantolo, nobhala angafaka bufakazi naaleminye imiculu lohambisana, kantsi ingavetwa ibuye ilalelwne ngalesikhatsi kulalelwne lesicelo;
- (c) inkapani ingafaka sisombululo ngaphansi kwsigaba 80 se-*Companies Act* kuphela uma ngabe nobhala sekavumele lesisombululo; kanye
- (d) nesitifiketi lesibalwe kusigaba 82(1) se-*Companies Act* ngalokuphatselene nemuntfu losemtsetfweni kufanele siniketwe nobhala.

(4) Inkantolo inganle inganiketi umyalelo wekuhlakata kwemuntfu losemtsetfweni 15 ngaphandle kwemvume yanobhala.

(5) Uma ngabe nobhala anganiketi imvume yalesisombululo ngalomuntfu losemtsetfweni lesentiwe ngaphansi kwsigaba 80 se-*Companies Act*, nobhala angasebentisa—

- (a) kwentela lokuhlata nekuuyeketa kwalomuntfu losemtsetfweni ngaphansi kwsigaba 81 saloMtsetfo; noma
- (b) enkhantolo ngekubeka lomuntfu losemtsetfweni ngaphansi kwekulawulwa ngekuhambisana ne *Financial Institutions (Protection of Funds) Act*.

(6) Umuntfu losemtsetfweni angeke wabekelwa kuhlakatwa noma kuvalewa.

### Kuhlengwa kwelibhizinisi

**101.** (1) Inkantolo inganiketa lotawuhenga libhizinisi ngekwemyalelo wemuntfu 25 losemtsetfweni lekuyinkapani noma lomunye umtimba wemabhizinisi ngesicelo salomuntfu lobalwe kusigaba 100(1), ngaphansle kwemlawuli lobalwe kusigaba 104(1).

(2) (a) Sigaba 100(3), (4), (5) na (6) sisebenta, naletingucuko letidzingekako kulengcikisti, kusicelo sasenkantolo noma sisombululo sekuhlengwa libhizinisi.

(b) kwentela tizatfu tendzima (a), noma yini lecondziswe kusigaba 80 se-*Companies Act* kulesigaba lesibalwe kundzima (a) kufanele sitsatfwе njengalesicondziswe kusigaba 129 saloMtsetfo kanye nalokunye lokubekiwe lokuphatselene nekuhlakata noma kuphelisa kuleto tigaba kufanele kutsatfwе njengalokusho kuhlengwa kwelibhizinisi.

(3) I-*Companies Act* isebeanta, ngekuya ngesigaba 103, ngetinchubo tekuhlengwa 35 kwelibhizinisi lokuhambisana nemuntfu losemtsetfweni lekuyinkapani.

### Kubekwa kwemlawuli

**102.** (1) Ngaphandle kwaleminye imitsetfo, inkantolo ingabeka umlawuli 40 ngekwsigaba 5 se-*Financial Institutions (Protection of Funds) Act* ngalokuphatselene nanoma bani losemtsetfweni.

(2) I-*Financial Institutions (Protection of Funds) Act* isebeanta kulokulawula nekuphatfwа kwemuntfu losemtsetfweni ngumlawuli lobekwe ngaphansi kwalesigaba.

(3) Uma ngabe umlawuli ubekwe ngaphansi kwsigaba, akunakuhlengwa kwelibhizinisi noma inchubo yekuhlakata lengaphansi kwe-*Companies Act* noma inchubo yekuvala lengaphansi kwe-*Insolvency Act* lengacalwa ngalokuhambisana 45 nalowo muntfu losemtsetfweni kute kumiswe kucashwa kwemlawuli, noma ngemvume yenkhantolo.

### Kubekwa kwsisebenti lesitawuhenga ibhizinisi noma umcitsi nkapani kanye nekuvunyelwa kweluhlelo lwekuhlengwa ibhizinisi

**103.** (1) Ngaphandle kwemibandzela ye-*Companies Act*, nobhala kufanele avumele 50 kucashwa kwemhengi welibhizinisi noma umhlakati wemuntfu losemtsetfwenikantsi kufanele acinisekise loluhlelo lekuhlengwa libhizinisi lelibalwe kusigaba 150 se-*Companies Act*.

(2) Ngaphandle kwekuhambisana nemibandzela ye-*Companies Act*, uma ngabe nobhala angavumeli loluhlelo lwekuhlengwa kwebhizinisi lolubalwe kusigaba 150(1) 55 se-*Companies Act*, nobhala angafaka sicelo—

- (a) for the liquidation and winding-up of the regulated person under section 81 of that Act; or
- (b) to court for placing that regulated person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

***Miscellanea***

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**General interpretation of Act**

**104.** This Act must be interpreted and applied in a manner that gives effect to the objects of the Act set out in section 2.

**Right of appeal**

- 105.** (1) A person aggrieved by a decision of—
- (a) the registrar under a power conferred or a duty imposed upon the registrar by or under this 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 to refuse an application by a person to be admitted as a clearing member;
  - (h) an independent clearing house to withdraw the authorisation of a clearing member or to direct a clearing member to terminate the access to the independent clearing house by an officer or employee of such clearing member;
  - (i) an exchange, central securities depository or independent clearing house to impose a penalty on an authorised user, issuer, participant or clearing member of an independent clearing house, 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;
  - (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.

(2) The registrar may appeal to the appeal board against a decision of a market infrastructure, if the market infrastructure fails to respond to a written request by the registrar to review the decision within a reasonable period.

**Evidence**

**106.** A record, including an electronic record, purporting to have been made in the ordinary course of the business of a regulated person, or a copy or printout of or an extract from such record certified to be correct by an officer in the service of such regulated person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under this Act, the rules of an exchange, central securities depository, independent clearing house or any other law or the common law, admissible in evidence against any person and *prima facie* proof of the facts contained in such record, copy, printout or extract.

- (a) sekuhlakatwa noma kubuyiswa kwalomuntfu losemtsetfweni ngaphansi kwesigaba 81 salowo Mtsetfo; noma
- (b) inkhantolo ngekubeka lowo muntfu losemtsetfweni ngaphansi kwekulawulwa ngekuhambisana ne *Financial Institutions (Protection of Funds) Act*.

**Inchubevange**

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**Inchazelo letayelekile yaloMtsetfo**

**104.** LoMtsetfo kufanele kutsi uchazwe ubuye usetjentiswe ngendlela leniketa imphumelelo kutinjongo talomtsetfo letibekwe kusigaba 2.

**Lilungelo lekufaka sikhalo**

- 105.** (1) Umuntu lobanjwe ngesincumo—
- (a) kufaka sandla ekuphatfweni kwesimondzawo setimakethe temnotfo lesismeme;
  - (b) dzinga kutsi tinsita ngemasheya tiniketwe ngalokuliciniso, kufinyeleleka nangendlela lecacile;
  - (c) ngalokuphat selene nenchubo yemtsetfo, ngaphandle kwenchubo yemtsetfo ngaphansi kwendzima (a), kulesatiso sanobhala noma umuntu lolawulako noma sicelo noma kuniketwa kwesicwayiso sesikhashana noma kuphi lokungenteka kucala;
  - (d) ngalokuphat selene nenchubo yekuphatsa, kungasiyo inchubo yekuphatsa lengaphansi kwendzima (a), ngekubekwa kwetisombululo tenkhapani, noma kucashwa kwemlawuli wekuhlakata,;
  - (e) Sikhungo semasheya lesisemkhatsini lokuguculwa kwemasheya langekho emtsetfweni abe titifketi temasheya, kantsi;
  - (f) Sikhungo semasheya lesisemkhatsini tkukhipha Labangenelelako noma kuholabangenelelako kutsi bangafiki kuSikhungo semasheya lesisemkhatsini salabangenelelako;
  - (g) lendlela emasheya labhalisiwe lekufanele agunyatwe nobe akhokheleke ngayo;
  - (h) kutsi akekho umsebentisi losemtsetfweni longenta umsebenti nemuntfu le umsebentisi losemtsetfweni lekakholelwa noma asolela kutsi udzinga imvume njengalophakanyisiwe ngaphansi kwesigaba 78 noma imvume yekulawula emasheya ngekuhambisana nanoma muphi umtsetfo ngaphandle kwekutsatsa tindlela letiphatsekako;
  - (i) kwentela kuvunyelwa ligatja leliphakanyisiwe lemsebentisi losemtsetfweni lapho khona lophakanyisiwe anemasheya ku-akhawanti yemasheya noma kumasheya ku-akhawanti yemasheya lesemkhatsini njengoba ichazwe kuSahluko IV, Labangenelelako noma lilunga leligunyatiwe;
  - (j) yetento letihle kanye nebhizinisi lesezingeni leliphakeme noma, uma ngabe kulibhizinisi, kuphatfwu bantfu labatiphetse kahle kanye nalabanemabhizinisi lahoniphekile.

(2) Ligatja leletayelekile lingadzinga basebentisi labagunyatiwe kanye nemaklayenti abo kutsi afake sandla kuletimali teligatja kwentela tizatfu tekuchubeka nelibhizinisi laleligatja.

**Bufakazi**

- 106.** Lirekhodikufaka ekhatsi le-elektronikhi, lebekufanele entiwe ngendlela letayelekile ngemsebenti wemuntfu losemtsetfweni, noma ikhophi noma lokuprhintiwe kwendzima levela kulamarekhodi lashicilelwe kutsi kube kahle kwestisebenti kulumsebenti kwalowo muntfu losemtsetfweni, ukumkhicito lojwayelekile, kutebugebengu, kuphatsta noma inchubo yekubuyisa endleleni ngaphansi kwaloMtsetfo, imitsetfo egatjeni, libhange lemasheya lesemkhatsini noma indlu letimele legunyatako noma lomunye umtsetfo noma wemaroma, lekutawuba bufka ngekumelana nalomunye umuntu ngaletintfo leticuketfwe kulamarekhodi, ikhophi, lokushishiwe noma lokukhicitwi.

## Regulations

**107.** (1) The Minister may make regulations not inconsistent with this Act with regard to—

- (a) any matter that is required or permitted to be prescribed in terms of this Act; and
- (b) any other matter necessary for the better implementation and administration of the Act or a function or power provided for in this Act:

Provided that in making regulations the Minister must maintain the operational independence of the registrar.

(2) (a) Before the Minister makes any regulation under this section or section 5, the Minister must—

- (i) ensure consultation with recognised industry bodies;
- (ii) consider any recommendations from the registrar prior to the publication of draft regulations;
- (iii) publish a notice of the release of draft regulations in the Gazette, indicating that the draft regulations are available on the National Treasury official website, and 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;
- (iv) in respect of draft regulations to be published in terms of section 5(1), publish on the National Treasury official website, along with the draft regulations, a policy document that informs the draft regulations, and a report on the expediency, effect and implication of the regulations;
- (v) in respect of draft regulations to be published in terms of section 5(1)(b), publish a notice identifying persons who may be declared to be regulated persons and inviting comment from those persons 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
- (vi) submit the draft regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before promulgation.

(b) After consideration of any comments received in response to the publication and tabling of the draft regulations in terms of paragraph (a)—

- (i) the Minister may alter the draft regulations, and need not publish the alterations before promulgating the regulations; and
- (ii) after promulgating the regulations, a copy of the promulgated regulations must be tabled in Parliament.

(c) The Minister must, within a reasonable period after prescribing regulations in terms of this section or section 5, publish on the official website of the National Treasury a document summarising the comments that were received in response to the published draft regulations, and providing a brief response to those comments that were not accommodated in the final regulations promulgated by the Minister.

## Fees

**108.** (1) The registrar may prescribe fees in respect of matters contemplated in this Act and, in relation to such 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.

(2) Fees payable in terms of this Act and interest so payable in respect of overdue fees may be recovered by the registrar by civil action in a competent court.

## Offences and penalties

**109.** A person who—

- (a) commits an offence referred to in section 78, 80 or 81, is liable on conviction to a fine not exceeding R50 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;
- (b) commits an offence referred to in section 93(2), is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

### Imitsetfosimiso

**107.** (1) Ngcongcoshe sngamisa umtsetfo longahambisni nalona—

- (a) noma luphi ludzaba lokudzingheka kutsi lukhishwe ngekwaloMtsetfo  
(b) Noma luphi lolunye ludzaba lekwenta nekulawula kancono loMtsetfo noma sento noma emandla lakuloMtsetfo,

Ngekuya ngekutsi nakwentiwa Umtsetfo Ngcongcoshe kufanele agcine lokuebenta ngekutimela kwanobhala.

“(2)(a) Ngembi kwekutsi Ngcongcoshe ente noma miph iimitsetfo lemisiwe ngaphansi kwalesigaba noma sigaba 5, Ngcongcoshe kufanele—

- (i) acinisekise kutsi utsintsene nemitimba lenakwako yetimboni; 10  
(ii) anake noma tiphi tincomo letivelal kunobhala ngembi kwekutsi akhiphe luuhlaka Iwemtsetfosimiso;  
(iii) Akhise satiso ngekukhishwa kweluhlaka Iwemtsetfosimiso *kuGazethi*, ichaze kutsi loluhlaka Iwemtsetfosimiso luyatfolakala kuwebhu leLitiko Letimali Tavelonkhe, abuye acele kutsi bantfu babeke timvo tabo 15 ngekubhala ngesikhatsi lesitawube sibekwe kulesatiso, leso sikhatsi singeke saba ngaphansi kwemalanga langema-30 kusukela kulelilanga lekukhishwa kwalesatiso;  
(iv) Ngalokuphatsele neluhlaka Iwemtsetfosimiso lekfanele lukhishwe ngekwasigaba 5(1), lelikhishwe kuwebhu leLitiko Letimali Tavelonkhe, kanye naloluhlaka Iwemtsetfosimiso, umculu wenchubomgomlokhulumalohalua Iwemtsetfosimiso, kanye nembiko lokhulumalohalua ngekuphutfuma, umtselela nembangela yalomtsetfosimiso; 20  
(v) Ngalokuphatsele neluhlaka Iwemtsetfosimiso lekfanele lukhishwe ngekwasigaba 5(1)/b), kukhishwe satiso lesisho bantfu lekfanele batiswe njengalabasemtsetfweni nekumema kuphawula kulabo bantfu ngekubhala ngesikhatsi lesibhalwe kulesatiso, leso sikhatsi singeke saba ngaphansi kwemalanga langema-30 kusukela ngekuphutfuma, ngealo satiso; ne  
(vi) kwetfula loluhlaka Iwemtsetfosimiso IwasePhalamende, ngalesikhatsi isebe, kwentela kuhlolakwephalamende lokungenani inyanga yinye ngembi kwekumemetelwa. 30

(b) Ngemuva kwekutsatwa kwanoma miph imibono letfolwe ngekuphendlulwa lebekukhishiwe nekufundvwa kwaloluhlaka Iwemtsetfosimiso ngekwasigaba (a)—

- (i) Ngcongcoshe angagucula loluhlaka Iwemtsetfo, angafuni kukhipha 35 lettingucuko ngembi kwekumemetelwa kwamitsetfosimiso; kanye  
(ii) ngemuva kwekumemetela lemitsetfosimiso, ikhophi yesimemetelo salemitsafimiso kufanele yetfulwe ePhalamende.

(c) Ngcongcoshe kufanele, ngesikhatsi lesifanele ngemuva kwekukhipha lemitsetfosimiso ngekwasigaba noma sigaba 5, akhiphe kuwebhu lesemtsetfweni yeLitiko Letimali Tavelonkhe umculu lobhalwe ummongo wekuphawula lokwatfolwa ngekuphendvula kulokukhishwa kweluhlaka Iwemtsetfosimiso, anikete nemphendvulolemfishane kuleto tiphawulo lebetingakafakwa kulomtsetfosimiso wekugcina lomemetele nguNgcongcoshe. 40

### Timali

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**108.** (1) Nobhala angabeka timali ngekwaloMtsetfo, ngekuphatsele naletotimali netimali letikhokhelwa ngekwaloMtsetfo, lomuntfu lekukhokhwa kuye, indlela yekukhokha, uma kufanele, intalo lekhokhwako nawukweleta.

(2) Italo lekhokhwako ngekwaloMtsetfo ingakhaww ngunobhala ngekumamngala enkhantolo lesebentako. 50

### Emacala netinhlawulo

**109.** Umuntfu—

- (a) lonelicala ngekwasigaba 78, angahlawulisa lengadluli ku R50 million noma aboshwe sikhatsi lesingu 10 iminyaka, noma totimbili tinhlawulo;  
(b) kwenta licala lelibalwe kusigaba 93(2) utawuboshwa noma ahlawulisa 55 lengadluli ku R10 million noma aboshwe kungadluli iminyaka lesihlanu, noma kokubili kuboshwa nekuhlawula;

- (c) contravenes or fails to comply with the provisions of sections 4, 7(1), 24, 25(1), 27(1), 47(1), 54(1) or a prohibition by the registrar referred in terms of section 6(7), commits an offence and is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
- (d) contravenes or fails to comply with the provisions of section 73(1) commits an offence and is liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years or to both the fine and such imprisonment.

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**Savings and transitional arrangements**

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**110.** (1) The licence, registration or authorisation of a regulated person who immediately before the date of commencement of this Act was licensed, registered or authorised under the Securities Services Act, 2004 (Act No. 36 of 2004), repealed by this Act, shall have effect from the date of commencement of this Act as if granted under a corresponding provision of this Act: Provided that a licence, registration or authorisation granted for a specified period remains in force, subject to this Act, for so much of that period as falls after the date of commencement of this Act only.

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(2) The rules of an exchange or central securities depository made under the Securities Services Act, 2004, repealed by this Act and in force immediately before the date of commencement of this Act, continue to be in force in so far as they are not inconsistent with this Act: Provided that the exchange or central securities depository must, within six months from the date of commencement of this Act, amend or replace its rules so as to comply with the requirements of this Act.

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(3) Subsection (2) applies with the changes required by the context to the listing requirements of an exchange.

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(4) Sections 84 and 85 apply to any investigation of alleged non-compliance with or offences under the Securities Services Act, 2004, instituted after its repeal by this Act.

(5) The registrar may on or after the commencement of this Act, but prior to a date determined by the Minister, on reasonable grounds, on application or on the registrar's own initiative, provide for any transitional arrangements regarding the application of any provision of this Act to a regulated person.

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**Repeal or amendment of laws**

**111.** The laws referred to in the Schedule are hereby repealed or amended to the extent specified in the third column thereof.

**Short title and commencement**

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**112.** This Act is called the Financial Markets Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

- (c) kungahambisani netigaba 4, 7(1), 24, 25(1), 27(1), 47(1), 54(1)noma kuvimbela lokubekwe ngunobhala ngekwasigaba 6(7) wenta licala utawuboshwa noma ahlawuliswe R10 million aboshwe kungadluli iminyaka leshlanu, noma kokubili kuboshwa nekuhlawula.
- (d) kucekela phansi noma kuhluleka kuhambisana nemibandzela yesigaba 73(1) wente licala kantsi utawugwetjwa ahlawuliswe imali lengadluli kusigidzi R1 noma aboshwe sikhatsi lesingadluli iminyaka leshlanu noma kokubili kuhlawula nekuboshwa.

### Lokongiwe

**110.** (1) ilayisensi, kubhalisa noma kugunyatwa kwemuntfu losemtsetfweni 10 ngekushesha ngembi kwalolusuku Iwekulala kusebenta kwaloMtsetfo lowalayisensa, lobhaliswe ngaphansi kwe *Securities Services Act*, 2004, ucitfwe nguloMtsetfo, utawuba nemtselela kusukela ngalokusuku Iwekulala kusebenta kwaloMtsetfo njengoba kuniketiwe.

(2) Imitsetfo yeligatja noma libhange lemasheya lasemkhatsini letentiwe ngaphansi 15 kwe-*Securities Services Act*, 2004, kucitfwe ngaloMtsetfo ngangenkhani ngembi kwlolusuku Iwekulala kusebenta kwaloMtsetfo, kuchubeka nekusebenta uma ngabe bangangcubutani naloMtsetfo: Kuya ngekutsi yeligatja noma libhange lemasheya lasemkhatsini kufanele, kungakadluli ttinyanga letisitfupha kusukela ngalelilanga lekulala kusebenta kwaloMtsetfo, kuchibiyela imitsetfo yawo kute uhambisane 20 nalomtsetfo.

(3) Sigatjana (2) sisebenta ngaletingucuko letidzingeka kulengcikitsi kuloku lokudzingekako kute ubhaliswe ligatja.

(4) Tigaba 84 na 85 tisebenta kulabo labangahambisani nalomtsetfo we-*Securities Services Act*, 2004, losetjentiswe ngemuva kweMtsetfo wabo locitsiwe. 25

(5) Nobhala ngemuva kwekulala kwekusebenta kwaloMtsetfo, ngekuya ngekulusuku loluncunywe nguNgcongcoshe, ngetindlela letifanele, ngekubhalisa noma ngemsebenti wanobhala ngalokuphat selene nesicelo sanoma ngumuphi Umtsetfo kumuntfu losemtsetfweni.

### Imitsetfo lechitjiyelwe

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**111.** Lemitsetfo lebalwe kuleshejuli itawucitfwa noma ichitjiyelwe ngalendlela lebalwe kulekholamu yesitsatfu.

### Sihloko lesifushane nekulala kusebenta

**112.** LoMtsetfo ubitwa ngeMtsetfo Wetimakethe temnotfo, 2012, kantsi utawucala kusebenta ngelusuku lolutawubekwa ngumengameli ngekulumemeta *kuGazethi*. 35

**Schedule**  
**LAWS REPEALED OR AMENDED**  
*(Section 111)*

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 36 of 2004	Securities Services Act	The repeal of the whole Act.
Act No. 37 of 2002	Financial Advisory and Intermediary Services Act, 2002	<p><b>1.</b> The substitution in section 45(1) for paragraph(a)(i) of the following paragraph:</p> <p style="padding-left: 2em;">“(1) The provisions of this Act do not apply to the rendering of financial services by—</p> <p class="list-item-l1">(a) (i) any “authorised user”, “clearing member”, “licensed clearing house”, “licensed central securities depository” “licensed exchange” or “participant” as defined in section 1 of the [Securities Services Act, 2002, or exchange licensed under section 10 of that Act] Financial Markets Act, 2012 that is authorised by that Act to render those financial services ;“.</p>
Act No. 45 of 2002	Collective Investment Schemes Control Act, 2002	<p>The substitution for section 5 of the following:</p> <p><b>“Requirement for the administration of collective investment schemes and application of Act</b></p> <p class="list-item-l1">(1) No person may perform any act or enter into any agreement or transaction for the purpose of administering a collective investment scheme, unless such person—</p> <p class="list-item-l2">(a) is registered as a manager by the registrar or is an authorised agent; or</p> <p class="list-item-l2">(b) is exempted from the provisions of this Act by the registrar by notice in the <i>Gazette</i>.</p> <p class="list-item-l1">(2) The provisions of this Act do not apply to the rendering of securities services by any “authorised user”, “clearing member”, “licensed central securities depository” “licensed clearing house”, “licensed exchange” or “participant” as defined in section 1 of the Financial Markets Act, 2012 to the extent that the rendering of those services are specifically supervised under that Act;”.</p>

**Ishejuli****IMITSETFO LECITSIWE NOMA LECHITJIYELWE***(Sigaba 111)*

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
Umtsetfo Nom. 36 wanga 2004	<i>Securities Services Act</i>	Kucitfwa Umtsetfo wonkhe.
Umtsetfo Nom. 37 wanga 2002	<i>Financial Advisory and Intermediary Services Act, 2002</i>	<p><b>1.</b> Kukhishwa kwasigaba 45(1) kufakwe indzima <i>(a)(i)</i> yalendzinyana lelandzelako:</p> <p>“(1) Lemibandzela yalomtsetfo ayisebenti ekuniketweni kwetisnita temali—</p> <p><i>(a) (i)</i> ngunoma muphi “umsebentisi losemtsetfweni”, “<u>lilunga leligunyatiwe</u>”, “<u>ligatja leligunyatiwe lelibhalisiwe</u>”, “<u>silulu semasheya lesisemkhatsini lesibhalisiwe</u>” “<u>ligatja lelibhalisiwe</u>” noma “Labangenelelako” njengoba kuchazwe kusigaba 1 se [<i>Securities Services Act, 2002, noma kuntjintjwa kwelayisensi ngaphansi kwasigaba 10 of that Act</i>] UMTsetfo weTimakethe Temali, 2012 ngendlela yekutsi kuniketwa kwalowo msebenti kuyalawulwa ngaphansi kwaloMtsetfo;”.</p>
Umtsetfo Nom. 45 wanga 2002	<i>Collective Investment Schemes Control Act, 2002</i>	<p>Lokukhishwa kwasigaba 5 salokulandzelako:</p> <p><b>“Requirement for the administration of collective investment schemes ne application of Act</b></p> <p><i>(1)</i> Akekho umuntfo longasebentisa noma muphi Umtsetfo noma angenele kunoma sippi sivumelwano noma itransekshini kwentela sizatfu sekulawula kusisa lokuhlanganisiwe kwasikimu, ngaphandle kwekutsi lowo muntfu—</p> <p><i>(a)</i> ubhalisiwe njengemphatsi ngunobhala noma sitfunywa lesisemtfweni; noma</p> <p><i>(b)</i> ukhishiwe kulemibandzela yalomtsetfo ngunobhala ngesatiso kugazethi.</p> <p><i>(2) Lemibandzela yalomtsetfo ayisebenti ekuniketweni kwemasheya nuna noma ngumuphi “umsebentisi losemtsetfweni”, “<u>lilunga leligunyatiwe</u>”, “<u>silulu semasheya lesisemkhatsini lesibhalisiwe</u>” “<u>ligatja leligunyatiwe lelibhalisiwe</u>”, “<u>ligatja lelibhalisiwe</u>” noma “Labangenelelako” njengoba kuchazwe kusigaba 1 seMtsetfo weTimakethe Temali, 2012 ngendlela yekutsi lokuniketwa kwalomsebenti kuyalawulwa ngaphansi kwaloMtsetfo;”.</i></p>

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 89 of 1998	Competition Act, 1998	<p><b>1.</b> The substitution for section 18(2) of the following:</p> <p>“(2) Despite anything to the contrary in this Act, the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b), and the Competition Tribunal may not make an order in terms of section 16(2), if the—</p> <p>(a) merger constitutes—</p> <ul style="list-style-type: none"> <li>(i) an acquisition of shares for which permission is required in terms of section 37 of the Banks Act, 1990 (Act No. 94 of 1990); <b>[or]</b></li> <li>(ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990)<b>[, or section 29 of the Cooperative Bank Act, 2007]</b>; <b>[and]</b></li> <li>(iii) an acquisition of shares for which approval is required in terms of section 67 of the Financial Markets Act, 2012; or</li> <li>(iv) a transaction for which approval is required in terms of section 64 of the Financial Markets Act, 2012; and</li> </ul> <p>(b) Minister of Finance has, in the <i>prescribed</i> manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that—</p> <ul style="list-style-type: none"> <li>(i) the merger is a merger contemplated in paragraph (a) <b>[<i>(i)</i> or <i>(ii)</i>]</b>; and</li> <li>(ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990) or <b>[section 29 of the Cooperative Banks Act, 2007]</b> the Financial Markets Act, 2012, as the case may be, only. </li></ul>
Act No. 28 of 2001	Financial Institutions (Protection of Funds) Act, 2001	<p><b>1.</b> The deletion of section 8.</p> <p><b>2.</b> The substitution for section 6A(2) of the following:</p> <p>“(2) The directorate may, after an investigation carried out by the directorate under <b>[Chapter VIII of the Securities Services Act, 2004]</b> Chapter X of the Financial Markets Act, 2012, refer an alleged contravention to the enforcement committee.”.</p> <p><b>3.</b> The substitution for section 6D(2)(a) of the following:</p> <p>“(a) Impose a penalty by ordering the respondent to pay a sum of money to the board; <b>and</b>”.</p>

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
Umtsetfo Nom. 89 wanga 1998	<i>Competition Act, 1998</i>	<p><b>1.</b> Lokukhishwa kwesigaba 18(2) salokulandzelako:</p> <p>“(2) Ngaphandle kwanoma yini lengabangela kungcubutana kulo-Mtsetfo, lenkhomishana yekuncintisana angeke yenta sincumo ngekwesigaba 13(5)(b) noma 14(1)(b), kanye ne-Litsimba Lekuncintisana angeke labeka umtsetfo ngekwesigaba 16(2), uma ngabe—</p> <p>(a) kuba munye kufaka ekhatsi—</p> <ul style="list-style-type: none"> <li>(i) <u>kutfolwa kwemasheya lapho khona imvume idzingeka khona ngekwesigaba 37 se-Banks Act, 1990 (Umtsetfo Nom. 94 wanga 1990); [noma]</u></li> <li>(ii) <u>itransekshini lapho khona imvume idzingeka ngekwesigaba 54 se-Banks Act, 1990 (Umtsetfo Nom. 94 wanga 1990)[,noma sigaba 29 se-Cooperative Bank Act, 2007]; [ne]</u></li> <li>(iii) <u>kutfolwa kwemasheya lapho khona imvume idzingeka khona ngekwesigaba 68 seMtsetfo weTimakethe Temali, 2012; noma</u></li> <li>(iv) <u>itransekshini lapho khona imvume idzingeka ngekwesigaba 65 seMtsetfo weTimakethe Temali, 2012; na</u></li> </ul> <p>(b) Ngcongcoshe wetimali, ngendlela lebekiwe, akhiphe satiso kuNkhomishani ahsu emagama alamacembu latawuba munye nekucinise-kisa kutsi—</p> <ul style="list-style-type: none"> <li>(i) lokuba munye kuhlangana lokuvetwe kundzima (a)(i) noma (ii); kanye</li> <li>(ii) <u>kuyinshisekelo yemmango kutsi lokuba munye kuya nge Banks Act, 1990 (Umtsetfo Nom. 94 wanga 1990) noma [sigaba 29 se-Cooperative Banks Act, 2007] UMtsetfo weTimakethe Temali, 2012, kuphela.</u></li> </ul>
Umtsetfo Nom. 28 wanga 2001	<i>Financial Institutions (Protection of Funds) Act, 2001</i>	<p><b>1.</b> Kukhishwa kwesigaba 8.</p> <p><b>2.</b> Kukhishwa kwesigaba 6A(2) salokulandzelako:</p> <p>“(2) Lihhovisi lemcondisi linga, ngemuva kweluphenyo lolwentiwe lihhovisi lemcondzisi ngaphansi kwe <u>[Sahluko VIII se-Securities Services Act, 2004] Sahluko IX seMtsetfo we-Timakethe Temali, 2012</u>, kndluliselwe kungenelela lokubonwako kulelikomidi lelishaya umtsetfo.</p> <p><b>3.</b> Kukhishwa kwesigaba 6D(2)(a) salokulandzelako: “(a) Kuniketwa inhla-wulo ngekucela lophendvulako kutsi akhokhe samba semali kubhodi; <u>kanye”;</u></p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p><b>4.</b> The substitution for section 6D(2)(b)(ii) of the following subparagraph:</p> <p style="padding-left: 2em;">“(ii) if the respondent contravened section [73, 75 or 76 of the Securities Services Act, 2004] 78 of the Financial Markets Act, 2012, order the respondent to pay to the board [a compensatory] amount calculated in accordance with section [77(1), (2), (3) or (4)] section 82 of that Act.”.</p> <p><b>5.</b> The substitution for section 6H of the following section:</p> <p style="padding-left: 2em;"><b>“Utilisation of administrative sanction”</b></p> <p style="padding-left: 3em;">(1) Any payment received by the board pursuant to an administrative sanction imposed under section 6D(2)(a) must, subject to [subsection] subsections (2) and (3), be utilised for purposes of consumer education or the protection of the public.</p> <p style="padding-left: 3em;">(2) A compensatory amount received pursuant to an order under section 6D(2)(b)(ii) must be dealt with in accordance with section [77(7), (8) and (9) of the Securities Services Act, 2004] 82(4) to (7) of the Financial Markets Act, 2012.”.</p>
Act No. 71 of 2008	Companies Act, 2008	<p><b>1.</b> Section 1 of the Companies Act is hereby amended by—</p> <p>(i) the substitution for the definition of “central securities depository” of the following definition:</p> <p style="padding-left: 2em;">“‘central securities depository’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2012;”;</p> <p>(ii) the substitution for the definition of “exchange” of the following definition:</p> <p style="padding-left: 2em;">“‘exchange’ when used as a noun, has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2012;”;</p> <p>(iii) the substitution for the definition of “listed securities” of the following definition:</p> <p style="padding-left: 2em;">“‘listed securities’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2012;”;</p> <p>(iv) the substitution for the definition of “nominee” of the following definition:</p> <p style="padding-left: 2em;">“‘nominee’ [has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004)] means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;”;</p>

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
		<p><b>4.</b> Lokukhishwa kwasigaba 6D(2)(b)(ii) salokulandzelako kwalendzinyana:</p> <p>“(ii) uma ngabe lolophendvulako aphula sigaba [73, 75 noma 76 se-Securities Services Act, 2004]80 seMtsetfo weTimakethe Temali, 2012, bacele lophendvulako kutsi akhoke kubhodi [a] linani [lesincepheteliso] lelibalwe ngekuhambisana nesigaba [771], (2), (3) noma (4) sigaba 84(1) saloMtsetfo.”; kanye</p> <p><b>5.</b> Lokukhishwa kwasigaba 6H salokulandzelako kusigaba:</p> <p><b>“kusebentisa lunklinyo lwekulawula</b></p> <p>(1) Noma kuphi lokukhokhelwe yibhodi lokuhambisana nekulawula kunkhinya lokubekwe ngaphansi kwasigaba 6D(2)(a) kufanele, sungekuya nge [sigatjana] tigaba (2) na (3), asetjentsi selwe tinjongo temfundvo yebatsengisi noma kuvikela umphakatsi.</p> <p>(2) Imali yesincephetelliso letfolakele ngena yemyalelo ngaphansi kwasigaba 6D (2)(b)(ii) kufanele kusetjentwe ngayo ngekuhambisana nesigaba [77(7), (8) and (9) se-Securities Services Act, 2004] 84(2) kuya (5) seMtsetfo weTimakethe Temali, 2012.“.</p>
Umtsetfo Nom. 71 wanga 2008	<i>Companies Act, 2008</i>	<p><b>1.</b> Sigaba 1 se-<i>Companies Act</i> sichitjiyelwa nge—</p> <p>(i) kukhishwa kwenchazelo ye “<b>ligatja lemasheya lasemkhatsini</b>” salokulandzelako ichazelo:</p> <p>“<b>ligatja lemasheya lasemkhatsini</b>” inechazelo lebekwe kusigaba 1 se-[<i>Securities Services Act, 2004</i> (Umtsetfo Nom. 36 wanga 2004)] UMTsetfo weTimakethe Temali, 2012;”</p> <p>(ii) lokukhishwa kwenchazelo “<b>ligatja</b>” salokulandzelako kwenchazelo:</p> <p>“<b>ligatja</b> uma lisetjentiwswe njengeligama, linechazelo lebekwe kusigaba 1 se-[<i>Securities Services Act, 2004</i> (Umtsetfo Nom. 36 wanga 2004)] UMTsetfo weTimakethe Temali, 2012;</p> <p>(iii) lokukhishwa kwenchazelo “<b>emasheya labhalisiwe</b>” salokulandzelako sinechazelo:</p> <p>“<b>emasheya labhalisiwe</b>” sinchazelo lebekwe kusigaba 1 se-[<i>Securities Services Act, 2004</i> (Umtsetfo Nom. 36 wanga 2004)] UMTsetfo weTimakethe Temali, 2012;</p> <p>(iv) lokukhishwa kwenchazelo “<b>lophakanyisiwe</b>” salokulandzelako kwenchazelo:</p> <p>“<b>lophakanyisiwe</b>” sinchazelo lebekwe kusigaba 1 se-[<i>Securities Services Act, 2004</i> (Umtsetfo Nom. 36 wanga 2004)] UMTsetfo weTimakethe Temali, 2012;</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(v) the substitution for the definition of “participant” of the following definition:</p> <p>“ ‘participant’ has the meaning set out in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2012;”;</p> <p>(vi) the substitution for the definition of “uncertificated securities” of the following definition:</p> <p>“ ‘uncertificated securities’ means any securities defined as such in section [29 of the Securities Services Act, 2004 (Act No. 36 of 2004)] 1 of the Financial Markets Act, 2012;”.</p> <p><b>2.</b> The substitution in section 5(4)(b)(i) of the Act for item <i>(ff)</i> of the following:</p> <p>“(ff) [Securities Services Act, 2004 (Act 36 of 2004)] Financial Markets Act, 2012;”.</p> <p><b>3.</b> The substitution in section 69(8)(b)(iv) of the Act for item <i>(cc)</i> of the following:</p> <p>“(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the [Securities Services Act, 2004 (Act 36 of 2004)] Financial Markets Act, 2012, or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);”.</p> <p><b>4.</b> The substitution for section 116(4)(a)(iii) of the following:</p> <p>“(iii) has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act or obtained the approval of the Registrar of Securities Services in terms of section 64 of the Financial Markets Act, 2012, if so required by that Act; and”.</p>

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
		<p>(v) lokukhishwa kwalenchazelo  <b>“Labangenelelako”</b> salokula-ndzelako kwalenchazelo:  <b>“Labangenelelako”</b> sinchazelo lebekwe kusigaba 1 se- [<i>Securities Services Act, 2004 (Umtsetfo Nom. 36 wanga 2004)</i>] <u>UMtsetfo weTimakethe Temali, 2012;</u></p> <p>(vi) lokukhishwa kwalenchazelo  <b>“emasheya”</b> salokulandzelako kwalenchazelo:  <b>“emasheya</b> sinchazelo lebekwe kusigaba 1 se- [<i>Securities Services Act, 2004 (Umtsetfo Nom. 36 wanga 2004)</i>] <u>UMtsetfo weTimakethe Temali, 2012,</u> kanye nalokufaka ekhatsi emasheya latfolakala kunkhapani letimele; kanye</p> <p>(vii) lokukhishwa kwalenchazelo  <b>“Emasheya langekho emtsetfweni”</b> salokulandzelako kwalenchazelo:  <b>“Emasheya langekho emtsetfweni”</b> kushiwo noma waphi emasheya lachazwe njengaloko kusigaba [<i>29 se-Securities Services Act, 2004 (Umtsetfo Nom. 36 wanga 2004)</i>] <u>1 seMtsetfo weTimakethe Temali, 2012;</u>”.</p> <p><b>2.</b> Kukhishwa kwesigaba 5(4)(b)(i) (<i>ff</i>) salokulandzelako:  <b>“(ff) [Securities Services Act, 2004 (Act 36 wanga 2004)] UMtsetfo weTimakethe Temali, 2012;”.</b></p> <p><b>3.</b> Kukhishwa kwesigaba 69(8)(b)(iv) saloMtsetfo (<i>cc</i>) salokulandzelako :  <b>“(cc) Ngphansi kwaloMtsetfo, se-<i>Insolvency Act</i>, 1936, (Umtsetfo 24 wanga 1936), Se-<i>Close Corporations Act</i>, 1984, se-<i>Competition Act</i>, Se-<i>Financial Intelligence Centre Act</i>, 2001 (Umtsetfo 38 wanga 2001), [<i>Securities Services Act, 2004 (Umtsetfo 36 wanga 2004)</i>] <u>UMtsetfo weTimakethe Temali, 2012,</u> noma Sahluko 2 se-<i>Prevention and Combating of Corrupt Activities Act</i>, 2004 (Act 12 wanga 2004);”.</b></p> <p><b>4.</b> Lokukhishwa kwesigaba 116(4)(a)(iii) salokulandzelako:  <b>“(iii) kuniketwe imvume yaNgcongcoshe Wetimali ngekwesigaba 54 se-<i>Banks Act</i> noma kutfola imvume yaNobhala Wetimakethe temnotfo ngekwesigaba 65 seMtsetfo weTimakethe Temali, 2012, Uma ngabe kudzingwe nguloMtsetfo; kanye</b></p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p><b>5.</b> The substitution for section 116(9) of the following:</p> <p>“(9) If, with respect to a transaction involving a company that is regulated in terms of the Banks Act or the Financial Markets Act, 2012, there is a conflict between a provision of subsection (7) and a provision of section 54 of [that] the Banks Act or section 64 of the Financial Markets Act, 2012 Act, as the case may be, the provisions of [that Act] those Acts prevail.”.</p>
Act No. 24 of 1936	Insolvency Act, 1936	<p><b>1.</b> The substitution for section 35A of the following:</p> <p><b>“35A. Transactions on exchange.—</b>            (1) In this section—  <b>[“exchange”]</b> <b>“market infrastructure”</b> means—  <ol style="list-style-type: none"> <li>an exchange as defined in section 1 and licensed under section [10] of the [Securities Services Act, 2004] and for the purposes of this section includes] Financial Markets Act, 2012; and</li> <li>a central securities depository as defined in section 1 and licensed under section 29 of that Act [and which is also licensed as a clearing house under section 66 of that Act,]; or</li> <li>a clearing house as defined in section 1 of that Act and licensed under section 49 of that Act;</li> </ol> <p>“[exchange] rules” means the exchange rules, [and] depository rules or clearing house rules, as defined in section 1 of the [Securities Services Act, 2004] Financial Markets Act, 2012;</p> <p>“market participant” means an authorised user, a participant, a clearing member or a client [or a settling party] as defined in section 1 of the [Securities Services Act, 2004] Financial Markets Act, 2012, or any other party to a transaction;</p> <p>“transaction” means any transaction to which the rules [of an exchange] apply.</p> </p>

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
		<p>5. Lokukhishwa kwasigaba 116(9) salokulandzelako:</p> <p>(9) Uma ngabe, ngalokuphat selene netransekshini kufaka ekhatsi inkapani lelawulwa ngekwe-<i>Banks Act</i> noma <u>UMtsetfo weTimakethe Temali, 2012</u>, kunekungcubutana emkhatsini wesigaba (7) nemibandzela yalesigaba 54 se <b>[kutsi]</b> le-<i>Banks Act</i> noma <u>UMtsetfo weTimakethe Temali, 2012</u> <u>Umtsetfo, njengoba kungabe kubekiwe, lemibandzela ya[lowo Mtsetfo]leMitsetfo ivimbela.</u></p>
Umtsetfo Nom. 24 wanga 1936	<i>Insolvency Act, 1936</i>	<p>1. Lokukhishwa kwasigaba 35A salokulandzelako:</p> <p><b>“35A. Lamatransekshini.—</b>            (1) Kulesigaba—  <b>[“ligatja”] “Luhlakanchanti lwekuniketwa kwetimakethe” kushiwo—</b>            (a) ligatja njengoba kuchazwe kusigaba 1 nalokuniketwe ilayisensi ngaphansi kwasigaba [10]11 se- [<i>Securities Services Act, 2004</i>] <u>UMtsetfo weTimakethe Temali, 2012</u>; and            (b) Sikhungo semasheya lesisemkhasini njengoba kuchazwe kusigaba 1 saloMtsetfo njengendlu legunyatako ngaphansi kwasigaba 66 salowo <b>Mtsetfo,];</b> noma            (c) indlu legunyatako njengoba kuchazwe kusigaba 1 saloMtsetfo kanye nekulayisensa ngaphansi kwasigaba 51 saloMtsetfo;  <b>[“Imitsetfo yeligatja”]</b>  <b>“imitsetfo”</b> kushiwo Imitsetfo yeligatja, <b>[ne]</b> nemitsetfo yesikhungo <b>noma imitsetfo</b> yendlu legunyatako, njengoba kuchazwe kusigaba 1 se- [<i>Securities Services Act, 2004</i>] <u>UMtsetfo weTimakethe Temali, 2012</u>;  <b>“labangenelelako etimakethe”</b> kushiwo umsebentisi losemse-tfweni, nalabangenelelako, <b>lilunga leligunyatiwe</b> noma iklayenti [noma incenye yekucedzisa]njengoba kuchazwe kusigaba 1 se- [<i>Securities Services Act, 2004</i>] <u>UMtsetfo weTimakethe Temali, 2012</u>, noma lelinye licembu letransekshini;  <b>“itransekshini”</b> kushiwo noma yiphi itransekshini lapho khona <b>[imitsetfo yeligatja] imitsetfo</b> lokusetjentisiwe.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(2) If upon the sequestration of the estate of a market participant the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the [exchange in question] market infrastructure in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall in accordance with the [rules of that exchange] rules applicable to any such transaction be entitled to terminate [all such] transactions or revoke settlement instructions and the trustee of the insolvent estate of the market participant shall be bound by such termination or revocation.</p> <p>(3) No claim as a result of the termination or revocation of any transaction as contemplated in subsection (2) shall exceed the amount due upon termination or revocation in terms of the [rules of an exchange] rules in question.</p> <p>(4) Any [rules of an exchange] rules and the practices thereunder which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position or for the revocation of settlement instructions shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to be settled on a date occurring after the sequestration, [but which is, in terms of such rules and practices, to be settled on a date occurring after sequestration,] or settlement of which was overdue on the date of sequestration.</p> <p>(5) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in accordance with the rules [of an exchange].”.</p>
Act 78 of 1998	National Payment System Act, 1998	<p>The substitution for section 8(1) of the following:</p> <p>“(1) The provisions of this section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Banks Act, the Co-operative Banks Act, the Postal Services Act, 1998 (Act 124 of 1998), [or] the Mutual Banks Act or the Financial Markets Act, 2012.”.</p>

Inom. nemnyaka wemtsetfo	Sihloko lesifushane	Lizinga lekuchibiyela noma kucitfwa
		<p>(2) Uma ngabe nakuvalwa lelifa lelisemakethe labangenelelako lomtfwalo walemakethe yalabangenelelako ngalokuphat selene nematranse-kshini lentiwe uma ngabe lokuvalwa kungakentiwa, loku <b>[ligatja lekukhulunywa ngalo]</b> umnikeli wetinsitanchanti temakethe ngekuhambisana nanoma muphi umbandzela lokolodwa nguye, noma lenye imakethe yalabangenelelako ngekuhambisana nemtfwalo lokolodwa kuleyo makethe yalabangenelelako, kutawufanele ngekuhambisana na <b>[imitsetfo yalelo gatja]</b> imitsetfo lekhona kulawo matranekshini kutawufanele imiswe <b>[onkhe]</b> ematranekshini noma kucitfwe imiyalelo yekucedzela kanye nebatsenja bale-akhawunti lehlakatiwe yemakethe yalabangenelelako kutawuboshwa nguloko kuvalwa noma kucitfwa.</p> <p>(3) Akunamakleyimu labangelwa ngulokuvalwa kucitfwa kwanoma yiphi itranekshini njengoba kuvetwe kusigatjana (2) kutawundlula lelinani lelikhona uma ngabe sekutauvalwa noma <b>kucitfwe</b> ngekuhambisana ne <b>[mitsetfo yeligtja]imitsetfo</b> lekukhulunywa ngayo.</p> <p>(4) Noma miphi <b>[imitsetfo yeligtja]</b> imitsetfo nalekentiwa ngapohansi kwaloko lokufaka ekhatsi kulandzelela imakethe yesimo salabangenelelako noma kulungiswa ngalokuphat selene nematranekshini lacedzelwelwe yimakethe yalabangenelelako noma kuvula noma kuvala kwemakethe yesimo salabangenelelako <b>noma kucitfwa</b> kwekedzelela <b>kwemi yalelo</b> kutawufanele ngaphansi kwekuvalwa kwelefa lemakethe yalabangenelelako kube sibopho kulesikhwama ngalokuphat selene nanoma maphi ematranekshini noma sivumelwano lokucedzelwelwe yimakethe yalabangenelelako ngekuya ngekuvalwa, kodvwa le, ngalokuphat selene naleyo mitsetfo netento, kulo kuvalwa, <b>[lokusho kutsi, ngekwalemitsetfo nemisebenti, kutsi kukhokhelwe ngalolusuku lokuvele ngemuva kwekuvalwa,</b>] noma kucedzelela lebekndlulele ngalolusuku lekuvalwa.</p> <p>(5) Sigaba 341(2) se-<i>Companies Act</i>, 1973 (Umtsetfo Nom. 61 wanga 1973), netigaba 26, 29 ne 30 saloMtsetfo akukafaneli bafake sicelo kumphahla lekhokhelwe ngekuhambisana <b>[nemitsetfo yeligtja]</b> imitsetfo.</p>
Umtsetfo 78 wanga 1998	<i>National Payment System Act</i> , 1998	<p>Lokukhishwa kwasigaba 8(1) saloku lokulandzelak:</p> <p>“(1) Imibandzela yalesigaba iyasebenta ngaphand kwanoma yini lengcubutanako kulomtsetfo lophat selene nekuhlakatwa noma <i>Companies Act, Banks Act, Co-operative Banks Act, Postal Services Act</i>, 1998 (Umtsetfo 124 wanga 1998), <b>[noma]</b> i-Mutual Banks Act noma Umtsetfo weTimakethe Temali, 2012.”.</p>

