Submission

To the Australian Law Reform Commission Inquiry

into

A Review of the Legislative Framework for Corporations and Financial Services Regulation

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21 March 2022

1. Summary of submission

1.1. A stand-alone piece of legislation, completely re-drafted, written in plain (stark) English, which clearly articulates six core consumer rights (reflecting Commissioner Hayne's six norms of behaviour, or the six pillars of the UK Treating Customers Fairly regime), with special regard paid to both the organisation of chapters in the legislation, and the placement of the six core rights. Fifty to 100 pages in length, that in addition reduces the risk of regulatory capture, by shutting the 'revolving door'.

2. Principal sources informing this submission

2.1. The first author of this submission draws upon his involvement in applying and operationalising the recommendations made in this submission. These include:

2.1.1. Membership of the Independent Committee of Experts convened by the South African National Treasury from late 2017 onwards, for the drafting of the *Conduct of Financial Institutions Bill* (CoFI). This bill will enact into South African law the six Treating Customers Fairly (TCF) principles developed by the UK Financial Services Authority (FSA), and deployed in the UK from 2005.

2.1.2. Leadership in the design of the world's first customer-outcomes indicator framework for CGAP (a division of the World Bank), currently in beta testing in the South African financial industry, for intended deployment in other jurisdictions,[1] covering ± 1.5 billion consumers. This work included extensive consultations with the South African conduct regulator, the Financial Sector Conduct Authority (FSCA), with a particular focus on assessing compliance with CoFI, and enforcement.

2.1.3. Ongoing advice to members of the House of Commons and House of Lords as a member of the Secretariat of the All Party Parliamentary Group for Personal Banking and Fairer Financial Services, House of Commons House of Lords.

2.1.4. Membership of the European Banking Institute (EBI) research work-stream on EU financial supervisory architecture.

2.1.5. Ongoing advice to the New Zealand Financial Markets Authority (FMA), from 2021 onwards.

2.1.6. Advice to members of Parliament in Australia and South Korea on financial system regulation and mitigating regulatory capture.

[1] Jurisdictions envisaged include India, Brazil, The Philippines, Peru and others.

2.1.7. Consulting advice to the financial industry in South Africa on compliance with CoFI, including four of South Africa's big five banks, South Africa's largest fund manager, and two of South Africa's largest insurers.

2.1.8. Advice to industry associations in South Africa (Banking Association, South Africa) and South Korea (Insurance Association of Korea) on fair conduct towards consumers.

2.1.9. Founding membership of, and board involvement in, the International Academy of Financial Consumers (IAFICO), headquartered in South Korea.

2.1.10. Various peer-reviewed publications, in national and international journals, on financial system regulation, regulatory theory, market conduct and consumer protection (cited in, *inter alia*, reports issued by the Central Banks of Portugal and China).

2.1.11. PhD in law from the Melbourne Law School on financial regulatory enforcement.

2.2. The second author draws upon her experience as a linguist with 20 years of research and teaching experience in language and meaning.

2.2.1. She is lead author on a number of books about academic literacy and other aspects of language.

2.2.2. She is the Vice Chair of the International Systemic Functional Linguistics Association and Vice President of the Australian Systemic Functional Linguistics Association.

2.2.3. She appears regularly on ABC radio, discussing languages and linguistics.

2.2.4. She has held research contracts with the federal government since 2012, using linguistic tools of analysis to analyse relevant language data.

3. Objective of this submission

3.1. To support, first and foremost, consumers. It is their rights and privileges which the legislation ought to provide for, because it is consumers who are most affected by industry misconduct and, it is respectfully submitted, are the ones who have to date been most poorly served by the current regime.

3.1.1. To that end the focus of this submission is to enable consumers to find *where* the relevant provisions are in the legislation, and once located, *what* those provisions mean.

4. Stand-alone

4.1. It is respectfully submitted that supporting financial consumers – in particular retail consumers – to be able to more easily locate and understand their rights, than is currently the case under Ch 7 of the *Corporations Act*, would be desirable.

4.2. The current regime, located in Ch 7 of the *Corporations Act*, runs to 476 pages which, in turn is subsumed in some 1700 pages of legislation.

> *The length of the Corporations Act… has increased by 178% since 1981. In preparing Background Papers for its hearings, this Commission found that an introductory overview of the law governing consumer credit in Australia required 86 pages of explanation; financial advice and sale of financial products required 114; and small business lending law that did not overlap with that governing consumer lending, required 41 pages to explain.*[2]
>
> *… the number of words in the Act has almost increased by 50 per cent from 2001 to 2015 (from 483,902 in 2001 to 715,754 in the most recent 2015 printed version) …*[3]
>
> *… Chapter 7 of the Corporations Act, Financial Services and Markets is the longest Chapter of 380 pages and the regulations that provide more detail of the law for that chapter are an additional 304 pages.*[4]

4.3. This, it is respectfully submitted, is antagonistic to the principles of access to justice which, in turn, undermines the rule of law.

> *As a recent article by Crawford argues, there is "cause for concern" that the length and complexity of Commonwealth legislation, in particular, is contrary to rule of law values.*[5]

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[2] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, (1 February 2019) Final Report, Financial Services Royal Commission (Canberra, ACT: Financial Services Royal Commission), at 421. (Hereafter 'FSRC Final Report').

[3] Commonwealth Government of Australia in its Treasury, (December 2015), 'Fit for the future. A capability review of the Australian Securities and Investments Commission. A Report to Government', at 132, available at <https://treasury.gov.au/sites/default/files/2019-03/ASIC-Capability-Review-Final-Report.pdf>.

[4] Chia, H X and Ramsay, I., (2015) 'Section 1322 as a Response to the Complexity of the Corporations Act 2001 (Cth)', *Company and Securities Law Journal*, Thomson Reuters, vol. 33, no. 6, page 391.

[5] Isdale, William and Christopher Ash, (12 May, 2021) 'Legislative morass and the rule of law: a warning, and some possible solutions', Australian Public Law blog, (citing Crawford, Lisa B, (2020) 'The rule of law in the age of statutes,' *Federal Law Review* 48, no. 2, 159 at 175), available at <https://www.auspublaw.org/blog/2021/05/legislative-morass-and-the-rule-of-law-a-warning-and-some-possible-solutions?rq=Legislative%20morass%20and%20the%20rule%20of%20law%3A%20a%20warning%2C%20and%20some%20possible>.

and further:[6]

> *Lord Bingham's book reflects the importance of the condition of society in various respects to understand the condition of the fabric of the Rule of Law, such as the need for the law to be accessible in its coherence and writing…*

4.3.1. Isdale and Ash identify two deficiencies in the current regime, namely complexity and accessibility.[7] Echoing the first concern (on the subject of financial regulation) is the view of Calomiris:[8]

> *increasingly complex and uncoordinated regulatory system has created an uneven regulatory playing field that is accelerating consolidation for the wrong reasons.*

4.3.2. The complexity of the current regime is widely acknowledged. Explanations often reference the inherent technicality of the subject matter.[9] We respectfully query whether this is correct: is the complexity and length[10] of the legislation indicative of the difficulty in addressing the subject matter? Or is it indicative of a failure to embrace clarity, accessibility and intelligibility (through, for example, a focus on principles and outcomes) in the drafting process?

> *The trouble lies with our method of drafting. The principal object of the draftsman is to achieve certainty – a laudable object in itself. But in pursuit of it, he loses sight of the equally important object – clarity. The draftsman – or draftswoman – has conceived certainty: but has brought forth obscurity; sometimes even absurdity.[11]*

And is that, in turn, indicative of the ease with which drafters default to simply drafting ever more prescriptive provisions,[12] in order to remedy the flaws of so many other, previous attempts?

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[6] Ibid., citing Allsop CJ, (1 November 2018) 'The Rule of Law is not a Law of Rules', Federal Court of Australia Annual Quayside Oration, Perth, available at <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/chief-justice-allsop/allsop-cj-20181101-2>.

[7] Ibid.

[8] Calomiris, Charles W., (2018) 'Restoring the rule of law in financial regulation,' *Cato Journal* 38, 701 at 701 (citing Lux, M., and Greene, R., (2015) 'The State and Fate of Community Banking,' Harvard Kennedy School of Government (February). Available at <www.hks.harvard.edu/centers/mrcbg/publications /awp/awp37)>.

[9] See for example the remarks of Justice Ashley Black, (June 2016) 'Unfinished business in corporations law reform,' BLS Corporations Workshop, at 2.

[10] See also: Government of the Commonwealth of Australia in its Australian Law Reform Commission, (October 2021), 'Legislative Framework for Corporations and Financial Services Regulation. Complexity and Legislative Design', Background Paper FSL2, at § 73.

[11] Denning, Alfred Thompson (1979), *The discipline of law*, London; Boston: Butterworths, at 9, cited in Isdale and Ash, ibid.

[12] See: Background Paper FSL2, ibid., at § 48 (b): "An aversion to principles-based legislation;"

> *Legislative schemes have commenced with principles at the fore only to have the full suite of prescriptions such as those described here grafted on over time.*[13]
>
> *[w]hy is Australia so particularly plagued with the problem of unnecessarily long and complex legislation? … because of the use of prescriptive, rather than principled drafting techniques.*[14]
>
> *[a] philosophy which infuses much of our current legislation, … appears to require an insistence on detail, an insistence which is carried to the point of complexity.*[15]
>
> *[resist] the beguiling temptation to tie down all conceivable matters … produces needlessly complex provisions and will in any event inevitably fail because tying everything down is an impossible goal… [the solution to which is] a shift … towards more principled drafting…*[16]

4.3.3. Put differently, doubtless there is an argument to be made that technicality begets complexity. But does complexity beget certainty? In the case of Ch 7 of the *Corporations Act* the answer appears to be a resounding 'no'.

4.3.4. Isdale and Ash put forth the argument that there must be a balance struck between principles and prescription, and further, that in our current regime the purpose – what Allsop terms the "human character of the narrative"[17] – and its moral purpose is lost.

> *A judge must construe a provision in an Act having regard to the Act as a whole.*[18]

This balance finds itself both in the theory and the practice of principles-based legislation. In theory, principles-based legislation ought to confine itself to *broad brushstrokes*. It is in the regulations that, where necessary, details are provided. But the operative phrase here is 'where necessary'. It is here that a useful comparison emerges between ASIC and its South African equivalent, the FSCA. In the extensive interactions the first author has had with the FSCA over the past five years he has been impressed by their willingness to resist the constant demands made upon them by the financial services industry for ever greater

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[13] FSRC Final Report, op cit., at 495.

[14] Address by The Hon T F Bathurst AC, Chief Justice of New South Wales, (31 July 2015) '50 Years of Commercial Law,' Commercial Law Association of Australia, Opening Address, § 18, cited in Isdale and Ash, op cit.

[15] Mason, Sir Anthony, (1992) 'Corporate Law: The Challenge of Complexity', *Australian Journal of Corporate Law,* 2(1), 1, at 2, cited in Isdale and Ash, op cit.

[16] Burrows, Andrew, (2018) Thinking about statutes: interpretation, interaction, improvement. Cambridge University Press, at 94, cited in Isdale and Ash, op cit.

[17] Allsop, op cit., cited in Isdale and Ash, op cit.

[18] Justice Steven Rares, (24 May, 2014) 'Competition, Fairness and the Courts,' Federal Court of Australia. A paper presented to the Competition Law Conference, at § 15, available at <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-rares/rares-j-20140524>.

degrees of prescription, detail and granularity in the regulations which they publish, and that inform the principles expressed in the *Financial Sector Regulation Act*,[19] and the regulations published in support of the forthcoming *Conduct of Financial Institutions Act*.[20] (For a useful example, see s 6, The Draft Conduct Standards for Banks,[21] Appendix B). In my anecdotal experience, the South African regulator is well-practiced in resisting industry pressure for ever more granularity in the regulatory guides and standards which they write. It has been explained to me by senior office-bearers at the FSCA, and on many occasions, that when they encounter demands from members of the regulated population that the regulator provide more, prescriptive details in standards and regulatory guides, they do not simply comply. They evaluate whether regulatees can, in their view, operate under current legislation and regulations, or whether the legislation and regulation is not adequate to address a particular issue.

4.3.5. One example they cite where they did accede to industry demands for more detail, and where they were of the view that existing legislation and regulation did not provide sufficient direction to a question that could not easily be answered by reference to principles of good conduct, was in respect of the manner in which interest rates should be advertised.

4.3.6. That said, the regulations issued by the FSCA provide more detail, but not excessive detail. Instead, subordinate legislation is drafted so as to support the overall project: a principles-based, outcomes-determined regime, with its foundation in norms of behaviour. Put differently, regulations add granularity only where strictly necessary. They are not permitted to become *prescription by the back door*.

> *5. It provides a model for the development of standards*
>
> *… It offers practical techniques to apply… but it stresses a flexible process rather than fixed, immutable rules. At its heart is the sovereignty of the audience in each context to determine the right content, the best structure, an appropriate style, effective design and the right channel for communication. It is a sound intellectual model that should inform any standards we might develop.*[22]

[19] *Financial Sector Regulation Act*, No. 9, 2017.

[20] Version: Draft, September 2020, available at <https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Conduct%20of%20Financial%20Institutions%20Bill%202018.zip>.

[21] Draft Conduct Standard 3 of 2020 (Banks), issued in terms of the Financial Sector Regulation Act, 2017, Conduct Standard for Banks, available at <https://www.fsca.co.za/Notices/FSCA%20Conduct%20Standard%203%20of%202020%20(BANKS)-Banks.zip>.

[22] James, Neil, (2008) 'Defining the profession: Placing plain language in the field of communication,' in Third International Clarity Conference, 20-23, at 7.

4.3.7. An example of which is s 6 of the Banking Standard[23] issued by the FSCA, which deals with advertising. Section 6 is provided below:

> *6. Advertising*
>
> *(1) A bank must ensure that its financial products and financial services are advertised to financial customers in a way that is clear, fair and not misleading.*
>
> *(2) If a bank relies on another person to advertise a financial product or financial service on its behalf, the bank remains responsible for –*
>
> > *(a) the manner in which its financial product or financial service is advertised; and*
> >
> > *(b) ensuring that the advertisement complies with this Conduct Standard.*
>
> *(3) Advertising by a bank must -*
>
> > *(a) be factually correct;*
> >
> > *(b) not contain any statement, promise or forecast which is fraudulent, untrue or misleading; and*
> >
> > *(c) In the case of advertising targeting retail financial customers, use plain language.*
>
> *(4) Where an advertisement includes a reference to interest payable by the bank to a financial customer, in respect of a financial product, the advertisement must comply with the disclosure requirement in section 7(4).*[24]
>
> *(5) A bank may not offer or provide any financial product or financial service to a retail financial customer or potential retail financial customer on the basis that any transaction will be entered into automatically unless the financial customer explicitly declines the offer.*
>
> *(6) Where a bank uses a telephone or mobile phone call, voice or text message or other electronic communication for any advertisement targeted at a retail financial customer or potential retail financial customer, it must inform the retail financial*

[23] Op cit.

[24] S 7(4) of the Banking Standard states: "Disclosure: Where a financial product provides for the payment of interest by the bank to the financial customer, a bank must, in addition to and with equal prominence to any other disclosure regarding the interest rate concerned, appropriately describe the rate of interest concerned and also disclose to a financial customer the effective annual interest rate of the financial product."

customer during that call or within a reasonable time after receiving the message, that the retail financial customer may demand that the bank not make use of any of these mediums to provide any further advertising to the retail financial customer.

(7) A bank or any person acting on its behalf must comply with a demand made by a retail financial customer in terms of subsection (6).

(8) A bank or any person acting on its behalf may not charge a retail financial customer a fee or allow a service provider to charge a retail financial customer any fee for making a demand in terms of subsection (6).

(9) A bank must have in place processes and procedures for the approval of advertisements and advertising methods by a person of appropriate seniority and expertise within the bank, which must form part of the governance arrangements required in section 3 above.

(10) Where a bank becomes aware that any advertising that relates to its business, financial products or financial services, whether published by the bank or any other person, is inconsistent with this Conduct Standard, the bank must -

(a) as soon as reasonably practicable correct or withdraw the advertising;

or

(b) take reasonable steps to ensure that it is corrected or withdrawn; and

(c) notify any persons who it knows have relied on the advertising.

(11) A bank must keep adequate records of all advertisements for a period of at least five years after publication.

(12) Subsections (1) to (11) apply equally to the advertising of any service or benefit provided or made available by a bank together with or in connection with any financial product or financial service, including a loyalty benefit.

4.3.8. Put differently, in a regime that imposes a positive duty upon regulatees, like that in South Africa, it becomes unnecessary to provide entities with minute, extremely granular detail in regulatory guides and standards, in order that regulatees may have certainty as to what actions may or may not constitute a breach. Instead, and when the legislation places them under a positive duty, entities will be directed to *do their best*, as opposed to *do the minimum.* Under

such a regime regulatees will seek to enliven the spirit of the law, by documenting the steps they have taken throughout the creation of a product or service life-cycle (longer and more extensive than the 'customer-journey' approach) to put the interests of the customer first, at every juncture.

4.3.9. Using the example above of advertising, the questions that regulated entities will ask is not 'are we allowed to do this?'. Instead, they will ask 'should we do this?' Put in context: 'is this the appropriate way to advertise our products? Does it put the customer's interests and welfare first? Could what we intend to do be done in a way that better serves our customers and their interests?' Concomitant with that approach will be an understanding that should the regulator observe a poor outcome, or the *risk* of a poor outcome, it may call upon the regulatee to justify its actions. At that stage it will be necessary to show how these questions were documented, what alternatives were evaluated, how solutions were arrived at, and then demonstrate how those solutions were the product of credible assessments and credible evaluations of the risks posed to consumers.

4.3.10. Under the current, prescriptive regime, regulated entities are encouraged to press ASIC for answers to the question 'what are we not permitted to do?' When those answers are provided there will be further pressure on the regulator to clarify ambiguity. Those clarifications will always give rise to further ambiguities in the face of circumstances not envisioned. That in turn will give rise to further requests for clarification, by way of ever more details in the regulatory guides and standards, and so forth. This process is potentially never-ending, resulting in an overwhelming degree of prescription, which then in turn gives rise to complaints about excessively detailed regulations. A case of *damned if you don't, damned when you do.*

4.3.11. To that end, and in my discussions with one of the Commissioners of ASIC,[25] the view was expressed that "regulated entities complain when our regulations are not detailed enough, so we add more detail. Then they complain that the regulatory guides are too long".

4.3.12. This culture within ASIC of attempting to satisfy regulated entities was identified in the FSRC Final Report as both existing and as deficient:

> *Financial services entities are not ASIC's 'clients'. ASIC does not perform its functions as a service to those entities.*[26]

4.3.13. The South African *Conduct of Financial Institutions Bill* serves to refute these practices. It deals with complex issues of financial products and services set

[25] Confidential discussion with [name redacted], August 2020, by telephone.
[26] FSRC Final Report, op cit., at 424.

against the need to protect consumers. But it does so in a manner which is intelligible and easily accessible.

4.3.14. However, for a principles-based, outcomes-determined regime to function successfully, not only will it be necessary to express what the principles are that must be adhered to, and which outcomes must be avoided, in the legislation. It will also be necessary for ASIC to change the tenor – that is to say the prescriptive nature – of its regulations. ASIC will also need to adopt an approach to regulated entities that does not seek to accommodate their every whim; especially because seeking ever more detail form the regulator inevitably becomes a compulsion: it enables the regulatee to divest itself of conduct risk. Instead, regulated entities must be appraised by ASIC of what is expected of them in terms of their obligations to enliven principles of good conduct (through consultations – as the South African regulator has done), and then thereafter regulatees must *learn to cope on their own.*

> *… more words … more scope for dispute about meaning… inconsistency and obscurity… greater the risk of uncertainty and error.*[27]

4.3.15. On accessibility, Isdale and Ash argue, especially in respect of consumer protection legislation, for the need for such legislation to be accessible to those to whom the legislation 'speaks' – that is to say, the individuals whose protections are enlivened by the legislation, and whose obligations the legislation sets forth:

> *At the very least, those required to comply with and/or administer particular laws must be capable of ascertaining and comprehending them.*[28]

in arriving at this view the authors keep auspicious company:

> *"[t]he desideratum of clarity represents one of the most essential ingredients of legality", since it is "obvious that obscure and incoherent legislation can make legality unattainable by anyone"*[29]

> *"[i]f social control [through law] is to function, the rules must satisfy certain conditions: they must be intelligible and within the capacity of most to obey"*[30]

4.4. In addition to Ch 7 of *the Corporations Act*, financial consumers' rights are spread out between the *ASIC Act* and the *National Consumer Credit Protection Act*. This

[27] Goode, Roy, (1988) 'The codification of commercial law,' *Monash University Law Rev*iew, 14, 135, at 156.
[28] Ibid.
[29] Fuller, Lon L., (1964) *The morality of law*, cited in Isdale and Ash, op cit.
[30] Hart, Herbert Lionel Adolphus, Joseph Raz and Leslie Green, (2012) *The Concept of Law*, Oxford University Press, at 207. Cited in Isdale and Ash, op cit.

exacerbates the challenges consumers face in finding relevant provisions and, by implication, to knowing and understanding their rights and obligations.

4.5. A stand-alone piece of legislation would be more manageable for consumers to use and, by implication, to access and understand their rights. This would reflect recent international developments, such as the *Act on The Protection of Financial Consumers* (South Korea) (which took effect on 30 December, 2021),[31] the *Financial Markets (Conduct of Institutions) Amendment Bill*, (New Zealand), the *Conduct of Financial Institutions Bill* (CoFI) (South Africa), *The Financial Consumer Protection Act* 2010 (United States),[32] *The Financial Products and Services Consumer Protection Act (Philippines)*,[33] the *Financial Consumer Protection Act* (Republic of China on Taiwan)[34] and by way of regulatory enactment, in the People's Republic of China.[35]

5. Plain (stark) English

5.1. The current regime is drafted in a manner which is dense and, it is respectfully submitted, and save for a small number of instances, is largely impenetrable and unnavigable to anyone other than a person with legal training. Indeed, even legally trained individuals may be not capable of untying this *Gordian Knot.*

> *… this legislative morass seems to be the same, it is difficult to discern why the public, their lawyers (if they can afford them) and the Courts must waste their time turning up and construing which of these statutes [ASIC Act or Corporations Act] applies to the particular circumstance… Why is there a difference? Why does a court have to waste its time wading through this legislative*

[31] Act No. 17799, Revised by other Acts, December 29, 2020, available at: <https://elaw.klri.re.kr/kor_service/lawView.do?hseq=54646&lang=ENG>.

[32] *Dodd-Frank Wall Street Reform and Consumer Protection Act*. 12 USC 5301, Public Law 111–203—July 21, 2010.

[33] *An Act Affording More Protection to Consumers of Financial Products and Services,* Senate Bill No. 2488 and House Bill No. 6768, available at: <http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-2488> and <https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/third_18/HBT6768.pdf>, respectively. The House of Representatives adopted the Senate version as an amendment to HB No. 6768 on 02 February 2022. For details on what the Act covers, see: Opening Statement by Mr Benjamin E Diokno, Governor of Bangko Sentral ng Pilipinas (BSP, the central bank of the Philippines), during the Senate Deliberation on the Proposed *Financial Consumer Protection Act*, Manila, 16 January 2022, in Central Banker's Speeches, published by the Bank for International Settlements (BIS), 21 January, 2022, available at <https://www.bis.org/review/r220121b.htm>.

[34] Effective: 30 December, 2011. For details on the provisions contained in the Act, see: Implementation of the *Financial Consumer Protection Act* in Taiwan, issued by the Central Bank of China (CBC), available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiBt7eq4tP2AhW_SmwGHYknCAEQFnoECD0QAQ&url=https%3A%2F%2Fwww.cbc.gov.tw%2Fen%2Fdl-9693-828d7a8e5b6643c690e3dcec391a34d8.html&usg=AOvVaw1I4u3mxNiD1P0WxQLSQZoP>.

[35] 'People's Bank of China Financial Consumer Rights and Interests Protection Implementation Measures,' Order No 5 [2020] (issued on 18 September), effective 1 November, 2020, available in English at <http://www.pbc.gov.cn/en/3688253/3689009/3788480/4121916/2020110615170136365.pdf>.

> *porridge to work out which one or ones of these provisions apply even though it is likely that the end result will be the same?*[36]

5.2. Examples from other jurisdictions indicate that a comprehensive statute, providing for consumer protection, and requiring good conduct in the market by regulated entities, can be drafted in plain (stark) English.

5.2.1. The South African *Conduct of Financial Institutions Bill* (CoFI) is one such example (and is attached as an Annexure to this submission).

5.3. Legislation drafted in accordance with the principles of 'plain-English' (or, where appropriate, what Godwin describes as 'stark language',[37] that is to say, *language that is direct and unambiguous*[38]) would be preferable, in that it would enable consumers to read the legislation, understand its provisions, and in so doing, their rights and obligations.

5.4. It is respectfully submitted that an 18-year-old consumer, having completed secondary schooling (year 12), with average English-language proficiency and understanding of financial services, should serve as the target by which the accessibility of the legislation is measured.[39]

> *The ordinary person of ordinary intelligence and education [should] have a reasonable expectation of understanding … legislation and of getting the answers to the questions he or she has. This is of critical importance.*[40]

5.5. Set against that, Hunt asserts as follows:

> *The language of our legislation cannot be reduced to baby talk for consumption by the masses.*[41]
>
> *Professor Bates' has suggested that drafting in plain language is subject to at least two fundamental constraints – the first being that language is not plain, as a word may well have a number of meanings. So, for example, 'attend' cannot be replaced by 'turn up', 'notify' cannot become 'tell' etc. The second constraint which he identifies is the actual nature of legislation itself, saying that:*

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[36] Rares, J, *Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq),* [2012] FCA 1028 (21 September 2012), at § 948.

[37] Godwin, Andrew, (2009) 'The Lehman Minibonds Crisis in Hong Kong: Lessons for Plain Language Risk Disclosure,' *The University of New South Wales Law Journal*, 32(2), at 547.

[38] Ibid., at 579.

[39] See also: Background Paper FSL2, op cit., at § 132.

[40] Murphy, D., (July 1995) 'Plain Language in a Legislative Drafting Office,' (Clarity 33, London), at 5, cited in Hunt, Brian, (2002) 'Plain language in legislative drafting: Is it really the answer,' 23(1), *Statute Law Review* 24, at 28.

[41] Hunt, op cit., 44.

'Statutes impose rights and obligations and the public is entitled to expect those rights and obligations to be stated precisely'.[42]

It is my respectful submission that this is incorrect, particularly in respect of principles-based and outcomes-determined legislation; such legislation should remain high-level, and express broad principles, framed as a positive duty. My view is that plain/stark language *can* be achieved when drafting such provisions – in language which is intelligible to the lay consumer. Indeed, and in respect of that type of legislation, it is my view that if plain/stark language is proving difficult to achieve, drafters need to, to put it simply, *try harder.*

[...] It is no criticism that Plain English cannot be precisely, mathematically defined. Neither can 'reasonable doubt' or 'good cause'.[43]

5.6. It is my respectful submission that the example below, found in s 26 of the South African *Conduct of Financial Institutions Bill*, is a good example of what can be achieved in pursuit of plain/stark language, even in the face of a potentially complex subject-matter:

26. (1) When providing financial products and financial services, a financial institution or a representative must ensure that the products and services are—

a) appropriate for targeted or impacted financial customers;
b) provided in a manner that is as objective[44] *as possible; and*
c) provided in a manner that supports the delivery of appropriate financial products and financial instruments to those financial customers.

(2) A financial institution must ensure that its financial customers are provided with financial products and financial services, as the case may be, that perform as that institution has led its financial customers to expect, through the information, representations and advertising provided by or on behalf of the institution to those financial customers.

(3) If a financial institution identifies circumstances that give rise to the material risk of a financial product or financial service being unsuitable for targeted financial customers, of financial products or financial services not performing as financial customers of those products and services were led to expect, or any other

[42] Citing, T. St J.N. Bates, 'Drafting for the User of Legislation' published in R.C. Bergeron (ed.), (1999) *Essays on Legislative Drafting,* Ottawa, at 78, in Hunt, op cit., at 117.
[43] Kimble, Joseph, (1992) 'Plain English: A charter for clear writing,' *Thomas M. Cooley Law Review*, 9, at 14.
[44] This provision raises questions as to how such a stricture would be evidenced, which will be addressed in a subsequent submission addressing Treating Customers Fairly (TCF). This submission is concerned only with supporting consumers to *find* the relevant provisions, and once found, to *understanding* those provisions.

unfair outcomes to its financial customers, it must take remedial action to reasonably mitigate the risk.

(4) A financial institution must ensure that—

a) where applicable, the personnel responsible for the design of financial products or development of financial services possess the necessary skills, knowledge and expertise to fulfil their functions; and
b) a new financial product or financial service, or any material variation of an existing financial product or financial service, is internally approved, and in accordance with any requirements prescribed relating to the approval of new financial products or financial services, before the financial product or financial service is marketed or offered to financial customers.

5.7. In analysing the advantages presented by the manner in which s 26 (at 5.6 above) is drafted, we present first an analysis of s 1012C of the *Corporations Act*: 'Obligation to give Product Disclosure Statement--offers related to sale of financial products.'

5.7.1. To that end, there are many different linguistic features that make meaning easily understood by a reader, as well as many that obfuscate meaning. What this exercise turns on is *lexical density*, which refers to the amount of meaning packed into an instance of language.[45] Where the lexical density is too high,[46] meaning is difficult to decode, and the language used can lock people out of being able to understand. Looking *at* the language used, and examining it across a range of linguistic features, can ensure that meaning is clear and accessible for most people. For the purposes of this exercise, we will focus on just a few linguistic features which are salient in this context. These include:

5.7.1.1. **Technicality** - which refers to the ways words have technical meanings in particular fields, and how those outside the field may not have access to those meanings. Too much technicality in a text can increase the lexical density (the amount of meaning packed into any instance of language) to the extent that readers cannot easily decode it.[47]

5.7.1.2. **Nominalisation/abstraction** – which refers to turning words that are not nouns into nouns. For example, the verb 'obligate' can be turned into the noun 'obligation'. Turning things into nouns is a feature of bureaucratic and legal discourse,[48] and enables us to talk and write about processes and

[45] Halliday, M.A.K., (1985) *Spoken and written language*, Melbourne: Deakin University Press.
[46] See also: Background Paper FSL2, op cit., at § 89.
[47] Halliday, M.A.K. and J.R. Martin (eds) (1993) *Writing Science: Literacy and Discursive Power*, Bristol/London: The Falmer Press, at 180-182.
[48] Iedema, R., (2006) *Discourses of post-bureaucratic organization*, Cambridge: Cambridge University Press; Halliday and Martin, op cit., at 162, 233, 292.

qualities as things, as well as remove the people. For example, you could say:

> *a regulated person is obliged to give another person a product disclosure statement.*

This construes events in a clear and straightforward way, where a person is doing something for another person. Or you could say:

> *…an obligation on a regulated person to give another person a Product Disclosure Statement.*

The second way turns the action of a person doing something for someone else into the nominalised abstraction of 'an obligation….'. This makes the meaning more difficult to understand, and the more of these there are, the more the difficulty in meaning is compounded.[49]

5.7.1.3. **Sentence structure** – a simple sentence has one clause in it, for example: 'The cat sat on the mat.' A complex sentence has more than one clause in it, such as 'The cat sat on the mat // and so did the dog.' Typically, in a sentence in English, there is a noun group at the beginning (The cat), a verbal group following (sat/did) and some other noun group (the dog) or phases of time, place, manner etc (on the mat). Where sentences have many clauses in them, the meaning can be difficult to extract.

5.7.1.4. **Complex noun groups** – noun groups are the 'things' in texts. They can be short and concrete like 'the cat' and 'the mat' or they can be long and complex like:

> *… situations in which an offer relating to the sale of a financial product gives rise to an obligation on a regulated person to give another person a Product Disclosure Statement for the product.*

Each noun group has a Head – which is the main noun in the group. In the mat, 'mat' is the Head. Words can come before the Head noun, such as 'the' in 'the mat' and after the noun, such as if we add: 'I bought yesterday' to 'the mat' (ie The cat sat on the mat that I bought yesterday). In concrete noun groups like these, the meaning is clearly retrievable, but in a noun group like the above from the legal context, 'situations' is the Head noun and everything after that is the post-modification of that one Head noun.

[49] Halliday and Martin, op cit., at 30-31.

5.7.2. We will now unpack what is contained in 5.7.1.4 above, in its sentence, across a couple of tables to see why a sentence like this is impenetrable to the average person. (Note that single square brackets [ ] denote a phrase, and double square brackets [[ ]] denote a clause, as embedded inside a noun group):

This section	*sets out*	*situations [in which an offer [[relating to the sale [of a financial product]]] gives rise to an obligation [on a regulated person] [[to give another person a Product Disclosure Statement [for the product]]]].*
Noun group	Verbal group	Noun group

5.7.3. In theory, this sentence has a simple structure, not dissimilar to 'The cat sat on the mat that I bought yesterday.' However, the second noun group here is very long, with many embedded phrases and clauses, such that the meaning is obfuscated. Specifically, everything that comes after 'situations', describes situations, yet each of these 'things' ('situations', 'offer', 'obligation') has their own post-modifications, which include both phrases and clauses:

situations	*[in which an offer relating to the sale of a financial product gives rise to an obligation on a regulated person to give another person a Product Disclosure Statement for the product.]*
Head noun	Post-modification

in which

an	*offer*	*relating to the sale of a financial product*
Pre-modification	Head noun	Post-modification

the	*sale*	*of a financial product*
Pre-modification	Head noun	Post-modification

gives rise to

an	*obligation*	*on a regulated person*
Pre-modification	Head noun	Post-modification

to give

another	*person*
Pre-modification	Head noun

a Product Disclosure	*Statement*
Pre-modification	Head noun

for

the	*product*
Pre-modification	Head noun

5.7.4. As can be seen by breaking down this second noun group into its sub-groups, phrases and clauses, there is nothing simple about understanding the meaning of 'situations' here. Explaining the type of 'situations' involves the reader being able to decode six noun groups, layered inside two prepositional phrases, and two clauses. This is too difficult for the average person to compute, let alone the inclusion of the technical terminology (*financial product, regulated person, product disclosure statement*) and the abstractions (*obligation, disclosure*). And this is just one sentence. If we were to look at other sentences, we would find similar patterns – they are very long, with chains of clauses making one sentence, as well as many embedded clauses and phrases. They also contain a proliferation of technical terms and abstractions, which in combination with long, complex sentences, make meaning very difficult to retrieve, unless you are an insider, ie a lawyer.

5.7.5. Now we will examine the first few sentences of the South African *Conduct of Financial Institutions Bill* (5.6 above). We will see that, while it is somewhat easier to understand, it could still have its readability improved.

5.7.5.1. First, it has very little abstraction, and the technicality is repeated: *financial x and financial y*, making the meaning quite clear. However, a close examination of its sentence structure sees some improvement, but more is needed.

> *26. (1) When providing financial products and financial services, a financial institution or a representative must ensure that the products and services are—*

While this one sentence begins at 'When', and finishes 6 lines later at the full stop, it is nonetheless easier to understand than the former examples from the *Corporations Act*. Even though there are many clauses, the first part has two clauses with a Doer – ie there is no nominalisation/abstraction: a financial institution or a representative is doing the ensuring, in the following two-part clause structure:

Clause 1:

When	*providing*	*financial products and financial services*
connector (temporal)	verb	noun group (made up of two noun groups joined by *and)*

Clause 2:

a financial institution or a representative	*must ensure*
Noun group (made up of two noun groups joined by *or)*	verbal group

It is the next clauses that are more complicated, because they list three long items that define products and services, though the lettering is helpful in breaking the meaning into chunks:

that	*the products and services*	*are—*	*a) appropriate for targeted or impacted financial customers;* *b) provided in a manner that is as objective as possible; and* *c) provided in a manner that supports the delivery of appropriate financial products and financial instruments to those financial customers*
	noun group (made up of two noun groups joined by *and)*	verb	complex participant with three attributes/sub-clauses

Each of these parts are, in fact, relatively simple clauses:

the products and services	*are—*	*a) appropriate [for targeted or impacted financial customers];*
noun group (made up of two noun groups joined by *and)*	verb	participant with one attribute and one phrase (who for?)

followed by:

the products and services	*are— b) provided*	*in a manner [[that is as objective as possible]];*
noun group (made up of two noun groups joined by *and)*	verbal group	phrase of manner (how?) with preposition (*in*) + noun group (*a manner [[that is as objective as possible]])*

followed by:

the products and services	*are— b) provided*	*in a manner [[that supports the delivery of appropriate financial products and financial instruments [to those financial customers]]].*

noun group (made up of two noun groups joined by *and)*	verbal group	phrase of manner (how?) with preposition (*in*) + noun group (*a manner [[that supports the delivery of appropriate financial products and financial instruments [to those financial customers]]]).*

*with the caveat that the third clause finishes with a long and complex noun group that has 3 layers of meaning to decode:

Layer 1:

the	*delivery*	*of appropriate financial products and financial instruments [to those financial customers].*
pre-modification	Head noun	post-modification (preposition (*of*) + noun group (see below))

Layer 2:

appropriate financial	*products and instruments*	*[to those financial customers].*
pre-modification	Head noun	post-modification (preposition (to) + noun group (*those financial customers*))

Layer 3:

those	*financial customers*
pre-modification	Head noun

Layer (2) is a somewhat more complicated with a number of points in it across a number of clauses and phrases:

Clause 1:

A financial institution	*must ensure*
noun group	verbal group

Clause 2:

that	*its financial customers*	*are provided*	*with financial products and financial services*
	noun group	verbal group	prepositional phrase of accompaniment (what with?), preposition (*with*) + 2-part noun group joined by *and* (*financial products and financial services*)

Note that the third element in clause 2 (*with financial products and financial services*) is interrupted by clause 3 (*as the case may be*):

Clause 3:

as	*the case*	*may be*
connector - cause	noun group	verbal group

with its meaning continuing after that, which if we move the interruption, is really the following:

financial	*products and services*	*[[that perform [[as that institution has led its financial customers [[to expect]]]], [through the information, representations and advertising [[provided by or on behalf of the institution [to those financial customers.]]]]]*
pre-modification	Head noun (a+b)	post-modification

With the post-modification being a very long and complex unit of meaning, comprising a clause with three embedded clauses (denoted by the double brackets [[ ]]), and two embedded phrases (denoted by the single brackets [ ]). This could be simplified by breaking this up into shorter clauses and sentences, and by putting some of the people who do the jobs being described back into the text. That way the sentences have the structure of a noun group, verbal group or prepositional phrase, as follows (new additions in bold):

> *(2) A financial institution must ensure that its financial customers are provided with financial products and financial services.* ***These services must*** *perform* ~~*as*~~ ***according to the way*** *that that institution has led its financial customers to expect.* ***These expectations should be met*** *through the information, representations and advertising* ***that the institution or someone representing the institution*** *has provided* ~~*by or on behalf of the institution*~~ *to those financial customers.*

To demonstrate this more simplified structure, we take the second and third rewritten sentences:

These services	*must perform*	*according to the way [[that that institution has led its financial customers to expect]]*
noun group	verbal group	prepositional phrase of angle (according to what/whom?)

These expectations	*should be met*	*through the information, representations and advertising [[that the institution or someone representing the institution has provided to those financial customers]].*
noun group	noun group	prepositional phrase of manner (how?)

5.8. At this point the distinctions between 'plain English'[50] and 'stark language' should be addressed, as well as their relative advantages: plain English is defined as:

> *Plain English is clear, straightforward expression, using only as many words as are necessary. It is language that avoids obscurity, inflated vocabulary and convoluted sentence construction. It is not baby talk, nor is it a simplified version of the English language. Writers of plain English let their audience concentrate on the message instead of being distracted by complicated language. They make sure that their audience understands the message easily.*[51]

and further:

> *It's not 'cat sat on the mat' or 'Janet and John' writing. Almost anything - from leaflets and letters to legal documents - can be written in plain English without being patronising or oversimplified.*[52]
>
> *It doesn't mean reducing the length of your message or changing its meaning. Most of the UK's biggest insurance companies produce policies that explain everything fully in plain English.*
>
> *It's not about banning new words, killing off long words or promoting completely perfect grammar. Nor is it about letting grammar slip.*
>
> *It is not an amateur's method of communication. Most forward-looking senior managers always write in plain English.*
>
> *And finally, it is not as easy as we would like to think.*[53]

5.8.1. Set against this is Godwin's view in support of 'stark language':[54]

[50] See also: Background Paper FSL2, op cit., at § 134.
[51] Plain Language Action and Information Network, United States Government, accessed: 5 March, 2022, available at https://www.plainlanguage.gov/about/definitions/short-definition/.
[52] See also: Background Paper FSL2, op cit., at § 133.
[53] All five quoted paragraphs from: Plain English Campaign (2022), accessed: 5 March, 2022, available at http://www.plainenglish.co.uk/how-to-write-in-plain-english.html.
[54] Godwin, op cit., 552.

> *In other words, even though plain language enhances readability and is an important part of improving financial literacy, it does not guarantee understanding for people who do not have the relevant level of financial literacy.*
>
> *and further:*
>
> *Another weakness with the plain language approach is the use of the term 'plain language' and the implicit assumptions that it involves; namely, if something has been expressed in accordance with plain language principles, the meaning will be clear. In this writer's view, this has led to a situation where drafters are often more intent on implementing the steps and techniques recommended by the plain language experts than on reviewing the result to determine whether the objectives of plain language have in fact been achieved.*[55]

5.9. Put differently, plain language, while a commendable goal, and one which the authors support, can be developed further, with stark language – that is to say, plain language that focuses not just on being plain, but more importantly, on conveying the message – is, in our respectful submission, an even more commendable goal. The techniques deployed by linguists may be highly beneficial, therefore, to the ultimate recommendations which this Inquiry may make.

5.10. From here the adoption of other measures in support of accessibility could be deployed – measures so prosaic in nature that ordinarily they would not bear mentioning – but regrettably in this case are. They include the use of definitions, their location, the use of delegated legislation, and modifications which cannot easily be located.

5.10.1. Definitions should be consistent. Inconsistency leads to confusion and, makes it more difficult for consumers to know their rights and obligations.

5.10.2. Definitions should be located in one place, for the same reasons.

5.10.3. Delegated legislation should not contradict provisions in the Act. To allow delegated legislation do so serves to undermine what the Act purports to do.

5.10.4. Modifications of schedules of regulations to the Act made by ASIC which are difficult to locate have the effect of making the law inaccessible, or worse, unknowable.

[55] Ibid., 553.

6. Coherently organised

6.1. Cognisant that a new legislative regime would be used by regulated entities, professional advisors and consumers, this submission respectfully submits that supporting consumers in their use of the legislation, and supporting them to know and understand their rights, should be the Commission's primary consideration. The reasons for which include the following:

6.1.1. the financial industry operates subject to a 'social licence'. This is borne from the fact that in times of financial crises taxpayers (through the Fiscus) underwrite financial industry liabilities (principally banks). Consequently, the financial industry ought to serve the society in which it operates, not the other way around;

6.1.2. regulated entities are established and operated to serve their customers and potential customers;

6.1.3. consumers suffer a power disparity – at times significant – when contracting with financial industry firms;

6.1.4. consumers do not enjoy the resources available to financial industry firms – especially large ones – to avail themselves of professional advice when seeking to understand and uphold their rights;

6.1.5. financial industry firms have misused their power in this respect, and have abused consumers' rights, and done so for an extended period of time, and at scale.[56]

6.2. The disorganised and impenetrable nature of the *Corporations Act* has been identified as a culprit in the findings of the Royal Commission of Inquiry into Misconduct in the Banking, Superannuation and Financial Services Industry (hereafter FSRC).[57]

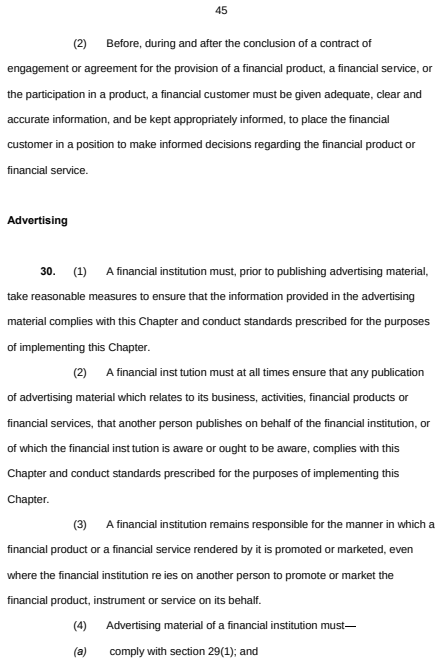
> *Beyond these steps, the task of simplification grows harder and will take much longer. But it is harder, and will take longer, because the law is now spread over so many different Acts and is as complex as it is. That is, the very size of the task shows why it must be tackled.*[58]

[56] Culminating in the establishment of the 2018 FSRC.
[57] See also: Government of the Commonwealth of Australia in its Australian Law Reform Commission, (October 2021), 'Legislative Framework for Corporations and Financial Services Regulation. Improving the Navigability of Legislation,' Background Paper FSL3, at § 2.
[58] FSRC Final Report, op cit., at 493.

6.3. Consumers will be supported in their efforts to *find* the relevant provisions in the legislation[59] if, in addition to the legislation being stand-alone, it is drafted in a manner which takes account of presentation, structure, hierarchy and navigability.[60] That may include not only language ('stark language') but also use of white space, font size, density of text, organisation of provisions and, it is respectfully submitted, numbering.

> *The five canons of rhetorics, as identified by the philosopher Cicero… are still important in plain language work…* ***arrangement relates to structure and organisation, and the effective sequencing of information in a text's structure according to the purpose of the text****; style relates to expression (including word choice), sentence construction and length, and tone;* ***delivery originally related principally to the verbal presentation of discourse, but in recent times it also relates to design issues such as typography, layout and other visual elements****… [emphasis added].*[61]

Once again, the South African *Conduct of Financial Institutions Bill* is instructive, screen-shots of which are attached below:



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(2) Before, during and after the conclusion of a contract of engagement or agreement for the provision of a financial product, a financial service, or the participation in a product, a financial customer must be given adequate, clear and accurate information, and be kept appropriately informed, to place the financial customer in a position to make informed decisions regarding the financial product or financial service.

Advertising

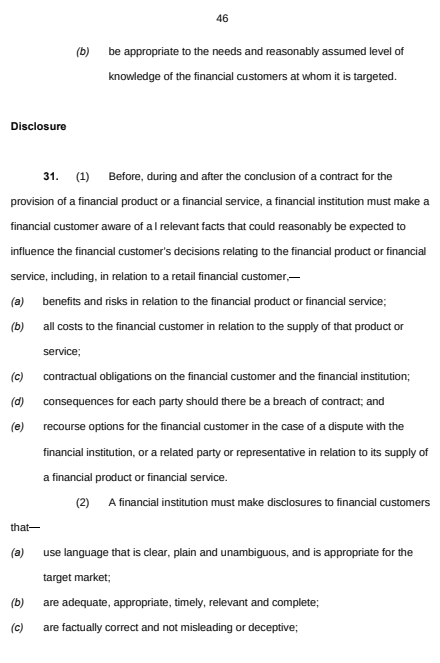
30. (1) A financial institution must, prior to publishing advertising material, take reasonable measures to ensure that the information provided in the advertising material complies with this Chapter and conduct standards prescribed for the purposes of implementing this Chapter.

(2) A financial inst tution must at all times ensure that any publication of advertising material which relates to its business, activities, financial products or financial services, that another person publishes on behalf of the financial institution, or of which the financial inst tution is aware or ought to be aware, complies with this Chapter and conduct standards prescribed for the purposes of implementing this Chapter.

(3) A financial institution remains responsible for the manner in which a financial product or a financial service rendered by it is promoted or marketed, even where the financial institution re ies on another person to promote or market the financial product, instrument or service on its behalf.

(4) Advertising material of a financial institution must—

(a) comply with section 29(1); and



46

(b) be appropriate to the needs and reasonably assumed level of knowledge of the financial customers at whom it is targeted.

Disclosure

31. (1) Before, during and after the conclusion of a contract for the provision of a financial product or a financial service, a financial institution must make a financial customer aware of a l relevant facts that could reasonably be expected to influence the financial customer's decisions relating to the financial product or financial service, including, in relation to a retail financial customer,—

(a) benefits and risks in relation to the financial product or financial service;

(b) all costs to the financial customer in relation to the supply of that product or service;

(c) contractual obligations on the financial customer and the financial institution;

(d) consequences for each party should there be a breach of contract; and

(e) recourse options for the financial customer in the case of a dispute with the financial institution, or a related party or representative in relation to its supply of a financial product or financial service.

(2) A financial institution must make disclosures to financial customers that—

(a) use language that is clear, plain and unambiguous, and is appropriate for the target market;

(b) are adequate, appropriate, timely, relevant and complete;

(c) are factually correct and not misleading or deceptive;

[59] See also: Background Paper FSL3, ibid., at § 6/7.

[60] See also: Background Paper FSL2, op cit., at § 70.

[61] Cornelius, Eleanor, (2015), 'Defining 'plain language' in contemporary South Africa,' *Stellenbosch Papers in Linguistics,* 44, 1-18, at 2.

6.4. In respect of numbering, it is respectfully submitted that regard be had to mnemonics. So, for example, if the Commission resolves to frame its recommendations for new legislation around the six norms of behaviour provided by Commissioner Hayne in the FSRC Final Report, or around the six pillars of TCF, then it may support consumers to locate those *six core principles of conduct*, if they were to be provided *in section six* of a new piece of legislation. Doing so would provide an easy-to-remember mnemonic: *my six core rights in s 6*, or *my six for six rights.*[62]

> *As far as possible, legislation governing financial services entities should identify expressly what fundamental norms of behaviour are being pursued when particular and detailed rules are made about a particular subject matter.*[63]

6.5. Doubtless within a short space of time a simple web search through Google, phrased as 'what are my 6 for 6 rights?' would present results pointing to the relevant legislation.

6.6. The placement of core provisions taking account of mnemonics would facilitate informing consumers of this development. By some estimates, in excess of 99 per cent of the Australian population, over the age of 14, have bank accounts.[64] Banks in turn are required to keep contact details for their customers which would include mobile phone numbers and/or email addresses. That alone would enable a virtually cost-free method by which to contact consumers to inform them of revisions to, or any new, rights upon which they can lay claim (such as those that may flow from the Commission's recommendations). If, in addition to those methods, other virtually cost-free methods were deployed by which to inform consumers of their rights (banners at the top of web pages or smartphone apps, notices printed at the bottom of paper statements and other forms of correspondence), then within a short space of time (a week?), potentially the majority of financial consumers in Australia would be informed of their rights, applicable to them as financial consumers. This in turn would lead to better informed consumers, and provide a more informed and robust basis upon which consumers can engage with, and be served by, financial services firms.

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[62] See also: Background Paper FSL2, op cit., at § 130; Background Paper FSL3, op cit., at § 83, citing Thring: "suggested stating the law first and then how the law was to be administered". Deployment of a mnemonic aids to render a phrase iconic. Examples abound, such as *slip, slop, slap*. That phrase has not only deeply penetrated the community's collective consciousness, its underlying meaning (combatting the carcinogenic effects of sunlight), is also well understood. We argue that *my six for six rights* could, similarly, become iconic, and aid financial consumers to remember where to find their fundamental rights, as well as aid them to understand that their rights rest on six, core notions.

[63] FSRC Final Report, op cit., at 42.

[64] Citing World Bank data: Anon., (2022), 'Australia: Percent people with bank accounts,' *TheGlobalEconomy.com*, accessed 12 March 2022, available at: <https://www.theglobaleconomy.com/Australia/percent_people_bank_accounts/>.

6.7. That in turn would empower consumers and, arguably, support them in future to mitigate the harm visited upon consumers by sustained and wide-spread industry misconduct.

7. Revolving Door

7.1. One, final recommendation, which this submission seeks respectfully to make, is that this Inquiry should take the opportunity to propose legislative reforms which will close the 'revolving door' (a feature of regulatory capture).[65] The revolving door is the phenomenon by which regulators 'revolve' to regulated entities – that is to say are employed by the same entities which they formerly regulated as regulators. There is substantial international evidence to support the contention that this practice undermines – indeed hollows-out – regulator efficacy.[66]

7.2. It does so by allowing regulated entities to lobby regulators directly. They do so through the connections that exist between former regulator staffers, subsequently employed by a regulated entity, and their erstwhile colleagues still employed by the regulator, in order to encourage the latter to forbear in their enforcement activities.

7.3. It also allows for the introduction of conflicts of interest while individuals are still employed by the regulator, in that it has been observed to encourage individuals within the regulator to *go soft* in their enforcement activities against particular regulatees. They do so in the expectation of rewards in the form of lucrative positions being made available to them in the regulatee, after their departure from the regulator.[67]

7.4. It has also been observed that regulatees encourage this practice by signalling to regulator staffers that such rewards are available in future, for favours done now.

7.5. As a result, in various jurisdictions, legislation has been enacted to shut the revolving door.[68] In South Korea this has taken the form of prohibiting a regulator's personnel

[65] See further: Mazzola, P, (forthcoming April 2022), *Countdown to the Global Financial Crisis: A Story of Power and Greed*, Cambridge Scholars, chapter 11.

[66] See: Schmulow, Andrew, Karen Fairweather, and John Tarrant, (1 February 2019) 'Restoring Confidence in Consumer Financial Protection Regulation in Australia: A Sisyphean Task?,' *Federal Law Review* 47, no. 1, 91, at 5, 6, 13, 19.

[67] See: Schmulow, Andrew, Paul Mazzola, and Daniel de Zilva, (25 September 2021) 'Twin Peaks 2.0: Avoiding Influence over an Australian Financial Regulator Assessment Authority,' *Federal Law Review* 49, no. 4, 505, at 509-10, 516, 518, 519-20. See also: Sen. Elizabeth Warren: 'Goldman Sachs gave Gary Cohn a 'pre-bribe' when he went to Trump admin.,' available at <https://youtu.be/CZErQ12y4t8>, in which she asserts that Goldman Sachs gifted its former executive USD 250 million as a 'pre-bribe' before he became Director of the National Economic Council in the Trump Administration. Within the first quarter of his tenure, he successfully proposed tax relief measures which, by Senator Warren's estimates, saved his former employer in excess of USD$250 million.

[68] See for example: the South Korean *Public Service Ethics Act,* No. 3250, 31 December 1981 (S Kor) (as amended). For a discussion on this, see: Youkyung Huh and Hongjoo Jung, (2021) 'Regulatory Structure and the Revolving Door Phenomenon in South Korea: Evidence from the 2011 Savings Bank Crisis,' in Godwin, Andrew, and Andrew

from working in a regulated entity for a period of three years after leaving the regulator.

7.6. Moves are afoot[69] in the European Parliament to shut the revolving door there, in particular in light of the scandal involving the recapitalisation of Banca Monte dei Paschi di Siena SpA[70] by the ECB President Mario Draghi.

7.7. Shutting the revolving door, it is respectfully submitted, would improve regulator efficacy by removing this potential conflict of interest.

Schmulow, eds. *The Cambridge Handbook of Twin Peaks Financial Regulation*. Cambridge, UK: Cambridge University Press.

[69] Roundtable discussion with selected EU MEPS on 26 April, 2022, under the leadership of Signora Sabrina Pignodeli, representing Castelnovo ne' Monti, to which the lead author has been invited to deliver research findings.

[70] Elisa Martinuzzi, (1 July, 2019) 'What the ECB Didn't Say About Monte Paschi's Bailout,' in 'Opinion', *Bloomberg,* available at <https://www.bloomberg.com/graphics/2019-opinion-monte-paschi/>.

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Appendix A

Conduct of Financial Institutions Bill

REPUBLIC OF SOUTH AFRICA

CONDUCT OF FINANCIAL INSTITUTIONS BILL

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

(MINISTER OF FINANCE)

Draft September 2020

For Public Consultation

[B -2020]

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BILL

To provide for a regulatory framework for the conduct of financial institutions that will—

- **protect financial customers, including by promoting the fair treatment and protection of financial customers by financial institutions;**
- **support fair, transparent and efficient financial markets;**
- **promote trust and confidence in the financial sector;**
- **support innovation and the development of and investment in sustainable innovative technologies, processes and practices;**
- **support sustainable competition in the provision of financial products and financial services;**
- **promote financial inclusion;**
- **promote transformation of the financial sector; and**
- **assist the South African Reserve Bank in maintaining financial stability;**

and to provide for matters connected therewith.

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CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION

PART 1
INTERPRETATION

Definitions

1. (1) In this Act, unless the context otherwise indicates, words and expressions that are not defined in this subsection that are defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), have the same meaning ascribed to them in terms of that Act, and—

"accounting records" has the meaning defined in section 1 of the Companies Act;

"activity" means an activity listed in Schedule 1 and includes a sub-activity listed in that Schedule;

"advertising" means any communication published through any medium and in any form, by itself or together with any other communication, which is intended to create public interest in the business, financial products or financial services of a financial institution, or to persuade the public (or a part of the public) to transact in relation to a financial product or financial service of the financial institution in any manner, but which does not purport to provide detailed information to or for a specific financial customer regarding a specific financial product or financial service, and "advertise" and "advertisement" have corresponding meanings;

"Auditing Profession Act" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**authorised user**" has the meaning defined in section 1(1) of the Financial Markets Act;

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

"claim" means a demand exercised by a person in respect of a financial product, irrespective of whether or not the person's demand is valid;

"collective investment scheme" has the meaning defined in section 1(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008);

"complainant" means a person who submits a complaint, who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in paragraphs *(a)* to *(f)*, and includes a—

(a) financial customer or the financial customer's successor in title;

(b) beneficiary or the beneficiary's successor in title;

(c) person whose life is insured under an insurance policy;

(d) person that pays any contribution or money in respect of a financial product or financial service;

(e) member or member spouse of a pension fund, insurance group scheme (or other type of member-based product or scheme); or

(f) potential financial customer or potential member of a pension fund, insurance group scheme (or other type of member-based product or scheme), whose dissatisfaction relates to the relevant application, approach, solicitation or advertising or marketing material referred to in the definition of "potential financial customer";

"commercial sponsor" means a licensed financial institution that establishes a retirement fund, with the intention that the financial institution, or another financial institution within the same financial group, will provide financial products or financial services to the retirement fund, once established, or its members;

"commercially sponsored fund" means a retirement fund that is established by a commercial sponsor;

"complaint" means an expression of dissatisfaction by a person to a financial institution or, to the knowledge of the financial institution, to the financial institution's service provider relating to a financial product or financial service provided or offered by that financial institution, which indicates or alleges, regardless of whether the expression of dissatisfaction is submitted together with or in relation to a query by a financial customer, that—

(a) the financial institution or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the financial institution or to which it subscribes;

(b) the financial institution's or its service provider's maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or

(c) the financial institution or its service provider has treated the person unfairly;

"competence" includes experience, qualifications and continuous professional development;

"conduct standard" means a conduct standard prescribed by the Authority as contemplated in section 67 of this Act;

"control function" has the meaning defined in section 1(1) of the Financial Sector Regulation Act, and includes the senior management function;

"Co-operatives Act" means the Co-operatives Act, 2005 (Act No. 15 of 2005);

"financial institution" has the meaning defined in section 1(1) of the Financial Sector Regulation Act, but does not include a market infrastructure;

"financial instrument" has the meaning defined in section 1(1) of the Financial Sector Regulation Act, and includes a foreign financial instrument;

"financial product" has the meaning defined in section 2 of the Financial Sector Regulation Act, and includes a foreign financial product;

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

"financial service" has the meaning defined in section 3 of the Financial Sector Regulation Act;

"financial statements" has the meaning defined in section 1 of the Companies Act;

"fit and proper requirements" means—

(a) in relation to a natural person, requirements relating to—

(i) honesty and integrity;

(ii) good standing;

(iii) competence, including—

(aa) experience;

(bb) qualifications;

(cc) knowledge of financial products, financial instruments, foreign exchange, foreign financial products, and financial services, as the case may be;

(dd) knowledge of financial sector laws, as assessed through—

(A) examinations;

(B) continuous professional development; and

(C) professional designation or membership;

(b) in relation to a significant owner, requirements relating to—

(i) honesty and integrity;

(ii) good standing; and

(iii) financial standing;

"licensed financial institution" means a financial institution that is licensed under this Act;

"licensee" means a person that has obtained a licence in accordance with section 10;

"Minister" means the Minister of Finance;

"participant" has the meaning defined in section 1(1) of the Financial Markets Act;

"payment service provider" means a person who is authorised under this Act to provide payment services as defined in Schedule 1;

"portfolio" means a group of assets including any amount of cash in which financial customers acquire, pursuant to a collective investment scheme or an alternative investment fund, a participatory interest or a participatory interest of a specific class which as a result of its specific characteristics differs from another class of participatory interests;

"potential financial customer" means a person who has—

(a) applied to, or otherwise approached, a financial institution or a related party or representative of the financial institution to become a financial customer;

(b) been solicited by a financial institution to become a financial customer; or

(c) received advertising in relation to any financial product or financial service;

"prescribed" means prescribed by the Authority in a conduct standard as contemplated in section 67;

"proprietary trading" means the buying and selling of financial instruments or foreign exchange by a financial institution for its own account;

"prudentially regulated financial group or financial conglomerate" means a banking group referred to in the Banks Act, an insurance group referred to in the Insurance Act, or a financial conglomerate designated in terms of section 160 of the Financial Sector Regulation Act that is subject to regulation and supervision by the Prudential Authority, and a reference to **"prudentially regulated financial group and financial conglomerate"** has a similar meaning;

"prudentially regulated financial institution" means a financial institution that is subject to regulation and supervision by the Prudential Authority, but does not include a market infrastructure;

"public sector retirement fund" means a retirement fund to which the State, or to which a national or provincial public entity, or a national or provincial business enterprise as those terms are defined in section 1 of the Public Finance Management Act, or a municipality or municipal entity as defined in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), contributes;

"related service" means any service or benefit provided or made available by a financial institution or any associate of that financial institution, together with or in connection with any financial product or benefit;

"representative" means any person, including a person employed by a representative, who performs an activity listed in Schedule 3 for or on behalf of a financial institution in terms of an employment contract or any other mandate or agreement, but excludes a person rendering a clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service—

(a) does not require judgment on the part of the latter person; or

(b) does not lead a financial customer to any specific transaction in respect of a financial product in response to general enquiries;

"research service" means the provision of analytical, evaluative or research, as a business or a part of a business, for the purposes of distilling information in respect of or assessing the desirability or unfeasibility of a particular financial investment, financial product, financial instrument, foreign exchange or financial service, or the provider of a financial product, financial instrument or financial service.

"retail financial customer" means a financial customer that is—

(a) a natural person; or

(b) a juristic person, whose asset value or annual turnover is less than the threshold value as prescribed after consideration of any similar threshold values determined under the Consumer Protection Act and the National Credit Act;

"retirement fund" has the meaning defined in section 1(1) of the Retirement Funds Act;

"Retirement Funds Act" means the Retirement Funds Act, 1956 (Act No. 24 of 1956);[1]

"service provider" means any person (whether or not that person is the representative or other agent of a financial institution) with whom a financial institution has an arrangement relating to the marketing, distribution, administration or provision of financial products or related services;

"supervised entity" has the meaning defined in section 1(1) of the Financial Sector Regulation Act, but does not include a market infrastructure;

"third party" means a person that has entered into a third-party arrangement with a financial product provider;

[1] This definition and the definition of "retirement fund" are to align with the proposed consequential amendment in Schedule 5 of the short title of the Pension Funds Act to be the Retirement Funds Act.

"third party arrangement" means an arrangement between a financial institution and another person in terms of which the other person may market or offer a financial product or financial service of the first-mentioned person under its brand;

"this Act" includes the Schedules to this Act, and conduct standards prescribed in terms of this Act;

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

"trust property" means any corporeal or incorporeal, movable or immovable asset invested, held, kept in safe custody, controlled, administered or alienated by a financial institution for, or on behalf of, a financial customer.

(2) In this Act, unless the context indicates otherwise, a word or expression derived from, or that is another grammatical form of, a word or expression defined in this Act has a corresponding meaning.

Interpretation

2. (1) This Act must be interpreted and applied in a manner that—

(a) gives effect to the object of this Act set out in section 3;

(b) promotes the achievement of the object of the Financial Sector Regulation Act set out in section 7 of that Act;

(c) gives effect to the achievement of the objective of the Authority set out in section 57 of the Financial Sector Regulation Act; and

(d) gives effect to the principles contained in Chapters 4 to 8 of this Act.

(2) When interpreting, applying or complying with this Act, a court, the Authority or any other person may, to the extent that is practicable, and with due consideration to the South African context, consider relevant international standards relating to the achievement of the object of this Act.

(3) If, in terms of this Act, information or a document is required to be published, disclosed, produced or provided by a financial institution, it is sufficient, unless otherwise prescribed, if—

(a) an electronic original or a reproduction of the information or document is published, disclosed, produced or provided by electronic communication in a manner and form that allows the information or document to be printed by the recipient within a reasonable time and at a reasonable cost; or

(b) a notice of the availability of that information or document, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the information or document, together with instructions for receiving the complete information or document.

PART 2
OBJECT AND APPLICATION OF ACT

Object of Act

3. (1) The object of this Act is to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will support the Authority in the achievement of its objective and functions as set out in sections 57 and 58 of the Financial Sector Regulation Act.

(2) When performing functions in terms of this Act, the Authority must take into account and seek to promote the object of this Act.

General application of Act

4. (1) A financial institution that provides a financial product or a financial service is subject to this Act.

(2) This Act applies to supervised entities, including, to the extent provided for in this Act, supervised entities that are not financial institutions.

Application of Act to prudentially regulated financial groups and financial conglomerates

5. (1) This Act applies to prudentially regulated financial groups and financial conglomerates to the extent provided for in this Act.

(2) The power of the Authority to make conduct standards in terms of this Act extends to making such standards to be complied with by holding companies of prudentially regulated financial groups or financial conglomerates.

(3) The Authority may only make a conduct standard referred to in subsection (2) after having consulted with the Prudential Authority and the Reserve Bank.

Application of Act to retirement funds and activities related to retirement funds

6. A commercial sponsor is not required to be licensed in terms of this Act, but the Authority may prescribe conduct standards regulating and imposing requirements on commercial sponsors of commercially sponsored funds.

Exemptions from application of Act, or part, provision or requirement of Act

7. (1) The Authority may, on application by a financial institution, key person, representative or contractor, or on its own initiative, exempt financial institutions, key persons, representatives, or contractors from the application of this Act, or a part, provision or requirement of this Act—

(a) to promote the proportional application of this Act or a part, provision or requirement of this Act as contemplated in section 58(5A) of the Financial Sector Regulation Act;

(b) where practicalities impede the application of a part, provision or requirement of this Act;

(c) where any existing Act of Parliament also wholly or partially regulates an activity;

(d) for developmental, financial inclusion and transformation objectives in order to facilitate the progressive or incremental compliance with this Act by a financial institution; or

(e) in order to provide scope for innovation, the development and investment in innovative technologies, processes, and practices.

(2) The Authority may grant an exemption to different categories, subcategories, types or kinds of financial institutions, key persons, representatives, or contractors, or to one or more specific financial institutions, key persons, representatives, or contractors.

(3) An exemption granted in terms of this section may be granted for a specified period and subject to conditions.

PART 3

COMPLIANCE BY FINANCIAL INSTITUTIONS

Compliance

8. (1) *(a)* A financial institution, a key person, a representative, or a contractor must have arrangements in place to comply with the requirements of this Act on an ongoing basis, and to identify any non-compliance with those requirements.

(b) If the Authority reasonably believes that the effectiveness of arrangements in place to comply with requirements requires further investigation, the Authority may direct a financial institution to perform an independent review of the arrangements by a person who is approved by the Authority at the cost of the financial institution.

(2) The Authority may direct a financial institution, or the governing body or other key persons of the financial institution, or a representative or contractor, to strengthen or effect improvements to the arrangements in place to comply with requirements in this Act.

(3) A financial institution, key person, representative, or contractor that has identified, or is informed or made aware, that it has materially failed to comply with a requirement in terms of this Act must, without delay, notify the Authority of the failure and the reasons for the failure.

(4) This section does not limit any other action that the Authority may take in terms of this Act or the Financial Sector Regulation Act.

CHAPTER 2

LICENSING

Power to grant licenses

9. (1) A person may not perform an activity listed in Schedule 1 unless that person has been issued with a licence in terms of this Act or has been appointed as a representative of a financial institution that is licensed under this Act.

(2) *(a)* The Authority may, on application, grant a licence under this Act.

(b) Sections 113(2) to 116, 118A and 124 of the Financial Sector Regulation Act applies with the necessary changes to the licensing process under this Act.

(c) Sections 117 and 118 of the Financial Sector Regulation Act apply to licensees and licences granted under this Act.

(d) Licences granted under this Act may be varied, suspended or revoked by the Authority in accordance with sections 119 to 123 of the Financial Sector Regulation Act.

Licensing per authorisation categories and subcategories

10. (1) A financial institution may only obtain one licence under this Act.

(2) A licensee under this Act—

(a) may only perform the activities for which it is authorised; and

(b) must perform the activities for which the institution is authorised in accordance with the requirements applicable in respect of each of the activities and sub-activities, financial products, financial instruments, foreign exchange, and financial customers, where applicable, in terms of—

(i) this Act;

(ii) conduct standards; and

(iii) the conditions of the licence.

(3) A financial institution may only enter into an outsourcing arrangement with a contractor for the performance of an activity if the contractor is—

(a) licensed under this Act and authorised to perform that activity; or

(b) appointed as a representative under Chapter 3 of this Act to perform that activity, provided that the activity is listed in Schedule 3.

Institutional form and structure of requirements for licensees

11. The institutional form and structure requirements applicable to applicants for licences under this Act are set out in Schedule 2.

CHAPTER 3

APPOINTMENT, LISTING AND DEBARMENT OF REPRESENTATIVES

Appointment of representatives

12. A person may not act or offer to act as a representative, unless that person is appointed by a licensed financial institution as its representative.

Requirements for appointment of representatives and duties of licensee

13. (1) A licensee may only appoint a person as a representative, if—

(a) the person is to perform an activity listed in Schedule 3;

(b) the person is competent to act, and complies with conduct standards relating to—

(i) fit and proper requirements;

(ii) other requirements that may be prescribed; and

(c) the appointment does not—

(i) materially increase any risk to the licensee;

(ii) materially impair the governance arrangements of the licensee, including the licensee's ability to manage its risks and meet its legal and regulatory obligations;

(iii) compromise continuous and satisfactory service to financial customers;

(iv) prevent or hinder the licensee from acting in the best interest of financial customers; and

(v) result in key decision-making responsibilities being removed from the licensee; and

(d) the person complies with the requirements in conduct standards for the reappointment of a debarred person as a representative, if that person was previously debarred in terms of section 15.

(2) A licensee must ensure that—

(a) its representatives—

(i) continue to comply with the requirements in subsection (1)*(b)*; and

(ii) comply with all requirements of this Act as well as other laws applicable to the performance of the activities for which they are appointed; and

(b) the continuation of the appointment referred to in subsection (1) does not result in any of the matters in subsection (1)*(c)*.

(3) A licensee is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by its representative in respect of the rendering of an activity listed in Schedule 3.

(4) The licensee must maintain a register of representatives which must—

(a) contain the information prescribed; and

(b) be updated in the form and manner and within the intervals as prescribed.

(5) The Authority may maintain and publish a list with the information referred to in subsection (4) of all representatives.

Requirements for representatives

14. (1) A representative must, prior to performing an activity listed in Schedule 3, provide confirmation, certified by the licensee of which it is a representative, to a financial customer that —

(a) an employment contract or other mandate or agreement to represent the licensee exists; and

(b) the licensee accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any contract, mandate or agreement.

(2) A representative may not perform an activity or contract in respect of an activity, other than in the name of the licensee of which it is a representative.

Debarment of representatives by licensees

15. (1) *(a)* A licensee must debar a person from rendering financial services if the person is or was, as the case may be, a representative of the licensee, if the licensee is satisfied on the basis of available facts and information that the person—

(i) does not meet, or no longer complies with, the requirements referred to in section 13(1)*(b)*; or

(ii) has contravened or failed to comply with any provision of this Act, the Financial Sector Regulation Act, or another financial sector law in a material manner;

(b) The reasons for a debarment in terms of paragraph *(a)* must have occurred and become known to the licensee while the person was a representative of the licensee.

(2) *(a)* Before effecting a debarment in terms of subsection (1), the licensee must ensure that the debarment process is lawful, reasonable and procedurally fair.

(b) If a licensee is unable to locate a person in order to deliver a document or information under subsection (3), after taking all reasonable steps to do so, including dissemination through electronic means where possible, delivering the document or information to the person's last known e-mail or physical business or residential address will be sufficient.

(3) A licensee must—

(a) before debarring a person—

(i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of financial customers;

(ii) provide the person with a copy of the licensee's written policy and procedure governing the debarment process; and

(iii) give the person a reasonable opportunity to make a submission in response;

(b) consider any response provided in terms of paragraph *(a)*(iii), and then take a decision in terms of subsection (1); and

(c) immediately notify the person in writing of—

(i) the licensee's decision;

(ii) the person's rights in terms of Chapter 15 of the Financial Sector Regulation Act; and

(iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

(4) Where the debarment has been effected as contemplated in subsection (1), the licensee must—

(a) immediately withdraw any authority which may still exist for the person to act on behalf of the licensee;

(b) where applicable, remove the name of the debarred person from the register referred to in section 14(4);

(c) immediately take steps to ensure that the debarment does not prejudice the interest of financial customers, and that any unconcluded business of the debarred person is properly attended to;

(d) in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and

(e) provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require within 15 days of the debarment.

(5) A debarment in terms of subsection (1) in respect of a person who no longer is a representative of the licensee must be commenced within six months from the date the person ceased to be a representative of the licensee.

(6) For the purposes of debarring a person as contemplated in subsection (1), the licensee must have regard to information relating to the conduct of the person that is furnished by the Authority, the Ombud or any other interested person.

(7) The Authority may, for the purposes of record keeping, require any information to be submitted to the Authority, including the information referred to in subsection (4)*(d)* and *(e)*, to enable the Authority to maintain and continuously update a central register of all persons debarred in terms of subsection (1), and that register must be published on the website of the Authority, or by means of any other appropriate public media.

(8) A person who is debarred in terms of subsection (1) may not provide financial services or act as a representative of any licensee, unless the person has complied with the requirements prescribed for the reappointment of a debarred person as a representative of a licensee and been reappointed as a representative.

CHAPTER 4

CULTURE AND GOVERNANCE

Application of Chapter

16. This Chapter applies to—

(a) a licensed financial institution in addition to any other governance requirements imposed on that financial institution under another Act; and

(b) proprietary trading and research services performed by a licensed financial institution.

PART 1

PRINCIPLES RELATING TO CULTURE AND GOVERNANCE AND OBLIGATIONS OF GOVERNING BODY

Principles relating to culture and governance for financial institutions

17. (1) A licensed financial institution must conduct its business in a manner that —

(a) promotes fair treatment of financial customers;

(b) enhances and supports the efficiency and integrity of financial markets;

(c) supports trust and confidence in the financial sector; and

(d) promotes transformation in a manner reasonably consistent with its transformation plan, developed in terms of section 23.

(2) When fulfilling its obligations in subsection (1), a licensed financial institution must—

(a) conduct its business with integrity;

(b) conduct its business honestly, fairly, and with due skill, care and diligence;

(c) identify and promote a corporate culture that takes into account ethics and aims to ensure that the fair treatment of financial customers and fair market practices, as the case may be, are central to the values and corporate culture of the financial institution;

(d) organise and control its affairs responsibly and effectively;

(e*)* maintain adequate financial and other resources;

(f) avoid or, where avoidance is not possible, manage, mitigate and disclose conflicts of interest;

(g) deal with the Authority in an open and cooperative manner; and

(h) perform its activity or activities transparently.

Obligations of governing body

18. (1) The governing body of a licensed financial institution is accountable for compliance with the requirements of this Act.

(2) The governing body must —

(a) endorse and is ultimately responsible for corporate culture within the financial institution;

(b) endorse and is ultimately responsible for the establishment, implementation, subsequent reviews of, and continued internal compliance with, governance arrangements within the financial institution; and

(c) ensure that the identified corporate culture and governance arrangements are appropriately embedded in the financial institution.

PART 2

GOVERNANCE ARRANGEMENTS

Governance arrangements

19. (1) A licensed financial institution must adopt, document, implement, and monitor the effectiveness of governance arrangements that are reasonably necessary to ensure adherence to the requirements in this Chapter.

(2) The governance arrangements referred to in subsection (1) must—

(a) promote accountability of members of the governing body and key persons;

(b) be approved by and be subject to the oversight of the governing body of the financial institution;

(c) ensure that key persons possess the necessary skills, knowledge and expertise to fulfil their functions, and perform those functions fairly, and with integrity, honesty, and due skill, care and diligence;

(d) provide for mechanisms to identify and, where appropriate, remove persons whose conduct materially increases the risk of the licensed financial institution not achieving the principles in section 17;

(e) be proportionate to the nature, size, scale and complexity of the conduct risks or business model of, and activities performed by, the financial institution;

(f) demonstrate how the licensed financial institution will comply with this Chapter and standards relating to this Chapter;

(g) at least address—

(i) roles, responsibilities and duties of the governing body and key persons;

(ii) record keeping;

(iii) communication with the Authority;

(iv) management processes and responsibilities;

(v) management of control functions;

(vi) remuneration and compensation practices referred to in section 20;

(vii) arrangements relating to conflicts of interest as required by section 21;

(viii) the transformation plan required by Part 4 of this Chapter;

(ix) financial product and financial service oversight arrangements as required by Chapter 5 and

(x) processes and procedures for the approval of advertising material as required by Chapter 6; and

(h) address and provide for prescribed matters.

PART 3

REMUNERATION AND COMPENSATION PRACTICES AND MANAGEMENT OF CONFLICTS OF INTEREST

Remuneration and compensation practices

20. (1) This section applies to any remuneration, compensation or consideration for the rendering of any authorised activity or service that is—

(a) offered or provided, directly or indirectly, by a licensed financial institution or a person on behalf of a licensed financial institution;

(b) accepted, directly or indirectly, by a licensed financial institution or an associate of a licensed financial institution; or

(c) accepted, directly or indirectly, by any other person, including a representative, contractor or service provider, from a licensed financial institution.

(2) Remuneration, compensation or consideration referred to in subsection (1) must—

(a) be reasonable and commensurate with the actual authorised activity performed or service provided;

(b) not result in any authorised activity or service being remunerated more than once; and

(c) not be structured in a manner that impedes the fair treatment of a financial customer or the efficiency and integrity of the financial markets, or is contrary to the identified corporate culture of the financial institution.

Oversight and management of conflicts of interest

21. (1) A licensed financial institution must have arrangements that provide for the effective oversight of conflicts of interest.

(2) Conflict of interest arrangements must—

(a) clearly define where actual or potential conflicts of interest may arise;

(b) define the roles and responsibilities of persons accountable for the management and oversight of conflicts of interest;

(c) set requirements relating to how conflicts of interest must be disclosed and documented to the governing body, within the financial institution and to financial customers;

(d) provide for corrective actions that must be taken for non-compliance with the arrangements;

(e) provide for adequate processes and procedures for transactions with related parties; and

(f) address and provide for any additional matters relating to conflict of interest arrangements that have been prescribed.

Disclosure by financial institutions of interest in related and inter-related parties and other undertakings

22. (1) A financial institution, at the request of the Authority, must provide the Authority with information relating to the financial institution's related and inter-related parties, or any joint ventures or partnerships that the financial institution participates in, or intends to enter into.

(2) The Authority may, in light of information received in terms of a request under subsection (1), take any action that the Authority is authorised to take in terms of this Act or the Financial Sector Regulation Act.

PART 4

TRANSFORMATION PLAN

Transformation plan

23. If a licensed financial institution is subject to or has undertaken to comply with the requirements of the Broad-Based Black Economic Empowerment Act, 2003

(Act No. 53 of 2003) and the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of that Act, it must have a plan in place to meet its commitments in terms of promoting transformation of the financial sector in line with those requirements.

PART 5

KEY PERSONS

Fitness and propriety and appointment of key person

24. Key persons must, at all times, comply with prescribed fit and proper requirements.

Non-compliance by key person

25. (1) The Authority may, if it reasonably believes that a key person does not comply or no longer complies with the requirements in terms of this Act, in addition to any other action that the Authority may take under this Act or the Financial Sector Regulation Act, direct the financial institution to make arrangements that are satisfactory to the Authority to address the non-compliance within a specified period or subject to appropriate conditions.

(2) Arrangements referred to in subsection (1) may include—

(a) providing additional education or training to that key person;

(b) utilising external resources to support that key person;

(c) outsourcing the functions and duties of that key person; or

(d) suspending or removing a person from the appointment as a key person.

(3) If a licensed financial institution fails to make arrangements contemplated in subsection (2) in order to address the non-compliance of a key person, the Authority, in addition to any other action that it may take under this Act, may—

(a) impose additional reporting requirements on the financial institution;

(b) vary the financial institution's licensing conditions;

(c) suspend or withdraw the financial institution's licence; or

(d) after giving the key person a reasonable opportunity to be heard, —

(i) direct the financial institution to terminate the appointment of the key person and;

(ii) replace the key person with another person, if deemed necessary, for the period and subject to the conditions that the Authority may determine, after having consulted the Prudential Authority in the case of a prudentially regulated financial institution.

(4) Where a conduct standard requires the approval of the appointment of a key person, the appointment takes effect only if the Authority approves the appointment.

CHAPTER 5

FINANCIAL PRODUCTS AND FINANCIAL SERVICES

Principles for provision of financial products and financial services

26. (1) When providing financial products and financial services, a financial institution or a representative must ensure that the products and services are—

(a) appropriate for targeted or impacted financial customers;

(b) provided in a manner that is as objective as possible; and

(c) provided in a manner that supports the delivery of appropriate financial products and financial instruments to those financial customers.

(2) A financial institution must ensure that its financial customers are provided with financial products and financial services, as the case may be, that perform as that institution has led its financial customers to expect, through the information, representations and advertising provided by or on behalf of the institution to those financial customers.

(3) If a financial institution identifies circumstances that give rise to the material risk of a financial product or financial service being unsuitable for targeted financial customers, of financial products or financial services not performing as financial customers of those products and services were led to expect, or any other unfair outcomes to its financial customers, it must take remedial action to reasonably mitigate the risk.

(4) A financial institution must ensure that—

(a) where applicable, the personnel responsible for the design of financial products or development of financial services possess the necessary skills, knowledge and expertise to fulfil their functions; and

(b) a new financial product or financial service, or any material variation of an existing financial product or financial service, is internally approved, and in accordance with any requirements prescribed relating to the approval of new financial products or financial services, before the financial product or financial service is marketed or offered to financial customers.

Additional principles in relation to retail financial customers

27. (1) A financial institution that provides financial products or financial services to retail financial customers must—

(a) enter into a written agreement with the financial customer, whenever possible; and

(b) always act within the mandate given by that financial customer in terms of the agreement.

(2) When designing, developing or making a material change to a financial product or a financial service, a financial institution must—

(a) make use of adequate and relevant information on the needs of the retail financial customers at whom the financial product or a financial service is targeted; and

(b) undertake a thorough assessment by competent persons with necessary skills of the main characteristics of the new or varied financial product or service to ensure that the financial product or service—

(i) is consistent with the financial institution's business model, risk management approach and applicable conduct standards;

(ii) targets the retail financial customers for whose needs the product or service is likely to be appropriate, while taking reasonable measures to limit access by retail financial customers for whom the product or service is likely to be inappropriate; and

(iii) is appropriate, taking into account the fair treatment of retail financial customers; and

(c) ensure that the financial product or financial services provide, where appropriate, sufficient flexibility to respond to reasonably expected changes in a financial customer's needs during the lifetime of the product or service.

(3) When undertaking the assessment referred to in subsection (2)*(b)*, a financial institution must also,—

(a) in the case of a financial product, take into account all intended distribution methods; and

(b) in the case of both financial products and services, take into account related disclosure documents.

(4) Where a financial institution, including a commercial sponsor of a commercially sponsored fund, provides financial products or financial services to a retirement fund or similar member based entity, or to another financial customer that is acting for or on behalf of another retail financial customer, all requirements in subsection (1) relating to retail financial customers apply equally in relation to the

members of that retirement fund or similar member based entity or in relation to those other retail financial customers.

Oversight arrangements

28. (1) A financial institution must establish and implement oversight arrangements to approve, monitor and review the design, development, suitability and provision of its financial products and financial services on an on-going basis.

(2) The oversight arrangements referred to in subsection (1) must—

(a) support compliance with section 26, and provide for approval of the oversight arrangements by the governing body of the financial institution;

(b) aim to prevent conflicts of interest and the incentivisation of behaviour which could threaten the fair treatment of financial customers or fair and efficient financial markets, and ensure objectivity and impartiality;

(c) appropriately take into account risks to financial customers or groups of financial customers at whom the financial product or financial service is targeted;

(d) allocate clear roles and responsibilities to persons who are responsible for, or partly responsible for, establishing and implementing the oversight arrangements;

(e) ensure appropriate record keeping, monitoring and analysis of processes and procedures relating to the design, development, suitability and provision of financial products and services, as well as regular and ad hoc reporting to the governing body of the financial institution and any relevant committee on—

(i) identified financial customer related risks and trends, poor financial customer outcomes, and actions taken in response to those risks, trends and outcomes;

(ii) identified risks that may threaten the efficiency and integrity of financial markets;

(iii) the effectiveness and outcomes of those processes and procedures; and

(f) include appropriate measures and procedures to ensure the financial institution's compliance with this Chapter.

(3) The oversight arrangements may vary depending on the nature, size, scale or complexity of the conduct risks or business model of, and activities performed by, the financial institution.

(4) A financial institution must regularly review the oversight arrangements to ensure that these remain effective and document any changes to the oversight arrangements.

CHAPTER 6

ADVERTISING AND DISCLOSURE

Principles for advertising and disclosure

29. (1) A financial institution must ensure that financial products and financial services are promoted and marketed to financial customers in a way that is clear, fair, unambiguous and not misleading or fraudulent.

(2) Before, during and after the conclusion of a contract of engagement or agreement for the provision of a financial product, a financial service, or the participation in a product, a financial customer must be given adequate, clear and accurate information, and be kept appropriately informed, to place the financial customer in a position to make informed decisions regarding the financial product or financial service.

Advertising

30. (1) A financial institution must, prior to publishing advertising material, take reasonable measures to ensure that the information provided in the advertising material complies with this Chapter and conduct standards prescribed for the purposes of implementing this Chapter.

(2) A financial institution must at all times ensure that any publication of advertising material which relates to its business, activities, financial products or financial services, that another person publishes on behalf of the financial institution, or of which the financial institution is aware or ought to be aware, complies with this Chapter and conduct standards prescribed for the purposes of implementing this Chapter.

(3) A financial institution remains responsible for the manner in which a financial product or a financial service rendered by it is promoted or marketed, even where the financial institution relies on another person to promote or market the financial product, instrument or service on its behalf.

(4) Advertising material of a financial institution must—

(a) comply with section 29(1); and

(b) be appropriate to the needs and reasonably assumed level of knowledge of the financial customers at whom it is targeted.

Disclosure

31. (1) Before, during and after the conclusion of a contract for the provision of a financial product or a financial service, a financial institution must make a financial customer aware of all relevant facts that could reasonably be expected to influence the financial customer's decisions relating to the financial product or financial service, including, in relation to a retail financial customer,—

(a) benefits and risks in relation to the financial product or financial service;

(b) all costs to the financial customer in relation to the supply of that product or service;

(c) contractual obligations on the financial customer and the financial institution;

(d) consequences for each party should there be a breach of contract; and

(e) recourse options for the financial customer in the case of a dispute with the financial institution, or a related party or representative in relation to its supply of a financial product or financial service.

(2) A financial institution must make disclosures to financial customers that—

(a) use language that is clear, plain and unambiguous, and is appropriate for the target market;

(b) are adequate, appropriate, timely, relevant and complete;

(c) are factually correct and not misleading or deceptive;

(d) promote understanding of the financial product or financial service being provided;

(e) promote comparison across similar financial products or financial services; and

(f) takes into account—

(i) the nature and complexity of the financial product or financial service concerned; and

(ii) the reasonably assumed level of knowledge, understanding and experience of financial customers at whom the disclosure is targeted.

(3) A financial institution must at all times ensure that any disclosure which relates to its business, activities, financial products or financial services, that another person publishes on behalf of the financial institution, or of which the financial institution is aware or ought to be aware, complies with this Chapter and conduct standards prescribed for the purposes of implementing this Chapter.

CHAPTER 7

POST-SALE BARRIERS AND OBLIGATIONS

Principles relating to post-sale barriers and post-sale obligations

32. (1) A financial institution may not impose unreasonable post-sale barriers on financial customers, including barriers that may prevent financial customers from holding a financial institution accountable for—

(a) its contractual obligations:

(b) expectations created that are not being met; or

(c) unfair treatment pertaining to a financial product, financial instrument, foreign exchange or financial service that is being provided.

(2) A financial institution must, after the point of contracting with a financial customer, continue to promote the fair treatment of that financial customer, including in relation to how that contract may be terminated and after the contract is terminated.

Limiting unreasonable post-sale barriers

33. (1) A financial institution may not impose post-sale barriers on financial customers that may unreasonably prevent financial customers from—

(a) changing to another financial product, financial instrument or financial service, whether individually, or as a group of members of a retirement fund or other similar member-based entity;

(b) changing to another financial institution;

(c) submitting a claim; or

(d) making a complaint.

(2) To ensure that financial customers do not face unreasonable post-sale barriers, a financial institution must ensure that—

(a) financial customers have access to, and are provided with, relevant information regarding the financial products or financial instruments that they have purchased, or the financial services that they are being provided, on an ongoing basis;

(b) where possible and appropriate, financial customers are provided with financial products and financial instruments that are appropriately flexible and portable;

(c) financial customers are provided with efficient and effective complaints management that resolves their complaints in relation to financial products, financial instruments and financial services in a fair and expeditious manner;

(d) the financial institution has systems in place to monitor complaints, and processes that enable the financial institution to pro-actively identify and manage conduct risks, effect improved financial customer outcomes, and prevent recurrences of poor outcomes and errors;

(e) financial customers are provided with claims management processes that promote claims being handled in a fair, transparent, and expeditious manner;

(f) financial customers are advised of, and have access to, effective internal and, where appropriate, external dispute resolution mechanisms to resolve disputes relating to financial products, financial instruments and financial services;

(g) financial customers do not face unreasonable barriers when terminating a contract in respect of a financial product, financial instrument or financial service, and are provided with an efficient and fair termination process; and

(h) financial customers are not subject to unreasonable fees, charges or penalties when a contract is terminated.

Post-sale obligations

34. (1) A financial institution may only terminate the contractual relationship between the financial institution and a financial customer in a fair manner, and in accordance with procedures and requirements that may be prescribed.

(2) Amounts owing to or unclaimed benefits of a financial customer must be treated as amounts being held in trust by the financial institution on behalf of

the financial customer, and must be handled by the financial institution in accordance with the requirements of this Act and other applicable legislation.

Service levels

35. A financial institution must—

(a) provide acceptable levels of service support for financial products, financial instruments and financial services that are provided, including in relation to responses to enquiries and any transaction or engagement that occurs after the initial sale of a financial product or financial instrument, or the initial provision of a financial service to a financial customer;

(b) provide service that is fair, reliable, transparent and consistent with the reasonable expectations of the financial customer that have been created by the information and representations provided by or on behalf of the financial institution to the financial customer; and

(c) provide acceptable levels of protection of safety and security in relation to the financial products, financial instruments and financial services provided, and in relation to a financial customer's personal information.

CHAPTER 8

SAFEGUARDING ASSETS AND OPERATIONAL REQUIREMENTS

Application of Chapter

36. (1) Part 1 of this Chapter applies to a financial institution, or a

nominee company, or key person or any member of the governing body of a financial institution or nominee company, who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property.

(2) Parts 2 and 3 of this Chapter do not apply to—

(a) prudentially regulated financial institutions, other than authorised users and participants; and

(b) prudentially regulated financial groups that are subject to financial soundness requirements imposed under a financial sector law other than this Act.

PART 1

SAFEGUARDING

Principles for persons dealing with trust property or assets of financial institutions

37. A financial institution, any member of its governing body, or any of its employees or agents, who invests, holds, keeps in safe custody, controls, administers or alienates any funds or assets of the financial institution or any trust property —

(a) must, with regard to the funds of the financial institution, observe the utmost good faith and exercise proper care and diligence;

(b) must, regarding trust property, observe the utmost good faith and exercise proper care and diligence required of a trustee in the exercise or discharge of the

trustee's powers and duties, and ensure that the trust property is adequately safeguarded;

(c) must at all times deal with trust property strictly in accordance with the mandate given to the financial institution;

(d) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of trust property, or furnish any guarantee in a manner calculated to gain, directly or indirectly, any improper advantage for any person to the prejudice of the financial institution or other person for, or on whose behalf, the financial institution is acting;

(e) must account for trust property properly and promptly, and when documents of title are lodged with the financial institution, it must immediately provide written confirmation of receipt of the documents, which contains a description of the documents that is sufficient to identify the documents;

(f) must, when trust property is received without the mediation of a bank, issue a written confirmation of receipt of the trust property; and

(g) must, record transactions or agreements in writing, and deliver the original or a copy of the agreement to the financial customer or other person for, or on whose behalf, the financial institution is acting.

Declaration of interest

38. (1) Any member of the governing body of a financial institution, or any of its employees or agents who takes part in a decision to invest any of the funds of the financial institution, or any trust property, in a person or venture in which that person has a direct or indirect financial interest, must declare that interest in writing to the

governing body of the financial institution, indicating the nature and extent of the interest, before a decision is made.

(2) For the purposes of subsection (1), "invest" includes—

(a) the purchase of shares in a company, or an interest in a close corporation or partnership;

(b) the granting of a secured or unsecured loan; or

(c) acquiring a financial interest in an agreement or other matter in which the financial institution or the group of companies of which it is a part has a material interest.

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

Investment of trust property

39. (1) A financial institution, any member of its governing body, or any of its employees or agents, may not cause any trust property to be invested otherwise than in the name of—

(a) the person for, or on whose behalf, the financial institution is acting;

(b) the financial institution in its capacity as administrator, trustee, curator or agent; or

(c) a nominee.

(2) *(a)* Despite subsection (1)—

(i) where the Memorandum of Incorporation of a company has as a special condition under section 15(2) of the Companies Act which prohibits the registration of its shares or debentures in the name of—

(aa) a trust;

(bb) a financial institution in its capacity as administrator, trustee or curator; or

(cc) any nominee; and

(ii) where those shares or debentures form part of trust property administered by a financial institution,

those shares or debentures must be registered in the name of a member of the governing body of that financial institution.

(b) The member of the governing body must hold those shares or debentures in a fiduciary capacity on behalf of the person for, or on whose behalf, the financial institution is acting.

(c) Prior to the registration of any shares or debentures in the name of a member of the governing body as contemplated in paragraph *(a)*, the financial institution concerned must furnish security to the satisfaction of the Master of the High Court, if security has not already been furnished in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

Segregation of trust property from property of financial institution

40. (1) A financial institution must—

(a) keep trust property separate from funds or assets belonging to it; and

(b) In its accounting records and financial statements, clearly indicate the trust property as being property belonging to a specified person for, or on whose behalf, the financial institution is acting; and

(c) in addition to, and simultaneously with the financial statements referred to in section 53, submit to the Authority a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the Authority by notice on the web site for different categories of financial institutions—

(i) the amount of money and assets at year end held by the institution on behalf of financial customers;

(ii) that the money and assets were throughout the financial year kept separate from those of the business of the financial institution, and report any instance of non-compliance identified in the course of the audit and the extent of the non-compliance; and

(iii) any other information required by the Authority.

(2) Despite anything to the contrary in any law or the common law, trust property invested, held, kept in safe custody, controlled or administered by a financial institution under no circumstances form part of the funds or assets of the financial institution.

(3) Despite subsection (1), the Authority may prescribe—

(a) different segregation requirements in respect of different—

(i) types of trust property; or

(ii) financial institutions;

(b) operating and management requirements relating to segregation.

PART 2

OPERATING CAPITAL AND OPERATIONAL ABILITY

Operating capital

41. (1) A financial institution must at all times maintain sufficient financial resources of an adequate amount and quality to carry out its activities, fulfil its obligations and comply with all legal requirements, and to ensure that there is no risk that its liabilities cannot be met as they fall due.

(2) The assets of a financial institution must at all times exceed its liabilities.

(3) A financial institution must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considers adequate to cover the nature and level of the risks to which it is exposed, or is likely to be exposed in the future.

(4) In addition to what is provided in subsection (3), a financial institution that holds trust property, or that collects, holds or receives any monies in respect of a financial product, must at all times comply with any additional asset, working capital and liquidity requirements that are prescribed.

(5) A financial institution that has identified a failure to comply with this section must, without delay—

(a) notify the Authority of the failure and the reasons for the failure;

(b) within 30 days after the notification referred to in paragraph *(a)*, submit a compliance remediation plan to the Authority for approval that sets out the measures that the financial institution will implement within a four month-period to remedy any non-compliance.

(6) The Authority may, where it identifies a failure by a financial institution to comply with this section, direct the financial institution to submit a compliance remediation plan to the Authority as referred to in subsection (5)*(b)*.

(7) The Authority may, if appropriate, extend the four-month period referred to in subsection (5)*(b)* by two months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors.

(8) A financial institution whose compliance remediation plan was approved as contemplated in subsection (5)*(b)* must submit a monthly progress report to the Authority that sets out the measures taken and the progress made with implementing the compliance remediation plan.

(9) The Authority may, until a compliance remediation plan is implemented—

(a) restrict or prohibit certain activities or transactions of the financial institution; or

(b) impose conditions or limitations on the financial institution or governing body.

(10) The Authority may—

(a) require the financial institution to demonstrate that the operational capital requirements provided for in this section and any other prescribed requirements are being complied with;

(b) if the Authority reasonably believes that the adequacy of the operational capital requirements of a financial institution requires further investigation, direct the

financial institution to secure an independent review of the operational capital requirements by a person who is approved by the Authority at the cost of the financial institution.

(11) The Authority may direct a financial institution, or the governing body or other key persons of the financial institution, to strengthen or effect improvements to its operational capital requirements.

(12) This section does not limit any other action that the Authority may take in terms of this Act.

Operational ability

42. (1) A financial institution must have and be able to maintain the operational ability to fulfil the responsibilities imposed by this Act on financial institutions, including—

(a) a fixed business address in the Republic;

(b) adequate access to communication facilities, including at least a full-time telephone or cell phone service, and typing and document duplication facilities;

(c) adequate storage and record keeping systems for the safe-keeping of records, business communications and correspondence, in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

(d) an account with a bank registered in terms of the Banks Act, including, where required by this Act, a separate bank account for trust property; and

(e) a financial institution who is an accountable institution as defined in the Financial Intelligence Centre Act must have in place all the necessary policies, procedures

and systems to ensure full compliance with that Act and other applicable anti-money laundering or terrorist financing legislation.

(2) A financial institution must ensure that internal control structures, processes, procedures and controls in relation to the financial institution's operational ability are in place, which include:

(a) Access rights and data security on electronic data, where applicable;

(b) physical security of premises, assets and records, where applicable;

(c) system application testing, where applicable;

(d) disaster recovery and business continuity planning, including back-up procedures on electronic data, where applicable; and

(e) appropriate recruitment and training for key persons, employees, representatives and other persons as required by this Act.

(3) A financial institution must have and be able to maintain the operational ability to fulfil the responsibilities imposed by this Act, including oversight of financial services provided by representatives of the financial institution, or other financial institutions and service providers who are undertaking the sales and distribution of a financial product or financial instrument.

PART 3

CERTAIN TRANSACTIONS AND STRUCTURE

Conducting business other than licensed activities

43. (1) A financial institution that belongs to a category, subcategory or type of financial institution that is determined for the purposes of this subsection may

not, without the approval of the Authority, conduct any business other than the activity or activities for which it is licensed under this Act, including any activity or a part of an activity performed on behalf of another financial institution.

(2) A financial institution that belongs to a category, subcategory or type of financial institution that is determined for the purposes of this subsection may not, without the approval of the Authority, conduct any business, including business similar to the activity or activities for which it is licensed under this Act, outside the Republic.

(3) Despite any approval under subsection (1) or (2), the Authority may, after having consulted the Prudential Authority in the case of an authorised user or participant, and with the concurrence of the Reserve Bank in the case of a systemically important financial institution or a payment service provider, direct a financial institution to cease conducting business referred to in subsection (1) or (2), if the Authority reasonably believes that the business may introduce a risk or risks that cannot be appropriately mitigated or may be detrimental to the financial customers of the institution.

Transfer, fundamental transaction or change of institutional form, acquisitions and disposals

44. (1) A financial institution that belongs to a category, subcategory or type of financial institution that is determined for the purposes of this section may only transfer assets and liabilities relating to the activity for which it is authorised to another person, with the approval of the Authority, and subject to the requirements that the Authority may determine.

(2) A financial institution may not, without the approval of the Authority—

(a) participate in any fundamental transaction or compromise contemplated in Part A of Chapter 5 or section 155 of the Companies Act; or

(b) convert from one type of corporate form to another, or in any other way change the type of person it was on the date that it was licensed under this Act.

(3) The Authority may only grant an approval referred to under subsection (1) or (2) if—

(a) the Authority is satisfied—

(i) that the transfer, transaction or change will not impede the fair treatment of financial customers or market efficiency and integrity; and

(ii) that any prescribed procedures have been complied with;

(b) in the case of an authorised user or a participant, the Prudential Authority has been consulted; and

(c) in the case of a systemically important financial institution or a payment service provider, the Reserve Bank has concurred.

(4) The Authority may—

(a) prescribe the processes that a financial institution must comply with in respect of transfers, transactions or changes, which may include processes for informing and consulting financial customers; and

(b) appoint a person, at the cost of the financial institution, to assess the transfer, transaction or change and express a view on the desirability or otherwise of the transfer, transaction or change.

(5) A transfer, transaction or change referred to in subsection (1) or (2) that is approved by the Authority is binding on and enforceable against all persons.

(6) Any person in charge of a deeds registry or other office in which any mortgage bond or movable or immovable property is registered which will be transferred in accordance with an approved transfer, transaction or change referred to in subsection (1) or (2) must, on receipt of the relevant bond, title deed or registration certificate and a certified copy of the Authority's approval, take the measures necessary to effect the transfer.

(7) A transfer, transaction or change referred to in subsection (1) or (2) may not be effected without the approval of the Authority, with the concurrence of the Prudential Authority in the case of an authorised user or a participant, as well as with the concurrence of the Reserve Bank in the case of a systemically important financial institution or a payment service provider.

(8) A financial institution must, prior to making a material acquisition or disposal, notify the Authority.

(9) The Authority must prescribe what constitutes a material acquisition or disposal for the purposes of subsection (8).

(10) *(a)* The Authority may issue a directive to a financial institution in relation to a material acquisition or disposal, if the Authority reasonably believes that the acquisition or disposal will impede—

(i) the delivery of fair outcomes to financial customers; or

(ii) the ability of the Authority to supervise the financial institution and its related and inter-related parties appropriately.

(b) A directive may direct the financial institution to undertake specified measures to address the concerns referred to in paragraph *(a)*.

(c) If a directive has been issued to an authorised user or a participant, the Authority must also provide a copy of the directive to the Prudential Authority.

(d) If a directive has been issued to a systemically important financial institution or a payment service provider, the Authority must also provide a copy of the directive to the Reserve Bank.

Registration of shares in name of nominee

45. (1) A financial institution that is a profit company registered under the Companies Act may not, without the approval of the Authority—

(a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended holder of a beneficial interest;

(b) register a transfer of any of its shares to a person other than the intended holder of a beneficial interest.

(2) The Authority may prescribe the circumstances in which approval under subsection (1) is not required.

Alteration of Memorandum of Incorporation or equivalent constitution, deed or founding instrument of financial institution, and change of name of financial institution

46. (1) A licensed financial institution which is a company, and which belongs to a category, subcategory of financial institution that is determined for the purposes of this section, must obtain the approval of the Authority prior to adopting—

(a) any alteration of the financial institution's Memorandum of Incorporation in terms of section 16 of the Companies Act; or

(b) any change of the name of the financial institution in terms of section 16(8) of the Companies Act.

(2) *(a)* Any alteration to the constitution, deed or founding instrument of a financial institution licenced under this Act that is not a company, that is equivalent to the Memorandum of Incorporation of a company, must be approved by the Authority.

(b) Any change in the name of any financial institution licenced under this Act that is not a company must be approved by the Authority.

(3) The Authority must not grant any application referred to in subsection (1) and (2) if it is of the opinion—

(a) that the proposed alteration is inconsistent with any provision of this Act or other applicable legislation, or is undesirable in so far as it concerns the activity or activities of the financial institution;

(b) the proposed change in the name of the financial institution is unacceptable because it—

(i) is identical to that of another financial institution;

(ii) so closely resembles that of another financial institution that the one is likely to be mistaken for the other;

(iii) is identical to or so closely resembles that under which another financial institution was previously licensed, and reasonable grounds exist for objection to its use;

(iv) is misleading; or

(v) is undesirable.

(4) Any alteration or change referred to in subsection (1) or (2) without the approval of the Authority is void.

CHAPTER 9

REPORTING

Application of Chapter

47. Parts 2 and 3 of this Chapter do not apply to—

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

(b) a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

(c) a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007); or

(d) an insurer as defined in section 1(1) of the Insurance Act.

PART 1

REPORTING AND PUBLIC DISCLOSURE

Information for supervisory purposes (prescribed returns)

48. (1) In addition to any specific or general requirement provided for elsewhere in this Act, a financial institution must provide the Authority with any

information that the Authority may require, in the medium, form and manner, and at the intervals prescribed, for the supervision and enforcement of this Act.

(2) The requirements referred to in subsection (1) may—

(a) apply generally or to a particular financial institution; and

(b) may differentiate between different—

(i) types of financial institutions;

(ii) types of activities;

(iii) categories, subcategories or types of financial customers; or

(iv) financial products or financial services.

(3) A financial institution must, when providing information, ensure that the information is—

(a) complete in all material respects;

(b) comparable and consistent from one reporting period to another;

(c) relevant, reliable and comprehensible; and

(d) not misleading, false or deceptive.

(4) The Authority may impose an administrative penalty in the case of any failure by a financial institution to submit to the Authority or any other person within a period specified in terms of subsection (1) or in a directive or condition imposed by the Authority in terms of the Act, any scheme, statement, report, return or other document or information required in terms of subsection (1) to be submitted, not exceeding R5 000 or another amount prescribed for every day during which the failure continues.

Public disclosures by financial institution

49. (1) A financial institution must annually, by no later than six months after its financial year end, publicly disclose the prescribed quantitative and qualitative information in full, or by way of prominent references to information equivalent in nature and scope disclosed publicly under any other law or legal obligation, in the form and manner that may be prescribed.

(2) In prescribing the quantitative and qualitative information in accordance with subsection (1), the Authority may differentiate between different —

(a) types of financial institutions;

(b) types of activities;

(c) categories, subcategories or types of financial customers; or

(d) financial products or financial services.

(3) *(a)* The Authority may approve the non-disclosure of specific information, if the disclosure of the information—

(i) may afford the competitors of the financial institution undue advantage;

(ii) is subject to contractual obligations of secrecy and confidentiality;

(iii) may negatively impact on the financial soundness of the financial institution;

(iv) may negatively impact on the financial stability of the financial services sector;

(v) relates to non-compliance with this Act that is not material; or

(vi) relates to a matter in which the public does not have an interest.

(b) If the Authority approves the non-disclosure of specific information, it may direct the financial institution to include a statement to this effect, and the reasons for the non-disclosure of the information, in its disclosure.

(c) The Authority may not make an approval regarding non-disclosure by—

(i) prudentially regulated institutions unless the Prudential Authority has concurred with the approval; and

(ii) systemically important financial institutions and payment service providers unless the Reserve Bank has concurred with the approval.

(4) *(a)* In the event of any major development affecting the relevance of the information disclosed in accordance with subsection (1), a financial institution must publicly disclose appropriate information on the nature and effects of that major development, unless the Authority has approved in terms of subsection (3) that disclosure need not be made.

(b) For the purposes of paragraph *(a)*, "a major development" means any material non-compliance with this Act, or a review, investigation or verification required by the Authority to be disclosed in accordance with this Act.

(c) In the circumstances referred to in paragraph *(a)*, a financial institution must immediately publicly disclose the extent of non-compliance, an explanation of the reasons for the non-compliance, the consequences of the non-compliance, and the remedial measures taken by the financial institution, unless the Authority has approved that disclosure need not take place.

(5) *(a)* The Authority may, in addition to subsection (1), at any time, require a financial institution to publish information in the form, and within the time limits, that the Authority may determine, if the publication—

(i) is in the interest of financial customers or prospective financial customers;

(ii) is in the public interest; or

(iii) would support the integrity of the financial services sector.

(b) If a financial institution fails to comply with a requirement under paragraph *(a)* within the time limit set in terms of that paragraph, the Authority may itself publish the information, after giving the financial institution reasonable time to make representations as to why it should not be published.

Incomplete, incorrect, false or misleading information

50. (1) If the Authority reasonably believes that any information provided to the Authority in terms of this Act is incomplete, incorrect, false or misleading, after providing the financial institution with appropriate information to indicate why it believes that the information is incomplete, incorrect, false or misleading, the Authority may—

(a) direct the financial institution to provide the Authority, within a specified period, with specified information or documents, to complete or correct the information provided to the Authority; or

(b) reject the information, and direct the financial institution to provide the Authority, within a specified period, with new information which is in the opinion of the Authority complete and correct.

(2) If the Authority reasonably believes that information, or a part of the information, requires further investigation, it may direct the financial institution to secure a report containing the information required by the Authority from a person who is approved by the Authority, at the cost of the financial institution, by a specified date, or within a specific period, and in the form and manner determined by the Authority.

Information concerning beneficial interests

51. (1) A financial institution must, when required to do so by the Authority, provide the Authority with any information the Authority may require, in the form and manner determined by the Authority, in respect of—

(a) the names of its shareholders, other holders of a beneficial interest, and the size of their shareholding and other beneficial interests, as the case may be; and

(b) the name of any person who, directly or indirectly, has the power to require the shareholders referred to in paragraph *(a)* to exercise their rights as shareholders in the financial institution.

(2) A person, or any person acting on behalf of that person, must, at the request of a financial institution, provide the financial institution with the information it may require for the purposes of complying with subsection (1), if—

(a) shares in a financial institution are registered in that person's name; or

(b) that person wishes to have shares in a financial institution allotted, issued or registered in that person's name.

(3) The Authority must prescribe what constitutes a beneficial interest for the purposes of this section.

PART 2

ACCOUNTING RECORDS, FINANCIAL STATEMENTS, VERIFICATION OR AUDITING AND INDEPENDENT REVIEW AND RETENTION OF RECORDS

Financial year of financial institution

52. (1) A financial institution may not change its financial year end without the approval of the Authority.

(2) Despite subsection (1), the Authority's approval is not necessary where a change of a financial year end has been approved by the Prudential Authority.

(3) Where a change of a financial year end was approved by the Prudential Authority, the financial institution must inform the Authority of that approval within 14 days of the approval being granted.

Accounting records and financial statements

53. (1) A financial institution must—

(a) maintain full and proper accounting records on a continual basis, brought up to date monthly; and

(b) annually prepare, in respect of the relevant financial year of the financial institution, financial statements that—

(i) fairly represent the state of affairs of the financial institution's business;

(ii) refer to any material matter which has affected or is likely to affect the financial affairs of the financial institution;

(iii) reflects those matters that are determined by the Authority; and

(iv) are in the format determined by the Authority.

(2) The Authority may issue a guidance notice in terms of section 141 of the Financial Sector Regulation Act regarding what constitutes a "material matter" referred to in subsection (1)*(b)*(ii).

(3) Sections 28, 29 and 30 of the Companies Act apply to the accounting records, financial statements and annual financial statements of any financial institution referred to in this section, including a financial institution that is not a company.

(4) The Authority may determine additional statements or reports that must be included in the annual financial statements of a financial institution after having consulted with any relevant regulatory authority.

Auditing or independently reviewed annual financial statements

54. (1) A financial institution must cause to be audited or independently reviewed, as required under section 30 of the Companies Act, —

(a) its annual financial statements referred to in section 53; and

(b) the information as prescribed referred to in Part 1 of this Chapter.

(2) A financial institution must submit its audited annual financial statements to the Authority and make them available to the public within the prescribed period after its financial year-end.

(3) Those financial institutions that are not companies must, if so required by the Authority in a conduct standard, comply with the independent review requirements of section 30 of the Companies Act.

Retention of records

55. (1) A financial institution must have in place and implement a framework for the retention of data and records, in accordance with—

(a) the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

(b) requirements prescribed in conduct standards in relation to the activities that the financial institution is authorised to provide; and

(c) other applicable legislation.

(2) Where data and records are maintained by a service provider or any third party, the records and data remain the property of the financial institution and must be made available to the financial institution free of charge.

PART 3

AUDITORS

Appointment of auditor

56. (1) *(a)* A financial institution must appoint and at all times have an auditor approved in terms of the Auditing Profession Act who has no direct or indirect financial interest in the business of the financial institution.

(b) Sections 90 to 93, inclusive, of the Companies Act apply to a financial institution referred to in paragraph *(a)*.

(2) *(a)* The appointment of an auditor is subject to the approval of the Authority in the form and manner prescribed.

(b) Paragraph *(a)* does not apply in respect of the reappointment of an auditor that does not involve a break in the continuity of the appointment.

(c) Where the appointed auditor is a firm defined under the Auditing Profession Act, both the firm and the partner who takes responsibility for the financial institution must be approved by the Authority.

(d) The Authority's approval of a firm as defined under the Auditing Profession Act does not lapse due to a change in the membership of the firm, if at least half of the members of the firm, after the change, were members when the

appointment of the firm was approved by the Authority, and the partner that takes responsibility for the financial institution is not affected by this change.

(3) *(a)* Auditors must, at all times, comply with prescribed fit and proper requirements.

(b) The Authority may, if it reasonably believes that an auditor does not comply or no longer complies with the requirements referred to paragraph *(a)*, in addition to any other action that the Authority may take under this Act, direct the financial institution to terminate the appointment of the auditor.

(4) *(a)* If a financial institution referred to in subsection (1) for any reason fails to appoint an auditor under subsection (1), the Authority may, despite the Companies Act, appoint an auditor for that financial institution.

(b) A person or firm appointed under paragraph *(a)* is deemed to have been appointed by that financial institution in accordance with this Act.

(5) A financial institution must notify the Authority of the termination of the appointment of an auditor, within 14 days of the termination.

(6) Any auditor of a financial institution who resigns or whose appointment is terminated must submit to the Authority—

(a) a written statement on the reasons for the resignation or the reasons that the auditor believes are the reasons for the termination; and

(b) any report contemplated in section 45(1)*(a)* and (3)*(c)* of the Auditing Profession Act that the auditor would, but for the termination, have had reason to submit.

Duties of auditor

57. (1) The auditor must, in addition to the requirements of the Financial Sector Regulation Act, without delay submit a detailed written report to the Authority, and to the governing body of the financial institution, on any matter of which the auditor becomes aware in the performance of the auditor's functions and duties referred to in section 56(6), and which, in the opinion of the auditor—

(a) may be contrary to the governance requirements of this Act, or amounts to inadequate maintenance of internal controls;

(b) in respect of a significant owner of the financial institution, constitutes a contravention of any section of this Act.

(2) The auditor of a financial institution must—

(a) audit the annual financial statements of a financial institution in the manner prescribed;

(b) perform the duties and functions assigned to the auditor of a financial institution under this Act, the Companies Act and the Auditing Profession Act; and

(c) perform any other duties or functions prescribed.

CHAPTER 10

CREDIT RATING SERVICES[2]

[2] This Chapter is for consideration, and discussion of where credit rating services should be regulated can take place. This content could be incorporated into the appropriate legislation that is agreed upon.

Definitions[3]

58. For the purposes of this Chapter, unless the context otherwise indicates, **"credit rating"** means an opinion regarding the creditworthiness of—

(a) an entity;

(b) an issuer of a security or a financial instrument;

(c) a security or a financial instrument; or

(d) a sovereign state,

using an established and defined ranking system of rating categories, excluding any recommendation to purchase, sell or hold any security or financial instrument, and includes a rating outlook;

"credit rating agency" means a financial institution authorised to provide credit rating services as defined in Schedule 1 of this Act;

"credit rating services" means gathering and collecting of data and information, analysis, evaluation, approval, issuing for review of the data and information for the purposes of providing a credit rating, but excluding credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

"credit score" means a measure of creditworthiness derived from summarising and expressing data based only on a pre-established statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst;

"external credit rating" means a credit rating issued by an external credit rating agency;

[3] Currently, for consideration, these definitions are included here for ease of reference. Depending upon the discussions regarding the placement of provisions relating to Credit Rating Services, these definitions might be moved to clause 1.

"external credit rating agency" means a person who provides credit rating services and who is authorised or registered by a regulatory authority whose regulatory framework has been recognised as equivalent by the Authority under section 255A of the Financial Sector Regulation Act;

"public regulation" means any legislation, including subordinate legislation, or any registration, licence, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

"rating category" means a rating symbol, such as a letter symbol or a numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the type of rated entity, issuer or financial instrument or other asset;

"rating outlook" means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both;

"regulated person" means a person that has been granted authority to conduct business or activities by a regulatory authority;

"regulatory authority" means an organ of state as defined in section 239 of the Constitution responsible for the supervision or enforcement of legislation dealing with the regulation of institutions and the provision of financial services, or a similar body designated in the laws of a country other than the Republic to supervise and enforce the legislation of that country;

"regulatory purposes" means the use of credit ratings for the specific purpose of complying with national legislation or the listings requirements made by an exchange under section 11 of the Financial Markets Act;

"securities" means securities as defined in section 1(1) of the Financial Markets Act;

"sovereign rating" means a credit rating where—

(a) the entity rated is a state or a provincial or local authority of the state; or

(b) the issuer of the debt or financial obligation, debt security; or other financial instrument is a state, or a provincial or a local authority of the state; or

(c) a special purpose vehicle of a state;

"structured finance instrument" means a financial instrument or other asset resulting from a securitisation transaction or other structured financial transaction or scheme; and

"unsolicited credit rating" means a credit rating assigned by a credit rating agency other than upon request.

Application and purpose of Chapter

59. (1) The regulatory framework set out in this Chapter applies to credit rating agencies.

(2) A credit rating agency must comply—

(a) with this Chapter; and

(b) Chapters of this Act that are indicated in Schedule 1 in the column with the heading "Chapters of Act applicable to the Activity ", in connection with row for the "financial markets activities" sub-activity of "credit rating services.

(3) The purpose of this Chapter is to protect the integrity, transparency and reliability of the credit rating process and credit ratings.

(4) This Chapter does not create a general obligation for—

(a) all securities or financial instruments to be credit-rated;

(b) credit rating agencies and financial customers to invest only in entities, securities or financial instruments that are credit-rated.

(5) This Chapter does not apply to private credit ratings and private credit rating services produced pursuant to an individual order and provided exclusively to the

person who placed the order and which are not intended for public disclosure or distribution by subscription.

Use of credit ratings

60. (1) Where a regulated person uses credit ratings for regulatory purposes, the regulated person must only use credit ratings that are—

(a) issued or endorsed by a credit rating agency; or

(b) issued by an external credit rating agency of an equivalent foreign jurisdiction as defined in section 1(1) of the Financial Sector Regulation Act, and with whose regulatory authority, the Authority has entered into a supervisory cooperation arrangement under section 255C of the Financial Sector Regulation Act.

(2) The Authority may prescribe additional requirements in respect of the use of credit ratings for regulatory purposes.

Exemption of certain applicants from providing information for licensing

61. The Authority may exempt an applicant under Chapter 2 of this Act, who, or whose holding company, or a related company in the same group, is registered, authorised or approved by a foreign regulatory authority as a credit rating agency, from providing some or all of the information required under Chapter 2, if—

(a) the applicant requests an exemption;

(b) the applicant provides proof of the registration, authorisation or approval; and

(c) the Authority is satisfied that the registration, authorisation or approval was granted in accordance with public regulation that is equivalent to this Act.

Use of credit ratings after suspension or revocation of licences

62. (1) Credit ratings issued by a credit rating agency whose licence has been suspended or revoked under section 120 or section 121 of the Financial Sector Regulation Act, may continue to be used for regulatory purposes for—

(a) 14 days after the publication of the notice of suspension or revocation on the Authority's website, if credit ratings of the credit rating agency were also issued by other credit rating agencies under this Chapter; or

(b) three months after the publication of the notice of suspension or revocation on the Authority's website, if no credit ratings of the credit rating agency were issued by other credit rating agencies.

(2) The Authority may extend the period referred to in subsection (1)*(b)*, in order to mitigate any potential market disruption or to ensure financial stability.

Requirements for endorsement of external credit ratings

63. (1) A credit rating agency may, subject to the approval of the Authority, endorse external credit ratings, if—

(a) the credit rating services resulting in the issuing of the credit rating to be endorsed are undertaken partly or entirely—

(i) by the credit rating agency; or

(ii) by an external credit rating agency belonging to the same group as that credit rating agency; and

(b) the ability of the Authority to assess and monitor the compliance of the external credit rating agency with the regulatory framework established in terms of this Act is not limited;

(c) the credit rating agency provides the Authority, on the Authority's request, with all information necessary to enable the Authority to monitor, on an ongoing basis, compliance with this Act; and

(d) there is an objective reason for the credit ratings to be issued in a country other than the Republic, or by an external credit rating agency.

(2) A credit rating endorsed under this section is deemed—

(a) to be a credit rating issued by a credit rating agency; and

(b) to have been issued when the credit rating is published on the website of the credit rating agency or by other means, or is distributed by subscription and presented and disclosed in accordance with the requirements of this Act.

(3) A credit rating agency that endorsed a credit rating under this section remains fully responsible for that credit rating and for compliance with this Act.

(4) *(a)* A credit rating agency must apply to the Authority for the approval of the external credit rating agencies whose credit ratings it intends to endorse under this section.

(b) If the Authority is of the opinion that a credit rating cannot be endorsed in accordance with this section or the requirements of this Chapter, the Authority may instruct the credit rating agency not to endorse the credit rating.

(5) A credit rating agency may not use endorsement with the intention of avoiding the requirements of this Act.

(6) The Authority must maintain a list on the official website of external credit rating agencies whose ratings may be endorsed in terms of this section.

Liability of credit rating agency

64. (1) A credit rating agency may be delictually liable, in respect of a credit rating issued or credit rating services performed in the ordinary course of business in terms of this Chapter, for any loss, damages or costs sustained as a result of that credit rating or credit rating service.

(2) Subsection (1) does not affect any additional or other liability of a credit rating agency to a financial customer or member of the public, arising from a contractual relationship or the application of any law.

Independence

65. No person, including the Authority, may hinder, interfere with, obstruct or improperly attempt to influence a credit rating, the content of a credit rating, or any methodology, model or key assumption used by a credit rating agency to derive a credit rating.

Savings of rights

66. No provision of this Chapter, and no act performed under or in terms of any provision of this Chapter, may be construed as affecting any right of a person to seek appropriate legal redress in terms of the common law or any other relevant legislation, whether relating to civil or criminal matters, in respect of a credit rating or credit rating agency.

CHAPTER 11

GENERAL PROVISIONS

PART 1

MAKING OF CONDUCT STANDARDS AND RELATIONSHIP OF ACT AND CONDUCT STANDARDS TO RULES

Conduct standards made by Authority

67. (1) The Authority may make conduct standards for and in respect of—

(a) financial institutions required to be licensed under this Act; and

(b) persons referred to in section 106(1) of the Financial Sector Regulation Act that are subject to this Act as provided in section 4.

(2) A conduct standard prescribed for the purposes of this Act must be aimed at achieving the object of this Act, the objective of the Authority in terms of section 57 of the Financial Sector Regulation Act, and supporting the performance of the Authority's functions in terms of section 58 of that Act.

(3) Without limiting the generality of subsection (1), a conduct standard in terms of this Act may be made in respect of any matter referred to in section 106(5), (6), (7) and (10) and section 108 of the Financial Sector Regulation Act.

(4) Section 106(3), (4) (8) and (9) of the Financial Sector Regulation Act applies to conduct standards made under this Act.

(5) Despite Chapters 5 to 7 of this Act, a conduct standard referred to in subsection (1) may define or classify a category or type of financial customer with the

purpose of allowing a financial institution to not comply with one or more requirement contained in Chapters 5 to 7 of this Act or any requirement contained in a conduct standard—

(a) in respect of the category or type of financial customer so defined or classified; and

(b) subject to and in accordance with any conditions, requirements or circumstances provided for in the conduct standard.

Relationship of Act and conduct standards to rules

68. In the event of any inconsistency between a provision of this Act or a conduct standard prescribed under this Act, and a rule made by a market infrastructure under the Financial Markets Act, or a rule under the National Payment System Act, that relates to the conduct of financial institutions as regulated in terms of the Conduct of Financial Institutions Act, the provision of Conduct of Financial Institutions Act or the conduct standard prescribed in terms of this Act prevails.

PART 2

APPLICATIONS AND NOTIFICATIONS

Applications

69. (1) A written application must be submitted to the Authority—

(a) in respect of any application for approval under this Act, other than an application for a licence;

(b) if any determination, decision, exemption or the performance of any other act is required by the Authority under this Act.

(2) A written application referred to in subsection (1) must be—

(a) submitted in the form and manner that may be determined by the Authority; and

(b) accompanied by the information that may be determined by the Authority; and

(c) accompanied by the fee that may be prescribed by the Authority.

(3) A person must promptly amend an application referred to under subsection (1) and inform the Authority if any information provided to the Authority on application becomes inaccurate prior to the Authority approving or declining an application.

(4) The Authority, in respect of any application referred to in subsection (1)—

(a) may—

(i) require a person to furnish additional information, to verify that information, or verify any information that accompanied the application, in the manner specified by the Authority; and

(ii) take into consideration any other information, derived from whatever source, including information provided by the Prudential Authority, the Reserve Bank, or "another regulator" as defined in section 1(1) of the Financial Sector Regulation Act;

(b) must, after considering the application—

(i) grant the application, if the Authority reasonably believes that the person complies with the requirements for that application; or

(ii) refuse the application, if the Authority reasonably believes that the person does not comply with the requirements for that application; and

(c) where an application is refused, must notify the applicant of the refusal.

(5) The Authority may grant any application subject to any conditions.

(6) Any approval, determination, decision, exclusion or exemption granted by the Authority is valid only if it is in writing.

(7) If the Authority under subsection (4)*(a)*(i) required a person to furnish additional information or required a person to verify any information, the Authority does not need to consider the application further, until the person has furnished or verified the information.

Notifications

70. Any notification by a person under this Act must be—

(a) submitted in the form and manner; and

(b) accompanied by the information,

that may be determined by the Authority.

PART 3

OFFENCES

Offences

71. (1) A person required to be licensed in terms of this Act, and who is not licensed, commits an offence and is liable on conviction to a fine not exceeding R15 million or imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

(2) A person who contravenes section 12(1) commits an offence and is liable on conviction to a fine not exceeding R 10 million or imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

(3) A person who contravenes section 37*(a)* to *(d)* commits an offence and is liable on conviction to a fine not exceeding R 100 million or imprisonment for a period not exceeding 20 years, or to both a fine and imprisonment.

(4) A person who contravenes section 39 commits an offence and is liable on conviction to a fine not exceeding R 50 million or imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

(5) A financial institution who contravenes section 40(1) commits an offence and is liable on conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 5 years, or to both a fine and imprisonment.

CHAPTER 12

FINAL PROVISIONS

Review of Act

72. (1) The National Treasury, after having consulted the Authority, must—

(a) regularly assess of the impact and effectiveness of this Act, and in particular, whether the object of this Act is being achieved; and

(b) where necessary, develop amendments to this Act or develop new legislation to be tabled in Parliament by the Minister, to address

shortcomings identified and promote the effectiveness of the Act and the achievement of the object of the Act.

(2) The Authority must within a reasonable period assess the effectiveness of conduct standards prescribed in terms of this Act, and where necessary amend or prescribe new standards to address deficiencies identified.

Savings

73. (1) Anything done under a section, subsection or paragraph of an Act amended or repealed by this Act remains valid—

(a) to the extent that it is not inconsistent with this Act; and

(b) until anything done under this Act overrides it.

(2) Any matter prescribed under a section of an Act amended or repealed by this Act remains valid and enforceable and is considered to have been prescribed under this Act as a conduct standard—

(a) to the extent that it is not inconsistent with this Act; and

(b) until it is repealed or replaced by a conduct standard prescribed under this Act.

(3) An authorisation, approval, registration, consent or similar permission given in terms of a financial sector law for which the Authority is the responsible authority and in force immediately before the effective date, remains in force for the purposes of the financial sector law, but may be amended or revoked by the Authority in terms of this Act.

(4) A regulatory instrument, Notice, rules or any other form of subordinate legislation made in terms of a financial sector law for which the Authority is the responsible authority on the effective date, and which are in force on the effective

date remain in force, but may be amended, replaced or revoked by conduct standards prescribed under this Act or another financial sector law.

(5) A Regulation made or issued in terms of a financial sector law for which the Authority is the responsible authority on the effective date and in force immediately before the effective date, remains in force despite the repeal of that financial sector law, but may be amended until revoked by the Minister and replaced by a conduct standard prescribed in terms of this Act.

Transitional arrangements regarding licensing

74. Schedule 4 sets out transitional arrangements in relation to licensing in terms of this Act.

Transitional arrangements regarding public sector retirement funds

75. (1) This Act applies to all retirement funds.

(2) A public sector retirement fund which at the date when this section comes into effect is licenced in terms of the Retirement Funds Act must be licensed in terms of this Act, in accordance with item 3 of Schedule 4 and applicable conduct standards that may be prescribed.

(3) *(a)* A public sector retirement fund which at the date of commencement of this section is not registered in terms of the Retirement Funds Act, must apply to be licensed in terms of this Act, in accordance with item 4 of Schedule 4 of this Act and conduct standards that may be prescribed, subject to any exemptions granted and conditions imposed by the Authority in terms of this Act.

(b) A public sector retirement fund referred to in paragraph *(a)* must also apply to be licensed in terms of the Retirement Funds Act, in accordance with the requirements and transitional arrangements provided for in terms of that Act.

(4) *(a)* Legislation which is in force at the date of commencement of this provision, which provides for the establishment and operation of a public sector retirement fund which is not already licenced in terms of the Retirement Funds Act, must be amended to the extent necessary to align with this Act and the requirements prescribed in terms of this Act, as well as the requirements of the Retirement Funds Act, but subject to any exemptions that may be granted by the Authority, within 3 years from the date of commencement of this provision.

(b) The rules of a public sector retirement fund referred to in paragraph *(a)* must also be amended, to the extent necessary to align with requirements under this Act and the Retirement Funds Act, but subject to any exemptions granted and conditions imposed by the Authority in terms of this Act or the Retirement Funds Act, within a prescribed period from the date of commencement of this provision.

Transitional arrangements regarding repealed legislation

76. (1) A supervisory on-site inspection or investigation in terms of, or in relation to compliance with or contraventions of, the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), the Financial Institution (Protection of Funds) Act, 2001 (Act No. 28 of 2001), the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and the Credit Rating Services Act, 2012 (Act No. 24 of 2012), that is pending and not yet concluded immediately before the date on which this provision comes into effect, may be

continued and concluded by the Authority in terms of the relevant provisions of Chapter 9 of the Financial Sector Regulation Act.

(2) Despite the repeal of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), the Financial Institution (Protection of Funds) Act, 2001 (Act No. 28 of 2001), the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and the Credit Rating Services Act, 2012 (Act No. 24 of 2012), any pending proceedings before the Tribunal, a court, or an arbitrator or any other person or body, which are not determined before the date on which this provision comes into operation, may be continued and concluded before the Tribunal, court, arbitrator, or other person or body, as the case may be.

Amendment of Schedules

77. (1) The Minister may, by Notice in the *Gazette,* amend Schedule 1 to ensure that the licensing framework appropriately accommodates—

(a) a new category of financial product that has been designated in terms of section 2 of the Financial Sector Regulation Act;

(b) a new category of financial service that has been designated in terms of section 3 of the Financial Sector Regulation Act;

(c) the addition or deletion of a sub-activity;

(d) the amendment of the definition of an activity or a subcategory of activity.

(2) The Minister may, by Notice in the *Gazette*, amend Schedules 2 and 3 to appropriately align with amendments that may be made to Schedule 1.

(3) Any amendment of Schedule 1 referred to in subsection (1)*(c)* and *(d)*and any amendments to Schedules 2 or 3 referred to in subsection (2) must, before publication in the *Gazette*, be submitted to Parliament for its approval.

Amendment of laws

78. The Acts listed in Schedule 5 are amended or repealed as set out in that Schedule.

Short title and commencement

79. (1) This Act is called the Conduct of Financial Institutions Act, 2021, and comes into effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into effect of—

(a) different provisions of this Act and the Schedules to this Act;

(b) different provisions of this Act in respect of different categories of financial institutions, financial products, financial services, or other persons; and

(c) the repeal or amendment of different provisions of a law repealed or amended by this Act.

SCHEDULE 1

CATEGORIES AND SUBCATEGORIES OF ACTIVITIES REQUIRING LICENSING

1. In this Schedule, the activities listed in the table have the meanings defined in the column headed "Definition" in the table, and—

"asset class" means a group of financial products, financial instruments or foreign exchange that have similar characteristics; and

"input data" means the data in respect of the value or price of one or more underlying assets, interests or elements that is used in providing a benchmark to determine the benchmark.

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
1	Providing a financial product	a.	Providing a participatory interest in a collective investment scheme	Providing a financial product as defined in section 2 of the Financial Sector Regulation Act, excluding a health service benefit referred to in subsection (1)*(h)* of that section	A financial product provider that is not a medical scheme. Licensed credit providers will be subject to limited chapters of the COFI Bill as specified in the FSRA. Includes providers of alternative investment funds, including non-retail hedge funds,	1-2, 4-9, 11- 12.
		b.	Providing a participatory interest in an alternative investment fund			1-2, 4-6, 8-9, 11-12
		c.	Providing a life policy or non-life insurance policy as defined in the Insurance Act			1-2, 4-9, 11- 12

[4] The descriptor column in this table is for the purpose of providing clarity and facilitating engagement regarding the application of the Bill. This column will not form part of the Schedule in the version of the Bill that will be tabled in Parliament.

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
		d.	Providing a deposit as defined in the Banks Act		private equity funds, REITs, infrastructure; retail hedge funds to remain under CIS framework. The Manco for an AIF is seen as the provider and is therefore the licence holder; limited chapters of the COFI Bill apply. Includes also providers of non-retail credit i.e. lending; limited chapters of COFI Bill apply. Provision can be made by for "opting out" of provisions by counterparties as a category of financial customer, as currently provided for by ODP regulations under FMA Medical schemes are not subject to the COFI Bill pending the outcome of policy engagement between DOH and NT. *This changes the scope of the "financial product" definition, although the activities added will not be subject to prudential oversight by the PA.*	1-9, 11- 12
		e.	Lending			1-2, 4, sections 29 and 30 of chapter 6, 8-9, 11-12
		f.	Providing retirement fund benefits			1-2, 4-9, 11- 12
		g.	Providing credit in terms of a credit agreement			1-2, 4, 9, 11-12

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
2.	Distribution	a.	Sales and execution	Providing a facility or performing a service or any other act (other than the performance of another authorised activity defined in this Schedule) – *(a)* as a result of which a person may enter into, offers to enter into or enters into any transaction in respect of a financial product, financial instrument, foreign exchange or payment service; or *(b)* with a view that a person acquire, buy, sell, deal, trade, invest or disinvest in, replace or vary one or more financial products, financial instruments, foreign exchange or payment services.	Giving effect to the selling and take-up of financial products, non-retail loans, financial instruments, foreign exchange and payment services; includes brokers trading on or off exchange (where simply acting on instruction). Includes activities performed by Authorised Dealers, Authorised Dealers with Limited Authority, traditional Treasury Outsourcing Companies (TOCs) and Agent TOCs. Medical schemes are excluded; but an intermediary that performs this activity is not excluded. *This changes scope of "financial services" definition, in relation to lending and forex.*	1-9, 11-12
		b.	Aggregation and comparison services	Providing a facility or performing a service or any other act (other than the performance of another authorised activity defined in this Schedule) aimed at aggregating information that enables the public to compare similar financial products' or financial instruments' prices, benefits or features	No descriptor required	1-9, 11-12
3.	Financial Advice			Providing a recommendation, guidance or proposal, by any means	Providing advice in relation to a:	1-9,11- 12 Excepting

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
				or medium, to any person or group of persons- *(a)* in respect of — (i) the acquisition of a financial product, financial instrument, foreign exchange, payment service or asset class; (ii) an investment, participation, subscription, contribution or commitment in a financial product, financial instrument, foreign exchange or payment service or asset class; (iii) the allocation of an investment or part of an investment in a financial product, financial instrument, foreign exchange or asset class; (iv) the variation of any term or condition applying to a financial product, financial instrument, foreign exchange, payment service or asset class; (v) the replacement, disposal, termination or disinvestment of any financial product, financial instrument, foreign exchange, payment service or asset class; (vi) maintaining or holding a financial product, financial instrument, financial instrument, foreign exchange, payment service or asset class; (vii) the underwriting or exercising of any rights conferred by a financial product, financial instrument, foreign exchange or payment service;	- financial product - financial instrument - foreign exchange, - payment service - asset class (to capture asset consultants) Advice given in relation to lending is subject to limited chapters. Note that advice given in relation to medical schemes and retail credit is captured.	for: -Advice in relation to lending which are 1-2, 4, sections 29 and 30 of Chapter 6, 8-9, 11-12

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
				(b) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product, financial instrument, foreign exchange or payment service; *(c)* in respect of the selection by a person of one or more financial product providers or financial service providers; and irrespective of whether or not the advice— (*aa*) is furnished in the course of or incidental to financial planning in connection with the affairs of the financial customer; or (*bb*) results in any of the acts referred to in paragraph *(a)* to *(c)*, as the case may be, being effected.		
4.	Discretionary Investment Management[5]			(a) obtaining a mandate from a financial customer to apply an agreed level of decision making, on behalf of the financial customer, after establishing and agreeing the financial customer's investment objectives and investment risk appetite; (b) identifying, selecting, acquiring or disposing of financial products, financial instruments or foreign exchange (or identifying and selecting other investment managers to perform this activity)— (i) in accordance with an investment strategy and investment objectives set out in the mandate; (ii) in accordance with any parameters, limits, thresholds or other	Investment management in respect of asset selection is the case where the manager is given a mandate by a consumer, corporate or another financial institution and in terms of that mandate can exercise discretion. Investment management in relation to manager selection is the this case where the discretion granted	1-9, 11-12

[5] The FSCA, through its Retail Distribution Review (RDR) process, is in the process of consulting stakeholders on a definition of this activity. The FSCA has identified a need to define the activity in a way that distinguishes it more clearly from the broader situation (contemplated in the current FAIS Cat II license criteria) of simply holding a mandate from a financial customer to make decisions regarding the purchase of or investment in financial products. Input on the activities that comprise "true" investment management to be included in such a definition is invited. This proposed categorisation is in line with the proposals in the RDR policy paper.

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
				instructions set out in the mandate; and (c) handing any assets of the financial customer over to a custodian or nominee for safekeeping.	in terms of the mandate is in relation to managers.	
5.	Administration	a.	Operating a linked investment platform	Arranging, safeguarding, administering and distributing financial products, and financial instruments, of more than one financial product provider, or provider of financial instruments through the method of bulking and by giving effect to instructions of a financial customer, but, excluding an exchange as defined in section 1(1) of the Financial Markets Act or a service which is ancillary to the activity of discretionary investment management.	A provider of what is typically understood to be a "LISP", and does not include an exchange as provided for in the FMA.	1-9, 11-12
		b.	Retirement fund self-administration	Receiving, controlling or managing contributions and benefits by a retirement fund in accordance with the rules of the retirement fund.	A retirement fund does its own administration.	1-9, 11-12
		c.	Third-party retirement fund administration	Receiving, controlling or managing contributions and benefits on behalf of a retirement fund, in accordance with the rules of the retirement fund	A retirement fund outsources administration to another entity; this entity must be licenced.	1-9, 11-12
		d.	General administration	Administration includes-- *(a)* administering, maintaining or servicing a financial product, lending agreement, financial instrument; *(b)* collecting or accounting for moneys payable by a person other than insurance premiums in respect of a financial product, lending agreement, financial instrument *(c)* receiving, submitting or processing the claims of a person in respect of a financial product, lending agreement, or financial instrument; and excludes operating an investment platform, retirement fund self-administration and third-party fund administration	All other administration services.	1-9, 11-12

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
6.	Fiduciary or custodian service			Holding assets on behalf of financial customers, or keeping trust property in safe custody	No descriptor required.	1-9, 11-12
7.	Payment service			Providing a payment service in the National Payment System Act, 1998 (Act No. 78 of 1998) or successor legislation.	The definition of payment services in the FSR Act is likely to be replaced by a definition of such in the new NPS Bill, that is being developed to replace the existing NPA Act. The content of this activity will therefore be aligned with the definition of "payment service" in the governing NPS law. A service provided to financial customers to ensure a payment happens, excluding clearing and settlement. It should accommodate banks and non-banks, as per the NPS Policy Review. Generally, means the "front end" of the national payment system i.e. financial customer facing.	1-9, 11-12
8.	Debt Collection Service			Collecting debt that is owed in terms of a credit agreement, whether on your own or on another's behalf.	Persons collecting on debt that originates from a loan issued under the NCA, including attorneys; other debt collection is excluded.	1-9, 11-12

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
9.	Financial Market Activities[6]	a.	Underwriting and placement	(a) Underwriting or placing of financial instruments, participatory interests in a collective investment scheme or participatory interests in an alternative investment fund, on a firm commitment basis, being the act of seeking subscribers or purchasers on behalf of an issuer or a transferor of such instruments or interests with a guarantee in subscriptions or purchases; (b) Placing of financial instruments, participatory interests in a collective investment scheme or participatory interests in an alternative investment fund, without a firm commitment basis, being the act of seeking subscribers or purchasers on behalf of an issuer or a transferor of the instruments or interests without guaranteeing it any amount in subscriptions or purchases.	No descriptor required.	1-2, 4, 8-9, 11-12
		b.	Custody and administration service	(a) Holding financial instruments and participatory interests in a collective investment scheme in custody on behalf of another person by maintaining securities account; and (b) administering corporate action or other event affecting the rights or benefits in respect of financial instruments and participatory interests in a collective investment scheme	Services provided by a participant in the settlement system, as pertains to: - maintaining an account in the CSD for a financial customer that reflects financial instruments / securities owned by that financial customer - effecting corporate action for financial customers, in relation to financial instruments/securities owned	1-2, 4-5, sections 29 and 30 of chapter 6, 9, 11-12

[6] The scope and definitions of these sub-activities will be further informed by the Financial Markets Review currently being undertaken.

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
					by that financial customer.	
		c. .	Providing over-the-counter derivative instruments	Originating, issuing, or making a market in over-the-counter derivatives, as a principal.	An ODP Provision can be made for "opting out" of provisions by counterparties as a category of financial customer, as currently provided for by ODP regulations under FMA	1-2, 4-9, 11-12
		d.	Providing other over-the-counter financial instruments or foreign exchange	Originating, issuing, or making a market in over-the-counter financial instruments other than derivatives, as a principal.	Providing an OTC financial instrument that is not a derivative. Provision can be made for "opting out" of provisions by counterparties as a category of financial customer, as currently provided for by ODP regulations under FMA	1-2, 4-9, 11-12
		e.	Providing a benchmark	Providing a benchmark by – *(a)* administering the arrangements for determining a benchmark; *(b)* collecting, analysing or processing input data for the purpose of determining a benchmark; or *(c)* determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose, but excluding a benchmark provided by— (i) A central bank; (ii) a public entity, where it contributes data to, provides, or has control over the provision of benchmarks the provision of benchmarks for public policy purposes, including measures of	No descriptor required *This changes the scope of the "financial services" definition.*	1-2, 4, 8-9, 11-12

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
				employment, economic activity, and inflation; (iii) a central counterparty, where it provides reference prices or settlement prices used for central counterparty risk-management purposes and settlement; (iv) the provision of a single reference price for any financial instrument by the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark; (v) a person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective financial customers; (vi) a commodity benchmark based on submissions from contributors of which the majority are entities who are not licensed financial institutions and in respect of which both the following conditions apply: the benchmark is referenced by financial instruments for which a request for admission to trading on an exchange has been made or which are traded on an exchange; (vii) the total notional value of financial instruments referencing the benchmark does not exceed an amount still to be determined by the Authority;		

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
				(viii) an index provider, who is unaware that the index, by reference, is used to— (A) determine the amount payable under a financial instrument or a financial contract; (B) determine the value of a financial instrument; (C) measure the performance of an investment fund with the purpose of tracking the return of the index, to— *(aa)* define the asset allocation of the portfolio; or *(bb)* compute the performance fees;		
		f.	Credit rating services	Gathering, collecting of data, and information analysis, evaluation, approval, issuing for review of the data and information for the purposes of providing an opinion regarding the creditworthiness of— *(a)* an entity; *(b)* a security or financial instrument; or *(c)* an issuer of a security or a financial instrument; or *(d)* a sovereign state, using an established and defined ranking system of rating categories, excluding any recommendation to purchase, sell or hold any security or financial instrument, and includes a rating outlook; but excluding credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships.	No descriptor required.	1-2, 4, sections 29 and 30 of chapter 6, 8-12
		g.	Third party treasury management	The management of another juristic person's financial operations, provided that the company is not a wholly owned subsidiary or a financial institution in the same group of companies, which management includes cash flows, assets and investments, in order to support that company's liquidity position and mitigate its operational, financial and reputational risk	Captures the activities of a traditional TOC, rather than an Agent TOC (which is captured under the activity of "*Distribution*"). Provision can be made for "opting	1-2, 4, 8-9

	ACTIVITY		SUB-ACTIVITY	DEFINITION	DESCRIPTOR[4]	Chapters of Act applicable to the Activity
					out" of provisions by counterparties as a category of financial customer, as currently provided for by ODP regulations under FMA *This changes scope of "financial services" definition*	
10	Corporate A dvisory Services			Providing proposals or guidance, valuation, analysis or solutions, by any means or medium, in respect of a juristic person's – *(a)* changes in capital structure, including the arrangement and structuring of debt and equity; *(b)* mergers, acquisitions or disposals, including potential mergers, acquisitions or disposals ; or *(c)* any other advice in relation to industrial strategy.[7]	Investment banking activities, excluding research and lending; should not include attorneys providing corporate legal support. Provision can be made for "opting out" of provisions by counterparties as a category of financial customer, as currently provided for by ODP regulations under FMA *This changes scope of "financial services" definition.*	1-4, sections 29 and 30 of Chapter 6, 8-9, 11-12

[7] This definition is not intended to include legal advice

SCHEDULE 2

INSTITUTIONAL FORM

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	REQUIRED INSTITUTIONAL FORM
1.	Providing a financial product	a.	Providing a participatory interest in a collective investment scheme	A person incorporated in terms of the Companies Act.[8]
		b.	Providing a participatory interest in an alternative investment fund	A person incorporated in terms of the Companies Act.[9]
		c.	Providing a life policy or non-life insurance policy as defined in the Insurance Act	Institutional form as required in terms of section 22(1)*(a)* of the Insurance Act, 2017 (Act No. 18 of 2017).
		d.	Providing a deposit as defined in the Banks Act	Institutional form as required – (a) in terms of section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990); (b) by the Prudential Authority in respect of an institution conducting the business of a bank by means of a branch in the Republic as referred to in section 18A(1) of the Banks Act, 1990 (Act No. 94 of 1990); (c) in terms of section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993) in respect of a mutual bank;

[8] This is intended to refer to the manager of the collective investment scheme.
[9] This is intended to refer to the management company of the alternative investment fund, and it is not intended to limit the overall structure of the alternative investment fund.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	REQUIRED INSTITUTIONAL FORM
				(d) in terms of section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007) and requirements prescribed in terms of that Act in respect of a co-operative bank or a co-operative financial institution. A co-operative financial institution must also comply with section 40B(2) of the Co-operative Banks Act and register as a co-operative bank if it reaches a prescribed amount of members' deposits.
		e.	Lending	A person incorporated in terms of the Companies Act.
		f.	Providing retirement fund benefits	As per section 4B of the Retirement Funds Act (as the Pension Funds Act will be amended to be renamed)
		g.	Providing credit in terms of a credit agreement	As permitted in terms of the National Credit Act.
2.	Distribution	a.	Sales and execution	Any institutional form.[10]
		b.	Aggregation and comparison services	A person incorporated in terms of the Companies Act.
3.	Financial Advice			Any institutional form.[11]
4.	Discretionary investment management			A person incorporated in terms of the Companies Act.

[10] **NOTE:** Please note that legal forms for sole proprietors and partnerships will be allowed, but the following limitations will apply to these institutional forms:

- the number of representatives that may act on the licence of financial services provider with such an institutional form will be limited (e.g. maximum of 4 representatives);
- a financial services provider with such an institutional form will not be allowed to receive, hold or in any manner deal with funds of financial customers.
- Sole proprietors with a greater number of representatives would be provided a transitional period within which to either reduce the number of representatives to below the specified maximum, or to become incorporated in terms of the Companies Act.

[11] **NOTE:** Same as for the activity of Distributing financial products, sub-activity a. (sales and execution).

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	REQUIRED INSTITUTIONAL FORM
5.	Administration	a.	Operating a linked investment platform	A person incorporated in terms of the Companies Act.
		b.	Retirement fund self-administration	A person incorporated in terms of the Companies Act.
		c.	Third-party retirement fund administration	A person incorporated in terms of the Companies Act.
		d.	General administration	Any institutional form except a sole proprietor or partnership.
6.	Fiduciary or Custodian Service			Public company as defined in section 1 of the Companies Act.
7.	Payment Service			As permitted in terms of the National Payment System Act, 1998 (Act No. 78 of 1998), or successor legislation
8.	Debt Collection Service			Any institutional form[12]
9.	Financial Market Activities	a.	Underwriting and placement	A person incorporated in terms of the Companies Act
		b.	Custody and administration service	A person incorporated in terms of the Companies Act [13]
		c.	Providing over-the-counter derivative instruments	Juristic person, as defined in the Financial Markets Act, as a person incorporated in terms of the Companies Act, a foreign company or another form of body corporate.
		d.	Providing other over-the-counter financial instruments	Juristic person, as defined in the Financial Markets Act, as a person incorporated in terms of the Companies Act, a foreign company or

[12] In terms of the Debt Collectors Act, 1998 (Act No. 114 of 1998), a natural or a juristic person is permitted to register as a debt collector.

[13] **NOTE:**
This sub-activity would include –
- "authorised users" as defined in the FMA because of the function listed in paragraph (d) of the definition of "securities services";
- "participant" as defined in the Financial Markets Act- i.e. a person authorised by a licensed central securities depository to perform custody and administration services or settlement services or both, in terms of the depository rules, and includes an external participant, where appropriate.

This sub-activity would therefore apply to "participants" as defined.

	ACTIVITY CATEGORY		ACTIVITY SUBCATEGORY	REQUIRED INSTITUTIONAL FORM
				another form of body corporate.
		e.	Providing a benchmark	A person incorporated in terms of the Companies Act.
		f.	Credit rating service	A person incorporated in terms of the Companies Act or an external company under the Companies Act.
		g.	Third party treasury management	A person incorporated in terms of the Companies Act
10.	Corporate Advisory Services			A person incorporated in terms of the Companies Act

SCHEDULE 3

ACTIVITIES OF REPRESENTATIVES

ACTIVITIES AND SUBCATEGORIES OF ACTIVITIES WHICH MAY BE PERFORMED BY A PERSON AS A REPRESENTATIVE AND THE REQUIRED INSTITUTIONAL FORM OF THE PERSON, WHICH WOULD REQUIRE THE REPRESENTATIVE TO BE APPROVED

Activity Category	*Activity Subcategory*	*Institutional Form*
Distribution	Sales and Execution	Any institutional form
Financial Advice		Any institutional form*
Discretionary Investment Management		A natural person
Administration	General Administration	A natural person
Debt Collection Service		A natural person

* *The prescribed institution form may change depending on the finalisation of the RDR project.*

SCHEDULE 4

TRANSITIONAL ARRANGEMENTS IN RESPECT OF LICENSING

Definitions and interpretation

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

"effective date" means the date fixed by the Minister in accordance with section 76 of this Act that sections 74, 75 and this Schedule or a provision of this Schedule comes into operation;

"previous Act" means the financial sector law listed in Schedule 2 of the Financial Sector Regulation Act for which the Authority is designated as the responsible authority immediately before the effective date of the amendment to that Schedule through this Act; and

"previously licensed financial institution" means a financial institution that is licensed under a previous Act.

(2) A reference in this Schedule to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

2. (1) The Authority must, within two months of the effective date, publish a framework that the Authority will implement to give effect to items 3(2) and 4(1).

(2) The framework referred to in sub-item (1) must be—

(i) reasonable and fair; and

(ii) allow for sufficient engagement with applicants for licences and authorisation under this Schedule.

(3) The Authority may in the framework referred to in sub-item (1) provide for different processes and timeframes in respect of different categories of applicants for licences and licensing activities in Schedule 1.

(4) The Authority must within a period of 3 years after the effective date, or another date as determined by the Minister by notice in the Government Gazette –

(a) subject to item 3(2), grant all previously licensed financial institutions a licence in accordance with this Act; and

(b) process all applications for licenses and authorisations in terms of this Schedule.

Continuation of previously licensed financial institutions where a financial sector law required licensing for business similar to activities and sub-activities listed in Schedule 1

3. (1) As of the effective date of this item, every previously licensed financial institution that was, immediately before that date, licensed under the previous Act continues to exist as a licensed financial institution in terms of the previous Act, as if it had been licensed under this Act and authorised to perform an activity or sub-activity that is similar to the business for which it was licensed under the previous Act, and may continue to conduct the business for which it was licensed under the previous Act, subject to and in accordance with the requirements of this Act and the requirements of the Previous Act, until it is—

(a) granted a licence under this Act and authorised to perform the similar activity or sub-activity; or

(b) directed by the Authority in terms of sub-item (3) to cease performing the activity or sub-activity.

(2) *(a)* The Authority must licence and authorise a previously licensed financial institution to perform activities and sub-activities referred to in Schedule 1 that is similar to the business for which it was licensed under the previous Act, if the previously licensed financial institution, immediately prior to the effective date, was actively and prudently conducting business similar to that activity or sub-activity.

(b) Despite paragraph *(a)*, and subject to any limitations relating to an activity or sub-activity provided for in this Act, a previously licensed financial institution that applies for a licence under this Act, may only be issued a licence in terms of this Act to perform activities or a category or sub-activities that it is permitted to be licensed for in terms of this Act.

(3) If the Authority does not licence and authorise a previously licensed financial institution to perform an activity or sub-activity set out in Schedule 1 that is similar to the business that the previously licensed financial institution was licensed for on the effective date because—

(a) the previously licensed financial institution did not immediately prior to the effective date perform that activity or sub-activity; or

(b) of the application of sub-item 3*(b)*, the Authority must direct the previously licensed financial institution to make arrangements to the satisfaction of the Authority to—

(i) cease performing the activity or sub-activity;

(ii) discharge its obligations under all contracts entered into in respect of that activity or sub-activity before the decision of the Authority not to licence and authorize the activity or sub-activity; or

(iii) ensure the orderly resolution of that business of the financial institution; or

(iv) transfer that business to another financial institution under section 44 of this Act by a specified date.

Authorisation for activities or sub-activities where a financial sector law did not require licensing

4. (1) A person who, as a regular feature of that person's business, performs an activity or sub-activity in terms of Schedule 1 and who is not currently licensed with the Authority and authorised to perform business in that activity or sub-activity, must within 4 months of the effective date of this item apply, in accordance with this Schedule, for—

(a) a licence in terms of this Act, if the person is not already regarded as having been licensed under this Act in terms of item 3(1); and

(b) authorisation to perform that activity or sub-activity.

(2) A person referred to in sub-item (1) may continue performing the activity or sub-activity which it was performing as a regular feature of its business immediately before the effective date of this item, without the person being licensed under this Act to perform that activity or sub-activity, up until—

(a) the period to submit an application referred to in sub-item 1 has expired without the person submitting an application; or

(b) an application referred to in sub-item (1) has been granted or declined.

SCHEDULE 5

LAWS AMENDED AND REPEALED

Part 1
Amendment of Pension Funds Act, 1956 (Act No. 24 of 1956)

General replacement of terms in Act 24 of 1956

1. Act 24 of 1956 is amended by substituting, in the following provisions—

(a) for the term "pension fund" of the term "retirement fund", wherever the term may appear:

The long title of the Act; section 1(1), the definition of "disclosure"; section 2(1), (3), (4); 7A(4)*(b)*; 9(4)*(c)* and (5); the heading of section 13A and 13B (substitution for "pension funds" of "retirement funds"; Sections 13B(1); 18A; 19(5C); 29A(1) and the heading to section 29A; 32; 37D(4); 40;

(b) for the term "fund" of the term "retirement fund", wherever the term may appear, including in the headings to the sections:

Section 1(1), the definitions of "actuarial surplus", "beneficiary", "benefit", "complainant", "complaint", "contingency reserve account", "conversion", "deferred pensioner", "employer", "employer surplus account"- except in paragraph *(c)* where "fund return" is referred to, "fair value", "financial year", "fund return" but not the title of the term or in paragraph *(c)* where there is the reference to "fund member policies", "investment reserve account"- only the initial reference to "fund", and not in the references to "fund return" , "member surplus account"- only the initial use of the term "fund", and not where used as "fund return", "non-member spouse", "officer", "pensioner", "principal employer", "registered", "reserve account", "rules", "stakeholder", "statutory actuarial valuation", "surplus apportionment date", "valuation exempt" ; Sections 2(1), (2)*(b)* and (4); 7A(1) and (2); 7B(1)(the words preceding paragraph *(a)*), *(a)* and *(b)* (the words preceding subparagraph (i)); 7C(1), (2)*(a)* and *(f)*; 7D(1)*(a)*, *(c)*, *(d)* and *(f)*; 8(2)*(c)(e)*, (3), (4), (5)*(c)*(i) and (iv)*(dd)* and *(d)*; 9(4); 9B; 11; 12(1)*(a)*, (3) and (4); 13A(2) to (7), (9), (10); 13B(5), (6), (7A), (8), (10);14(1)*(c)*, *(e)* (7)*(a)* (the first and sole use of "fund", and not where "retirement annuity fund" is referred to) (8) (the words preceding paragraph *(a)*, and substituting for "transferee funds" of "transferee retirement funds in paragraphs *(a)* and *(aA)*"); 14A; 14B (excluding the references to "fund return" in subsections (1)*(b)* and (2)*(a)*(ii) and (4)*(b)*(i));15(4); 15A(1) and (3) (excluding the reference to "fund return" in subsection (3)); 15B(1), (3)*(a)*(ii), (iii) and (iv) (substitution of "funds" for "retirement funds"), (3)*(b)*, (4); (5) (excluding the reference to "fund return" in paragraph *(b)*); (6)*(a)* to *(d)* , (9), (11) to (13); 15C; 15D(1); 15E;15G(1); 15H(1); 15I, in the words preceding paragraph *(a)* and paragraph *(c)*(i) and (ii); 15J(1) and (3)*(d)*; 15K(1)*(a)* and *(e)*, (2), (3), (6A)*(c)*, (9)*(d)*(ii), (11), (12)*(a)*, (15); 16(3), (3A), (4), (5), (6), (8), (9); 18(1), (1A), (3), (4), (5); 19(4A), (4B), (5), (5B)(other than the reference to "funds" in paragraph *(a)*), (5C), (5D)*(a)*, (6)*(a)*; 20(1); 21; 24; 26(1) and (2); 28; 28A(1); 29(5), (6), (8), and substitute in (6A) for the term "fund's" of the phrase "registered fund's"; 29A; 30 (including the heading to the section); 32A(1); 35; 36 (including substituting for "funds" of "retirement funds" in subsection (2); 37(1)*(b)*; 37A;37D (1) to (3) and (6); 40B, including where "funds" is referred to, but not in relation to the terms ""defined benefit category of fund" and "fund return";

(c) for the term "registered fund" of the term "licensed retirement fund", wherever the term may appear:

Sections 8(1) and 8(2)*(a)* and *(b)*; 9(1) and (2); 9A(1) and (3);10; 11(2); 12(1), (5), (6); 13; 13A(1);14(1) (the words preceding paragraph *(a)*, and paragraph *(d)*),(8)*(b)*(i) and (ii) (substituting "registered funds" for "licensed retirement funds");14A(1); 15(1) to (3); 16(1), (5), (8); 18(1), (1A); 19(4), (5)*(a)*, (5B), (5C); 20(1) and (3); 22(3); 28(1); 30(3); 35; 37A(1); 37B; 37C(2)*(a)*; 37D(1);

(d) for the term "registration" of the term "licensing", wherever the term may appear:

Sections 8(3); 11(1); 16(3A), (4); 21(1)*(a)*;

(e) for the term "registered" of the term "licensed", wherever the term may appear:

Sections 16(3) and (3A); 29A(1), as well as substituting the term "unregistered" for "unlicensed"; 32(1); 37(1)*(b)*;

(f) for the term "register" of the term "licence" in section 32(3); and

(g) for the term "registrar" of the term "Authority", wherever the term may appear:

Section 1(1), the definitions of "administrator", "contingency reserve account", "financial year", "valuator" ; Section 2(4); 8(2)*(a)*,(3), (5) and (6); 9(2)*(b)*, (4) and (5); 9B(1) and (2); 10; 11(3)*(a)*;12; 13A(5) and (6); 13B(1) and (1A)*(c)*, (1B), (5)*(g),* (6), (8) to (10); 14(1), (2)*(b)*, (5), (6), (7)*(b)*(ii)*(aa,* (9); 15 15B(1), (3)*(b)*(ii), (4)*(a)*, (5)*(c)* and *(d)*(ii), (6), (9), (11) to (13); 15E(2); 15F(1) and (2); 15J; 15K(1) to (3), (5), (6A)*(c)*, (10), (11), (13) and (15); 16(1), (2), (5), (6), (8) and (9); 18(1A), (2), (3), (4), (5)*(b)* and *(c)*; 18A; 19(4A), (5D) and (6)*(a)*; 20 (including the heading of the section); 21 (including the heading of the section); 22; 23 (including the heading of the section); 24; 26(1), (2), (4) and (5); 27; 28; 28A; 29(1), (7) and (8); 29A(2)*(c)*; 32 (including in the heading of the section); 32A (including the heading of the section).

Amendment of section 1(1) of Act 24 of 1956

2. Section 1(1) of Act 24 of 1956 is amended—

(a) by substituting for the definition of "administrator":

"**"administrator"** means a person **[approved by the Authority in terms of section 13B (1)]** licensed by the Authority under the Conduct of Financial Institutions Act for retirement fund self-administration as defined in Schedule 1 of that Act;';

(b) by substituting for the definition of "audit exempt fund":

"**"audit exempt fund"** means a retirement fund which has been exempted by the **[registrar]** Authority in terms of section 2(5) from being required to be subject to audit;';

(c) by substituting for the definition of "Authority":

"**"Authority"** means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act **until the date contemplated in section 292(1) of the Financial Sector Regulation Act, after which it means the Prudential Authority established by section 32 of the Financial Sector Regulation Act**;';

(d) by substituting for the definition of "beneficiary fund":

"**"beneficiary fund"** means **[a fund referred to in paragraph *(*c) of the definition of "pension fund organisation]** any arrangement established with the object of receiving, administering, investing and paying benefits that became payable to a dependant or nominee in terms of section 37C, or in respect of the employment of a member on behalf of beneficiaries, or that became otherwise payable to natural persons on the death of an insured person in terms of one or more policies of insurance and payable on the death of more than one member of one or more retirement funds, on the death of any of their members;';

(e) by substituting for the definition of "board":

"**"board",** means the board of a retirement fund contemplated in section 4D, and 7A, 7B and 26(2) **[of this Act]**;';

(f) by inserting following the definition of "board member":

"**"Central Unclaimed Retirement Benefit Fund"** means the Fund established under section 4D;';

(g) by inserting following the definition of "complaint":

"**"Conduct of Financial Institutions Act"** means the Conduct of Financial Institutions Act, 2021 (Act No. [--] of 2021;';

(h) by substituting for the definition of "contribution holiday":

"**"contribution holiday"**, in relation to a—

(a) defined benefit category of a fund, means payment by the employer of less than the contribution rate the valuator recommends be payable by the employer, taking into account the circumstances of the retirement fund and ignoring any surplus or deficit; or

(b) defined contribution category of a fund, means payment by the employer of less than the employer contribution rate defined in the rules prior to application of any credit balance in any employer reserve account as defined in the rules or employer surplus account;';

(i) by inserting following the definition of "credit agreement":

'**"credit rating agency"** means a credit rating agency as defined in section 58 of the Conduct of Financial Institutions Act;';

(j) by substituting for the definition of "defined benefit category of a fund":

'**"defined benefit category of a fund"** means a category of a retirement fund other than a defined contribution category of a fund;';

(k) by substituting for the definition of "defined contribution category of a fund":

'**"defined contribution category of a fund"** means a category of members whose interest in the retirement fund has a value at least equal to—

(a) the contributions paid by the member and by the employer in terms of the rules of the retirement fund that determine the rates of both their contributions at a fixed rate;

(b) less **[such]** the reasonable expenses **[as]** that the board determines;

(c) plus any amount credited to the member's individual account upon the commencement of the member's membership of the retirement fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of **[his or her]** the member's retirement fund with any other retirement fund, if any, other than amounts taken into account in terms of subparagraph *(d)*;

(d) plus any other amounts lawfully permitted, credited to or debited from the member's individual account, if any, as increased or decreased with fund return: Provided that the board may elect to smooth the fund return;';

(l) by deleting the definition of "fund";

(m) by substituting for the definition of "member";

'**"member" [in relation to]** means any member or former member of a retirement fund**[**—

***(a)* a fund referred to in paragraph *(a)* or *(c)* of the definition of "pension fund organisation", means any member or former member of the association by which [such] the fund has been established;**

***(b)* a fund referred to in paragraph *(b)* of that definition, means a person who belongs or belonged to a class of persons for whose benefit that fund has been established]**,

but does not include any person who has received all the benefits which may be due to that person from the retirement fund and whose membership has thereafter been terminated in accordance with the rules of the retirement fund;';

(n) by inserting following the definition of "normal retirement age":

'**"occupational fund"** means a retirement fund established by a principal employer, or by the principal employer in a group of companies where two or more of the employers in the group participate in the fund, for the benefit of the employees of those employer(s);';

(o) by substituting for the definition of "pension fund":

'**"pension fund"** means a **[pension fund organisation]** retirement fund where a member may elect to receive a lump sum payment up to one-third of the member's individual account of the member' benefit upon retirement;';

(p) by deleting the definition of "pension fund organisation";

(q) by inserting following the definition of "pension preservation fund":

'**"prescribed"** means prescribed by the Authority in a conduct standard, by the Prudential Authority in a prudential standard, or in a joint standard;';

(r) by substituting for the definition of "pension preservation fund":

'"**pension preservation fund**" means **[a fund that is a—**

(a) **pension preservation fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or**

(b) **pension fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), doing the business of a pension preservation fund as prescribed by the Commissioner in terms of that Act;]** pension fund established for the purpose of preserving the benefits of former members of other retirement funds whose memberships have terminated in those other retirement funds;';

(s) by inserting following the definition of "Protected Disclosures Act":

'"**provident fund**" means a retirement fund where a member may receive the member's full benefit upon retirement;';

(t) by inserting following the definition of "provident preservation fund" of the following definition:

'"**provident preservation fund**" means **[a fund that is a—**

(a) **provident preservation fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or**

(b) **provident fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), doing the business of a provident preservation fund as prescribed by the Commissioner in terms of that Act;]** a provident fund established for the purpose of preserving the benefits of former members of other retirement funds, whose memberships have terminated in those other retirement funds;';

(u) by inserting following the definition of "prudential standard":

'"**public sector retirement fund**" means a retirement fund to which the State, or to which a national or provincial public entity, or a national or provincial business enterprise as those terms are defined in section 1 of the Public Finance Management Act, or a municipality or municipal entity as defined in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), contributes;';

(v) by substituting for the definition of "retirement annuity fund":

'"**retirement annuity fund**" means **[a retirement annuity fund as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)]** a retirement fund established for the purpose of providing life annuities for the members of the retirement annuity fund or annuities for the dependants or nominees of deceased members where a member may elect to receive a lump sum payment up to one-third of the member's individual account of the member's benefit upon retirement;';

(w) by inserting following the definition of "retirement annuity fund":

'"**retirement fund**" means any arrangement established with the primary object of providing annuities or lump sum payments on retirement of a member or for payments of benefits to beneficiaries upon the death of a member;';

(x) by inserting following the definition of "statutory actuarial valuation":

'"**sub-fund**" means that section of an umbrella fund that is defined in terms of a set of special rules applicable to that employer that participates in the umbrella fund;';

(y) by inserting following the definition of "Tribunal":

'"**umbrella fund**" means a retirement fund which provides for the participation of more than one employer that are not associated with each other; and';

(z) by substituting for the definition of "unclaimed benefit":

'"**unclaimed benefit**" means—

(a) any benefit, other than a benefit referred to in paragraphs *(aA)*, *(b)*, *(c)* and *(d)*, not paid by a retirement fund to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the retirement fund, became legally due and payable;

(aA) a share of a death benefit payable to a beneficiary under section 37C not paid within 24 months from the date on which the retirement fund **[became aware of the death of the member or such longer period as may be reasonably justified by the board of the fund in writing]** allocated that share to the beneficiary;

(b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a retirement fund to a member, former member or beneficiary within 24 months of—

(i) the expiry date of any guarantee period for pension payments provided for in the rules of the retirement fund; or

(ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the retirement fund became unpaid;

(c) **[in relation to a benefit]** an amount payable to a former member **[who cannot be traced in accordance with section 15B (5)*(e)*, any benefit that has become legally due and payable to a former member]** in terms of a surplus apportionment scheme approved in terms of this Act but not paid to that former member within 24 months of the date on which it became legally due and payable;

(d) any **[benefit that remained unclaimed or unpaid]** amount payable to a member, former member or beneficiary **[when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid,]** of a retirement fund in liquidation when the liquidator is satisfied that it will not be paid within six months after the finalisation of the liquidation; or

(e) any amount payable **[that remained unclaimed or unpaid]** to a non-member spouse but which has not been paid within 24 months from the date of the deduction contemplated in section 37D(4)*(a)*(ii),

but does not include a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act;'; and

(aa) by substituting for the definition of "unclaimed benefit fund":

'"**unclaimed benefit fund"** means **[a fund that is established for the receipt of unclaimed benefits contemplated in the definitions of a pension preservation fund and a provident preservation fund in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);]** an arrangement established with the object of receiving, administering, investing and paying unclaimed benefits;'.

Repeal of section 1(2) of Act 24 of 1956

3. Section 1(2) of Act 24 of 1956 is repealed.

Amendment of section 1A(4)*(b)* of Act 25 of 1956

4. Section 1A(4) of Act No. 24 of 1956 is amended by substituting for paragraph *(b)*:

"(*b*) a reference to the Authority determining the matter in writing **[and registering the determination in the Register]**.".

Amendment of section 1B of Act 24 of 1956

5. Section 1B of Act No. 24 of 1956 is amended by substituting for the section:

"**Regulatory instruments**

1B. For the purposes of the definition of "regulatory instrument" in section 1 (1) of the Financial Sector Regulation Act, any matter prescribed by the Authority **[in respect of which notice in the *Gazette* is specifically required by this Act]** is a regulatory instrument.".

Amendment of section 2 of Act 24 of 1956

6. Section 2 of Act No. 24 of 1956 is amended—

(a) by deleting paragraph *(a)* in subsection (2);

(b) by substituting in subsection (2) for paragraph *(b)*:

"*(b)* Despite any other provision of this Act, the first statutory actuarial valuation of a fund **[registered]** licensed in accordance with paragraph *(a)* must be undertaken at the end of the first financial year following **[registration]** licensing or **[such other]** another date approved by the Authority."

(c) by substituting in subsection (4)*(a)* for the words preceding subparagraph (i):

"*(a)* The provisions of this Act, other than **[section three and subsections (1) and (2) of section four]** section 4(1) and (2), **[shall]** do not apply in relation to a **[pension]** retirement fund if the head office of the association which carries on the business of that retirement fund, or, as the case may be, of every employer who is a party to **[such]** that retirement fund, is outside the Republic, if—"; and

(d) by substituting in subsection (4) for paragraph *(b)*:

"*(b)* The **[registrar]** Authority may from time to time require any person carrying on the business in the Republic of a **[pension]** retirement fund referred to in paragraph *(a)*, to submit to the **[registrar such]** Authority those returns and information in connection with that business **[as]** that the **[registrar]** Authority may specify, and if at any time the **[registrar]** Authority is no longer satisfied **[as regards]** regarding any of the matters specified in paragraph *(a)*,**[he]** the Authority may advise the person accordingly by notice transmitted **[to him]** by registered post, and **[thereupon]** the provisions of this Act **[shall]** then apply in relation to **[such]** that retirement fund.".

Substitution of section 4 of Act 24 of 1956

7. Section 4 of Act 24 of 1956 is amended by substituting for the section:

"**[Registration] Licensing of [pension] retirement funds**

4. (1) Every **[pension]** retirement fund must, prior to commencing any **[pension]** retirement fund **[business]** activities –

(a) apply to the **[registrar]** Authority for **[registration]** licensing under this Act; and

(b) be provisionally or finally **[registered]** licensed under this Act.

(2) An application under subsection (1) **[shall]** must be accompanied by the particulars and the fee prescribed.

(3) The **[registrar]** Authority must, if the retirement fund has complied with the prescribed requirements and the **[registrar]** Authority is satisfied that the **[registration]** licensing of the retirement fund is desirable in the public interest, **[register]** licence the fund provisionally and forward to the applicant a certificate of provisional **[registration]** licensing, which **[provisional registration]** takes effect on the date determined by the retirement fund or, if no **[such]** date has been determined by the retirement fund, on the date of registration by the **[registrar]** Authority.

(4) If after considering **[any such]** an application the **[registrar]** Authority is satisfied that the fund complies with the conditions prescribed, **[he shall]** the Authority must **[register such]** licence the retirement fund and send to the applicant a certificate of **[registration]** licensing as well as a copy of the rules of the retirement fund bearing an endorsement of the date of **[registration]** licensing.

(5)(*a*) If the **[registrar]** Authority deems it necessary, the **[registrar]** Authority may—

(i) request a **[pension]** **retirement** fund to furnish additional information in respect of its application under subsection (1); or

(ii) require a **[pension]** retirement fund to verify the information provided in its application under subsection (1).

(*b*) If a **[pension]** retirement fund fails to furnish or verify the information contemplated in paragraph *(a)* within 60 days from the date of the request, its application under subsection (1) lapses.

(6) Subject to the provisions of subsection (7), the provisional **[registration]** licensing of a fund under subsection (3) **[shall be]** is valid for a period of **[five years]** one year, but may in the discretion of the **[registrar]** Authority and subject to **[such]** any conditions and limitations **[as he]** that the Authority may consider desirable, be renewed from time to time for periods not exceeding twelve months at a time and not exceeding five years in **[the aggregate]** total.

(7) Whenever a retirement fund which is provisionally **[registered]** licensed under this section has complied with all the requirements specified in subsection (4), the **[registrar shall register]** Authority must licence the retirement fund and transmit to it a certificate of **[registration]** licensing as well as a copy of its rules **[with the date of registration duly endorsed thereon]** bearing an endorsement of the date of licensing, and **[thereupon]** the retirement fund **[shall cease]** then ceases to be provisionally **[registered]** licensed.

(8) No retirement fund **[shall]** may be **[registered]** licensed or provisionally **[registered]** licensed under this Act except as provided in this section.".

Substitution of section 4A of Act 24 of 1956

8. Section 4A of Act 24 of 1956 is amended by substituting for the section:

"**Application of Act to public sector retirement funds**

4A. (1) This Act applies to all public sector retirement funds.

(2) *(a)* A public sector retirement fund which at the date of commencement of this section is not registered in terms of this Act, must apply for licensing in terms of section 4 of this Act, within a prescribed period after the date of commencement of this provision, and may be registered subject to any exemptions granted and conditions imposed by the Authority.

(b) A public sector retirement fund referred to in paragraph *(a)* must also apply to be licensed in terms of the Conduct of Financial Institutions Act, 2021, in accordance with the requirements and transitional arrangements provided for in terms of that Act.

(3) *(a)* Legislation which is in force at the date of commencement of this provision, which provides for the establishment of a public sector retirement fund, must be amended to the extent necessary to align with this Act and requirements prescribed in terms of this Act as well as the requirements of the Conduct of Financial Institutions Act, 2021, but subject to any exemptions granted and conditions imposed by the Authority, within 3 years from the date of commencement of this provision.

(b) The rules of a pension fund referred to in paragraph *(a)* must also be amended, to the extent necessary to align with requirements under this Act and the Conduct of Financial Institutions Act, but subject to any exemptions granted and conditions imposed by the Authority in terms of this Act, within a prescribed period from the date of commencement of this provision.

(4) Legislation that may be enacted subsequent to the date on which this section comes into operation that establishes a public sector retirement, must, subject to any exemptions granted and conditions imposed by the Authority in terms of this Act or the Conduct of Financial Institutions Act, 2021 —

(a) be consistent with this Act and the Conduct of Financial Institutions Act, 2021 and

(b) provide that the fund that is established and its rules must comply with requirements prescribed in terms of this Act and the Conduct of Financial Institutions Act, 2021.

(5) The Authority may make conduct standards and the Prudential Authority may make prudential standards to give effect to this section and sections 4B and 4C, including conduct standards the carrying on the activities of a public sector retirement fund referred to in subjection (2) from the date of the application for licensing until the date of licensing of the public sector retirement fund.".

Substitution of section 4B of Act 24 of 1956

9. Section 4B of Act 24 of 1956 is amended by substituting for the section:

"**Effect of [registration] licensing of [pension] public sector retirement fund referred to in section 4A(2)**

4B. (1) On the **[registration]** licensing of a **[pension]** public sector retirement fund referred to in section 4A(2), it **[shall become]** becomes a juristic person.

(2) Subject to the provisions of subsections (3) and (4), the **[registration]** licensing of a **[pension]** public sector retirement fund referred to in section 4A(2) **[shall]** does not affect the assets, rights, liabilities, obligations and membership of **[such pension]** the public sector retirement fund.

(3) **[Regulations]** Standards referred to in section 4A(4) may also provide for the termination of the membership of certain persons of a **[pension]** public sector retirement fund referred to in section 4A(2) which has been **[registered]** licensed, and for their membership of any other **[pension]** public sector retirement fund, and the passing of the obligations of the first-mentioned public sector retirement fund towards dependants and nominees of members **[thereof]** to the last-mentioned **[pension]** public sector retirement fund.".

Substitution of section 4C of Act 24 of 1956

10. Section 4C of Act 24 of 1956 is amended by substituting for the section:

"**Transfer to [pension] public sector retirement fund referred to in section 4A(2) of its assets held by another**

4C. (1) If any person holds any assets on behalf of a **[pension]** public sector retirement fund referred to in section 4A(2), or has **[on behalf of any such pension fund]** invested any assets in any stock, debentures, securities or financial instruments on behalf of a public sector retirement fund referred to in section 4A(2), **[he shall]** the person must, on production **[to him]** of the certificate of provisional **[registration]** licensing or the certificate of **[registration in respect of such pension]** licensing of the public sector retirement fund—

(a) transfer those assets into the name of **[such pension]** the public sector retirement fund;

(b) take **[such]** any necessary steps **[as may be necessary]** to ensure that on **[such]** the stock, debentures, securities or financial instruments issued in **[his]** the person's name and in any relevant register, **[such]** endorsements are made **[as]** that may be necessary to show that the ownership in **[such]** the stock, debentures, securities or financial instruments vests in **[such pension]** the public sector retirement fund; and

(c) if requested **[thereto by such pension]** by the public sector retirement fund, transfer to **[such]** the fund the stock, debentures, securities or financial instruments vested in it.

(2) No registration fee or costs **[shall be]** are payable in respect of any transfer or endorsement referred to in subsection (1)."

Insertion of section 4D in Act 24 of 1956

11. Act 24 of 1956 is amended by inserting following section 4C:

"**Central Unclaimed Retirement Benefit Fund**

4D. (1) A juristic person called the Central Unclaimed Retirement Benefit Fund is hereby established.

(2) The provisions of this Act apply, to the extent that they can be applied, to the Central Unclaimed Retirement Benefit Fund, except where specifically excluded.

(3) Despite section 7A of this Act, the board of the Central Unclaimed Retirement Benefit Fund consists of six board members, who must be appointed by the Authority after following a transparent and public process to identify suitable board members and alternate board members.

(4) The Authority may appoint an alternate board member to act in the absence or during incapacity of an appointed board member.

(5) A person may not be appointed as a member or alternate member if such a person is a disqualified person as contemplated in paragraphs *(b)* to *(k)* of the definition of 'disqualified person' in section 1(1) of the Financial Sector Regulation Act.

(6) A member or alternate member of the board holds office for five years, but may be reappointed at the expiry of a term.

(7) The board must appoint the chairperson of the board from its members.

(8) The Authority may subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove the board or board member if—

(i) the board or board member(s) is no longer able to fulfil the duties as a board or board member;

(ii) the board or board member (s) is considered to be a disqualified person;

(iii) the board or board member(s) has failed to perform satisfactorily any duty imposed by this Act, or to comply with a lawful requirement of the Authority or a commissioner appointed by the Court under this Act; or

(iv) for any other reason, if the board or board member(s) is no longer suitable to be the board or board member(s) of the fund concerned.

(9) A court may, on application by any interested person, remove a board or board member(s) from office if the Authority fails to do so in any of the circumstances mentioned in subsection (8) or for any other good cause.

(10) In addition to the object of a board of a fund set out in section 7C of this Act, the board of the Central Unclaimed Retirement Benefit Fund, must—

(a) accept and consolidate unclaimed benefits held by funds on behalf of members and beneficiaries;

(b) ensure that the Central Unclaimed Retirement Benefit Fund is administered to achieve its objectives to trace and pay beneficiaries;

(c) ensure that proper records are maintained for the determination and tracing of members and beneficiaries; and

(d) pay benefits from the Central Unclaimed Retirement Benefit Fund to identified members and beneficiaries.

(11) *(a)* The board of the Central Unclaimed Retirement Benefit Fund must appoint an administrator that is approved in terms of the Conduct of Financial Institutions Act in accordance with a procurement process that is fair, equitable, transparent and competitive.

(b) The Board of the Central Unclaimed Retirement Benefit Fund must develop and maintain a procurement policy that conforms to the requirements in subparagraph *(a)*.

(12) *(a)* The Authority must approve the rules of the Central Unclaimed Retirement Benefit Fund.

(b) The rules must be in the prescribed format and comply with the requirements prescribed in standards in so far as those requirements may be applied.

(13) The Authority must publish a Notice in the *Gazette* that sets out—

(a) the purposes for which an unclaimed benefit, that remained unclaimed for a period of at least thirty years from date of receipt of the benefit by the Central Unclaimed Retirement Benefits Fund, may be utilised; and

(b) the process that the Authority must follow when determining the purpose for which such unclaimed benefit may be utilised, including that –

(I) the Authority must give reasonable notice of the intention to make unclaimed benefits of the Central Unclaimed Retirement Benefit Fund available for projects or causes for the benefit of the retirement fund industry or communities within the retirement fund industry and request interested parties to make submissions of possible projects or causes for which such unclaimed funds can be utilised;

(II) submissions to access funds that remained unclaimed as per subparagraph *(a)*, must be referred to the administrative action committee established under section 87 of the Financial Sector Regulation Act, if such a committee has been established, for its consideration and recommendation.

(14) The provisions of section 26(1) to (3) and (5), and sections 27 to 29 of this Act do not apply to the Central Unclaimed Retirement Benefit Fund.".

Substitution of section 5 of Act 24 of 1956

12. Section 5 of Act 24 of 1956 is amended by substituting for the section:

"**Effect of [registration] licensing of [pension] retirement fund**

5. (1) Upon the **[registration]** licensing of a retirement fund under this Act—

(a) **[of a fund which is a pension fund organization in terms of paragraph *(a)* of the definition of "pension fund organization" in subsection (1) of section one],** the retirement fund **[shall]**, under the name by which it is **[so registered]** licensed, **[and in so far as its activities are concerned with any of the objects set out in that definition]**, **[become]** becomes a body corporate capable of suing and being sued in its corporate name and of doing all **[such]** things **[as]** that may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules;

(b) **[of a fund which is a pension fund organization in terms of paragraph *(b)* of the said definition,]** all the assets, rights, liabilities and obligations pertaining to the business of the retirement fund **[shall]**, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of any body corporate or unincorporate having control of the business of the retirement fund, **[be]** are deemed to be assets, rights, liabilities and obligations of the retirement fund to the exclusion of any other person, and no person **[shall]** may have any claim on the assets or rights or be responsible for any liabilities or obligations of the retirement fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the **[business]** activities of the retirement fund;

(c) **[of any fund,]** the assets, rights, liabilities and obligations of the retirement fund (including any assets held by any person in trust for the retirement fund), as existing immediately prior to its **[registration]** licensing, **[shall]** vest in and devolve upon the **[registered]** licensed retirement fund without any formal transfer or cession**[.]**;

(d) which is an umbrella fund, of which the rules provide for the assets, rights, liabilities and obligations in respect of each participating employer to be maintained separately in a sub-fund—

(i) the assets and liabilities corresponding to members employed by a participating employer, members and pensioners who were previously employed by that employer and their beneficiaries, must be held separately in each sub-fund;

(ii) any provision of the Act relating to—

(aa) the determination of minimum benefits, minimum individual reserves, minimum pension increases of members;

(bb) the determination, application, distribution and transfer of actuarial surplus;

(cc) the funding of any shortfall between the assets and liabilities; and

(dd) member and employer surplus accounts,

must apply to each sub-fund separately, although an umbrella fund may maintain accounts at fund level.

(1A) A fund operating as an umbrella fund at the effective date of this amendment must comply with the provisions of section 5(1)*(d)*(i) and (ii) within 12 months from that date.

(1)*bis* The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which in terms of **[paragraph *(c)* of]** subsection (1)*(c)* vests in or devolves upon a **[registered]** licensed retirement fund **[shall]** must, upon production **[to him]** by the retirement fund of its licensing certificate **[of registration]** or **[of]** provisional **[registration]** licensing certificate, as the case may be, and of the deed or other document **[aforesaid]**, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements **[upon such]** on the deed or document and the alterations in **[his]** the registers that are necessary **[by reason of such]** as a result of the vesting or devolution.

(2) *(a)* Subject to paragraph *(b)*, all moneys and assets belonging to a **[pension]** retirement fund **[shall]** must be kept by that retirement fund, and every retirement fund **[shall]** must maintain **[such]** books of account and other records **[as]** that may be necessary for the purpose of **[such]** the retirement fund**[:]**.

(b) **[Provided that such money]** Money and assets of a retirement fund may, subject to **[such]** conditions **[as]** that may be prescribed, also be kept in the name of the **[pension]** retirement fund by one or more of the following institutions or persons**[, namely -]** :

[*(a)*] (i) **[an]** An authorised user as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

[*(b)*] (ii) **[a long-term insurer registered in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998)]** an insurer defined in the Insurance Act, 2017 (Act No. 18 of 2017) licensed to conduct life insurance business;

[*(bA)*](iii) a manager of a domestic or foreign collective investment scheme registered under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

[*(c)*] (iv) a bank registered under the Banks Act, 1990 (Act No. 94 of 1990);

[*(d)*] (v) a financial institution licensed under the Conduct of Financial Institutions Act to perform a fiduciary or custodian service or a nominee company; or

[*(e)*] (vi) a person or investment vehicle approved by the **[registrar]** Authority subject to such conditions as the **[registrar]** Authority may determine.

(3) For the purposes of this section, a nominee company is a company which—

(a)(i) has as its principal object to act as representative of any person;

(ii) is precluded by its Memorandum of Incorporation from incurring any liabilities other than those to persons on whose behalf it holds property;

(iii) has entered into an irrevocable agreement with another person in terms of which **[such]** the other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation; and

(iv) has been approved by the **[registrar]** Authority , subject to **[such]** those conditions **[as]** that the **[registrar]** Authority may impose, including any guarantee for the fulfilment of any obligation in respect of the holding of **[such]** property, the generality of the **[afore-going]** above provisions not being restricted by the provisions of this paragraph;

(b) is incorporated under the Companies Act where the Memorandum of Incorporation contains a reference to paragraph *(a)*(i) and (ii) as a restrictive condition contemplated in section 15(2)*(b)* of the Companies Act.

(4) Notwithstanding the provisions of subsection (2), the **[registrar]** Authority may permit money and assets to be kept in the name of **[a nominee company]** the institutions referred to in subparagraph (2)*(b)*(v) on behalf of the **[pension]** retirement fund.".

Repeal of section 6 of Act 24 of 1956

13. Section 6 of Act 24 of 1956 is repealed.

Substitution of section 7 of Act 24 of 1956

14. Section 7 of Act 24 of 1956 is amended by substituting for the section:

"**Registered office**

7. (1) Every **[registered]** licensed retirement fund **[shall]** must have a registered office in the Republic.

(2) Process in any legal proceedings against any **[such]** licensed retirement fund may be served by leaving it at the registered office, and in the event of **[such]** the registered office having ceased to exist, service upon the **[registrar]** Authority **[shall be]** is deemed to be service upon the licensed retirement fund.".

Substitution of section 7A of Act 24 of 1956

15. Section 7A of Act 24 of 1956 is amended by substituting for the section:

"**Board of fund**

7A. (1) **[Notwithstanding]** Despite the rules of a retirement fund, every retirement fund **[shall]** must have a board consisting of at least four board members, at least 50% of whom the members of the retirement fund **[shall]** must have the right to elect, subject to subsection (3).

(1A) The composition of the board **[shall]** must at all times comply with the requirements of the rules of the fund and any vacancy on **[such]** the board **[shall]** must be filled within **[such]** the prescribed period **[as prescribed]**.

(2)*(a)* Subject to subsection (1), the constitution of a board, the election procedure of the members mentioned in that subsection, the appointment and terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting, the breaking of deadlocks and the powers of the board **[shall]** must be set out in the rules of the fund**[: Provided that if]**

(b) If a board consists of four members or less, all the members **[shall constitute]** constitutes a quorum at a meeting.

(3)**[*(a)* A board member appointed or elected in accordance with subsection (1), must attain such levels of skills and training as may be prescribed by the Authority by notice in the *Gazette*, within six months from the date of the board member's appointment]** Only a person that complies with the prescribed fit and proper requirements may be appointed or elected as a board member.

[*(b)* A board member must retain the prescribed levels of skills and training referred to in paragraph (a), throughout that board member's term of appointment.]

(4) A board member must—

(a) within 21 days of removal as board member for reasons other than the expiration of that board member's term of appointment or voluntary resignation, submit a written report to the Authority detailing the board member's perceived reasons for the termination;

(b) on becoming aware of any material matter relating to the affairs of the **[pension]** retirement fund which, in the opinion of the board member, may seriously prejudice the financial viability of the retirement fund or its members, inform the Authority **[thereof]** in writing.".

Substitution of section 7B of Act 24 of 1956

16. Section 7B of Act 24 of 1956 is amended by substituting for the section:

"**Exemptions**

7B.(1) The Authority may on written application and the payment of the prescribed fee by **[of]** a retirement fund and subject to **[such]** those conditions **[as]** that may be determined by the Authority—

(a) authorise a retirement fund to have a board consisting of less than four board members if **[such]** that number is impractical or unreasonably expensive**[: Provided that],**but the members of the fund **[shall]** must have the right to elect at least 50 percent of the board members;

(b) exempt a retirement fund from the requirement that the members of the retirement fund have the right to elect members of the board, if the retirement fund—

(i) has been established for the benefit of employees of different employers referred to in the definition of "pension fund" and "provident fund" **[as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)]**;

(ii) is a retirement annuity fund;

(iii) is a beneficiary fund; or

(iv) is a pension preservation fund or a provident preservation fund **[as defined in section 1 of the Income Tax Act, 1962]**.

(2) The Authority may withdraw an exemption granted under subsection (1)*(a)* or (1)*(b)* if a retirement fund no longer qualifies for **[such]** the exemption.".

Substitution of section 7C of Act 24 of 1956

17. Section 7C of Act 24 of 1956 is amended by substituting for the section:

"**Object of board**

7C. (1) The object of a board **[shall]** must be to direct, control and oversee the operations of a retirement fund in accordance with this Act, and any other **[the]** applicable laws and the rules of the fund.

(2) In pursuing its object, the board **[shall]** must—

(a) take all reasonable steps to ensure that the interests of members in terms of the rules of the retirement fund and the provisions of this Act and are protected at all times, especially in the event of an amalgamation or transfer of any business contemplated in section 14, splitting of a fund, termination or reduction of contributions to a fund by an employer, increase of contributions of members and withdrawal of an employer who participates in a fund;

(b) act with due care, diligence and good faith;

(c) avoid conflicts of interest;

(d) act with impartiality in respect of all members and beneficiaries;

(e) act independently;

(f) have a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as a fiduciary duty to the retirement fund, to ensure that the retirement fund is financially sound and is responsibly managed and governed in accordance with the rules and this Act; and

(g) comply with any other prescribed requirements.".

Amendment of section 7D of Act 24 of 1956

18. Section 7D of Act 24 of 1956 is amended by repealing subsection (1).

Repeal of section 7E of Act 24 of 1956

19. Section 7E of Act 24 of 1956 is repealed.

Substitution of section 8 of Act 24 of 1956

20. Section 8 of Act 24 of 1956 is amended by substituting for the section:

"**Principal officer and deputy principal officer**

8. (1) Every **[registered]** licensed retirement fund **[shall]** must have a principal **[executive]** officer, who complies with the prescribed fit and proper requirements.

(1A) A principal officer has a fiduciary duty to the fund and its members and must—

(a) be independent and have the requisite knowledge of, or experience in, relevant laws;

(b) be appointed by the fund;

(c) oversee the proper execution of resolutions taken by the board of the fund;

(d) report to the board on matters requiring the board's attention and resolution;

(e) provide the board collectively and trustees individually with guidance as to their duties, responsibilities and powers;

(f) make the board aware of any law relevant to or affecting the fund;

(g) report to the board any failure on the part of the fund or a board member to comply with the registered rules of the fund or relevant laws;

(h) ensure that minutes of all board meetings and the meetings of any committees are properly recorded;

(i) be the official contact person for the Authority with the fund unless the circumstances of the fund dictate otherwise;

(j) independently satisfy themselves as to the veracity of documents required to be submitted to the Authority by the fund in terms of this Act;

(k) be accountable to the Authority.

(1B) Nothing contained in subsection (1A) may be construed to mean that the board or a board member is divested or relieved of their responsibilities in terms of this Act.

(2)*(a)* The principal officer of **[registered]** licensed retirement fund **[shall]** must be an individual who is resident in the Republic, and if the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon the principal officer by any provision of this Act, the **[registered]** licensed retirement fund **[shall]** must, in the manner directed by its rules, appoint another person to be its principal officer within **[such]** the period **[as]** that may be prescribed by the **[registrar]** Authority, after the commencement of a continuing absence or inability to discharge any duty by the principal officer.

(b) A **[registered]** licensed retirement fund may appoint a deputy principal officer.

(c) The principal officer may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the **[registered]** licensed retirement fund to the deputy principal officer, subject to conditions that the principal officer must determine

(cA) A person may only be appointed as a principal officer or a deputy principal officer who complies with the prescribed fit and proper requirements.

(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the principal officer may withdraw the delegation at any time.

(e) If a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act, until the fund formally in the manner directed in its rules appoints a new principal officer.

[(3) Every fund must within 30 days after the registration of a fund or within 30 days after the appointment of a principal officer give the Authority written notice of the appointment by furnishing the Authority with the prescribed information in respect of the appointee.

(4) Despite anything to the contrary in any law or in any agreement, the appointment by a fund of a principal officer is subject to the condition that the appointment may be terminated under subsection (5)(b) and the fund must make any appointment subject to this condition.

(5)*(a)* The Authority , subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), may, if the Authority reasonably believes that a principal officer is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the principal officer holds or continues to hold such office, object to the appointment of a principal officer, stating the grounds for the objection, and provide such to the chairperson of the board and to the appointee.

(b) **If the Authority objects to an appointment in terms of paragraph (a), the board must terminate the appointment within 30 days of the Authority informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).**

(c) **The Authority may for purposes of assessing if a principal officer is not, or is no longer, a fit and proper person in accordance with paragraph *(a)*, have regard to—**

(i) **the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and type of fund;**

(ii) **the diligence with which the person concerned is likely to fulfil those responsibilities;**

(iii) **previous conduct and activities of the person in business or financial matters; and**

(iv) **any evidence that the person—**

(aa) **after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act., 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), or any offence involving dishonesty;**

(bb) **has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine;**

(cc) **has contravened the provisions of any law the object of which is the protection of the public against financial loss;**

(dd) **is a former principal officer of a fund and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;**

(ee) **has taken part in any business practices that, in the opinion of the Authority , were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or**

(ff) **has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgement.**

(d) **The Authority may request any person to assist him or her in assessing whether a person is fit and proper to act as a principal officer of a fund.]**

(6) A principal officer of a fund must—

(a) within 21 days of his or her appointment being terminated, other than **[in accordance with the condition referred to in subsection (5)(b)]** as a result of an action taken by the Authority in terms of section 25(2)*(d)* of the Conduct of Financial Institution Act, submit a written report to the Authority detailing the principal officer's perceived reasons for the termination; and

(b) on becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members, inform the Authority **[thereof]**in writing.".

Amendment of section 9 of Act 24 of 1956

21. Section 9 of Act 24 of 1956 is amended—

(a) by substituting for subsection (3):

"(3)*(a)* The Authority may refuse an application for the Authority's approval of the appointment of an auditor if the application seeks the re-appointment of an auditor who has already served as auditor of the retirement fund in question for the prescribed number of years;

(b) The Authority may withdraw any approval of the appointment of an auditor previously granted by the Authority under this section, if the auditor—

(i) has been convicted of an offence of which dishonesty is an element;

(ii) is under investigation by the Independent Regulatory Board for Auditors; or

(iii) fails to disclose any direct or indirect interests which may constitute a conflict of interest in respect of the auditor's duties.

(c) Upon the withdrawal of an approval in terms of paragraph *(b)*, the functions and responsibilities of an auditor in respect of a retirement fund must immediately cease.

(d) A person appointed to replace an auditor whose approval has been withdrawn in terms of subsection *(b)* must be appointed for the remainder of the period for which the auditor whom the person replaces was appointed and is subject to the same conditions as the original appointment."; and

(b) by substituting in subsection (4) for paragraph *(a)*:

"*(a)* within 21 days of **[his or her]** the auditor's appointment being terminated, other than in accordance with **[section 8(5)]** subsection (3), submit a written report to the Authority detailing the auditor's perceived reasons for the termination;".

Substitution of section 11 of Act 24 of 1956

22. Section 11 of Act 24 of 1956 is amended by substituting for the section:

"**Rules**

11. The rules of a retirement fund which applies to be licensed must be in the prescribed format and form and must comply with the prescribed requirements.".

Amendment of section 12 of Act 24 of 1956

23. Section 12 of Act 24 of 1956 is amended—

(a) by substituting for subsection (4):

"(4) If the **[registrar]** Authority finds that any **[such]** alteration, rescission or addition is not inconsistent with this Act and is satisfied that it is financially sound, **[he shall]** the Authority must register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of

registration endorsed thereon, and **[such]** the alteration, rescission or addition, as the case may be, **[shall take]** takes effect **[as]** from the date determined by the retirement fund concerned or, if no date has been **[so]** determined, **[as]** from the **[said]** date of **[registration]** licensing."; and

(b) by substituting in subsection (6) for paragraph *(b)*:

"*(b)* If a registered fund fails to furnish the information requested by the **[registrar]** Authority within **[180 days from the date of that request]** the period determined by the Authority, any submission for approval of an alteration, rescission, addition or consolidation of the rules of that fund lapses.".

Amendment of section 13A(3)*(a)*(iii) of Act 24 of 1956

24. Section 13A(3) of Act 24 of 1956 is amended by substituting in paragraph *(a)* for subparagraph (iii):

"(iii) in the case of a fund contemplated in section 15(4) that has been exempted from the provisions of sections 5(2) and 9 because, in operating as a fund, its assets consist exclusively of one or more policies of insurance with an insurer **[carrying on long-term insurance business as contemplated in the Insurance Act, 1943, shall]** licensed to conduct life insurance business under the Insurance Act, 2017 (Act No. 18 of 2017), must be forwarded to the insurer concerned in such manner as to have the insurer receive the contribution not later than seven days after the end of that month.".

Repeal of section 13B of Act 24 of 1956

25. Section 13B of Act 24 of 1956 is repealed.

Amendment of section 14 of Act 24 of 1956

26. Section 14 of Act 24 of 1956 is amended —

(a) by substituting in paragraphs *(b)* and *(d)* of subsection (1) for the term "he", of the term "the Authority";

(b) by substituting for subsection (5):

"(5) Any application for approval of a scheme lodged with the **[registrar]** Authority in terms of subsection (1)*(a)* **[shall lapse]** lapses if the **[registrar]** Authority requests further information and no satisfactory response is received from either the transferor or the transferee fund, as the case may be, within a period **[of 180 days from the date of such request]** determined by the Authority.";

(c) by substituting for subsections (8) and (9):

"(8) With effect from the commencement of the Pension Funds Amendment Act, 2007, subsection (1) does not apply—

(a) where the affected members were duly informed of a proposed transaction and any objection the members may have, has been resolved to the satisfaction of the board of the fund concerned**[,]**; and

[(a)] (i) both transferor and transferee retirement funds are valuation exempt; or

[(aA) **both transferor and transferee funds are beneficiary funds; or]**

[(b)](ii) the transferor, **[or]** transferee fund, or other person or trust contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988) is neither **[registered]** licensed nor required to **[register]** be licensed under this Act and the other fund is valuation exempt**[,]**; or

(b) in the case of unclaimed benefit members; and,

furthermore, that—

[(i)]*(aa)* **[such registered]** those licensed retirement funds keep proper records of all such transactions;

[(ii)]*(bb)* **[such registered]** those licensed retirement funds comply with any further requirements as the **[registrar]** Authority may prescribe;

[(iii)]*(cc)* the assets and liabilities are transferred within **[180 days]** a period prescribed of the effective date of transfer; and

[(iv)](dd) any assets transferred must be increased or decreased with fund return from the effective date until the date of final settlement.

(9) Notwithstanding subsections (1) and (8), the **[registrar]** Authority may on application and payment of the prescribed fee exempt a transaction contemplated in subsection (1) from the provisions of this section, subject to such requirements or conditions as may be **[prescribed]** determined. "; and

(d) by inserting following subsection (9):

"(10) An exemption granted in terms of subsection (9) may be issued to apply generally or be limited in its application to a particular retirement fund or kind of retirement fund, which may, for the purposes of this subsection, be defined in relation to either a category or type of retirement fund or in any other manner.".

Amendment of sections 14(7)*(b)*(ii) and 14B(3)*(c)*(i) and (ii) of Act 24 of 1956

27. Sections 14(7)*(b)*(ii) and 14B(3)*(c)*(i) and (ii) of Act 24 of 1956 are amended by substituting for the phrase "Long Term Insurance Act, 1998)" for the phrase "Insurance Act, 2017 (Act No. 18 of 2017)".

Amendment of section 15 of Act 24 of 1956

28. Section 15 of Act 24 of 1956 is amended—

(a) by substituting for subsection (1):

"(1) Subject to the provisions of subsection (4), every **[registered]** licensed retirement fund **[shall]** must, within **[six]** four months as from the expiration of every financial year, furnish to the **[registrar]** Authority **[such]** the statements in regard to its revenue, expenditure and financial position **[as]** that may be prescribed, duly audited and reported on by the auditor of the fund;";

(b) by substituting in subsection (3):

"(3) If the **[registrar]** Authority is of the opinion that any document furnished by a **[registered]** licensed fund in terms of subsection (1) does not correctly reflect the revenue and expenditure or the financial position (as the case may be) of the fund, **[he]** the Authority may reject the **[said]** document, and in that event—

(a) **[he shall]** the Authority must notify the fund concerned of the reasons for such rejection; **[and]**

(b) the fund **[shall be]** is deemed not to have furnished the **[said]** document to the **[registrar]** Authority [**: Provided that in such event**]; and

(c) the **[registrar]** Authority may apply the provisions of section **[thirty-three]** 33, even though the period concerned may have expired before application is made for extension.";

(c) by substituting for subsection (4):

"(4) If a retirement fund has been exempted as contemplated in section **[2(5)*(a)*]** 281 of the Financial Sector Regulation Act, the **[registrar]**Authority may authorise **[such]** the retirement fund to furnish to **[him or her]** the Authority, instead of the statements referred to in subsection (1), the information prescribed;"; and

(d) by inserting following subsection (4):

"(5) A licensed retirement fund or categories of licensed retirement funds must submit to the Authority the regulatory reports or information in the format and within the periods that the Authority may determine.".

Amendment of section 16(5) of Act 24 of 1956

29. Section 16 of Act 24 of 1956 is amended by substituting in subsection (5) for the term "he" of the term "the Authority".

Amendment of section 18(3) and (4) of Act 24 of 1956

30. Section 18(3) and (4) of Act 24 of 1956 is amended by substituting for the terms "he" and "him" of the term "the Authority".

Amendment of section 18A of Act 24 of 1956

31. Section 18A of Act 24 of 1956 is amended—

(a) by substituting for subsection (1):

"(1) Notwithstanding the provisions of the Companies Act or any other law under which a **[pension]** retirement fund **[or an administrator]** is incorporated, Chapter 6 of the Companies Act **[shall]**, applies,

subject to this section and section 166BM of the Financial Sector Regulation Act, and with the necessary changes, **[apply]** in relation to the business rescue of a **[pension]** retirement fund **[or an administrator, whether or not it is a company]**.";

(c) by repealing subsections (2) to (5); and

(d) by substituting for subsection (6):

"(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a **[pension]** retirement fund **[or an administrator shall]** may not provide new benefits, unless the practitioner has been granted permission to do so by a court.".

Amendment of section 19 of Act 24 of 1956

32. Section 19 of Act 24 of 1956 is amended—

(a) by substituting in subsection (5)*(a)* for the words preceding subparagraph (i):

"(5)*(a)* A **[registered]** licensed retirement fund may, if its rules so permit and subject to those conditions that may be prescribed **[prudential standards]**, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member—"; and

(b) by substituting in subsection (6) for paragraph *(a)*:

"*(a)* The **[registrar]** Authority may, on application by a fund and the payment of the prescribed fee, under exceptional circumstances, and **[on such]** subject to conditions and for **[such]** the periods **[as he]** that the Authority may determine, temporarily exempt any retirement fund from compliance with any provision of subsection (5) or (5B)*(a)*.".

Amendment of section 20(3) of Act 24 of 1956

33. Section 20 of Act 24 of 1956 is amended by substituting for subsection (3):

"(3) Any person who is required in terms of any provision of this Act to furnish to the **[registrar]** Authority—

(a) any original document, **[shall]** must also furnish **[such]** additional copies **[thereof]**, not exceeding three in number, **[as]** that may be **[prescribed by regulation or as the registrar may require]** determined by the Authority;

(b) a copy of any document, **[shall]** must furnish one copy **[thereof]** that is certified as correct—

(i) in the case of a **[registered]** licensed retirement fund, by its principal officer; and

(ii) in any other case, by the person by whom **[such]** the copy is required to be furnished,

together with so many additional copies as may be determined, **[not exceeding three, as may be prescribed by regulation or as the registrar may require]** by the Authority,".

Amendment of section 21 of Act 24 of 1956

34. Section 21 of Act 24 of 1956 is amended by substituting for the term "him" of the term "the Authority".

Amendment of section 22 of Act 24 of 1956

35. Section 22 of Act 24 of 1956 is amended by substituting for the term "he" of the term "the Authority".

Substitution of section 26 of Act 24 of 1956

36. Section 26 of Act 24 of 1956 is amended by substituting for the section:

"**[Registrar]Authority may intervene in management of fund**

26. (1) Without limiting what a directive of a financial sector regulator may include, the Authority may, through a directive, direct that the rules of a retirement fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if the retirement fund—

(*a*) is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the retirement fund;
(*b*) has failed to act in accordance with the provisions of section 18; or
(*c*) is not being managed in accordance with this Act or the rules of the retirement fund.

(2) Where a retirement fund has no properly constituted board contemplated in section 7A or has no valid exemption granted to it in terms of section 7B, and—

(a) has failed to constitute a board in terms of section 7A **[after 90 days written notice]** within the period determined by the **[registrar]** Authority; or
(b) **[where,]** for whatever reason, a retirement fund cannot properly constitute a board that is compliant with the provisions of this Act **[or where a board fails to comply with any requirements prescribed by the registrar in terms of section 7A(3)]**,

the **[registrar]** Authority may, notwithstanding the rules of the retirement fund, at the cost of the fund or administrator, **[*(a)*]**(i) appoint **[so many]** one or more persons as the **[registrar]** Authority considers appropriate to **[the board of the fund or appoint so many persons as may be necessary to make up the full complement or quorum of the board;]** perform the functions of a board; and
[*(b)*](ii) assign to **[such]** the board **[such specific]** additional duties **[as]** that the **[registrar]** Authority **[deems expedient]** considers appropriate.

(2A) A person that is appointed under subsection (2) must comply with the requirements that may be prescribed in standards.

(3) A board constituted in terms of subsection (2) must—
(a) properly constitute a board in terms of section 7A or obtain an exemption in terms of section 7B;
(b) fulfil all the objects and duties of a board contemplated in this Act and the rules of the retirement fund;
(c) comply with any additional duties as determined by the Authority; and
(d) hold office—
(i) until the Authority is satisfied that the retirement fund has properly constituted a **[valid]** board in terms of section 7A **[and the registrar has relieved the former board in writing of its duties]**; or
(ii) until the Authority has granted an exemption in terms of section 7B and a board has been properly constituted; or
(iii) in the event that a board cannot be properly constituted, until –
(aa) the Authority has approved the appointment of a liquidator; or
(bb) the licence of the retirement fund has been cancelled.

(3A) *(a)* Where a board fails to comply with any requirements of a financial sector law, the Authority may, after giving the board a reasonable opportunity to be heard, at the cost of the retirement fund appoint a statutory manager to the board of the retirement fund without the consent of the board.

(b) The retirement fund's or the board's agreement to the appointment of the statutory manager in terms of paragraph *(a)* is not required.

(c) Subsections (2) to (7) of section 166BJ of the Financial Sector Regulation Act apply with the necessary changes to the appointment of a statutory manager under this section by the Authority.

(4) If the **[registrar]** Authority has reason to believe that a board member is not or is no longer fit and proper to hold office, the **[registrar]** Authority may, after giving the board member a reasonable opportunity to be heard—
(*a*) direct the board member to vacate office; and
(*b*) replace that board member with another person for the period and subject to the conditions that the **[registrar]** Authority may **[prescribe]** determine.

(5) In the circumstances described in subsection (4), the retirement fund **[shall]** must cause the vacancy to be filled in accordance with the provisions of section 7A and the rules of the retirement fund, failing which the **[registrar]** Authority may adopt the course set out in subsection (2).

(6) The Authority may—
(a) appoint an independent person conforming to the requirements set out in subsection (2A) to the board contemplated in section 7A, if it is in the interest of the fund, or the members of the fund, to do so;
(b) assign to that person those duties that the Authority considers appropriate;
(c) determine the remuneration, costs and fees as deemed appropriate;
(d) assess or appoint an independent person to assess the remuneration, costs and fees to determine if the remuneration, costs and fees are reasonable.".

Substitution of section 27 of Act 24 of 1956

37. Section 27 of Act 24 of 1956 is amended by substituting for the section:

"**Cancellation, [or] suspension and reinstatement of [registration] licence**

27. (1) The **[registrar shall]** Authority must cancel the **[registration]** licence of a retirement fund—
(a) on proof **[to his satisfaction]** that the retirement fund has ceased to exist; or
(b) if the **[registrar]** Authority and the retirement fund **[are agreed]** agree that the retirement fund was **[registered]** licensed by mistake **[in circumstances not amounting to fraud:]**.

(1A) *(a)* **[Provided that in the circumstances stated in paragraph *(b)*, the registrar]** The Authority may suspend the **[registration in lieu]** licence of a retirement fund instead of cancelling it, if **[he is]** satisfied that by so doing the retirement fund will **[be furnished with]** have an opportunity of rectifying the **[said mistake]** cause for the suspension in a manner consistent with the provisions of this Act,

(b) If the fund **[does rectify such mistake]** rectifies the cause for suspension **[to the satisfaction of the registrar, the latter shall thereupon]**, the Authority may **[reinstate the said registration]** withdraw **[such]** the suspension **[as]** from the date determined by the **[registrar]** Authority.

(c) **[but if]** If the **[mistake]** cause for suspension is not rectified within a period specified by the **[registrar he shall]** the Authority, the Authority may cancel the **[registration]** licence of the retirement fund.

(2) The **[registrar]** Authority may apply to the court for the cancellation or suspension of the **[registration]** licence of a retirement fund if—

(a) the retirement fund has wilfully and after notice from the **[registrar]** Authority violated any provision of this Act; or

(b) the **[registrar]** Authority is of the opinion, as a result of an investigation under section **[twenty-five]** 25, that the **[registration]** licence should be cancelled or suspended.

(3) The court may cancel the **[registration]** licence of the retirement fund or suspend **[such registration]** the licence for **[such]** a period as it thinks fit, and may attach to **[such]** the cancellation or suspension **[such]** conditions **[as]** that it thinks are desirable, or may make any other order which in the circumstances it thinks is desirable.

(4) Unless the court otherwise orders, the costs of the **[registrar]** Authority in or in connection with the application **[shall]** must be paid by the retirement fund and **[shall]** must be a first charge upon the assets of **[such]** the retirement fund.

(5) The Authority may reinstate the licence of a retirement fund which was cancelled in accordance with subsection (1) with retrospective effect to the date of cancellation, if satisfied that the retirement fund had not ceased to exist or that the cancellation was as a result of a genuine error or was effected by mistake.

(6) The reinstatement of the licence of a retirement fund as contemplated in subsection (5) restores the fund to the position it would have been in had the licence not been cancelled.".

Substitution of section 28 of Act 24 of 1956

38. Section 28 of Act 24 of 1956 is amended by substituting for the section:

"**Voluntary dissolution of retirement fund**

28. (1)*(a)* Subject to the provisions of this section, a **[registered]** licensed retirement fund may be terminated or dissolved, whether wholly or in part, in the circumstances (if any) specified for that purpose in its rules, and in the manner provided by those rules.

(b) In **[such an]** the event of the voluntary termination or dissolution of a retirement fund as contemplated in paragraph *(a)*, the assets of the retirement fund, or, in the case of the partial termination of the retirement fund, those assets of the retirement fund attributable to the members connected to the participating employer whose withdrawal from the retirement fund has caused its partial termination (as the case may be), **[shall]** must, subject to the provisions of this section, be distributed in the manner provided by those rules.

(2) A liquidator **[shall]** must be appointed in the manner directed by the rules, or, if the rules do not contain directions **[as to such an]** regarding the appointment of a liquidator, by the board, but **[such]** the appointment **[shall]** must be subject to the approval of the **[registrar]** Authority, and the period of liquidation **[shall]** must be deemed to commence **[as]** from the date of **[such]** the approval.

(3) During **[such]** the liquidation the provisions of this Act **[shall]** continue to apply to **[such]** the retirement fund as if the liquidator were the board.

(4) *(a)* The liquidator **[shall as soon as may be possible]**, must, within a period not exceeding 60 days or another period agreed to by the Authority in writing, deposit for approval with the **[registrar]** Authority the prescribed preliminary accounts **[prescribed]**, signed and certified as correct by the liquidator, and showing—

(i) the assets and liabilities of the retirement fund as at the commencement of the liquidation, or, in the case of the partial termination of the retirement fund, the assets and liabilities of the retirement fund attributable to the members connected to the participating employer whose withdrawal from the retirement fund has caused its partial termination; and

(ii) **[as well as]** the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members**[, or, in the case of the partial termination of the fund, the assets and liabilities of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination]**.

(b) In discharging the liabilities and contingent liabilities to or in respect of members referred to in paragraph *(a)*(ii), full recognition **[shall]** must be accorded to—

(i) the rights and reasonable benefit expectations of the persons concerned;

(ii) the payment of additional benefits **[the payment of]** by the retirement fund which has become an established practice;

(iii) the payment of minimum benefits referred to in section 14A.

(5) **[If deemed fit, the registrar]** The Authority may direct the liquidator to–

(a) amend the preliminary accounts;

(b) furnish a report **[, drawn up]** by an independent valuator or other competent person nominated by the **[registrar on]** Authority, dealing with those aspects of the preliminary accounts that the Authority deems necessary; or

(c) address any other enquiries that the Authority deems necessary.

(6) **[The]** Once approved, the Authority must give notification on the web site of the Authority that the preliminary accounts and report (if any) referred to in subsection (5) **[shall]** lie open for inspection by interested persons for a period of 30 days at the office of the **[registrar]** Authority and at the registered office of the retirement fund, and where the registered office of the retirement fund is not in the district in which the office of the **[registrar]** Authority is situate, at the office of the magistrate of the district in which the registered office of the retirement fund is situate.

(7) *(a)* The **[registrar shall]** Authority must direct the liquidator to publish a notice, at the cost of **[such a]** the retirement fund, in the *Gazette* and in a newspaper circulating in the district in which the registered office of the retirement fund is situated and in which is stated the period during which and the places at which the preliminary accounts and report (if any) **[shall]** lie open for inspection by interested persons.

(b) The notice **[shall]** must call upon any interested persons who have any objection to the preliminary accounts and report (if any) to lodge their objections in writing with the **[registrar]** Authority within the period stated in the notice, which period **[shall]** may not be shorter than 14 days, calculated **[as]** from the last day on which those documents lie open for inspection.

(7A) *(a)* If, in the case of a particular retirement fund or a particular participating employer whose withdrawal from the retirement fund has caused its partial termination, the **[registrar]** Authority is satisfied on reasonable grounds that there exist special circumstances which justify exemption from the provisions of subsections (6) and (7), the **[registrar]** Authority, having due regard to the rights of interested persons, may exempt the retirement fund from all or any of the provisions of those subsections if deemed expedient in the circumstances.

(b) **[Such an]** An exemption in terms of paragraph *(a)* **[shall]** must be subject to the conditions determined from time to time by the **[registrar]** Authority **[by notice in the *Gazette*]**.

(8) *(a)* If no objections are lodged **[with the registrar]** in terms of subsection (7), **[he shall]** the Authority must direct the liquidator to complete the liquidation.

(b) The liquidator must distribute the benefits due to members and beneficiaries within a period not exceeding 60 days after the date directed by the Authority.

(c) If after the expiry of six months from the date contemplated in paragraph *(b)*, the liquidator is satisfied that benefits are and will remain unclaimed benefits, the liquidator must transfer those benefits to an unclaimed benefit fund.

(9)*(a)* The Authority may—

(i) **[If]** if objections are lodged **[with the registrar]** in terms of subsection (7), **[the registrar may,]** after considering the **[said]** objections, direct the liquidator to amend the preliminary accounts; or

(ii) give **[such]** any other directions relating to the liquidation **[as he thinks]** that the Authority deems fit**[,]**.

(b) **[provided such directions are]** Directions issued by the Authority in terms of paragraph *(a)* may not be inconsistent with the rules of the retirement fund or this section, and any **[such]** direction **[shall be]** is binding upon the liquidator.

(10) *(a)* The liquidator **[shall]** must within fourteen days of **[the]** receipt **[by him]** of any direction of the **[registrar in terms of subsection (9)]** Authority, post a copy **[thereof]** of the direction to every member, shareholder and creditor of the retirement fund.

(b) **[and the]** The liquidator or any person aggrieved by any direction of the **[registrar]** Authority may apply **[by motion to the court within twenty-eight days after such direction has been communicated to the liquidator, for an order to set aside the registrar's decision, and the court may confirm the said decision or make such order as it thinks fit]** to the Tribunal for reconsideration of the decision in accordance with the provisions of the Financial Sector Regulation Act.

(11) *(a)* If the **[registrar]** Authority is satisfied that **[his]** the directions, in so far as they have not been varied or set aside by the **[court have been given effect to, he shall]** Tribunal or the decision of the Tribunal has not been set aside by a court, it must direct the liquidator to complete the liquidation as contemplated in subsection (8)*(b)* and *(c)*.

(b) If the Authority's directions have been varied or set aside by the Tribunal, the liquidation must proceed on the basis of the Tribunal's decision.

(12) Within 30 days after the expiration of the date determined in subsections (8) or (11) **[completion of the liquidation]**, the liquidator **[shall]** must lodge with the **[registrar]** Authority the final accounts prescribed, signed and certified as correct by the liquidator and showing—

(a) the assets and liabilities of the retirement fund, as at the commencement of the liquidation, or, in the case of the partial termination of the retirement fund, those assets and liabilities of the retirement

fund which, at the commencement of the liquidation, are attributable to the members connected to the participating employer whose withdrawal from the retirement fund has caused its partial termination; and

(b) the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect of members) have been discharged.

(12A) Notwithstanding any provision to the contrary in this section, the **[registrar]** Authority, on good cause shown, may authorise the liquidator, subject to any conditions that the **[registrar]** Authority may impose and prior to the submission of the final accounts and report (if any)—

(a) to make payment of any amounts to the members and beneficiaries of a retirement fund; or

(b) where the liquidator is satisfied that benefits are and will remain unclaimed benefits, to transfer **[such]** those benefits to an unclaimed benefit fund.

[(13) The provisions of the Companies Act shall apply with the necessary changes to the dissolution of a fund in terms of this section, in so far as the said provisions relate to a voluntary winding-up in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provisions of this Act.]

(14) All claims against the retirement fund **[shall]** must be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit.

(15) The **[registrar]** Authority, if satisfied that the liquidator's accounts in respect of the retirement fund are correct and that the liquidation has been completed, **[shall]** must—

(a) cancel the **[registration]** licence of the retirement fund, in the case where the retirement fund is wholly terminated, whereupon the retirement fund **[shall]** must be dissolved; or

(b) in the case of the partial dissolution of the retirement fund, only confirm the completion of the partial liquidation of the retirement fund.

(16) For the purposes of this section, **"participating employer"** means any employer who participates in the scheme or arrangement whereby a retirement fund has been established.

(17) The **[registrar may prescribe the circumstances under which a fund may be exempted from the provisions of this section]** Authority may exempt a retirement fund from any of the provisions of this section and must prescribe the circumstances and requirements to be complied with for **[such]** an exemption to be granted.

(18) *(a)* The provisions of this section do not apply to a beneficiary fund, retirement annuity fund and unclaimed benefit fund.

(b) The **[registrar]** Authority may prescribe matters that must be provided for in the rules of a beneficiary fund regarding voluntary dissolution and the transfer of remaining assets on voluntary dissolution.

(19) A liquidator may not be absent from the Republic for a period exceeding 30 days unless—

(a) the Authority has, before the departure of the liquidator from the Republic, granted permission to the liquidator in writing to be absent; and

(b) the liquidator complies with any conditions that the Authority may deem fit to impose.

(20)*(a)* The Authority may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a liquidator if—

(i) the liquidator is not, or is no longer, a fit or proper person to hold that office;

(ii) the liquidator has failed to perform satisfactorily any duty imposed by this Act, or to comply with a lawful requirement of the Authority;

(iii) the estate of the liquidator has become insolvent;

(iv) that the liquidator has become mentally or physically incapable of performing duties satisfactorily as liquidator; or

(v) for any other reason, if the liquidator is no longer suitable to be the liquidator of the fund concerned.

(b) A court may, on application by any interested person, remove a liquidator from office if the Authority fails to do so in any of the circumstances mentioned in subsection *(a)* or for any other good cause.

(21) *(a)* Where a liquidator has been removed in accordance with subsection (20) or a vacancy has occurred for any other reason, the Authority may appoint a suitable person as liquidator to fill the vacancy.

(b) If the Authority is of the opinion that the remaining liquidator or liquidators will be able to complete the liquidation of the fund, the Authority may dispense with the appointment of a liquidator to fill the vacancy and may direct the remaining liquidator or liquidators to complete the liquidation.

(22) The Authority must give notice on the Authority's website of the removal of the liquidator and the appointment of another person to fill the vacancy, if any.".

Amendment of section 29 of Act 24 of 1956

39. Section 29 of Act 24 of 1956 is amended—

(a) by substituting for subsections (1) and (2):

"(1) If the Authority is of the opinion that a retirement fund is in such an unsound financial condition that any scheme as contemplated by section **[eighteen]** 18 would be ineffective, impracticable or

unsatisfactory or otherwise the Authority believes it is in the interests of members to do so as contemplated in section 166BO of the Financial Sector Regulation Act, **[he]** the Authority may apply to the court for an order that the whole or any part of the business of the fund be wound up, and section 166BN of the Financial Sector Regulation Act applies, with the necessary changes to an application under this subsection.

(2) *(a)* Any creditor of a **[registered]** licensed retirement fund who is unable to obtain payment of **[his]** the creditor's claim after recourse to the ordinary process of law may apply to the court for an order that the whole or any part of the business of the retirement fund be wound up, and sections 166 BN and 166 BO(2) of the Financial Sector Regulation Act, applies, with the necessary changes to an application under this subsection. **[: Provided that a]**

(b) A creditor **[shall]** may not make application except by leave of the court, and the court **[shall]** may not grant such leave unless the creditor has given security to an amount specified by the court for the payment of the costs of the application and of any opposition **[thereto]** to the application, and has established prima facie the desirability of the order for which **[he]** the creditor wishes to apply.";

(b) by repealing subsection (4);

(c) by substituting for subsections (5), (6) and (6A):

"(5) The court may direct that the **[aforementioned]** provisions of the Companies Act referred to in section 166BN of the Financial Sector Regulation Act may, for the purposes of the winding-up be suitably modified in any particular case if, having regard to the circumstances of the retirement fund concerned, it would be impracticable or unnecessarily onerous to comply with the **[said]** provisions in every particular case, and that in spite of **[such]** the modification, the interests of the creditors of the retirement fund will be sufficiently safeguarded.

(6) In the winding-up of the whole or any part of the business of a retirement fund, the value of the interests of the members or of the various groups of members of the retirement fund, and the value of any benefits due by the retirement fund to persons other than members, **[shall]** must be ascertained in such manner as the court may direct.

(6A) In giving any order or direction under this section the court **[shall]** must have regard to any recommendation which may have been made by the retirement fund's valuator, if any, and accord full recognition to the rights and reasonable benefit expectations of the persons concerned and to additional benefits the payment of which by the retirement fund has become an established practice.";

(d) by repealing subsection (7); and

(e) by substituting for subsection (8):

"(8) If, where the court has ordered that the whole business of the retirement fund be wound up, the **[registrar]** Authority is satisfied that the winding-up of **[such a]** the retirement fund has been completed, **[he shall]** the Authority must cancel the **[registration]** licence of the fund. **[and thereupon]** after which the retirement fund **[shall]** will be deemed to be dissolved.".

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Amendment of section 29A of Act 24 of 1956

40. Section 29A of Act 24 of 1956 is amended by substituting for the heading of the section and subsection (1):

"**Winding-up of [unregistered pension] unlicensed retirement fund**

(1) If a person carries on the business of a **[pension]** retirement fund which is not **[registered]** licensed under this Act, the [registrar] Authority may apply to the court for the sequestration or liquidation of that person and the **[unregistered]** unlicensed fund, whether or not the person or fund is solvent, in accordance with—

(a) the Insolvency Act, 1936 (Act No. 24 of 1936);
(b) the Companies Act;
(c) the Close Corporations Act, 1984 (Act No. 68 of 1984); or
(d) the law under which that person is incorporated.".

Amendment of section 30 of Act 24 of 1956

41. Section 30 of Act 24 of 1956 is amended—

(a) by substituting in subsection (1) for the words preceding paragraph *(a)*:

"(1) In applying the provisions of the Companies Act in terms of section **[28 or]** 29, and 166BN and 166BO of the Financial Sector Regulation Act —"; and

(b) by substituting in subsection (2) for the term "him" of the phrase "the shareholder".

Substitution of section 31 of Act 24 of 1956

42. Section 31 of Act 24 of 1956 is amended by substituting for the section:

"**Carrying on business of [unregistered] unlicensed [pension fund organization] retirement fund and use of designation "retirement fund" or "pension fund**

31.[(1) No person shall] A person may not—

(a) .....

(b) carry on the business of a **[pension]** retirement fund, unless that retirement fund has been provisionally or finally **[registered]** licensed under this Act;

(c) carry on the business of a **[pension]** retirement fund for **[such]** the period and subject to **[such]** the conditions **[as]** that may be prescribed after the date on which the person who applied for **[registration]** licensing of the fund is advised by the Authority that the application for**[registration]** licensing has been rejected; or

(d) apply to that person's business a name which includes the words "retirement fund" or "pension fund" or any other name which is calculated to indicate that that person carries on the business of a **[pension]** retirement fund, unless **[such]** that business is provisionally or finally **[registered]** licensed as a **[pension]** retirement fund under this Act**[,]**.

[(2) If at the commencement of this Act any person applied to his business any such name as is referred to in paragraph *(d)* of subsection (1) and he, after the commencement of this subsection, changes such name and produces any deed or document bearing such name and licensed in any deeds registry, to the officer in charge of that registry, and satisfies the said officer that such name was changed by virtue of the provisions of the said paragraph *(d)*, the said officer shall, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers in the said registry.]".

Substitution of section 32 of Act 24 of 1956

43. Section 32 of Act 24 of 1956 is amended by substituting for the section:

"[Registrar] Authority may require [unregistered] unlicensed retirement funds to furnish information

32. (1) The [registrar] Authority may by notice in writing require any person whom he has reason to suspect is carrying on the business of a **[pension]** retirement fund which is not **[registered]** licensed under this Act, to transmit to **[him]** the Authority, within a period stated in **[such]** the notice, a copy of the rules, if any, under which **[such]** the person is operating, together with a copy of the last annual accounts recorded by **[such]** the person, and **[such]** the further information **[as]** that the **[registrar]** Authority may require.

(2) If **[such]** the person fails to comply, to the satisfaction of the **[registrar]** Authority, with the requirements of the **[registrar]** Authority, the **[registrar]** Authority may investigate the affairs or any part of the affairs of the **[said]** person, or appoint an inspector to hold **[such]** an investigation and to report the result of his investigation to the **[registrar]** Authority, and the provisions of section 25, **[shall]** with the necessary changes, **[apply]** applies to every **[such]** investigation, and the **[registrar] [shall be]** is entitled to recover from the person concerned all expenses necessarily incurred in connection with the investigation, unless **[such]** the investigation shows that **[such]** the person is not carrying on the business of a **[pension]** retirement fund.

(3) If it appears from enquiries made by the **[registrar]** Authority in terms of subsection (1) or of any investigation made in terms of subsection (2), that the person concerned is carrying on the business of a **[pension]** retirement fund, the **[registrar shall]** Authority must **[register]** licence the fund provisionally, **[whereafter]** and the provisions of this Act [shall] then apply to the **[said]** retirement fund.".

Repeal of section 32A of Act 24 of 1956

44. Section 32A of Act 24 of 1956 is repealed.

Insertion of section 36A in Act 24 of 1956

45. Section Act 24 of 1956 is amended by inserting following section 36:

"**Standards**

36A. (1) The Authority may prescribe in standards on any matter that is appropriate and necessary for achieving the purposes of this Act.

(2) The Authority may determine administrative and penalty fees in respect of matters contemplated in this Act and, in relation to those fees, the person by whom the fee must be paid, the manner of payment of the fees, and, where necessary, the interest payable in respect of overdue fees.

(3) Different standards may be issued to apply generally or be limited in its application to a category of funds, which may, for the purposes of this subsection, be defined in relation to either a category or type of fund or in any other manner.".

Amendment of section 37A of Act 24 of 1956

46. Section 37A of Act 24 of 1956 is amended by inserting following subsection (4):

"(5) Unclaimed benefits may not be reduced or utilised for any other purpose by a fund."

Amendment of section 37C of Act 24 of 1956

47. Section 37C of Act 24 of 1956 is amended—

(a) by substituting for subsection (1):

"**37C.** (1) *(a)* Despite anything to the contrary contained in any law or in the rules of a licensed retirement fund, and subject to subparagraph *(b)*, any benefit payable by the retirement fund on the death of a member, does not form part of the assets in the estate of the member.

(b) A benefit payable as a pension to the spouse or child of the member in terms of the rules of a licensed retirement fund must be dealt with in terms of the rules.

(c) A benefit payable by the retirement fund on the death of a member as referred to in this subsection must be dealt with, after complying with sections 19(5)*(b)*(i), 37A(3) and 37D, as follows:

(i) When the retirement fund becomes aware of the death of the member, the retirement fund must use its best endeavours to trace dependants of the deceased members.

(ii) Where the retirement fund has successfully traced a dependant or dependants, the benefit must be paid to the dependant or, as may be deemed equitable by the fund, to one of the dependants or in proportions to some of or all the dependants, within two months of the fund tracing the dependant.

(iii) If the retirement fund cannot trace any dependant of the member within 12 months after the retirement fund became aware of the death of the member, and the member has designated in writing to the retirement fund a nominee who is not a dependant of the member, to receive the benefit or a portion of the benefit that is specified by the member in writing to the retirement fund, the benefit or the portion of the benefit must be paid to such the nominee, subject to subparagraph (iv).

(iv) In the case where a member has designated a nominee who is not a dependant as set out in subparagraph (iii), and the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in the member's estate, —

(aa) the amount of the benefit that is equal to the difference between the aggregate amount of debts and the aggregate amount of assets must be paid into the estate; and

(bb) the balance of the benefit or the balance of the portion of the benefit that is specified by the member as contemplated by subparagraph (iii) must be paid to the nominee.

(v) If a member has a dependant and the member has also designated in writing to the retirement fund a nominee to receive the benefit or a portion of the benefit that is specified by the member in writing to the retirement fund, the fund must within 12 months of the death of the member pay the benefit or a portion of the benefit to the dependant or nominee in the proportions that the board may deem equitable, subject to subparagraph (vi).

(vi) *(aa)* Subparagraph (v) only applies to the designation of a nominee made on or after 30 June 1989. *(bb)* In respect of a designation made on or after 30 June 1989, this subparagraph does not prohibit a retirement fund from paying the benefit, either to a dependant or nominee contemplated in this subparagraph or, if there is more than one dependant or nominee, in proportions to any or all of those dependants and nominees.

(vii) If the retirement fund does not become aware of or cannot trace any dependant of the member within 12 months of the death of the member, and—

(aa) the member has not designated a nominee; or

(bb) the member has designated a nominee to receive a portion of the benefit in writing to the retirement fund,

the benefit or the remaining portion of the benefit after payment to the designated nominee, must be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund or unclaimed benefit fund.

(viii) If the deceased is a pensioner who receives an in-fund living annuity or a life annuity which has a guaranteed period and the pensioner dies within this period,--

(aa) any benefit must be paid to the pensioner's nominees, if any;

(bb) where the pensioner has not designated any nominees, it must be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund or unclaimed benefit fund."; and

(b) by substituting for subsection (3):

"(3) *(a)* Any benefit dealt with in terms of this section, payable to a minor dependant or minor nominee, may be paid in more than one payment in **[such]** the amounts **[as]** that the board may from time to time consider appropriate and in the best interests of **[such]** the dependant or nominee.**[: Provided that interest at a reasonable rate, having regard to the fund]**

(b) Fund return **[earned by the fund,] [shall]** must be added to the outstanding balance at **[such]** the times **[as]** that the board may determine.**[: Provided further that any]**

(c) Any balance owing to **[such a]** the dependant or nominee at the date on which **[he or she]** the dependant or nominee—

(a) attains the age of majority as determined in the Children's Act, 2005 (Act No. 38 of 2005);

(b) attains another age that is agreed to between the fund and the beneficiary, but not exceeding 21 years of age; or

(c) dies,

whichever occurs first, **[shall]** must be paid in full.".

Amendment of section 37D of Act 24 of 1956

48. Section 37D of Act 24 of 1956 is amended—

(a) by substituting in subsection (1)*(a)* for the words preceding subparagraph (i):

"(1)*(a)* deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), and Tax Administration Act (Act No. 28 of 2011); and any amount due to the fund in respect of—";

(b) by substituting in subsection (1)*(b)* for the words preceding subparagraph (i):

"*(b)* deduct any amount due by a member to his employer **[on the date of his retirement or on which he ceases to be a member of the fund,]** on the date on which the member's employment with a participating employer in a fund is terminated, in respect of—";

(c) by substituting in subsection (1) for paragraph *(d)*:

(d) deduct from a member's or deferred pensioner's benefit, member's interest or minimum individual reserve, deferred pensioner or the capital value of a pensioner's pension after retirement, as the case may be—

(i) any amount assigned from **[such]** the benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979) or in terms of any order made by a court in respect of the division of assets of a marriage under **[Islamic law]** the Marriage Act, 1961 (Act No. 68 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 68 of 1997), or the Civil Union Act, 2006 (Act No. 17 of 2006), or the tenets of a religion pursuant to its dissolution;

(iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and

(iB) any amount payable as maintenance in terms of an interim maintenance order granted by the court in terms of rule 43 of the High Court Rules.";

(d) by inserting in subsection (3) following paragraph *(a)*:

"*(aA)* For the purposes of a deduction in terms of subsection (1)*(d)*, read with subsection (6), where the member has an outstanding housing loan granted by the fund or in respect of which the fund granted a guarantee, the member's pension interest is deemed to be the amount as contemplated in the definition of section 1 of the Divorce Act or as contemplated in subsection (6), reduced by the outstanding loan amount as at the date of divorce, irrespective of whether the outstanding amount is due and payable.

(aB) A reduction referred to in paragraph *(aA)* will apply only if the loan or guarantee was granted prior to the granting of the order as contemplated in section 7(8) of the Divorce Act.

(aC) A retirement fund may not, without the consent of the member's spouse, grant a loan or guarantee if the fund is aware that a divorce action in respect of the member is pending.

(aD) In respect of a deduction referred to in subsection (1)*(d)*(iA), the retirement fund must pay the maintenance, as directed in the maintenance order—

(aa) as a lump sum in respect of arrear maintenance;

(bb) in monthly payments in respect of future maintenance or annually in advance where a fund is unable to make monthly payments.";

(e) by substituting in subsection (4)*(a)* for subparagraph (i):

"(i) must be deducted by—

(aa) the **[pension]** retirement fund or **[pension]** retirement funds named in or identifiable from the decree;

(bb) the **[pension]** retirement fund or **[pension]** retirement funds to which the **[pension]** retirement fund referred to in item *(aa)* transferred the pension interest referred to in the decree; or

(cc) the portion paid to the spouse and the portion to be transferred to a retirement fund or retirement funds on his or her behalf;"; and

(f) by substituting for subsection (6):

"(6) Despite paragraph *(b)* of the definition of "pension interest" in section 1(1) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest of a—

(a) member of a pension preservation fund or a provident preservation fund;

(b) member that preserves the member's benefit in a pension preservation fund or a provident preservation fund; or

(c) **[a]** deferred pensioner of a pension preservation fund or provident preservation fund,

that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the retirement fund if—

(i) **[his or her]** the member's membership of the fund terminated**[,]**; or

(ii) the member elected to withdraw his preserved benefit fund; or

(iii) the member or the deferred pensioner retired,

on the date on which the decree was granted.".

Amendment of section 41 of Act 24 of 1956

49. Section 41 of Act 24 of 1956 is amended by substituting for the phrase "Pension Funds Act, 1956" for the phase "Retirement Funds Act, 1956".

Part 2
Repeal of Friendly Societies Act, 1956 (Act No. 25 of 1956)

Repeal of Act 25 of 1956

1. Act 25 of 1956 is repealed.

References to friendly societies in Acts

2. Any reference to a friendly society in an Act of Parliament must, on the repeal of the Friendly Societies Act, 1956, be construed as a reference to a financial co-operative registered under the Cooperatives Act, 2005.

Part 3
Amendment of Transnet Pension Funds Act, 1990 (Act No. 62 of 1990)

1. Amendment of section 13 of Act No. 62 of 1990

Section 13 of Act No. 62 of 1990 is amended by substituting for the section:

"**Registration and application of [Pension Funds] Act, 1956**

13. (1) The **[Registrar of Pension Funds]** Financial Sector Conduct Authority may, on request by the Transport Pension Fund, register the Transport Pension Fund in terms of section 4 of the **[Pension]** Retirement Funds Act, 1956, and may, for the purposes of such request, regard the Transport Pension Fund as a **["pension fund organization"]** retirement fund as defined in section 1 (1) of that Act.

(2) Upon such registration—

(a) the whole of the **[Pension]** Retirement Funds Act, 1956, shall become applicable to the Transport Pension Fund; and

(b) the provisions of sections 7 to 11 of this Act shall cease to be applicable.".

Part 4
Amendment of Banks Act, 1990 (Act No. 94 of 1990)

Amendment of section 1(1) of Act No. 52 of 1990

1. Section 1(1) of Act No. 52 of 1990 is amended—

(a) by substituting in the definition of "deposit" for the phrase "Pension Funds Act, 1956 (Act No. 24 of 1956)" of the phrase "Retirement Funds Act, 1956 (Act No. 24 of 1956)"; and

(b) by substituting in the definition of "deposit" for the phrase "pension fund" of the phrase "retirement fund", and for the phrase "Pension Funds Act, 1956 (Act No. 24 of 1956)" of the phrase "Retirement Funds Act, 1956 (Act No. 24 of 1956)".

Part 5
Amendment of Labour Relations Act, 1995 (Act No. 66 of 1995)

Amendment of section 197(4) of Act No. 66 of 1995

1. Section 197(4) of Act No. 66 of 1995 is amended by substituting for the phrase "Pension Funds Act, 1956 (Act No. 24 of 1956)" of the phrase "Retirement Funds Act, 1956 (Act No. 24 of 1956)".

Part 6
Amendment of Government Employees Pension Fund Law, 1996 (Proclamation No. 21 of 1996)

Amendment of section 1 of Proclamation 21 of 1996

1. Section 1 of Proclamation 21 of 1996 is amended by substituting in the definition of "approved retirement fund" for the phrase "pension fund organisation" of the phrase "retirement fund", and for the phrase "Pension Funds Act, 1956 (Act No. 24 of 1956)" of the phrase "Retirement Funds Act, 1956 (Act No. 24 of 1956)".

Part 7
Repeal of Long-term Insurance Act, 1998 (Act No. 52 of 1998)

Repeal of Act 52 of 1998

1. Act 52 of 1998 is repealed.

Part 8
Repeal of Short-term Insurance Act, 1998 (Act No. 53 of 1998)

Repeal of Act 53 of 1998

1. Act 53 of 1998 is repealed.

Part 9
Amendment of Medical Schemes Act, 1998 (Act No. 131 of 1998)

Amendment of section 44 of Act 131 of 1998

1. Section 44 of Act 131 of 1998 is amended—

(a) by substituting for subsections (2) to (4):

"(2) The Registrar, or such other person authorised by him or her, shall in addition to the powers and duties conferred or imposed upon him or her by this Act, have all the powers and duties conferred or imposed upon an **[inspector]**investigator appointed under **[section 2 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984)]** section 134 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), as if he or she has been appointed an **[inspector]** investigator under that Act.

(3) Any reference in this Act to an inspection made under this section **[shall]** must also be construed as a reference to **[an]** supervisory on-site inspection or investigation made under **[the Inspection of Financial Institutions Act, 1984]** Chapter 9 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

(4) The Registrar may order **[an inspection in terms of this section]**—

(*a*) an investigation in terms of section 134 of the Financial Sector Regulation Act, if he or she is of the opinion that such an **[inspection]** investigation will provide evidence of any irregularity or of non-compliance with this Act by any person; or

(*b*) a supervisory on-site inspection in terms of section 132 of the Financial Sector Regulation Act, for purposes of routine monitoring of compliance with this Act by a medical scheme or any other person."; and

(b) by substituting for subsection (7):

"(7) The Registrar may, if he or she, on account of any statement, document or information furnished to him or her by virtue of subsection (4), deems it necessary in the interest of the members of the medical scheme concerned, and, after consultation with the **[Financial Services Board]** Financial Sector Conduct Authority established by **[section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990)]** section 56 of the Financial Sector Regulation Act, by notice in writing direct the medical scheme to furnish to him or her a report compiled by an actuary, in the form and relating to the matters specified by the Registrar in the notice.".

Amendment of section 56 of Act 131 of 1998

2. Section 56 of Act 131 of 1998 is amended by substituting for subsections (2) and (3):

"(2) The provisions of **[the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)]** sections 166BI(4)*(c)* and 166BK of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), insofar as those provisions relate to the appointment of a curator in terms of the said Act, and insofar as they are not inconsistent with the provisions of this Act, shall apply with the necessary changes to the appointment of a curator of a medical scheme in terms of this section.

(3) In the application of the **[Financial Institutions (Investment of Funds) Act, 1984]** Financial Sector Regulation Act, 2017 as provided for by subsection (1)—

(*a*) a reference to **[a company and the registrar]** an institution, and to a financial sector regulator or a responsible authority, in section **[1 of the Financial Institutions (Investment of Funds) Act, 1984, shall]** 166BK of the Financial Sector Regulation Act must be construed as a reference also to a board of trustees and the Registrar, respectively;

[(*b*) a reference in that Act to a director, official, employee or agent shall be construed as a reference also to a member of the board of trustees or the principal officer, as the case may be; and]

(*c*) a reference in **[that Act]** section 166BK of the Financial Sector Regulation Act to **[a financial]** an institution shall be construed as a reference also to a medical scheme.".

Part 10
Repeal of Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)[14]

Repeal of Act 28 of 2001

1. Act 28 of 2001 is repealed.

Part 11
Repeal of Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)

[14] The repeal of the Financial Institutions (Protection of Funds) Act will be timed to coincide with the commencement of the proposed Chapter 12B of the Financial Sector Regulation Act, which will incorporate some of the matters that are currently addressed in the Financial Institutions (Protection of Funds) Act into the Financial Sector Regulation Act.

Repeal of Act 37 of 2002

1. Act 37 of 2002 is repealed, with the exception of section 1(1) and Part I of Chapter VI (sections 20 to 31).

Part 12
Amendment of Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)

Amendment of section 1(1) of Act 45 of 2002

1. Section 1(1) of Act 45 of 2002 is amended—

(a) by inserting in the definition of "administration" following paragraph *(d)*:

"*(e)* the administration of assets, including trade confirmation, trade settlements, income accruals and receipts, valuation of assets, pricing of participatory interests, reconciliations and conducting due diligence evaluations pertaining to assets; and

(f) the maintenance of the register of investors and the distribution of any income to investors.";

(b) by substituting for the definition of "auditor":

'"**auditor**" means a person registered under the **[Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991),]** Public Audit Act, 2004 (Act No. 25 of 2004) and appointed by a manager in terms of **[section 73]** section 25;';

(c) by substituting for the definition of "Authority":

'"**Authority**" means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act until the date contemplated in section 292(1) of the Financial Sector Regulation Act, after which it means the Prudential Authority established by section 32 of the Financial Sector Regulation Act;';

(d) by substituting for the definition of "exchange":

'"**exchange**" means an exchange licensed under **[the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), the Financial Markets Control Act, 1989 (Act No. 55 of 1989),]** the Financial Markets Act, 2012, or an exchange outside the Republic **[referred to in section 45]**;';

(e) by inserting following the definition of "person":

'**"prescribed"** means a matter determined in a standard by a financial sector regulator in terms of this Act or another financial sector law;'; and

(f) by inserting following the definition of "regulation":

'**"related party"** means a juristic person is related to another juristic person if —

(a) either of them directly or indirectly controls the other, or the business of the other; or

(b) either is a subsidiary of the other; or

(c) a person directly or indirectly controls each of them, or the business of each of them;'.

Substitution of section 1B of Act 45 of 2002

2. Section 1B of Act 45 of 2002 is amended by substituting for the section:

"**Regulatory instruments**

1B. [(1)] For the purposes of the definition of "regulatory instrument" in section 1(1) of the Financial Sector Regulation Act, any matter prescribed by the Authority **[in respect of which notice in the *Gazette* is specifically required by this Act]** is a regulatory instrument.".

Repeal of sections 2, 3, 4 and 6 of Act 45 of 2002

3. Sections 2, 3, 4 and 6 of Act 45 of 2002 are repealed.

Substitution of section 15 of Act 45 of 2002

4. Section 15 of Act 45 of 2002 is amended by substituting for the section:

"15. Powers of [registrar] Authority [after investigation]

(1) If it is in the interests of the investors of a collective investment scheme or members of the public, the Authority may--

(a) apply to the court under the Companies Act for the winding-up of a manager or of a collective investment scheme, and sections 166 BN and 166 BO of the Financial Sector Regulation Act apply to such an application;

(b) .....

(c) apply to the court under **[section 5 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001),]** section 166 BK of the Financial Sector Regulation Act for the appointment of a curator for the business of the manager or for the business of a portfolio;

(d) require a manager to appoint, in accordance with the **[registrar's]** Authority's directions, in place of the serving trustee or custodian, a competent person nominated by the registrar;

(e) require a manager to take steps, in accordance with the **[registrar's]** Authority's directions and the provisions of section 102, for the winding-up of a portfolio of its collective investment scheme, and for the realisation of the assets and the distribution of the net proceeds **[thereof]** of the winding-up, together with any income accruals or other moneys available for distribution among the investors in proportion to their respective participatory interests;

(f) direct a manager or trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection;

(g) direct a manager to withdraw from the administration of a collective investment scheme or portfolio, [whereupon] in which case the trustee or custodian must in accordance with the **[registrar's]** Authority's directions but subject to this Act arrange for another manager to take over the administration of the collective investment scheme or portfolio;

(h) if a person administers a collective investment scheme in contravention of this Act, apply to the court to have the collective investment scheme wound up, in which case the court may make any order it considers appropriate for the winding-up of the collective investment scheme, and sections 166 BN and 166 BO of the Financial Sector Regulation Act apply to such an application;

(i) instruct a manager to wind up a portfolio or amalgamate a portfolio with another portfolio;

(j) if a manager fails to comply with a written request, direction or directive by the Authority under this Act or the Financial Sector Regulation Act, do or cause to be done all that a manager was required to do in terms of the request, direction or directive of the Authority.

(2) **[The registrar may oppose any application in terms of the Companies Act for-**

(a) **the winding-up of a manager; or**

(b) **.....**

(c) **the winding-up of a portfolio of a collective investment scheme in terms of section 102.]**

(3) **[Any person who intends to make an application contemplated in subsection (2) must give timeous notice of such application to the registrar.]**

(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs *(d)*, *(e)*, *(f)* or (g) of subsection (1) is guilty of an offence and on conviction liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.".

Substitution of section 16 of Act 45 of 2002

5. Section 16 of Act 45 of 2002 is amended by substituting for the section:

"**Cancellation or suspension of registration of manager**

16. (1) The **[registrar]** Authority may, subject to subsection (2), cancel the registration of a manager under this Act if—

(a) **[he or she]** the Authority is satisfied that the manager has contravened or failed to comply with any provision of this Act, or any direction or requirement given or imposed under this Act or the Financial Sector Regulation Act, and that **[such]** the contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;

(b) **[he or she]** the Authority is satisfied, upon completion of an investigation or inspection in terms of **[section 14]** the Financial Sector Regulation Act, that the manner in which a manager carries on the business of a collective investment scheme is unsatisfactory or undesirable or not calculated to serve the best interests of its investors;

(c) it is apparent that the registration of the manager was obtained through misrepresentation; or

(d) a manager is wound up, either voluntarily or by the court,

or may, on any ground referred to in paragraph *(a)*, *(b)* or *(c)*, suspend the registration of a manager for a period not exceeding 12 months at a time, subject to **[such]** the conditions **[as]** that the **[registrar]** Authority may determine.

(2) The **[registrar]** Authority may not cancel or suspend the registration of a manager on any ground contemplated in subsection (1)*(a)*, *(b)* or *(c)* unless **[he or she]** the Authority has—

(a) notified the manager of **[his or her]** the intention and of the grounds **[upon which he or she proposes to do so]** for the suspension;

(b) allowed the manager to make representations **[to him or her]** in connection with the proposed cancellation or suspension; and

(c) afforded the manager a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice.

(3) An application for registration as a manager by a company whose registration has been cancelled under this section must be dealt with as if it were its first application for registration.

(4) *(a)*If the registration of a manager is cancelled in terms of subsection (1)*(a)*, *(b)* or *(c)*, the provisions of this Act or the Financial Sector Regulation Act **[with regard to]** regarding the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager apply**[: Provided that the registrar]**.

(b) The Authority may in **[any such]** a case referred to in paragraph *(a)* direct the former manager to defray in whole or in part the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of its assets, and also any remuneration to which a trustee or custodian may be entitled.

(5) If the registration of a manager has been suspended under subsection (1), the manager may not, during the period of suspension, issue any fresh participatory interests, but must, in respect of participatory interests issued, continue the administration of the collective investment scheme and deal with **[such]** those interests in all respects as it would have been bound to do had its registration not been suspended.".

Repeal of section 17 and sections 25 to 38 of Act 45 of 2002

6. Section 17 and sections 25 to 38 of Act 45 of 2002 are repealed.

Amendment of section 42 of Act 45 of 2002

7. Section 42 of Act 45 of 2002 is amended—

(a) by substituting for the heading of the section, both in the body of the Act, and similarly substituting in item 42 in the Arrangement of Sections:

"'**Procedure for registration of manager of collective investment scheme in securities and approval of deed and collective investment scheme and portfolio**";

(b) by substituting for subsections (3) and (4):

"(3) If the **[registrar]** Authority is satisfied that the —

(a) deed which the applicant proposes to prepare for the purposes of the collective investment scheme in securities does not contain anything inconsistent with this Act; and

(b) proposed directors, management, trustee or custodian and auditors are qualified as required by or under this Act,

[he or she] the Authority must, subject to subsection (4) and on **[such]** the conditions **[as he or she]** that may **[determine]** be determined, approve the deed, the collective investment scheme, any portfolios under the scheme and register the applicant as a manager and issue to it a certificate of registration in the form determined by the **[registrar]** Authority.

(4) The **[registrar]** Authority may not register any company as a manager, or approve a deed or collective investment scheme or portfolio under this section, unless **[he or she is]** satisfied that—

(a) **[such]** the company, deed and collective investment scheme **[complies]** comply with subsection (3);

(aA) the directors of the company and its shareholders comply with the fitness and propriety requirements prescribed by the Authority;

(b) **[such]** the company is fit to assume the duties and responsibilities of a manager; and

(c) the registration of **[such]** the company as a manager will be in the public interest."; and

(c) by inserting following subsection (5):

"(6) A manager registered under this section must apply to the Authority for approval of a new portfolio in accordance with this section.".

Amendment of section 43(1) of Act 45 of 2002

8. Section 43 of Act 45 of 2002 is amended by substituting for subsection (1):

"(1) A manager may not without the prior approval in writing of the **[registrar]** Authority —

(a) change the name under which it is registered under this Act **[or change its shareholding or directors]**;
(b) use or refer to itself by a name other than the name under which it is **[so]** registered or a literal translation **[thereof]** that name;
(c) use or refer to itself by an abbreviation or a derivative of **[such]** that name; **[or]**
(d) change the name of its collective investment scheme in securities or any portfolio administered by it as approved by the **[registrar]** Authority;
(e) change its direct or indirect shareholding; or
(f) change its directors.".

Amendment of section 44(2) of Act 45 of 2002

9. Section 44 of Act 45 of 2002 is amended by substituting for subsection (2):

"(2) When a manager is unable to determine a market price for a security, whether listed on an exchange or not, for the purposes of a collective investment scheme in securities, a fair market price for **[such]** that security must**[, at the request of such manager,]** be determined **[by a stockbroker who is a member of a licensed exchange]** as prescribed by the Authority.".

Amendment of section 65 of Act 45 of 2002

10. Section 65 of Act 45 of 2002 is amended—

(a) by the substitution in subsection 1 for paragraph *(b)*:

"*(b)* a copy of the approval or registration by the relevant equivalent foreign jurisdiction as defined in section 1(1) of the Financial Sector Regulation Act authorising the foreign collective investment scheme to act as such is submitted;"; and

(b) by substituting for subsection (2):

"(2) A scheme approved in terms of subsection (1) must, for the purposes of **[section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990)]** the Financial Sector Levies Act, 2020, be regarded as a financial institution and the provisions of that **[section]** Act apply, with the necessary changes required by the context, to **[such a]** the scheme.".

Amendment of section 69(1)*(d)* of Act 45 of 2002

11. Section 69(1) of Act 45 of 2002 is amended by substituting for paragraph *(d)*:

"*(d)* an institution which is **[registered as an insurer under the Long- term Insurance Act, 1998 (Act No. 52 of 1998)]** licensed as an insurer under the Insurance Act, 2017 (Act No. 18 of 2017).".

Amendment of section 70(1) of Act 45 of 2002

12. Section 70 of Act 45 of 2002 is amended by inserting in subsection (1) following paragraph *(h)*:

'*(hA)* prepare any other report determined by the Authority;'.

Amendment of section 71 of Act 45 of 2002

13. Section 71 of Act 45 of 2002 is amended by substituting for the section:

"**Status of Assets**

For the purposes of this Act any—
(a) money or other assets received from an investor; and
(b) an asset of a portfolio,
are regarded as being trust property for the purposes of **[the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001)]** part 1 of chapter 8 of the Conduct of Financial Institutions Act, and a manager, its authorised agent, trustee or custodian must deal with such money or other assets in terms of this Act and the deed and in the best interests of investors.".

Amendment of section 74 of Act 45 of 2002

14. Section 74 of Act 45 of 2002 is amended—

(a) by substituting in subsection (1) for paragraph *(a)*:

"*(a)* maintain the accounting records and prepare annual financial statements in **[conformity with generally accepted accounting practice]** a manner that satisfies the financial reporting standards, as they may be prescribed;";

(b) by substituting in subsection (2) for paragraph *(c)*:

"*(c)* ensure that the financial statements are properly drawn up so as to fairly represent the financial position, and that the results of the operations of the manager and every portfolio of its collective investment scheme **[are in accordance with generally accepted accounting practice and in the manner required by]** satisfy the financial reporting standards as to form and content, if any standards are prescribed in terms of this Act."; and

(c) by substituting for subsection (3):

"(3) When the auditor of a collective investment scheme has conducted an audit in terms of subsection (2), he or she must report to the manager that the accounting records and the annual financial statements have been **[examined in accordance with generally accepted auditing standards and in the manner required by]** audited in compliance with applicable requirements of this Act and state whether in **[his or her]** the auditor's considered opinion they fairly present the financial position and the results of the operations of the manager and its collective investment scheme.".

Amendment of section 75(1)*(b)* of Act 45 of 2002

15. Section 75(1) of Act 45 of 2002 is amended by substituting for paragraph *(b)*:

"*(b)* submit a copy of **[such]** the report to the **[registrar if there is reasonable cause to believe that such report is or might be of material significance to the registrar]** Authority." .

Amendment of section 93 of Act 45 of 2002

16. Section 93 of Act 45 of 2002 is amended —

(a) by substituting in subsection (1) for paragraph *(b)*:

"*(b)* **[auditor's fees,]** fees incurred by the auditor for services contemplated under section 74 or services that may be required by the Authority, bank charges, trustee and custodian fees and other levies or taxes;''; and

(b) by substituting in subsection (1) for paragraph *(e)*:

"*(e)* any costs incurred as a result of a collective investment scheme **[in property]** being listed on an exchange."; and

(c) by substituting for subsection (2):

"(2) Amounts other than those referred to in subsection (1) may not be deducted by a manager from a portfolio unless determined by the **[registrar]** Authority.".

Substitution of section 96 of Act 45 of 2002

17. Section 96 of Act 45 of 2002 is amended by substituting for the section:

"**Power of manager to borrow money to bridge insufficient liquidity in a portfolio**

96. *(a)* In the case where insufficient liquidity exists in a portfolio or where assets cannot be realised **[to repurchase or cancel participatory interests]** to meet the portfolio's obligations in relation to the administration of a scheme with regard to the settlement of buying and sale transactions and the repurchase or cancellation of participatory interests, the manager of a collective investment scheme in securities may

borrow the necessary funds for **[such]** the repurchase or cancellation on security of the assets and for the account of the portfolio in question, from a **[registered]** licensed financial institution at the best commercial terms available and until assets can be realised to repay **[such a]** the loan**[: Provided that the]**.

(b) The maximum amount **[so]** borrowed in terms of paragraph *(a)* may not exceed 10 per cent of the market value of **[such]** the portfolio at the time of borrowing.".

Amendment of section 98(2)*(a)* of Act 45 of 2002

18. Section 98(2) of Act 45 of 2002 is amended by substituting for paragraph *(a)*:

"(2) *(a)* The parties to a deed may by supplemental deed amend a deed, but no amendment of a deed is valid unless—

(i) the consent **[thereto]** to the amendment of a majority in value of investors has been obtained in the manner prescribed in the deed; and

(ii) the Authority approved the amendment.".

Repeal of section 100 of Act 45 of 2002

19. Section 100 of Act 45 of 2002 is repealed.

Amendment of section 102 of Act 45 of 2002

20. Section 102 of Act 45 of 2002 is amended by substituting for subsection (6):

"(6) Despite the provisions of the Companies Act **[, 1973 (Act No. 61 of 1973)]**, this section and sections 103 and 104 of this Act must be applied to the winding-up of a portfolio of an open-ended investment company and none of the assets of a portfolio administered by such a company may be utilised for the payment of any claim of a creditor of the company.".

Substitution of section 104 of Act 45 of 2002

21. Section 104 of Act 45 of 2002 is amended by substituting for the section:

"**Separation of assets of portfolio handed to or received by manager, trustee or custodian**

104. (1) A manager must have a separate bank account for the purposes of receiving money from investors to acquire a participatory interest or interests.

(2) For the purposes of a claim against a manager, trustee or custodian, there must be excluded from the assets of the manager, trustee or custodian—

(a) any money or other assets handed to that manager, trustee or custodian or its authorised agents by an investor for the sale or repurchase of a participatory interest; and

(b) the assets of a portfolio.

(3) A manager must maintain records in accordance with section 74 in respect of money and assets received in terms of subsection (1) and must, in addition to and simultaneously with the financial statements referred to in section 74, submit to the Authority a report, by the auditor, which confirms that:

(a) the amount of money at year end held by the manager on behalf of investors;

(b) the money received was throughout the financial year kept separate from the assets of the manager or trustee or custodian, and report any instance of non-compliance identified in the course of the audit and the extent of the non-compliance.".

Repeal of section 111A of Act 45 of 2002

22. Section 111A of Act 45 of 2002 is repealed.

Amendment of section 112 of Act 45 of 2002

23. Section 112 of Act 45 of 2002 is amended by—

(a) substituting for subsection (1):

"(1) The Minister may delegate any power conferred **upon [him or her]** the Minister by this Act to the Director-General: Finance or any other officer in the National Treasury, **[the Board, an association]** or the **[registrar]** Authority.";

(b) by repealing subsection (2); and

(c) substituting for subsection (4):

"(4) Any delegation under subsection (1) **[or (2)(a)]** does not prohibit the exercise of the power in question by the Minister **[,association]** or Authority, as the case may be.".

Substitution of section 114

24. Section 114 of Act 45 of 2002 is amended by substituting for the section:

"**Regulations by Minister and [notices by registrar] standards by the Authority**

(1) The Minister may make regulations as to any matter which is required or permitted by this Act to be prescribed under this Act.
(2) The Minister may make different regulations—
(a) in respect of **[manager which is or a manager which is not a member of an association]** different types of managers, different types of collective investment schemes or different types of portfolios;
(b) prescribing, generally, any matter, whether or not connected with any matter specified in subsection (1), which is necessary or expedient to prescribe or to regulate in order for the objects of this Act to be achieved, but the generality of this provision is not limited by subsection (1).
(3) The **[registrar]** Authority may, for the purposes of this Act, **[by notice in the *Gazette* determine]** prescribe—
(a) the records to be kept and furnished to the **[registrar]** Authority by a manager;
(b) the forms, returns, documents or information and the manner and time limits for the lodgement with or transmission to the **[registrar]** Authority or any other person;
[*(c)* the manner in which and the period within which
(i) application for the renewal of an association licence must be made; or
(ii) notice must be given of the issue, cancellation or suspension of an association licence;]
(d) …….
(e) rules for the conduct of a collective investment scheme by a manager **[who is not a member of an association]**; and
(f)(i) the circumstances under which the manager of a collective investment scheme in securities may suspend the repurchase of participatory interests and the conditions of **[such]** the suspension**[: Provided that any]**;and
(ii) the amount that the aggregate amount or value, any offer of participatory interests for repurchase by an investor**[, of does]** may not exceed **[specified by the registrar]**, on the day of such offer**[, is excluded from any suspension]**.
(4) The **[registrar]** Authority may **[issue]** prescribe different **[notices]** standards--
(a) in respect of **[a manager which is or a manager which is not a member of an association]** different types of managers, different types of collective investment schemes or different types of portfolios;
(b) **[determining]** prescribing, generally, any matter, whether or not connected with any matter specified in subsection (3), which is necessary or expedient to **[determine]** prescribe in order for the objects of this Act to be achieved, but the generality of this provision is not limited by subsection (3).
(5) …….
(6) …….
(7) A regulation may provide for penalties for a contravention **[thereof]** of or failure to comply **[therewith]** with the regulation.".

Part 13
Amendment of Co-operatives Act, 2005 (Act No. 14 of 2005)

Amendment of section 1(1) of Act 14 of 2005

1. Section 1(1) of Act 14 of 2005 is amended by inserting following the definition of "Department":

''**"financial sector law"** means a "financial sector law" as defined in section 1(1) of the Financial Sector Regulation Act;
"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);
"financial sector regulator" means a "financial sector regulator" as defined in section 1(1) of the Financial Sector Regulation Act, 2017;
"financial services" means any "financial service" as defined in section 3(1) of the Financial Sector Regulation Act;"'.

Substitution of section 5A of Act 14 of 2005

2. Section 5A of Act 14 of 2005 is amended by substituting for the section:

"**Application of Co-operative Banks Act**

5A. The Co-operative Banks Act, 2007, applies to any co-operative bank or co-operative financial institution that is registered under that Act.".

Amendment of section 8 of Act 14 of 2005

3. Section 8 of Act 14 of 2005 amended--

(a) by substituting for subsection (1):

"(1) Subject to subsection (1A), **[A]**a co-operative may amend its constitution by a special resolution."; and

(b) by inserting following subsection (1):

"(1A) a financial co-operative, other than a co-operative bank, that is authorised, licensed or registered under a financial sector law may not amend its constitution without the approval of the relevant financial sector regulator under which the financial cooperative has been authorised, licensed or registered.".

Amendment of section 50 of Act 14 of 2005

4. Section 50 of Act 14 of 2005 is amended by inserting following subsection (6):

"(7) Notwithstanding the requirements contained in this section, a financial co-operative, other than a co-operative bank, that is authorised, licensed or registered under a financial sector law is subject to the requirements relating to the appointment of an auditor under the relevant financial sector law and in the case of any conflict between those requirements and this section, the requirements in the relevant financial sector law will prevail."

Repeal of section 94 of Act 14 of 2005

5. Section 94 of Act 14 of 2005 is repealed.

Amendment of Schedule 1 to Act 14 of 2005

6. Schedule 1 to Act 14 of 2005 is amended—

(a) by substituting for subitem (2) of item 1 of Part 3:

"(2) A financial [] co-operative is a co-operative whose main objective is to provide financial services to its members**[, and includes a credit union, co-operative bank, savings and credit co-operative or other financial services]**.";

(b) by deleting items 2A, 3, 4 and 5 and 8 of Part 3;

(c) by inserting following item 2A in Part 3:

"3A. Subject to item 2A, Registration under this Act does not exempt a financial co-operative from a requirement to be registered, licensed or authorised under any financial sector law, unless the financial co-operative is specifically exempted from being registered or authorised under the financial sector law concerned.";

(d) by substituting for subitem (1) of item 6 of Part 3:

"(1) The registrar may, in consultation with **[the Registrar of Banks, the Registrars of Long-term or Short-term Insurance,]**a financial sector regulator or the Registrar of Medical Schemes, as the case may be, direct that all co-operatives, to whom this part applies, or any category of co-operative to whom this part applies, other than a co-operative bank, belong to a secondary co-operative that will act as a self-regulatory body, in compliance with any requirement for exemption from any provision of **[the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or Short-term**

Insurance Act, 1998 (Act No. 53 of 1998),] a financial sector law or the Medical Schemes Act, 1998 (Act No. 131 of 1998).";

(e) by substituting for item 6A of Part 3:

"**6A.** The registrar may, in consultation with **[the registrar of Banks, the registrars of Long-term Insurance or Short-term Insurance,]** a financial sector regulator or the registrar of Medical Schemes, as the case may be, direct that all co-operatives, to whom this part applies, or any category of co-operative to whom this part applies, other than a co-operative bank, must provide a recommendation letter from the financial sector regulator or the registrar of medical schemes **[as contemplated in the Banks Act, 1990 (Act No. 94 of 1990),]** in compliance with any requirement for exemption from any provision of **[the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998),]** the Financial Sector Regulation Act, a financial sector law, or the Medical Schemes Act, 1998 (Act No. 131 of 1998).";

(f) by substituting for subitem (1) of item 7 of Part 3:

"(1) The Minister may, in consultation with the Minister of Finance, **[the Co-operative Bank Supervisor, the Registrar of Banks or the Registrars of Long-term or Short-term Insurance,]**a financial sector regulator or the Registrar of Medical Schemes, as the case may be, make regulations regarding any matter relating to the operation or administration of financial services co-operatives or any category of financial services co-operatives.";

(g) by substituting for item 8 of Part 3:

"8. For the purposes of this Part, "financial service" means any financial service as defined in section 3 of the Financial Sector Regulation Act **[or banking service]** that a co-operative may be licensed in terms of a financial sector law or other legislation to provide to its members, and includes **[the provision of long-term and short-term insurance, as envisaged in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and]** the business of a medical scheme, as envisaged in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998)**[, or funeral services, as envisaged in the Friendly Societies Act, 1956 (Act No. 25 of 1956)]**.";and

(h) by inserting following item 8 in Part 3:

"**9. Insuring life of unborn or minor**

(a) No financial services co-operative shall insure the life of an unborn or minor before that minor attains the age of fourteen years for any sum of money which, either alone or together with any amount which to the knowledge of the said financial services co-operative is payable on the death of that unborn or minor by any other persons carrying on insurance business within the meaning of the Insurance Act, No. 18 of 2017, exceeds—

(i) R10,000 in respect of an unborn or minor under six years of age; or

(ii) R30,000 in respect of a minor that older than the age of six but younger than the age of fourteen.

(b) Where a financial services cooperative has insured the life of an unborn or minor referred to in sub-item (a) for a benefit not consisting of a sum of money, it shall for the purposes of this item be deemed to have insured the life of that unborn or minor for a sum of money equal to the value of that benefit.

(c) The provisions of this item shall not be construed so as to prohibit insurance which provides for the payment, on the death of any unborn or minor which is under the age of fourteen years, of a sum not exceeding in the aggregate all the contributions paid in respect of that insurance, plus interest on each contribution at a rate not exceeding seven and a half per cent per annum, compounded annually.".

Part 14
Amendment of Financial Markets Act, 2002 (Act No. 19 of 2012)

Amendment of section 1 of Act 19 of 2012

1. Section 1(1) of Act 19 of 2012 is amended—

(a) by inserting following the definition of "Companies Act":

'"**Conduct of Financial Institutions Act**" means the Conduct of Financial Institutions Act, 2021;';

(b) by substituting for the definition of 'financial institution';

'"**financial institution"** means—

(a) any **[pension fund organisation registered]** retirement fund licensed in terms of the **[Pension]** Retirement Funds Act, 1956 (Act No. 24 of 1956), or **[any person referred to in section 13B of that Act]** a financial institution licensed under the Conduct of Financial Institutions Act to **[**administering**]** administer the securities of **[such a pension fund]** a retirement fund or the disposition of benefits provided for in the rules of **[such a pension fund]** a retirement 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]** financial co-operative registered in terms of the Co-operatives Act, 2005 (Act No. 14 of 2005);

(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]** insurer licensed under the Insurance Act, 2017 (Act No. 18 of 2017); and

(e) a bank;'; and

(c) by deleting the definition **"Financial Institutions (Protection of Funds) Act**".

2. Amendment of section 3 of Act 19 of 2012

Section 3 of Act 19 of 2012 is amended by inserting following subsection (6):

"(7) A market infrastructure must, when making rules that relate to the conduct of financial institutions as regulated in terms of Conduct of Financial Institutions Act, promote and facilitate compliance with that Act and any standard prescribed in terms that Act."

Amendment of section 6(3)*(m)*(iii)*(aa)* of Act 19 of 2012

3. Section 6(3)*(m)*(iii) of Act 19 of 2012 is amended by substituting for item *(aa)*:

"*(aa)* is based in an equivalent foreign jurisdiction as defined in **[terms of section 6A]** section 1(1) of the Financial Sector Regulation Act and is authorised by the supervisory authority of **[such]** that jurisdiction;".

Repeal of sections 6A, 6B and 6C of Act 19 of 2012

4. Sections 6A, 6B and 6C of Act 19 of 2012 are repealed.

Amendment of section 15 of Act 19 of 2012

5. Section 15 of Act 19 of 2012 is amended by substituting for subsection (2):

"(2) Any funds received or held by an exchange for the 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]** section 1(1) of the Conduct of Financial Institutions Act and part 1 of chapter 8 that Act applies, with the necessary changes, to those funds.".

Amendment of section 17 of Act 19 of 2012

6. Section 17 of Act 19 of 2012 is amended--

(a) by substituting for subsection (1):

"(1) The exchange rules must be consistent with this Act, the Financial Sector Regulation Act4, the Conduct of Financial Institutions Act, and any standard made in terms of this Act**, [or]** the Financial Sector Regulation Act, or the Conduct of Financial Institutions Act."; and

(b) by substituting in subsection (2)*(a)* for the words preceding paragraph *(a)* and subparagraph (i):

"(2) The exchange rules must provide—

(a) for equitable criteria for authorisation and exclusion of authorised users, which criteria must be consistent with fit and proper requirements prescribed under the Conduct of Financial Institutions Act, and, in

particular, that no person may be admitted as an authorised user or allowed to continue **[such]** that person's business as an authorised user 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]** has been appropriately licensed under the Conduct of Financial Institutions Act;".

Amendment of section 21(3) of Act 19 of 2012

7. Section 21 of Act 19 of 2012 is amended by substituting for subsection (3):

"(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]** section 1(1) of the Conduct of Financial Institutions Act, and part 1 of chapter 8, and that Act applies, with the necessary changes, to those funds, subject to this section.".

Amendment of section 22(3) of Act 19 of 2012

8. Section 22 of Act 19 of 2012 is amended by substituting for subsection (3):

"(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]** section 1(1) of the Conduct of Financial Institutions Act, and part 1 of chapter 8 of that Act applies, with the necessary changes, to those securities.".

Amendment of section 35 of Act 19 of 2012

9. Section 35 of Act 19 of 2021 is amended--

(a) by substituting for subsection (1):

"(1) The depository rules must be consistent with this Act, the Financial Sector Regulation Act4, the Conduct of Financial Institutions Act, and any standard made in terms of this Act, **[or]** the Financial Sector Regulation Act, or the Conduct of Financial Institutions Act."; and

(b) by substituting in subsection (2)*(b)* for the introductory words and subparagraph (i):

"*(b)* for equitable criteria for authorisation and exclusion of participants, which criteria must be consistent with fit and proper requirements prescribed under the Conduct of Financial Institutions Act, and, in particular, that no person may be admitted as a participant or allowed to continue **[such]** that person's business as a participant 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]** has been appropriately licensed under the Conduct of Financial Institutions Act;".

Amendment of section 36(5) of Act 19 of 2012

10. Section 36 of Act 19 of 2012 is amended by substituting for subsection (5):

"(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]** section 36(1) of the Conduct of Financial Institutions Act, and part 1 of chapter 8 of that Act applies, with the necessary changes, to those securities.".

Amendment of section 49A(2) of Act 19 of 2012

11. Section 49A of Act 19 of 2012 is amended by substituting for subsection (2):

"(2) An external central counterparty from an equivalent foreign jurisdiction as defined in section 1(1) of the Financial Sector Regulation Act may apply to the Authority for a licence.".

Amendment of section 51 of Act 19 of 2012

12. Section 51 of Act 19 of 2012 is amended by substituting for subsection (2):

"(2) Any funds received or held by an independent clearing house or a central counterparty for the purpose of maintaining the insurance, guarantee, compensation fund or other warranty contemplated in section 49(2)(b), are for all intents and purposes considered to be **"trust property"** as defined in **[the Financial Institutions (Protection of Funds) Act]** section 1(1) of the Conduct of Financial Institutions Act, and part 1 of chapter 8 of that Act applies, with the necessary changes, to those funds.".

Amendment of section 56A(2) of Act 19 of 2012

13. Section 56A of Act 19 of 2012 is amended by substituting for subsection (2):

"(2) An external trade repository from an equivalent foreign jurisdiction as defined in section 1(1) of the Financial Sector Regulation Act may apply to the Authority for a licence.".

Substitution of section 96 of Act 19 of 2012

14. Section 96 of Act 19 of 2012 is amended by substituting for the section:

"Powers of Authority after supervisory on-site inspection or investigation

96. After a supervisory on-site inspection or an investigation has been conducted, the Authority 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]** section 166BO of the Financial Sector Regulation Act for the winding-up of the respondent as if the Authority were a creditor of the respondent;

(ii) apply to the court under **[section 131 of the Companies Act]** section 166BM of the Financial Sector Regulation Act to begin business rescue proceedings in respect of the respondent as if the Authority 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 under section 166BK of the Financial Sector Regulation Act;

(bA) appoint a statutory manager under section 166BJ of the Financial Sector Regulation Act;

(c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the supervisory on-site inspection or investigation;

(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 Authority believes that the director, managing executive, officer or employee is not fit and proper to perform such activities; or

(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.".

Substitution of section 100 of Act 19 of 2012

15. Section 100 of Act 19 of 2012 is amended by substituting for the section:

"**Winding-up or sequestration by court**

100. (1) Despite any other law and subject to section 3(1) of this Act and Chapter 12B of the Financial Sector Regulation Act, 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;

(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 Authority.

(2) A regulated person which is a company or other corporate body may be wound up, subject to **[section 102]** section 166BK(14) of the Financial Sector Regulation Act, according to **[the Companies Act]** part 4 of chapter 12B of the Financial Sector Regulation Act **[and the estate of a regulated 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 Authority, as the case may be, and must be approved by the Authority prior to the filing or serving thereof;**

(b) in relation to a court application in respect of a regulated person, the Authority 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 Authority 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 Authority.

(4) A court may not grant a liquidation order in respect of a regulated person without the approval of the Authority.

(5) If the Authority does not approve the resolutions of the regulated person made under section 80 of the Companies Act, the Authority 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.]".

Substitution of section 101 of Act 19 of 2012

16. Section 101 of Act 19 of 2012 is amended by substituting for the section:

"**Business rescue**

101. (1) Subject to section 3 of this Act and part 3 of chapter 12B of the Financial Sector Regulation Act, the **[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)]** section 166BK of the Financial Sector Regulation Act .

[(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.]".

Substitution of section 102 of Act 19 of 2012

17. Section 102 of Act 19 of 2012 is amended by substituting for the section:

"Appointment of curator

102. (1) Despite any other law, and subject to section 3(1) of this Act, the court may appoint a curator in terms of **[section 5 of the Financial Institutions (Protection of Funds) Act]** section 166BK of the Financial Sector Regulation Act in respect of any regulated person.

[(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.]".

Repeal of section 103 of Act 19 of 2012

18. Section 103 of Act 19 of 2012 is repealed.

Part 15
Repeal of Credit Rating Services Act, 2012 (Act No. 24 of 2012)

Repeal of Act 24 of 2012

1. Act 24 of 2012 is repealed.

Part 16
Amendment of Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

Amendment of long title of Act 9 of 2017[15]

1. The long title of Act 9 of 2017 is amended by substituting:

"To establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority, and conferring powers on these entities; to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank; to establish the Financial Stability Oversight Committee; to provide for the establishment of a framework for the resolution of designated institutions to ensure that the impacts or potential impact of a failure of a designated institution on financial stability are managed appropriately; to designate the Reserve Bank as the resolution authority; to establish a deposit insurance scheme, including a Corporation for Deposit Insurance; to provide a framework for the recovery and exit of financial institutions from the financial sector; to ensure that the impacts and potential impacts of financial institutions in recovery and on exit from the financial sector on the efficiency and integrity of the financial markets and on financial customers are managed appropriately; to regulate and supervise financial product providers and financial services providers; to improve market conduct in order to protect financial customers; to provide for co-ordination, co-operation, collaboration and consultation among the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the Corporation for Deposit Insurance, the National Credit Regulator, the Financial Intelligence Centre and other organs of state in relation to financial stability and the functions of these entities; to establish the Financial System Council of Regulators and the Financial Sector Inter-Ministerial Council; to provide for making regulatory instruments, including prudential standards, conduct standards and joint standards; to make provision for the licensing of financial institutions; to make comprehensive provision for powers to gather information and to conduct supervisory on-site inspections and investigations; to make provision in relation to significant owners of financial institutions and the supervision of financial conglomerates in relation to eligible financial institutions that are part of financial conglomerates; to make provision for designated institutions in connection with resolution matters; to make provision for financial institutions in relation to recovery and exit from the financial sector; to provide for powers to enforce financial sector laws, including by the imposition of administrative penalties; to provide for the protection and promotion of rights in the financial sector as set out in the Constitution; to establish the Ombud Council and confer powers on it in relation to ombud schemes; to provide for coverage of financial product and financial service providers by appropriate ombud schemes; to establish the Financial Services Tribunal as an independent tribunal and to confer on it powers to reconsider decisions by financial sector regulators, the Ombud Council and certain market infrastructures; to establish the Financial Sector Information Register and make provision for its operation; to provide for information sharing arrangements; to create offences; to provide for regulation-making powers of the Minister; to amend and repeal certain financial sector laws; to make transitional and savings provisions; and to provide for matters connected therewith.".

Amendment of section 1(1) of Act 9 of 2017

2. Section 1(1) of Act 9 of 2017 is amended—

(a) by inserting following the definition of "administrative penalty order":

'**"alternative investment fund"** means an arrangement, but excluding a collective investment scheme, constituted in any legal form, including in a company, in terms of a contract, by means of a trust or a partnership, or in terms of a statute, which—

(a) raises capital from two or more financial customers to facilitate the participation or interest in, subscription, contribution or commitment to, a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the financial customers; and

(b) the financial customers share the risk and the benefit of investment in proportion to their participation or interest in, subscription, contribution or commitment to, the fund;

"another regulator" means—

(a) the Council for Debt Collectors established in section 2 of the Debt Collectors Act, 1998 (Act No. 114 of 1998);

(b) the Council for Medical Schemes;

(c) the National Credit Regulator; or

(d) the registrar as defined in section 1(1) of the Co-operatives Act, who is the Commissioner of the Companies and Intellectual Property Commission, appointed in terms of section 189 of the Companies Act;';

[15] This amendment to the long title is aligned with the amendment to the long title contained in the Financial Sector Laws Amendment Bill, 2020.

(b) by inserting following the definition of "collective investment scheme":

'"**commercial sponsor"** has the meaning defined in section 1(1) of the Conduct of Financial Institutions Act;

'"**commercially sponsored fund"** has the meaning defined in section 1(1) of the Conduct of Financial Institutions Act;';

(c) by inserting following the definition of "Competition Commission":

'**"Conduct of Financial Institution Act"** means the Conduct of Financial Institutions Act, 2021 (Act No. [--] of 2021);';

(d) by inserting following the definition of "credit agreement" --

'**"credit rating agency"** means a credit rating agency as defined in section 58 of the Conduct of Financial Institutions Act;';

(e) by inserting following the definition of "enforceable undertaking":

'**"equivalent foreign jurisdiction"** means a foreign jurisdiction determined in terms of section 255A;';

(f) by substituting for the definition of "financial instrument":

'"**financial instrument"** means—

(a) a share as defined in section 1 of the Companies Act;
(b) a depository receipt and other equivalent instruments;
(c) a debt instrument such as a debenture or a bond, but not a credit agreement;
(d) money market securities as defined in section 1(1) of the Financial Markets Act;
(e) a derivative instrument as defined in section 1(1) of the Financial Markets Act; **[or]**
(f) a **[warrant certificate,]** securitization instrument; or
(g) **[**other**]** another instrument or certificate acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert, the financial instruments referred to in paragraphs *(a)* to *(e)* or credit;';

(g) by substituting in the definition of "governing body" for paragraph *(a)*(v):

"(v) the board of a **[pension]** retirement fund referred to in section 7Aof the **[Pension]** Retirement Funds Act;";

(h) by inserting in the definition of "key person":

"*(g)* the principal officer and deputy principal officer of a retirement fund; "

(i) by inserting following the definition of "legal practitioner":

'"**lending"** means providing credit in terms of a lending agreement that is not regulated in terms of the National Credit Act;';

(j) by substituting for the definition of "outsourcing arrangement":

'"**outsourcing arrangement"**, in relation to a financial institution, means an arrangement between a financial institution and another person for the provision to or for the financial institution of any of the following—

(a) a control function;
(b) a function that a financial sector law requires to be performed or requires to be performed in a particular way or by a particular person; and
(c) a function or an activity that is integral to the nature of a financial product or financial service that the financial institution provides, or is integral to the nature of the market infrastructure**[;],**

but does not include**[—]**

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

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

(k) by substituting in paragraph *(a)* of the definition of "ombud" for the word "Pension" of the word "Retirement";

(l) by deleting the definition of "Pension Funds Act";

(m) by substituting for the definition of "representative"':

'"**representative"** has the meaning defined in section 1(1) of the Conduct of Financial Institutions Act;";

(n) by inserting following the definition of "responsible authority":

'"**retirement fund"** has the meaning defined in section 1(1) of the Retirement Funds Act;

"Retirement Funds Act" means the Retirement Funds Act, 1956 (Act 24 of 1956);';

(o) by substituting for the definition of "supervised entity":

'"**supervised entity"** means each of the following—

(a) A licensed financial institution;
(b) a person with whom a licensed financial institution has entered into an outsourcing arrangement; **[and]**
(c) a representative of a financial institution;
(d) the employer of any member of a retirement fund as referred to in section 13A of the Retirement Funds Act, for the powers to be exercised in terms of Chapters 7, 9, 10 and 13 of this Act;
(e) a commercial sponsor of a commercially sponsored fund as defined in section 1(1) of the Conduct of Financial Institutions Act; and
(f) a contributor to a benchmark;'.

Amendment of section 2 of Act 9 of 2017

3. Section 2 of Act 9 of 2017 is amended—

(a) by inserting in subsection (1) following paragraph *(a)*:

"*(aA)* a participatory interest in an alternative investment fund";
(bB) lending;";

(b) by substituting in subsection (1) for paragraphs*(b)* and *(c)*:

"*(b)* **[a long-term policy as defined in [section 1(1) of the Long-term Insurance Act or]** a life insurance policy as defined in section 1 of the Insurance Act;
(c) **[a short-term policy as defined in section 1(1) of the Short-term Insurance Act or]** a non-life insurance policy as defined in section 1 of the Insurance Act;";

(c) by substituting in subsection (1)*(d)* for subparagraphs (i) and (ii):

"(i) a **[pension fund organisation]** retirement fund as defined in section 1(1) of the **[Pension]** Retirement Funds Act, to a member of the **[organisation]** retirement fund by virtue of membership;";
(ii) a **[friendly society as defined in section 1(1) of the Friendly Societies Act]** financial co-operative registered in terms of the Co-operatives Act, 2005 (Act No. 14 of 2005), to a member of the **[society]** co-operative;"; and

(d) by inserting following subsection (1):

"(1A) For the purposes of sections 33 and 34, a participatory interest in an alternative investment fund and lending are not financial products.".

Substitution of section 3 of Act 9 of 2017

4. Section 3 of Act 9 of 2017 is amended by substituting for the section:[16]

"**Financial services**

3. (1) In this Act, **"financial service"** means any of the following activities, each as defined in Schedule 1 of the Conduct of Financial Institutions Act:

[16] This amendment is intended to align the definition of financial services with what will be provided in Schedule 1 of the Bill, as the current descriptions of services in the definition are not arranged and described clearly in alignment with the activities that will be licensed going forward.

(a) distribution;
(b) financial advice;
(c) discretionary investment management;
(d) administration;
(e) fiduciary or custodian service;
(f) payment service;
(g) debt collection service;
(h) financial markets activities; and
(i) corporate advisory services.

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

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

(a) any service that is not regulated in terms of a specific financial sector law, if the service, that is provided in the Republic, relates to—
(i) a financial product, a foreign financial product, a financial instrument or a foreign financial instrument;
(ii) an arrangement that is in substance an arrangement for lending, making a financial investment or managing financial risk, all as contemplated in section 2(2) to (4); or
(b) a service provided by a market infrastructure.

(4) Regulations designating a financial service in terms of subsection (3) may specify the financial sector regulator that is the responsible authority for the financial service.".

Amendment of section 57*(b)* of Act 9 of 2017

5. Section 57*(b)* of Act 9 of 2017 is amended by substituting for the words preceding subparagraph (i):

"*(b)* protect financial customers, including by—".

Amendment of section 58 of Act 9 of 2017

6. Section 58 of Act 9 of 2017 is amended—

(a) by inserting in subsection (1) following paragraph *(e)*:

"*(eA)* promote, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority, transformation of the financial sector, including through co-operating and collaborating with the Broad-Based Black Economic Empowerment Commission established by section 13B of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);";

(b) by inserting following subsection (5):

"(5A) The Financial Sector Conduct Authority must—
(a) adopt a licensing framework;
(b) prescribe conduct standards;
(c) develop and implement its supervisory approach;
(d) enforce compliance with this Act and other financial sector laws in respect of which it is the responsible authority; and
(e) consider the granting of exemptions under this Act and other financial sector laws in respect of which it is the responsible authority,
in a manner that—
(i) promotes the object of this Act and other financial sector laws,
(ii) supports the achievement of the objective of the Financial Sector Conduct Authority in section 57 and its functions in section 58; and
(iii) takes into account, and is proportionate to—
(aa) the nature, size, scale or complexity of the conduct risks or business model of, or activities performed by, the financial institutions or persons to which the matters referred to in paragraphs *(a)* to *(e)* are applied;
(bb) achieving the purpose of the requirement; and
(cc) the significance of risks to the achievement of the object of this Act, the object of the Conduct of Financial Institutions Act, and the Financial Sector Conduct Authority's objectives."; and

(c) by inserting following subsection (6):

"(6A) When prescribing requirements in terms of this Act, the Conduct of Financial Institutions Act, or another financial sector law, and when applying requirements contained in this Act, the Conduct of Financial Institutions Act or another financial sector law, the Authority must consider—

(a) the content of applicable requirements contained in other legislation; and

(b) the likely impact of requirements that are proposed to be prescribed, and the actual impact of requirements that are imposed on financial institutions, prudentially regulated financial groups and financial conglomerates as defined in section 1(1) of the Conduct of Financial Institutions Act, or other persons to whom the requirements apply.".

Amendment of section 71(5) of Act 9 of 2017

7. Section 71 of Act 9 of 2017 is amended by substituting for subsection (5):

"(5) *(a)* Any power or duty of the Financial Sector Conduct Authority may be delegated to the Prudential Authority by a section 77 memorandum of understanding in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.

(b) For the purposes of the effective implementation of and the achievement of the object of the Conduct of Financial Institutions Act, any power or duty of the Financial Sector Conduct Authority in terms of this Act or the Conduct of Financial Institutions Act may be delegated to "another regulator" as defined in section 1(1) of this Act by a memorandum of understanding in accordance with a framework and system of delegation developed by the Financial Sector Conduct Authority to ensure that any delegation does not constrain the Financial Sector Conduct Authority from achieving its objective as set out in section 57, or the achievement of the Object of this Act or the Conduct of Financial Institutions Act.";

Amendment of section 77 of Act 9 of 2017

8. Section 77 of Act 9 of 2017 is amended by inserting following subsection (6):

"(7) In order to facilitate the implementation of the Conduct of Financial Institutions Act in relation to financial institutions and supervised entities subject to regulation by "another regulator" as defined in section 1(1) of this Act, the Authority may enter into a memorandum of understanding with "another regulator", and engage in any co-operation, collaboration and co-ordination arrangements that the Authority may agree with that other regulator.".

Substitution of section 106 of Act 9 of 2017

9. Section 106 of Act 9 of 2017 is amended by substituting for the section:

"**Conduct standards**

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

(a) supervised entities; and

[*(a)* financial institutions;

***(b)* representatives of financial institutions;]**

[*(c)*]*(b)* key persons of financial institutions;

[*(d)* contractors;]*(c)* holding companies of financial conglomerates; and

(d) significant owners.

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

(a) achieving the objectives of the Financial Sector Conduct Authority in section 57; or

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

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

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

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

[*(e)* assisting in maintaining financial stability;

***(f)* achieving the object of this Act.]**

(3) When making conduct standards, the Authority may consider –

(a) the nature, size, scale or complexity of the conduct risks or business model of, or activities performed by, the financial institutions or persons to whom the requirements apply; and

(b) the content of applicable requirements contained in other legislation and the impact of requirements on financial institutions and prudentially regulated financial groups and financial conglomerates to whom the requirements apply.

(4) A conduct standard or requirements in a conduct standard may—

(a) differentiate between or be limited in application to particular categories, subcategories, kinds or types of—

(i) financial institutions, key persons, representatives, contractors or supervised entities;

(ii) financial products, or financial instruments; or

(iii) activities or subcategories of activities as defined in section 1(1) or referred to in Schedule 1 of the Conduct of Financial Institutions Act;

(b) differ based on category or subcategories of financial customers.

[(3)](5) Without limiting the generality of subsections (1) and (2), a conduct standard may be made on any of the following matters:

(a) **[Efficiency and integrity requirements for financial markets;**

(*b*) measures] Measures to combat abusive practices;

[(*c*)]*(b)* requirements **[for the fair treatment of financial customers, including]** in relation to—

(i) the design and suitability of financial products and financial services;

(ii) **[the promotion]**advertising, marketing and distribution of **[, and advice in relation to,]** financial products and services;

(iii) advice in relation to financial products and financial services;

(iv) post-sales barriers in relation to financial products, including, but not limited to—

(aa) the provision of redress for financial customers;

(bb) access to information by financial customers;

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

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

[(v)](vii) principles, guiding processes and procedures for the refusal, withdrawal or closure of a financial product or a financial service by a financial institution in respect of one or more financial customers, taking into consideration relevant international standards and practices, and subject to the requirements of any other financial sector law or the Financial Intelligence Centre Act, including—

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

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

(viii) the composition and suitability of fees or any other charges to financial customers;

(c) requirements and restrictions relating to the appointment and debarment of representatives;

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

(e) with regards to credit rating agencies, with respect to—

(i) the independence of credit rating agencies and the avoidance of conflicts of interest;

(ii) the quality and integrity of credit ratings;

(iii) the presentation of credit ratings;

(iv) additional obligations in relation to credit ratings of structured finance instruments;

(v) the responsibilities of credit rating agencies to investors and the public;

(vi) the limitation on shareholding or other interest in a credit rating agency;

(vii) organisational requirements to ensure that business interest does not impair the independence and integrity of its credit ratings or the accuracy of its credit rating services;

(viii) methodologies, models and key rating assumptions of credit rating agencies;

(ix) requirements regarding a code of conduct; and

(x) the endorsement of external credit ratings;

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

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

(6) Conduct standards may include requirements aimed at ensuring that, where financial products are provided to retirement funds, or similar member-based entities, where appropriate—

(a) protections afforded to financial customers also apply in relation to the members of retirement funds or similar member-based entities; and

(b) obligations imposed on financial institutions that provide products are also imposed, where appropriate, on commercial sponsors of commercially sponsored funds.

[(4)](7) A conduct standard may declare specific conduct in connection with a financial product or a financial service to be a prohibited practice or unfair business conduct if the conduct—

(*a*) is or is likely to be materially inconsistent with the fair treatment of financial customers;

(*b*) is deceiving, misleading or is likely to deceive or mislead financial customers;

(*c*) is unfairly prejudicing or is likely to unfairly prejudice financial customers or a category of financial customers; or

(*d*) impedes in any other way the achievement of any of the objectives of a financial sector law.

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

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

(9) The Authority may make a conduct standard that imposes requirements on financial institutions that are subject to conduct regulation by "another regulator" as defined in section 1(1) of this Act in terms of other legislation, after having consulted the other regulator.

(10) The Authority may prescribe requirements in relation to supervised entities which are not licensed financial institutions involved in the activities of a retirement fund, in order to ensure the protection of members, pensioners, and beneficiaries of pension funds as defined in section 1(1) of the Retirement Funds Act, and that the activities of a retirement fund comply with the requirements of the Conduct of Financial Institutions Act.

".

Substitution of section 107 of Act 9 of 2017

10. Section 107 of Act 9 of 2017 is amended by substituting for the section:

"Joint standards

107. (1) The Prudential Authority and the Financial Sector Conduct Authority may make joint standards with each other on any matter in respect of which either of them has the power to make a standard.

(2) The Financial Sector Conduct Authority may make joint standards with the Reserve Bank in respect of financial institutions that provide a payment service or a financial service in relation to forex, on any matter in respect of which the Financial Sector Conduct Authority or Reserve Bank has the power to make, issue or in any other manner impose requirements on those financial institutions through standards, directives or any similar legislative instrument.".

Amendment of section 108(1) of Act 9 of 2017

11. Section 108 of Act 9 of 2017 is amended by substituting for subsection (1):

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

(a) Fit and proper person requirements, including in relation to—
- (i) personal character qualities of honesty and integrity;
- (ii) competence, including experience, qualifications and knowledge; and
- (iii) financial standing;

(b) governance, including in relation to—
- (i) the obligations, composition, membership and operation of governing bodies and of substructures of governing bodies; and
- (ii) the roles**[and]**, responsibilities and duties of governing bodies and their substructures and members;
- (iii) a governance framework and matters which must be addressed in a governance framework;
- (iv) transformation and matters which must be addressed in a transformation plan;

(c) the appointment, duties, responsibilities, remuneration and compensation practices and arrangements, reward, incentive schemes and, subject to applicable labour legislation, the suspension and dismissal of, members of governing bodies and of their substructures, and of key persons;

(d) **[the appointment, duties, responsibilities, remuneration, reward, incentive schemes and, subject to applicable labour legislation, the suspension and dismissal of, key persons]** limitations or restrictions on ownership of a financial institution;

(e) the operation of, and operational requirements for, financial institutions and operational capital requirements in respect of financial institutions that are not prudentially regulated;

(f) financial management, including—
- (i) accounting, actuarial and auditing requirements;
- (ii) asset, debt, transaction, acquisition and disposal management; and
- (iii) financial statements, updates on financial position, and public reporting and disclosures;

(g) risk management and internal control frameworks and requirements;

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

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

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

(k) outsourcing by financial institutions, including outsourcing arrangements;

(l) insurance arrangements, including reinsurance, of financial institutions and guarantees and professional indemnity insurance or fidelity insurance that must be held by financial institutions;

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

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

(o) requirements for identifying, avoiding, overseeing and managing conflicts of interest and disclosures of interests;

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

(q) requirements relating to institutional structures;
(r) requirements for notification to, reporting to, or approval by, authorisation by, registration by or listing by a financial sector regulator in respect of specified matters, including—
(i) ongoing reporting requirements;
(ii) a framework for the reporting of contraventions;
(iii) the manner in which remediation must be effected;
(iv) in respect of actions, activities, transactions and financial product or financial service related contracts and appointments;
(s) licensing in terms of a financial sector law, including—
(i) transitional arrangements in relation to licensing;
(ii) institutional and structural form requirements;
(iii) local presence requirements for foreign financial entities;
(iv) requirements regarding combinations, or limitations, of activities in respect of which a financial institution may be licensed;
(v) requirements to prevent misleading of financial customers or other abuses in relation to licensing.
(t) fees for the purposes of funding the performance of specific functions under this Act or another financial sector law, as envisaged in section 237.".

Amendment of section 111 of Act 9 of 2017

12. Section 111 of Act. 9 of 2017 is amended—

(a) by inserting following subsection (4):

"(4A) A person may not in any manner make use of any licence or copy of a licence for business purposes where the licence or an applicable authorisation under the licence has been suspended, withdrawn, lapsed or cancelled.
(4B) A person may not, without the approval of the responsible authority, apply to that person's business or undertaking a name or description which includes words that may be prescribed by the responsible authority in standards as implicitly or inherently conveying that a person is licenced in terms of this Act, or authorised to perform an activity, or any derivative of those words, unless that person is licensed in terms of a financial sector law and authorised to perform the activity.";

(b) by substituting for subsection (6):

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

(c) by inserting following subsection (7):

"(8) The responsible authority may take into consideration the requirement for licensing of a particular applicant or a category or type of applicant by "another regulator" as specified in section 1(1) or that financial sector law, when—
(a) determining and implementing licensing requirements, processes and procedures;
(b) making standards in relation to licensing; and
(c) considering licence applications.".

Substitution of section 112 of Act 9 of 2017

13. Section 112 of Act 9 of 2017 is amended by substituting:

"**Interpretation**

112. In this Part—

"application" means an application for a licence required in terms of section 111(1)*(b)* or *(2)* **[or]**, section 162 or the Conduct of Financial Institutions Act;

"licence" means a licence required in terms of section 111(1)*(b)* or *(2)* or section 162 or the Conduct of Financial Institutions Act;

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

Amendment of section 113 of Act 9 of 2017

14. Section 113 of Act 9 of 2017 is amended—

(a) by substituting for subsection (2):

"(2) The application must—
(a) be in writing and in a form approved or accepted by the responsible authority; and
(b) include or be accompanied by the information and documents:-
(i) required in the form; or
(ii) required by the responsible authority; and
(c) be accompanied by the prescribed fee."; and

(b) by inserting following subsection (2):

"(3) The responsible authority, prior to licensing, may require a person to change its proposed name (or a translation, shortened form or derivative of the proposed name), if the proposed name—
(a) is identical to that of another financial institution;
(b) closely resembles that of another financial institution that the one is likely to be mistaken for the other;
(c) is identical to or closely resembles that under which another financial institution was previously licensed, and reasonable grounds exist for objection to its use;
(d) is misleading; or
(e) is undesirable.".

Substitution of section 115 of Act 9 of 2017

15. Section 115 of Act 9 of 2017 is amended by substituting for the section:

"**Relevant matters for application for licence**

"**115.** (1) The matters to be taken into account in relation to an application for a licence include—
(a) the objective of the responsible authority as set out in section 33 or 57;
(b) the financial and other resources of and available to the applicant;
(c) fit and proper person requirements applicable to the applicant and to any key person or significant owner of the applicant;
(d) the governance and risk management arrangements of the applicant; **[and]**
(dA) applicable requirements regarding institutional form and structure of applicants;
(e) whether the applicant made a statement that is false or misleading, including by omission, in or in relation to the application**[.]** ; and
(f) any other matter prescribed in standards.
(2) The responsible authority may determine that an applicant who, or whose holding company, or a related company in the group of companies, is registered, authorised or approved by a financial sector regulator or "another regulator" as specified in section 1(1) or another financial sector law from providing some or all of the information required under section 114 or subsection (1), if—
(a) the applicant provides proof of that registration, authorisation or approval; and
(b) the responsible authority is satisfied that that registration, authorisation or approval was granted in accordance with public regulation that is equivalent to this Act.".

Amendment of section 116(2) of Act 9 of 2017

16. Section 116(2) of Act 9 of 2017 is amended by inserting preceding paragraph *(a)*:

"*(Aa)* the applicant complies with the requirements contemplated in section 115;".

Insertion of section 118A in Act 9 of 2017

17. Act 9 of 2017 is amended by inserting following section 118:[17]

"**Conditions of licences**

118A. (1) A licence may be given subject to conditions specified in the licence or in the notice of the grant or issue of the licence given to the licensee.

[17] This section is the existing section 280 of the Financial Sector Regulation Act, which is being moved to sit in the Licensing Chapter to which it relates.

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

(3) Contravention of a condition in terms of subsection (2) does not affect the suspension, cancellation or revocation of the licence.

(4) In this section, a reference to a licence must be read as including a reference to a consent, agreement, approval or permission of any kind in terms of a financial sector law.".

Amendment of section 119(4) of Act 9 of 2017

18. Section 119 of Act 9 of 2017 is amended by substituting for subsection (4):

"(4) If a variation of a licence condition results in a licensee no longer being licensed for a specific activity or sub-activity, financial product, financial instrument or financial customer as contemplated in a financial sector law, the responsible authority may direct the licensee to make arrangements to the satisfaction of the authority to—

(a) discharge its obligations entered into in respect of that category or sub-activity, financial product, financial instrument or financial customer before the variation;

(b) ensure the orderly resolution of that business of the licensee; or

(c) transfer that business to another licensee that is licensed for that activity by a specified date.".

Substitution of section 126 of Act 9 of 2017

19. Section 126 of Act 9 of 2017 is amended by substituting for the section:

"Concurrence and consultation of financial sector regulators and Reserve Bank on licensing matters

126. (1) The responsible authority may not take any of the actions specified in subsection **[(2)]**(4) with regard to a—

(a) systemically important financial institution;

(b) financial institution that provides a payment service; or

(c) financial institution that performs a financial service in relation to foreign exchange, which financial institution is also regulated by the Reserve Bank for a similar activity,

unless**[**—

(a) **the other financial sector regulator has concurred; and**

(b) **if the action relates to or affects a systemically important financial institution,]** the Reserve Bank has concurred.

(2) The responsible authority may not take any of the actions specified in subsection **[(2)]**(4) with regard to a market infrastructure, unless the other financial sector regulator has concurred;

(3) For all other financial institutions, the responsible authority may take any of the actions specified in subsection (4) after having consulted with the other financial sector regulator.

[(2)](4) The actions are—

(a) issuing a licence;

(b) varying, suspending or revoking a licence, however these are described in the relevant financial sector law; and

(c) granting an exemption in terms of section 281.".

Amendment of section 127 of Act 9 of 2017

20. Section 127 of Act 9 of 2017 is amended by inserting following subsection (2):

"(3) A licensed financial institution may not change its name or any shortened form or derivative of the name of the licensee that is used in conducting business without the approval of the Authority.".

Amendment of section 135(1)*(a)* of Act 9 of 2017

21. Section 135 of Act 9 of 2017 is amended by substituting in subsection (1) for paragraph (a)—

"*(a)* reasonably suspects that **[a person may have contravened, may be contravening or may be about to contravene,]** a financial sector law for which the financial sector regulator is the responsible authority, has been contravened, may be in the process of being contravened or may be about to be contravened; or".

Insertion of section 139A in Act 9 of 2017

22. Act 9 of 2017 is amended by inserting following section 139:

"**Recovery of costs**

139A. A financial sector regulator may recover costs and expenses reasonably incurred in connection with an investigation from —

(a) financial institution that is the subject of the investigation, after having considered the results of the exercise of the powers; or

(b) any person, when it appears, after considering the outcome of the investigation, that the person was knowingly a party to the carrying on of the affairs of the financial institution in a manner that constituted an irregularity, non-compliance or contravention.".

Amendment of section 141 of Act 9 of 2017

23. Section 141 of Act 9 of 2017 is amended—

(a) by inserting following subsection (1):

"(1A) The Prudential Authority and the Financial Sector Conduct Authority may publish joint guidance notices on the application of a financial sector law in respect of any matter of common interest."; and

(b) by substituting for subsection (2):

"(2) Guidance notices in terms of subsection (1) and (1A) are for information, and are not binding.".

Amendment of section 142 of Act 9 of 2017

24. Section 142 of Act 9 of 2017 is amended by inserting following subsection (9):

"(10) The Prudential Authority and the Financial Sector Conduct Authority may, in accordance with subsection (2) to (8), publish joint interpretation rulings regarding the interpretation or application of a financial sector law in respect of any matter of common interest.".

Amendment of section 144(3)*(e)* of Act 9 of 2017

25. Section 144(3) of Act 9 of 2017 is amended by substituting for paragraph *(e)*:

"*(e)* remedying the effects of a contravention of a financial sector law or the person's involvement in financial crime, including by that the financial institution must provide appropriate redress to financial customers .".

Amendment of section 152 of Act 9 of 2017

26. Section 152 of Act 9 of 2017 is amended by inserting following subsection (1):

"(1A) Without limiting the scope of subsection (1), the responsible authority for a financial sector law may apply to the High Court, and the Court may grant any appropriate order or relief, including making the following orders:

(a) An order compelling any financial institution to comply with any law or to cease contravening a law;

(b) an order compelling any financial institution to comply with a lawful request, directive or instruction made, issued or given by the authority under a financial sector law;

(c) an order to prevent concealment, removal, dissipation or destruction of specified assets;

(d) an interim order to a person to cease trading or to seize and remove assets for safe custody, in order to protect financial customers while an investigation is underway or to enable the responsible authority to exercise any other legal remedy;

(e) a declaratory order regarding the interpretation of a provision of this Act or another financial sector law, or the business of a financial institution, or any matter that will directly or indirectly assist in achieving the objective of the responsible authority.

(1B) *(a)* An application by a responsible authority seeking an order referred to in subsection (1A)*(c)* and *(d)* may be made on an *ex parte* basis.

(b) An application referred to in paragraph *(a)* may be made in chambers.".

Amendment of section 153 of Act 9 of 2017

27. Section 153 of Act 9 of 2017 is amended by inserting in subsection (1) following paragraph *(d)*—

"*(e)* no longer complies with prescribed fit and proper requirements.".

Insertion of Part 7 in Chapter 10 of Act 9 of 2017

28. Act 9 of 2017 is amended by inserting in Chapter 10 following Part 6 (section 156):

"Part 7
Urgent actions

Take-down notices

156A. (1) The responsible authority may issue to a service provider, defined in section 70 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), a take-down notice contemplated in section 77 of that Act; if a person is conducting, advertising, soliciting or marketing a business on the internet—

(a) in contravention of a financial sector law for; or

(b) in a manner that is likely to lead to prejudice to financial customers; or harm to the financial system.

(2) For purposes of section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), the responsible authority is a 'complainant' as contemplated in that section.

(3) Before issuing the take-down notice as contemplated in subsection (1), the responsible authority must inform the service provider of its intention to issue the take-down notice and provide the services provider with an opportunity to make submissions.

(4) The period contemplated in subsection (3) must be five business days, but may be reduced if the authority determines that this period is likely to defeat the object of the take-down notice.

(5) Where the responsible authority is aware of the identity of the person referred to in subsection (1), the authority must inform that person of the intention to issue the take-down notice as contemplated in subsection (3).

(6) In deciding whether or not to issue the take-down notice, the responsible authority must take into account any submissions made by the service provider and the person referred to in subsection (1).

Prevention of the removal or dissipation of assets

156B. (1)The responsible authority may, if it reasonably suspects that—

(a) a person—

(i) has contravened, may be contravening or may be about to contravene, a provision of a law in a material respect; or

(ii) is likely to be in an unsound financial position, and

(b) there is an urgent imperative to protect –

(i) the interest of the customers of the institution; or

(ii) the safety and soundness of the institution,

direct any person in writing not to -

(c) proceed with a transaction or proposed transaction related to the suspected contravention; or

(d) remove or dissipate the assets of the institution or of the customers of the institution,

for a period not exceeding 10 business days from the date of the direction or until the responsible authority exercises any other power under a law, whichever date is soonest.

(2) The consultation requirements prescribed in section 146 of this Act apply with the necessary changes to a directive under this Part.".

Insertion of Chapter 12B in Act 9 of 2017[18]

29. Act 9 of 2017 is amended by inserting following Chapter 12A:

"CHAPTER 12B
RECOVERY AND EXIT FROM THE FINANCIAL SECTOR

Interpretation and application of Chapter

[18] This amendment is aligned with the insertion of Chapter 12A into the Financial Sector Regulation Act which is contained in the Financial Sector Laws Amendment Bill, 2020.

166BI. (1) In this Chapter, —

'institution' means a financial institution, other than—

(a) a designated institution as defined in section 29A,

(b) an insurer as defined in section 1(1) of the Insurance Act, or

(c) a financial co-operative as defined in section 1(1) of the Co-operatives Act, 2005 (Act No. 14 of 2005).

(2) This Chapter applies to institutions, subject to subsection (3).

(3) This Chapter applies to—

(a) regulated persons as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 24 of 2012), only to the extent provided in sections 3(1), and in accordance with sections 100 to 103 of that Act;

(b) managers of collective investment schemes as defined in section 1(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), only in respect of sections 166BK, 166BN and 166BO, and in accordance with section 15 of the Collective Investment Schemes Control Act;

(c) retirement funds only in respect of sections 166BM, 166BN and 166BO, and in accordance with sections 18A, 29 and 30 of the Retirement Funds Act.

(4) A measure provided for in this Chapter may only be exercised in respect of institutions to which this Chapter applies by the responsible authority, after having consulted the other financial sector regulator.

Part 1
Statutory management

Appointment of statutory manager

166BJ. (1) Despite any other financial sector law or other legislation relating to insolvency, the responsible authority may by agreement with an institution licensed under a financial sector law and without the intervention of a court, appoint a statutory manager for that institution, if it appears that—

(a) the institution—

(i) has in a material respect failed to comply with a financial sector law, or has repeatedly failed to comply with a financial sector law;

(ii) is likely to have a material deterioration in its financial position;

(iii) does not conform to prescribed solvency requirements ; or

(iv) is maladministered; and

(b) it is advisable to appoint a statutory manager in order to protect—

(i) the interests of the financial customers of the institution;

(ii) the safety and soundness of other financial institutions in general;

(iii) the fairness, efficiency, integrity and orderliness of the financial markets.

(4) The statutory manager of an institution—

(a) must be allowed full access to the accounting records, financial statements and other information relating to the affairs of the institution;

(b) must participate in the management of the affairs of the institution with its executive directors or managers;

(c) has the final decision, in the event of a disagreement between the statutory manager and the executive directors or managers of the institution; and

(d) is entitled to receive remuneration from the institution as agreed on.

(5) *(a)* The statutory manager and the institution must manage the affairs of the institution in the most economically efficient manner possible and, as soon as practicable, report to the responsible authority who appointed the statutory manager, and indicate what steps should be taken to ensure that the institution—

(i) complies with the law;

(ii) becomes financially sound; and

(iii) is properly administered.

(b) If the statutory manager considers that it is not practicable to take steps in terms of paragraph *(a)*, the statutory manager must report to the financial sector regulator who appointed the statutory manager and must indicate—

(i) whether steps should be taken to transfer the relevant business or a part of the business of the institution to another appropriate institution, and if so, on what terms; or

(ii) whether the institution should be wound up or placed under curatorship.

(6) The statutory manager and the institution must comply with instructions issued by the financial sector regulator who appointed the statutory manager from time to time in relation to the statutory manager's functions, and report to a financial sector regulator should the statutory manager be hindered in giving effect to any instructions.

(7) The statutory manager of an institution is not liable for loss suffered by the institution, unless it is established that the loss was caused by the statutory manager's fraud, dishonesty or wilful failure to comply with the law.

(8) The provisions of this section must not to be construed as limiting any of the powers of a financial sector regulator provided for elsewhere in this Act or another financial sector law.

(9) If a statutory manager is appointed under this section, no business rescue or winding-up proceedings may be commenced in respect of the institution until the appointment of the statutory manager is terminated.

Part 2
Curatorship

Appointment of curator

166BK. (1) The responsible authority may, on an *ex parte* basis, apply to the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.

(2) Upon an application in terms of subsection (1), the court may—

(a) on good cause shown, provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution, on the conditions, and for the period, that the court deems fit; and

(b) simultaneously grant a *rule nisi* calling upon the institution and other interested parties to show cause on the return day why the appointment of the curator should not be confirmed.

(3) On application by the responsible authority or the institution, the court may anticipate the return day, if not less than 48 hours' notice of the application has been given to the other party.

(4) If, at the hearing pursuant to the *rule nisi*, the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.

(5) The court may, for the purposes of a provisional appointment in terms of subsection (3)*(a)* or a final appointment in terms of subsection (4), make an order with regard to—

(a) the suspension of legal or foreclosure proceedings against the institution for the duration of the curatorship;

(b) the authority of the curator to investigate the affairs of the institution or any related, inter-related or associated entity;

(c) the powers and duties of the curator;

(d) the remuneration of the curator;

(e) the costs relating to any application made by the responsible authority;

(f) the costs incurred by the responsible authority in respect of any supervisory on-site inspection or investigation conducted in terms of this Act;

(g) the method of service or publication of the order; or

(h) any other matter which the court deems necessary.

(6) *(a)* Any person, on good cause shown, may make an application to court to set aside or alter any decision made, or any action taken, by the curator, a financial sector regulator with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.

(b) A person who makes an application contemplated in paragraph *(a)* must give notice of not less than 48 hours of the application to the responsible authority, or the curator, as the case may be, and the responsible authority or curator is entitled to be heard at the application.

(c) The court may, on application and good cause shown, cancel the appointment of the curator at any time.

(7) *(a)* Despite subsections (1) to (6), the responsible authority may on good cause shown, by agreement with an institution, and without the intervention of the court, appoint a curator for the purpose set out in subsection (1).

(b) The terms of the appointment contemplated in paragraph *(a)* must be set out in a letter of appointment issued by the responsible authority to the curator and—

(i) must include—

(aa) the powers and duties of the curator, including that the curator takes over the control and management of the institution;

(bb) the remuneration of the curator; and

(ii) may include any other matter agreed upon between the responsible authority and the institution .

(c) The rights of any creditor or financial customer of the institution are not affected by the appointment of a curator in terms of paragraph *(a)*.

(8) An appointment in terms of subsection (7) lapses—

(a) if the responsible authority, after consultation with the curator, withdraws the letter of appointment; or

(b) by order obtained at the instance of the institution in terms of subsection (6)*(c)*.

(10) The curator acts under the control of the responsible authority, and in accordance with guidelines made by a financial sector regulator, and the curator may apply to the responsible authority for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution.

(11) The curator must furnish the responsible authority with the reports or information concerning the affairs of the institution that the responsible authority may require.

(12) In addition to, and subject to, any powers or functions that may be afforded by a court to a curator on appointment under subsection (1), a curator on appointment—

(a) is vested with the power to take and implement any decision in respect of the institution that would have required an ordinary resolution or a special resolution of shareholders or members of the institution in terms of the provisions of the—

(i) Companies Act;
(ii) Co-operatives Act;
(iii) Memorandum of Incorporation, or the equivalent constitution, deed or founding instrument of an institution that is not a company; or
(iv) rules of any exchange licensed under the Financial Markets Act on which any securities of the financial institution are listed;

(b) is vested with all executive powers which would ordinarily be vested in, and exercised by, the key persons (other than an auditor or the head of a control function) of the institution whether by law or in terms of its Memorandum of Incorporation, or the equivalent constitution, deed or founding instrument of an institution that is not a company, and the present key persons must be divested of all powers in relation to the business;

(c) must take immediate control of, manage and investigate the business and operations of and concerning the institution, together with all assets, interests and liabilities relating to the business, subject to the control of the responsible authority in accordance with subsection (8), and with all the rights and obligations that relate to the management of the business and operations of the institution;

(d) must at all times give consideration to the best interests of the financial customers of the institution;

(e) must exercise the powers vested in the curator with a view to conserving the business and, with the prior approval of the responsible authority , may—
(i) alienate or dispose of any of the property or transfer any of the assets and liabilities or business of the institution;
(ii) cancel any guarantee issued by the institution prior to the institution being placed under curatorship, excluding a guarantee which the institution is required to make good within a period of 30 days from the date of the appointment of the curator; and
(iii) raise funding on behalf of the institution, despite any contractual obligations of the institution, to provide security over the assets of the institution in respect of the funding;

(f) must continue to conduct the business for which the institution is licensed, but may not enter into new contracts for the provision of financial products or financial services, without the approval of the responsible authority;

(g) must take custody of the cash, cash investments, shares, other securities or investments held or administered by the institution and of other property (movable or immovable) or effects belonging to, or held by or on instructions of, the institution or any entity directly or indirectly controlled by, affiliated to or associated with the institution;

(h) must notify the responsible authority should the curator deem it necessary or expedient that an application be made to the court—
(i) for the extension of the curator's powers to any other company (including any holding company or subsidiary) or other related or inter-related person or person associated with the institution;
(ii) for the winding-up of the institution; or
(iii) for any relief as envisaged in this Act or another financial sector law against the institution, or any of its key persons;

(i) may, at the curator's discretion, and depending on available resources, make full or part payments to financial customers in identified circumstances, after the prior approval of the responsible authority has been obtained;

(j) may conduct any investigation with a view to locating the assets belonging to, administered or controlled by the institution, including assets held by way of securities, in cash or liquid form;

(k) may incur reasonable expenses and costs that may be necessary or expedient for the curatorship and control of the institution and operations of the institution, and to pay expenses and costs from the assets held, administered or under the control of the institution;

(l) may engage, after consultation with the responsible authority, as the case may be, the assistance of a legal, accounting, administrative, or other professional or technical nature, that the curator may reasonably deem necessary for the performance of the curator's duties, and the curator may defray reasonable charges and expenses incurred from the assets held or under control of the institution;

(m) may institute or prosecute any legal proceedings on behalf of the institution, and defend any litigation against the institution;

(n) may invest funds that are not required for the immediate purposes of the business, with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990), or other liquid instrument approved by the responsible authority;

(o) may take control of and operate or freeze existing banking accounts of the institution and of its subsidiaries or related persons, and of any director of the institution, insofar as any money belonging to the institution has been deposited into that banking account;

(p) may open and operate any new banking accounts for the purposes of the curatorship; and

(q) may claim all costs, charges and other expenditure reasonably incurred by the curator in the execution of duties in terms of this section, including the curator's own remuneration, as administration costs, in the event of the winding-up of the institution ensuing.

(12) A curator, when acting in accordance with subsection (11), must consider the expected effect on the creditors of the institution and whether—

(a) creditors are treated in an equitable manner; and

(b) when acting under subsection (11)*(e)*(i), a reasonable probability exists that a creditor will not incur greater losses, as at the date of the proposed disposal, transfer, or disposal and transfer, than would have been

incurred if the institution had been wound-up on the date of the proposed disposal, transfer, or disposal and transfer.

(13) A claim for damages in respect of any loss sustained by, or damage caused to, any person as a result of the cancellation of a guarantee referred to in subsection (11)*(e)*(ii), other than a guarantee that constitutes an insurance obligation under a life insurance policy a defined in the Insurance Act, or provision of security, may be instituted against the institution after the expiration of a period of six months from the date of the cancellation.

(14) An institution may not begin or enter business rescue or be wound-up while under curatorship, unless the curator applies for the business rescue or winding-up.

Part 3
Business Rescue

Application of Companies Act to business rescue

166BL. (1) Despite any other law under which an institution is established or incorporated, Chapter 6 of the Companies Act applies, subject to this section, and with the necessary changes, in relation to an institution , to the exclusion of any similar provisions under the Co-operatives Act, or any other law under which an institution is established or incorporated, and in an application or resolution taken in respect of business rescue proceedings, the responsible authority is deemed to be an affected person.

(2) In the application of Chapter 6 of the Companies Act—

(a) a reference to the Commission must be construed as a reference also to the responsible authority;

(b) the reference to creditors must be construed as a reference also to the financial customers);

(c) a reference to debt must be construed as including any liability in respect of financial customers;

(d) a reference relating to the inability of an institution to pay all its debts, must be construed as relating also to its inability to comply with the financial soundness requirements of applicable legislation; and

(e) in addition to any question relating to the business of an institution, it must be considered if any proposed action is in the interests of the financial customers.

Business rescue applications and resolutions

166BM. (1) The responsible authority may make an application under section 131 of the Companies Act in respect of an institution, if the authority reasonably believes that it is in the interests of the institution's financial customers.

(2) *(a)* If an application to a court for an order relating to the business rescue of an institution is made by an affected person other than a financial sector regulator, —

(i) the application may not be heard, unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the responsible authority at least 14 days before the application is set down for hearing;

(ii) the responsible authority may, if it reasonably believes that the application is not in the interests of the financial customers , join the application as a party and file affidavits and other documents in opposition to the application.

(b) Any order granted by the court in circumstances where paragraph *(a)*(i) has not been complied with is void.

(3) *(a)* Any resolution of an institution to begin business rescue proceedings is subject to the approval of the responsible authority .

(b) An institution may file a resolution under section 129 of the Companies Act only after the responsible authority has approved the resolution.

(c) Any resolution of an institution that is not approved by the responsible authority under paragraphs *(a)* or *(b)*, is void.

(4) If the board of an institution has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution under section 129 of the Companies Act, the board must deliver a written notice to the responsible authority, as an affected person, setting out the relevant reasons for not adopting a resolution, as required by section 129(7) of the Companies Act.

(4) Despite the provisions of the Companies Act, the following acts are subject to the approval of the responsible authority:

(a) The appointment of a business rescue practitioner who satisfies experience and knowledge requirements that may be determined by the responsible authority; and

(b) the adoption of a business rescue plan.

(5) Despite the provisions of the Companies Act, if the responsible authority does not approve a resolution referred to in subsection (3)*(a)* or *(b)*, or the appointment or plan referred to in subsection (4)*(a)* or *(b)*, the responsible authority must apply to court—

(a) for the winding-up of the institution under this Act; or

(b) to place the institution under curatorship under this Act.

(6) As from the date on which a business rescue practitioner is appointed, the business rescue practitioner of an institution may not enter into any new contracts for the provision of financial products or financial services, unless the practitioner has been granted prior approval to do so by the responsible authority .

(7) The power of a business rescue practitioner to apply to court in terms of section 136(2) of the Companies Act to cancel any provisions of a contract in relation to critical functions performed by third parties that provide services that are vial for the function of the institution is subject to the prior approval of the responsible authority.

(8) *(a)* Notwithstanding section 137(5) of the Companies Act, the business rescue practitioner may, with the approval of the responsible authority, remove a director from office if the director impedes the practitioner's performance or powers.

(b) The removal of a director from office in terms of paragraph *(a)* is reviewable by a court.

(9) Termination of business rescue proceedings contemplated in section 132(2) of the Companies Act is subject to approval by the responsible authority .

Part 4
Winding-Up

Application of Companies Act to winding-up

166BN. (1) *(a)* Despite any other law under which an institution is incorporated, sections 79 to 81 of, and item 9 of Schedule 5 to, the Companies Act applies, subject to this section, and with the necessary changes, in relation to the winding-up of an institution, and to the exclusion of any similar provisions under the Co-operatives Act, or any other law under which an institution is established or incorporated.

(b) In an application for the winding-up of an institution, the responsible authority is deemed to be a person authorised under the Companies Act to make an application to the court for the winding-up of the institution.

(2) In the application of sections 79 to 81 of, and item 9 of Schedule 5 to, the Companies Act, as provided by subsection (1)—

(a) a reference which relates to the inability of an institution to pay its debts must be construed as relating also to its inability to comply with the financial soundness requirements of applicable legislation;

(b) a reference to an institution in this section must, for the purposes of the application of sections 79, 80 and 81 of the Companies Act, be construed as a reference to a financially sound institution;

(c) in addition to any question whether it is just and equitable that an institution should be wound-up, there must also be considered the question whether it is in the interest of the financial customers that it should be wound-up;

(d) the references to the Commissioner, Commission, Master or Panel must be construed as a reference also to the responsible authority ; and

(e) the requirement to give security does not apply where the responsible authority makes the application to court.

Winding-up

166BO. (1) The responsible authority may make an application under the Companies Act for the winding-up of an institution, if the authority reasonably believes that it is in the interests of the financial customers of that institution to do so.

(2) *(a)* If an application to the court for, or in respect of, the winding-up of an institution is made by any person other than a financial sector regulator—

(i) the application may not be heard, unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the responsible authority at least 14 days, or a shorter period that the court may allow on good cause shown, before the application is set down for hearing; and

(ii) the responsible authority may, if it reasonably believes that the application is contrary to the interests of the financial customers of the institution, join the application as a party and file affidavits and other documents in opposition to the application.

(b) Any order granted by the court in circumstances where paragraph *(a)*(i) has not been complied with is void.

(3) *(a)* Any resolution of an institution to begin winding-up proceedings is subject to the approval of the responsible authority .

(b) An institution may file a resolution under section 80 of the Companies Act only after the responsible authority has approved the resolution.

(c) Any resolution of an institution that is not approved by the responsible authority under paragraph *(a)* or *(b)* is void.

(4) Despite the provisions of the Companies Act, the appointment of a trustee or a liquidator is subject to the approval of the responsible authority.

(5) Despite the provisions of the Companies Act, if the responsible authority does not approve a resolution referred to in subsection (3)*(a)* or *(b)*, or the appointment referred to in subsection (4), the responsible authority may apply to court to place the institution under curatorship in terms of the section 166BK.".

Amendment of section 167(3) of Act 9 of 2017

29. Section 167 of Act 9 of 2017 is amended by substituting for subsection (3*)*:

"(3) An administrative penalty may include an amount to reimburse the responsible authority for reasonable costs incurred by the responsible authority in connection with the contravention, except, in the case of investigation costs, the costs were recovered under section 139A of this Act.".

Amendment of section 171 of Act 9 of 2017

30. Section 171 of Act 9 of 2017 is amended by substituting for paragraph *(a)*:

"(a) first, to—

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

(ii) provide redress to prejudiced financial customers in accordance with section 171A; and".

Insertion of section 171A in Act 9 of 2017

31. Act 9 of 2017 is amended by inserting following section 170:

"**Redress to financial customers**

171A. Where the responsible authority determined that a penalty must be applied to provide redress to financial customers, the amount recovered by a responsible authority as an administrative penalty must—

(a) be deposited by the responsible authority directly into a specially designated trust account; and

(b) be distributed by the responsible authority to financial customers who the responsible authority has determined suffered financial prejudice as a result of the action that lead to the administrative penalty to the extend as determined by the responsible authority.".

Substitution of section 173 of Act 9 of 2017

32. Section 173 of Act 9 of 2017 is amended by substituting for the section:

"**Remission and suspension of administrative penalties**

173. (1) The responsible authority that imposed an administrative penalty on a person may, on application by the person, by order, remit all or some of the administrative penalty, and all or some of the interest payable in terms of section 169.

(2) The responsible authority may suspend any part of an administrative penalty on any condition the authority deems appropriate for a period not exceeding five years."

Amendment of section 218 of Act 9 of 2017

33. Section 218 of Act 9 of 2017 is amended by substituting in the definition of "decision" for paragraph *(b)*:

"*(b)* a decision by **[an authorised financial services provider, as defined in section 1 of the Financial Advisory and Intermediary Services Act, in terms of section 14 of that Act]** a financial institution licensed under the Conduct of Financial Institutions Act, in terms of section 15(1) of that Act, in relation to a specific person;".

Insertion of Part 1A in Chapter 17 of Act 9 of 2017

34. Act 9 of 2017 is amended by inserting in Chapter 17 following Part 1 and section 255:

"***Part 1A***
Equivalence

Equivalence recognition of foreign jurisdictions

255A. (1) A financial sector regulator or the Reserve Bank may,

(a) on its own initiative or on application by an interested party; and

(b) where required under a financial sector law,

determine that the regulatory framework of a specified foreign country is equivalent to the regulatory framework established in terms of this Act and that financial sector law, if the legislative and regulatory framework established in that foreign country meets the objectives of this Act and the financial sector law.

(2) A determination in terms of subsection (1) must be published on the financial sector regulator's or the Reserve Bank's website and in the Register.

(3) When assessing the equivalence of the regulatory framework of a foreign country, the financial sector regulator or the Reserve Bank must take into account—

(a) the nature and intensity of the supervisory authority's oversight processes, including direct comparison with the regime applied by the financial sector regulator or the Reserve Bank;

(b) alignment of the foreign country's regulatory framework with relevant principles developed by international standard setting bodies applicable to financial institutions;

(c) observed outcomes of the foreign regulatory framework applicable to financial institutions relative to those in South Africa; and

(d) the need to prevent regulatory arbitrage.

Withdrawal of recognition

255B. A financial sector regulator or the Reserve Bank may withdraw recognition where the criteria set out in section 255A(3) are no longer met.

Principles of co-operation

255C. A financial sector regulator or the Reserve Bank may enter into a supervisory cooperation arrangement with the relevant supervisory authority from the equivalent jurisdiction as contemplated in section 251(3) for the purpose of performing its functions in terms of this Act or the specific financial sector law.".

Amendment of section 266(1) of Act 9 of 2017

35. Section 266(1) of Act 9 of 2017 is amended by substituting:

"(1)*(a)* A person who contravenes section 111 (1), (2), (3), (4) or (5) commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and **[such]** imprisonment.

(b) A person who contravenes section 111(4A) or (4B) commits an offence and is liable on conviction to a fine not exceeding R1 000 000 or imprisonment for a period not exceeding 2 years, or to both a fine and imprisonment.".

Repeal of section 280 of Act 9 of 2017[19]

36. Section 280 of Act 9 of 2017 is repealed.

Amendment of section 282 of Act 9 of 2017

37. Section 282 of Act 9 of 2017 is amended by inserting following subsection (3):

"(4) If this Act provides that a financial sector regulator or the reserve Bank may not take a particular action without having first consulted the other financial sector regulator or the Reserve Bank, as the case may be, the concurrence is not required if the other regulator or the Reserve Bank has agreed, in a memorandum of understanding or otherwise, that the concurrence is unnecessary.".

Amendment of section 292(2) of Act 9 of 2017

38. Section 292(2) of Act 9 of 2017 is amended—

(a) by substituting for paragraph *(b)*:

"*(b)* **[pension]** retirement funds as defined in section 1(1) of the **[Pensions]** Retirement Funds Act;"; and

[19] This section is being moved to the licensing Chapter to which is relates, as section 118A.

(b) by the deletion of paragraph *(c)*.

Amendment of Schedule 1 of Act 9 of 2017

39. Schedule 1 of Act 9 of 2017 is amended—

(a) by substituting in the first row for the item “Pension Funds Act, 1956 (Act No. 24 of 1956)” for the item “Retirement Funds Act, 1956 (Act No. 24 of 1956”;

(b) by deleting the following items from the Schedule:

"Friendly Societies Act, 1956 (Act No. 25 of 1956);";
“Long-term Insurance Act, 1998 (Act No. 52 of 1998);";
“Short-term Insurance Act, 1998 (Act No. 53 of 1998);";
“Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);";
“Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);";
“Credit Rating Services Act, 2012 (Act No. 24 of 2012";"; and

(c) by inserting below the reference to "Insurance Act, 2017, Act No. 18 of 2017":

"Conduct of Financial Institutions Act, 2021 (Act No. [--] of 2021)".

Amendment of Schedule 2 of Act 9 of 2017

40. Schedule 2 of Act 9 of 2017 is amended—

(a) by substituting in the first row for the item “Pension Funds Act, 1956 (Act No. 24 of 1956)” for the item “Retirement Funds Act, 1956 (Act No. 24 of 1956”;

(b) by deleting the rows relating to the following legislation:

"Friendly Societies Act, 1956 (Act No. 25 of 1956)";
“Long-term Insurance Act, 1998 (Act No. 52 of 1998";
“Short-term Insurance Act, 1998 (Act No. 53 of 1998;"
“Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);"
“Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);"
“Credit Rating Services Act, 2012 (Act No. 24 of 2012";";

(c) by inserting in Schedule 2 below the row referencing the Insurance Act, 2017 (Act No. 18 of 2017):

"Conduct of Financial institutions Act, 2021 (Act No. [--] of 2021)	Financial Sector Conduct Authority"; and

(d) by inserting below row *(b)* in the block relating to joint standards:

"(c)	the Reserve Bank and the Prudential Authority or Financial Sector Conduct Authority	Reserve Bank and Prudential Authority or Financial Sector Conduct Authority, as the case may be”.

Amendment of Schedule 4 of Act 9 of 2017

41. Schedule 4 of Act 9 of 2017 is amended by substituting in the second row of the Schedule, in the column headed “Short Title”, for the term “Pension Funds Act, 1956” of the term “Retirement Funds Act, 1956”.

Part 17
Amendment of Insurance Act, 2017 (Act No. 18 of 2017)

Amendment of section 52 of Act 18 of 2017

1. Section 52 of Act 18 of 2017 is amended by inserting following subsection (3):

"(4) The Prudential Authority must act with the concurrence of the South African Reserve Bank in respect of an insurer that has been designated as a systemically important financial institution in accordance with the Financial Sector Regulation Act.".

Substitution of section 53 of Act 18 of 2017

2. Section 53 of Act 18 of 2017 is amended by substituting for the section:

"**Appointment of statutory manager**

53. (1) Despite any other law, the Prudential Authority may, by agreement with an insurer or controlling company and without the intervention of a court, appoint a statutory manager for that insurer or controlling company.

(2) An appointment under subsection (1) takes effect immediately, but the Prudential Authority must, as soon as practicable after the appointment, and in any event within 30 days after the appointment, apply to the High Court for an order confirming the appointment.

(3) On hearing the application in terms of subsection (2), the court must confirm the appointment, unless satisfied that the grounds for making the appointment no longer exist.

(4) The statutory manager of an insurer or controlling company—

(a) must be allowed full access to the accounting records, financial statements and other information relating to the affairs of the insurer or controlling company;

(b) must participate in the management of the affairs of the insurer or controlling company with its executive directors or managers;

(c) has the final decision, in the event of a disagreement between the statutory manager and the executive directors or managers of the insurer or controlling company; and

(d) is entitled to receive remuneration from the insurer or controlling company that the Court may order.

(5) *(a)* The statutory manager of an insurer or controlling company and the insurer or controlling company must manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, report to the Prudential Authority and indicate what steps should be taken to ensure that the insurer or controlling company addresses the concerns that resulted in the appointment of the statutory manager.

(b) If the statutory manager considers that it is not practicable to take steps in terms of paragraph *(a)*, the statutory manager must report to the Prudential Authority and must indicate—

(i) whether steps should be taken to transfer the insurance business or a part of the business of the insurer or controlling company to an appropriate financial institution, and if so, on what terms; or

(ii) whether the insurer or controlling company should be wound up or placed under curatorship.

(6) The statutory manager of an insurer or controlling company and the insurer or controlling company must comply with directives issued by the Prudential Authority from time to time in relation to the statutory manager's functions, and report to the Prudential Authority should the statutory manager be hindered in giving effect to any directives.

(7) The statutory manager of an insurer or controlling company and the insurer or controlling company may, after giving notice to the Prudential Authority, at any time apply to the court for directions.

(8) The Prudential Authority may at any time apply to the court to—

(a) terminate the statutory management; or

(b) remove a statutory manager from office and, subject to subsection (2), to confirm the appointment of a replacement.

(9) The statutory manager of an insurer or controlling company is not liable for loss suffered by the insurer or controlling company, unless it is established that the loss was caused by the statutory manager's fraud, dishonesty or wilful failure to comply with the law.

(10) The provisions of this section must not to be construed as limiting any of the powers of the Prudential Authority provided for elsewhere in this Act or the Financial Sector Regulation Act.

(11) If a statutory manager is appointed under this section, no business rescue or winding-up proceedings may be commenced in respect of an insurer or controlling company until the appointment of the statutory manager is terminated. ".

Substitution of section 54 of Act 18 of 2017

3. Section 54 of Act 18 of 2017 is amended—

(a) by substituting for subsection (1):

"(1) The Prudential Authority may, on an ex parte basis, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an insurer or controlling company.

(1A) Upon an application in terms of subsection (1) the court may—

(a) provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution, on the conditions, and for the period, that the court deems fit; and

(b) simultaneously grant a rule nisi calling upon the insurer or controlling company and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.

(1B) On application by the Prudential Authority or the insurer or controlling company, the court may anticipate the return day, if not less than 48 hours' notice of the application has been given to the other party.

(1C) If, at the hearing pursuant to the rule nisi, the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.

(1D) The court may, for the purposes of a provisional appointment in terms of subsection (2)(a) or a final appointment in terms of subsection (1C), make an order with regard to—

(a) the suspension of legal or foreclosure proceedings against the insurer or controlling company for the duration of the curatorship;

(b) the Prudential Authority of the curator to investigate the affairs of the insurer or controlling company or any related, inter-related or associated entity;

(c) in addition to subsection (2), the powers and duties of the curator;

(d) the remuneration of the curator;

(e) the costs relating to any application made by the Authority;

(f) the costs incurred by the Prudential Authority in respect of any supervisory on-site inspection or investigation conducted in terms of the Financial Sector Regulation Act;

(g) the method of service or publication of the order; or

(h) any other matter which the court deems necessary.

(1E) *(a)* Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the Prudential Authority with regard to any matter arising out of, or in connection with, the control and management of the business of an insurer or controlling company which has been placed under curatorship.

(b) A person who makes application contemplated in paragraph *(a)* must give notice of not less than 48 hours of the application to the Prudential Authority or the curator, as the case may be, and the Prudential Authority or curator is entitled to be heard at the application.

(c) The court may, on good cause shown, cancel the appointment of the curator at any time.

(1F) *(a)* Despite subsections (1) to (1E), the Prudential Authority may, by agreement with an institution, and without the intervention of the court, appoint a curator for the purpose set out in subsection (1).

(b) The terms of the appointment contemplated in paragraph *(a)* must be set out in a letter of appointment issued by the Prudential Authority to the curator and—

(i) must include—

(aa) the powers and duties of the curator;

(bb) the remuneration of the curator; and

(ii) may include any other matter agreed upon between the Prudential Authority and the insurer or controlling company.

(c) The rights of any creditor or financial customer of the institution are not affected by the appointment of a curator in terms of paragraph *(a)*.

(1G) An appointment in terms of subsection (1F) lapses—

(a) if the Authority, after consultation with the curator, withdraws the letter of appointment; or

(b) by order obtained at the instance of the insurer or controlling company in terms of subsection (1E)*(c)*.

(1H) The curator acts under the control of the Authority, and in accordance with guidelines made by the Authority, and the curator may apply to the Prudential Authority for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the insurer or controlling company.

(1I) The curator must furnish the Prudential Authority with the reports or information concerning the affairs of the institution that the Prudential Authority may require."; and

(b) by substituting in subsection (2) for the words preceding paragraph *(a)* of the following words:

"(2) In addition to any powers or functions that may be afforded by a court to a curator on appointment under subsection (1), **[but subject to section 5 of the Financial Institutions (Protection of Funds) Act,]** a curator on appointment—".

Appendix B

Financial Sector Conduct Authority Banking Standard

FSCA

Financial Sector
Conduct Authority

CONDUCT STANDARD 3 OF 2020 (BANKS)

FINANCIAL SECTOR REGULATION ACT, 2017

CONDUCT STANDARD FOR BANKS

The Financial Sector Conduct Authority, under section 106(1), read with sections 106(2)(b) and 108(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), hereby makes a conduct standard setting out requirements applicable to banks, as per the Schedule below.

DP TSHIDI

DP TSHIDI

FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: 03 July 2020

SCHEDULE

CONDUCT STANDARD 3 OF 2020 (BANKS)

ARRANGEMENT OF SECTIONS

1. Definitions

In this Conduct Standard, "the Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it unless the context otherwise indicates, and -

"advertisement" means any communication published through any medium and in any form, by itself or together with any other communication, which is intended to create public interest in the business, financial products or financial services of a bank, or to persuade the public (or a part thereof) to transact in relation to a financial product or financial service of the bank in any manner, but which does not purport to provide detailed information to or for a specific financial customer regarding a specific financial product or financial service and "advertise" and "advertising" have corresponding meanings;

"Authority" means the Financial Sector Conduct Authority as defined in section 1 of the Act;

"bank" means a bank as defined in the Banks Act, a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993) and a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

"compensation" means the provision of money, or a benefit or service , by or on behalf of a bank to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the bank's non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the bank accepts liability for having caused the loss concerned, but excludes any -

(a) goodwill payment;

(b) payment contractually due to the complainant in terms of a product or service agreement with the bank; or

(c) refund of an amount paid by or on behalf of the complainant to the bank where such payment was not contractually due;

and includes any interest on late payment of any amount referred to in paragraphs (b) or (c);

"complainant" means a person who has submitted a specific complaint to a bank and who -

(a) is a financial customer or potential financial customer of the bank concerned and has a direct interest in the financial product or financial service to which the complaint relates; or

(b) has submitted the complaint on behalf of a person mentioned in paragraph (a),

provided that a potential financial customer will only be regarded as a complainant to the extent that the complaint relates to the potential financial customer's dissatisfaction in relation to the activities contemplated in the definition of "potential financial customer";

"complaint" means an expression of dissatisfaction by a person to a bank or, to the knowledge of the bank, to the bank's service provider relating to a financial product or financial service provided or offered by that bank which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a customer query, that -

(a) the bank or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the bank or to which it subscribes;

(b) the bank or its service provider's maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or

(c) the bank or its service provider has treated the person unfairly;

"effective annual interest rate" is the interest rate restated from the nominal interest rate as an interest rate with annual compound interest payable in arrears;

"goodwill payment" means the provision of money, a benefit or service by or on behalf of a bank to a complainant as an expression of goodwill aimed at resolving a complaint, where the bank does not accept liability for any financial loss to the complainant as a result of the matter complained about;

"pension fund" means a pension fund as defined in the Pension Funds Act;

"plain language" means communication that -

(a) is clear and easy to understand;

(b) avoids uncertainty or confusion; and

(c) is adequate and appropriate in the circumstances,

taking into account the factually established or reasonably assumed level of knowledge of the person or average persons at whom the communication is targeted;

"potential financial customer" means a person who has applied to or otherwise approached the bank in relation to becoming a financial customer of the bank, or a person who has been solicited by the bank to become a financial customer, or has received advertising material in relation to the bank's financial products or financial services;

"potential retail financial customer" means a person who has applied to or otherwise approached the bank in relation to becoming a retail financial customer of the bank, or a person who has been solicited by the bank to become a retail financial customer, or has received advertising material in relation to the bank's financial products or financial services;

"rejected" in relation to a complaint means that a complaint has not been upheld and the bank regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the bank as unjustified or invalid, or where the complainant does not accept or respond to the bank's proposals to resolve the complaint;

"reportable complaint" means any complaint other than a complaint that has been -

(a) upheld immediately by the person who initially received the complaint;

(b) upheld within the bank's ordinary processes for handling customer queries in relation to the type of financial product or financial service complained about, provided that such process does not take more than five business days from the date the complaint is received; or

(c) submitted to or brought to the attention of the bank in such a manner that the bank does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints;

"retail complainant" means a person who has submitted a specific complaint to a bank and who -

(a) is a retail financial customer or potential retail financial customer of the bank concerned and has a direct interest in the financial product or financial service to which the complaint relates; or

(b) has submitted the complaint on behalf of a person mentioned in paragraph (a),

provided that a potential retail financial customer will only be regarded as a complainant to the extent that the complaint relates to the potential retail financial customer's dissatisfaction in relation to the activities contemplated in the definition of "potential retail financial customer;

"retail financial customer" means a financial customer that is -

(a) a natural person; or

(b) a juristic person, whose asset value or annual turnover is less than the threshold value as determined by the Minister of Trade and Industry in terms of section 6(1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

"service provider" means any person, whether or not that person is a representative or other agent of a bank, with whom a bank has an arrangement relating to the advertising or provision of the financial products or financial services of the bank; and

"upheld" means that a complaint has been finalised wholly or partially in favour of the complainant and that -

(a) the complainant has explicitly accepted that the matter is fully resolved; or

(b) it is reasonable for the bank to assume that the complainant has so accepted;

and all undertakings made by the bank to resolve the complaint have been met or the complainant has explicitly indicated satisfaction with any arrangements to ensure such undertakings will be met by the bank within a time acceptable to the complainant.

2. Application and general obligations

(1) Subject to subsection (3), this Conduct Standard is applicable to banks in relation to their provision of financial products and financial services.

(2) This Conduct Standard applies in addition to any other regulatory requirements imposed on a bank in relation to its provision of a financial product or financial service.

(3) Sections 4 to 10 do not apply to a bank in relation to the provision of credit under a credit agreement.

(4) A bank must conduct its business in a manner that prioritises the fair treatment of financial customers.

(5) The fair treatment of financial customers by banks includes achieving at least the following outcomes:

(a) Financial customers can be confident that they are dealing with a bank where the fair treatment of financial customers is central to the bank's culture;

(b) where a bank provides financial products and financial services to retail financial customers, those financial products and financial services are suitably designed to meet the needs of identified types, kinds or categories of financial customers who are targeted accordingly;

(c) financial customers are given clear information and are kept appropriately informed before, during and after the time of entering into a contract in respect of a financial product or financial service offered or provided by a bank;

(d) any advice provided to financial customers in respect of a bank's financial products is suitable and takes into account the needs and circumstances of those financial customers;

(e) financial customers are provided with financial products that perform as a bank or its representatives have led them to expect, and the related customer service is of an acceptable standard and in line with the expectations created; and

(f) financial customers do not face unreasonable post-sale barriers imposed by or on behalf of a bank to change or replace a financial product or financial service, request a withdrawal or submit a complaint.

(6) When a bank renders a financial service, the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider.

3. Culture and governance

(1) A bank must at all times -

(a) conduct its business with integrity;

(b) act honestly, fairly, with due skill, care and diligence, and in a manner that does not bring the financial sector into disrepute;

(c) organise and manage its affairs responsibly and efficiently;

(d) avoid or, where avoidance is not possible, manage and mitigate actual or potential conflicts of interest;

(e) deal with the Authority in an open and cooperative manner; and

(f) conduct its business transparently and with due regard to the information needs of its financial customers.

(2) A bank must document, adopt, implement and monitor the effectiveness of appropriate governance arrangements that are reasonably necessary to ensure adherence to the requirements in section 2(4) and 3(1).

(3) The governance arrangements referred to in subsection (2) must -

(a) be proportionate to the nature, scale and complexity of the activities and business model of the bank, having due regard to the inherent risks associated with such activities and model;

(b) describe how the bank will comply with this section and must at least, through appropriate policies and procedures, address -

(i) roles and responsibilities of the governing body and key persons of the bank;

(ii) remuneration, compensation and incentive practices;

(iii) conflicts of interest;

(iv) disclosure of interests in related and inter-related parties;

(v) record keeping;

(vi) communication with the Authority;

(vii) decision making and management procedures, including delegation of authority arrangements;

(viii) risk management, compliance and internal control procedures, including segregation of duties and functions;

(ix) security, integrity, privacy and confidentiality of information; and

(x) any other matter that this Conduct Standard requires to be included in the governance arrangements.

(4) The matters contemplated in subsection (3)*(b)* may be addressed in one or more separate policies or procedures forming part of the overall governance arrangements of the bank.

(5) A bank's governance arrangements must provide for regular risk-based monitoring and evaluation of the adequacy and effectiveness of the bank's systems, processes, procedures and internal control mechanisms and measures to address any identified deficiencies.

(6) The monitoring and evaluation contemplated in subsection (5) must specifically consider the systems, processes, procedures and internal control mechanisms in place to ensure -

(a) compliance with this Conduct Standard and other applicable legislation; and

(b) the effectiveness of the bank's practices in relation to the fair treatment of its financial customers.

(7) The governing body of a bank is accountable for the approval, establishment, embedment, ongoing review of, and continued compliance with, the bank's governance arrangements to reasonably ensure the fair treatment of its financial customers.

4. Design, suitability and performance requirements for financial products and financial services

(1) A bank must design its financial products and financial services, including the related models utilised for the advertising, distribution and provision of these financial products and financial services, with due regard to the interests of its financial customers.

(2) A bank must ensure that the relevant personnel responsible for the design of its financial products and financial services possess the necessary skills, knowledge and expertise to fulfil their functions.

(3) A bank must establish and implement appropriate oversight arrangements to monitor and review the design and suitability of its financial products and financial services on an ongoing basis.

(4) The oversight arrangements referred to in subsection (3) must -

(a) support the achievement of subsections (1) and (2) and, where applicable, the achievement of section 5;

(b) address the management of conflicts of interest:

(c) ensure that the objectives, interests and characteristics of targeted retail financial customer groups are duly taken into account;

(d) appropriately take into account risks borne by targeted retail financial customer groups in respect of a financial product or a financial service;

(e) allocate clear roles and responsibilities for persons in the bank responsible for, or partly responsible for, establishing and implementing the oversight arrangements;

(f) incorporate effective assessment by the risk and compliance functions of the extent to which subsections (1) to (3) and, where applicable, section 5, are being achieved;

(g) provide for relevant key person approval, including relevant key person confirmation that a financial product or a financial service adequately meets required outcomes for the fair treatment of retail financial customers, prior to advertising or providing such financial product or financial service;

(h) include a financial product and financial service design policy, and ensure that the policy is not compromised as a result of commercial, time or funding pressures;

(i) include a financial product and financial service approval process as contemplated in subsections (8) and (9); and

(j) ensure appropriate record keeping, monitoring and analysis of arrangements relating to the design of financial products and financial services, and regular and ad hoc reporting to the governing body of the bank and any relevant committee on:

(i) identified customer related risks and trends and actions taken in response thereto; and

(ii) the effectiveness and outcomes of such arrangements.

(5) A bank must include the oversight arrangements referred to in this section as part of the governance arrangements referred to in section 3(2) and make them readily available to relevant persons responsible for the design of financial products and financial services.

(6) The oversight arrangements referred to in this section may vary depending on the financial product or financial service, taking into consideration the nature, scale and complexity of the relevant business of the bank and the complexity of the financial product or financial service, and related business models.

(7) A bank must ensure that a financial product or financial service -

(a) performs or is executed as that bank or its service provider has led financial customers to expect, which expectations include those created through advertising and disclosure;

(b) is subject to appropriate monitoring by relevant key persons to enable on-going, informed decision making relating to the extent to which the financial product or financial service continues to comply with the requirements of this Conduct Standard; and

(c) is supported by adequate post-sales service that is of a standard that financial customers have been led to expect.

(8) The relevant key person approval of a new financial product or financial service or of a material variation of the design of an existing financial product or financial service must be accompanied by a confirmation that the provision of the financial product or financial service, distribution method, advertising approach and materials, and disclosure documents are consistent with the objectives set out in section 3.

(9) A bank must regularly review the oversight arrangements referred to in this section to ensure that they remain effective and up to date.

(10) A bank must ensure that timeous remedial action is taken in respect of those financial products and financial services that are reasonably expected to lead, or are leading, to unfair outcomes for financial customers.

5. Additional requirements in respect of retail financial customers

(1) A bank that provides financial products or financial services to retail financial customers must -

(a) when designing a financial product or financial service, make use of adequate information on the needs and reasonable expectations of retail financial customers and undertake an assessment by persons with relevant competence relating to the characteristics of the financial product or financial service, the distribution methods intended to be used in relation to the financial product or financial service, and the related advertising and disclosure approach and materials, to ensure that they -

(i) are consistent with the bank's business model and risk management approach;

(ii) target the identified groups of retail financial customers for whose needs and reasonable expectations the financial product or financial service is likely to be appropriate;

(iii) include reasonable measures to limit access by retail financial customers for whom the financial product or financial service is likely to be inappropriate; and

(iv) are appropriate, taking into account the risk of unfair outcomes for retail financial customers;

(b) ensure on an on-going basis that the financial products or financial services remain appropriate to meet the identified needs of the target market after they have been made available to the market;

(c) ensure reasonable flexibility in the design of financial products and financial services to deal with and adjust to the reasonably expected changes in the needs of targeted retail financial customers during the lifetime of the financial product or financial service; and

(d) ensure that the terms, conditions and requirements in a contract between the bank and its retail financial customer, relating to a financial product or financial service, including fees and charges, are not unfair.

(2) Without limiting the generality of subsection (1)(d) a term, condition or a requirement in a contract is unfair, if it -

(a) would cause a significant and unreasonable imbalance in the parties' rights and obligations under the contract;

(b) is not reasonably necessary to protect the legitimate interests of the financial institution, who would be unduly advantaged by the term, condition or requirement;

(c) would result in an unfair outcome (financial or otherwise) to a retail financial customer if it was applied or relied on;

(d) unreasonably requires a retail financial customer, whether as a condition to enter into a transaction or otherwise, to:

(i) waive any right; or

(ii) absolve the bank of any obligation or liability.

(3) Where a bank provides financial products or financial services to a pension fund or another member-based entity, or to another financial customer that is acting for or on behalf of other retail financial customers, all requirements in this Conduct Standard relating to retail financial customers apply equally in relation to the members of that pension fund or other member-based entity or in relation to those other retail financial customers.

6. Advertising

(1) A bank must ensure that its financial products and financial services are advertised to financial customers in a way that is clear, fair and not misleading.

(2) If a bank relies on another person to advertise a financial product or financial service on its behalf, the bank remains responsible for -

(a) the manner in which its financial product or financial service is advertised; and

(b) ensuring that the advertisement complies with this Conduct Standard.

(3) Advertising by a bank must -

(a) be factually correct;

(b) not contain any statement, promise or forecast which is fraudulent, untrue or misleading; and

(c) in the case of advertising targeting retail financial customers, use plain language.

(4) Where an advertisement includes a reference to interest payable by the bank to a financial customer, in respect of a financial product, the advertisement must comply with the disclosure requirement in section 7(4).

(5) A bank may not offer or provide any financial product or financial service to a retail financial customer or potential retail financial customer on the basis that any transaction will be entered into automatically unless the financial customer explicitly declines the offer.

(6) Where a bank uses a telephone or mobile phone call, voice or text message or other electronic communication for any advertisement targeted at a retail financial customer or potential retail financial customer, it must inform the retail financial customer during that call or within a reasonable time after receiving the message, that the retail financial customer may demand that the bank not make use of any of these mediums to provide any further advertising to the retail financial customer.

(7) A bank or any person acting on its behalf must comply with a demand made by a retail financial customer in terms of subsection (6).

(8) A bank or any person acting on its behalf may not charge a retail financial customer a fee or allow a service provider to charge a retail financial customer any fee for making a demand in terms of subsection (6).

(9) A bank must have in place processes and procedures for the approval of advertisements and advertising methods by a person of appropriate seniority and expertise within the bank, which must form part of the governance arrangements required in section 3 above.

(10) Where a bank becomes aware that any advertising that relates to its business, financial products or financial services, whether published by the bank or any other person, is inconsistent with this Conduct Standard, the bank must -

(a) as soon as reasonably practicable correct or withdraw the advertising; or

(b) take reasonable steps to ensure that it is corrected or withdrawn; and

(c) notify any persons who it knows have relied on the advertising.

(11) A bank must keep adequate records of all advertisements for a period of at least five years after publication.

(12) Subsections (1) to (11) apply equally to the advertising of any service or benefit provided or made available by a bank together with or in connection with any financial product or financial service, including a loyalty benefit.

7. Disclosures

(1) Before, during and after the conclusion of a contract for the provision of a financial product or a financial service, a bank must take reasonable steps to ensure that a financial customer is aware of all relevant facts that could reasonably be expected to influence the financial customer's decisions relating to the financial product or financial service, including -

(a) a balanced presentation of benefits and risks in relation to the financial product or financial service;

(b) all estimated costs to the financial customer in relation to the supply of that financial product or financial service, including the total expected or actual costs as may be appropriate, and, for the same period, the total expected, or actual returns earned by the financial customer in relation to the supply of that financial product or financial service as may be appropriate;

(c) contractual obligations of the financial customer and the bank;

(d) the consequences for each party should there be a breach of contract; and

(e) recourse options available to the financial customer in the case of a dispute.

(2) A bank must make disclosures to financial customers that -

(a) in the case of retail financial customers, use plain language;

(b) are adequate, appropriate, timely, relevant and complete;

(c) are factually correct and not misleading,

(d) are not deceptive, fraudulent, contrary to the public interest and do not contain incorrect statements;

(e) in the case of retail financial customers, promote understanding of the financial product or financial service being provided; and

(f) are readily available to the financial customer affected by the agreement.

(3) When making disclosures to financial customers, a bank must take into account the -

(a) nature and complexity of the financial product or financial service concerned;

(b) needs and reasonably assumed level of knowledge, understanding and experience of financial customers at whom the disclosure is targeted; and

(c) most appropriate timing of the disclosure concerned, in order to ensure that a financial customer is given appropriate information about a financial product or financial service at the point at which the information will be most useful to the financial customer's decision-making in relation to entering into, using or maintaining the financial product or financial service.

(4) Where a financial product provides for the payment of interest by the bank to the financial customer, a bank must, in addition to and with equal prominence to any other disclosure regarding the interest rate concerned, appropriately describe the rate of interest concerned and also disclose to a financial customer the effective annual interest rate of the financial product.

(5) The Authority may determine the manner and form of disclosures that must be made in respect of financial products and financial services to retail financial customers.

8. Complaints

(1) A bank must establish, maintain and operate an adequate and effective complaints management framework to ensure the fair treatment of complainants that -

(a) is proportionate to the nature, scale and complexity of the bank's business and risks;

(b) is appropriate for the business model, financial products, financial services and financial customers of the bank;

(c) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;

(d) does not impose unreasonable barriers to complainants; and

(e) must address and provide for, at least, the matters provided for in this section.

(2) A bank must regularly review its complaints management framework and document any changes thereto.

(3) The complaints management framework must at least, provide for -

(a) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the bank;

(b) appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality;

(c) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;

(d) documented procedures which clearly define the escalation, decision-making, monitoring, oversight and review processes within the complaints management framework;

(e) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to the governing body of the bank and any relevant committee on -

(i) identified risks, trends and actions taken in response thereto; and

(ii) the effectiveness and outcomes of the complaints management framework;

(f) appropriate communication with complainants and their authorised representatives on the complaints and the complaints processes and procedures;

(g) appropriate engagement between the bank and a relevant ombud;

(h) compliance with any applicable requirements for reporting to the Authority and public reporting;

(i) a process for managing complaints relating to the bank's service providers, insofar as such complaints relate to services provided in connection with the bank's financial products or financial services, which process must -

(i) enable the bank to reasonably satisfy itself that the service provider has adequate complaints management processes and procedures in place to ensure the fair treatment of complainants;

(ii) provide for monitoring and analysis by the bank of aggregated complaints data in relation to complaints received by the service provider and their outcomes;

(iii) include effective referral processes between the bank and the service provider for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and

(iv) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and

(j) regular monitoring of the complaints management framework.

(4) The governing body of a bank is responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the bank's complaints management framework.

(5) The oversight responsibility referred to in 8(4), may be delegated to a person of appropriate seniority and expertise within the bank,

(6) Any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must -

(a) be adequately trained;

(b) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of financial customers, the subject matter of the complaints concerned and relevant legal and regulatory matters;

(c) not be referred to as an internal ombud to avoid creating confusion with the established relevant ombuds;

(d) not be subject to a conflict of interest; and

(e) be adequately empowered to make impartial decisions or recommendations.

(7) A bank must categorise reportable complaints received from a retail complainant in accordance with the following minimum categories:

(a) Complaints relating to the design of a financial product or financial service, including the fees or charges related to that financial product or financial service;

(b) complaints relating to disclosures made to financial customers;

(c) complaints relating to advertising of financial products and financial services;

(d) complaints relating to advice;

(e) complaints relating to the performance of a financial product and financial service;

(f) complaints relating to financial customer service, including complaints relating to the way in which staff dealt with the financial customer, the administrative processing of payments to or by the financial customer as well as breaches of confidentiality;

(g) complaints relating to the accessibility of funds, changes or switches between financial products or financial services;

(h) complaints relating to complaints handling; and

(i) other complaints.

(8) A bank, in addition to the categorisation set out in subsection (7), must consider additional categories relevant to its chosen business model, financial products, financial services and financial customer base that will support the effectiveness of its complaint management framework in managing conduct risks and effecting improved outcomes and processes for its financial customers.

(9) A bank must categorise, record and report on reportable complaints by identifying the category contemplated in subsection (7) to which a complaint most closely relates and group complaints accordingly.

(10) A bank must establish and maintain an appropriate internal complaints escalation and review process.

(11) Procedures within the complaints escalation and review process must provide for internal escalation of complex or unusual complaints as well as the allocation to a person of appropriate seniority and expertise within the bank, which must form part of the complaint management framework required in subsection (3) above.

(12) Where a complaint is upheld, any commitment by the bank to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.

(13) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.

(14) A bank must ensure accurate, efficient and secure recording of complaints-related information, including in respect of each reportable complaint received from a retail complainant:

(a) All relevant details of the complainant and the subject matter of the complaint;

(b) copies of all relevant evidence, correspondence and decisions;

(c) the complaint categorisation as set out in subsection (7); and

(d) progress and status of the complaint, including whether such progress is within or outside any set timelines.

(15) A bank must maintain the following data in relation to reportable complaints received and categorised in accordance with subsection (7):

(a) Number of complaints received;

(b) number of complaints upheld;

(c) number of rejected complaints and reasons for the rejection;

(d) number of complaints escalated by complainants to the internal complaints escalation process;

(e) number of complaints referred to an ombud and their outcome;

(f) number and amounts of compensation payments made;

(g) number and amounts of goodwill payments made; and

(h) total number of complaints outstanding.

(16) Complaints information recorded in accordance with subsection (15) must be scrutinised and analysed by a bank on an ongoing basis and utilised to pro-actively identify and manage conduct risks and affect improved outcomes and processes for its financial customers, and to prevent recurrences of poor outcomes and errors.

(17) A bank must establish and maintain appropriate processes and procedures for reporting of the information in subsection (16) to its governing body and appropriate key persons.

(18) A bank must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the bank and its financial customers.

(19) A bank may not impose any charge for a complainant to make use of complaint processes and procedures.

(20) All communications with a retail complainant must use plain language.

(21) A bank must, within a reasonable time after receipt of a complaint, acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including -

(a) contact details of the person or department that will be handling the complaint;

(b) indicative timelines for addressing the complaint;

(c) details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome of a complaint; and

(d) details of escalation of complaints to the office of a relevant ombud where applicable.

(22) A complainant must be kept adequately informed of -

(a) the progress of the complaint;

(b) causes of any delay in the finalisation of the complaint and revised timelines; and

(c) the bank's decision in response to the complaint.

(23) A bank must -

(a) have appropriate processes and procedures in place for engagement with any relevant ombud in relation to its complaints;

(b) clearly and transparently communicate the availability and contact details of the relevant ombud services to financial customers and complainants at all relevant stages of the relationship with the bank, including at point of sale, in relevant periodic communications, and when a complaint is rejected;

(c) display or make available information regarding the availability and contact details of the relevant ombud services at the premises or on the website of the bank;

(d) maintain specific records and carry out specific analysis of complaints referred to the bank by the ombud and the outcomes of such complaints; and

(e) monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own financial products, financial services or practices.

(24) A bank must have appropriate processes and procedures in place to ensure compliance with any prescribed requirements for reporting complaints information to the Authority or to the public as may be required by the Authority.

9. Refusal, withdrawal or closure of financial products or financial services by the bank

(1) A bank must, subject to other applicable regulatory requirements, document, adopt and implement processes and procedures relating to the -

(a) refusal to provide a financial product or render a financial service to one or more financial customers;

(b) withdrawal, termination or closure of a financial product or withdrawal or termination of a financial service in respect of one or more financial customers.

(2) Subject to subsection (4), a bank may not take any of the actions referred to in subsection (1)(b), without providing reasonable prior notice of the withdrawal, termination or closure to the financial customer.

(3) Subject to subsection (4), a bank must, when it takes any of the actions referred to in subsection (1), disclose to the financial customer the reasons for the refusal, withdrawal, termination or closure.

(4) A bank may take any of the actions referred to in subsection (1) without providing the financial customer reasonable prior notice or reasons as contemplated in subsections (2) and (3) if it –

(a) is compelled to do so by law; or

(b) has a reasonable suspicion that the financial product or financial service is being used for any illegal purpose; and

(c) has made the necessary reports to the appropriate authority.

(5) Contractual agreements with financial customers must make provision for the types of circumstances in which the contractual agreement may be terminated or withdrawn by the bank.

10. Termination, closure or switching of financial products or financial services by the financial customer

(1) A bank must not impose unreasonable barriers where a financial customer requests the termination, closure or transfer to another bank, of a financial product or financial service.

(2) A bank must assist a financial customer to close, terminate or transfer to another bank a financial product or financial service, upon receiving a request from a financial customer to do so.

(3) Contractual agreements with financial customers must make provision for the circumstances in which the contractual agreement may be terminated or closed by the financial customer.

(4) A bank must proactively disclose to a financial customer the effect and implications of maintaining a dormant financial product as opposed to closing or terminating the financial product.

(5) A bank must have processes and procedures in place to identify a dormant financial product and notify the financial customer of such dormancy, including

the decisions available to the financial customer with regards to such dormant financial product.

11. Short title and commencement

This Conduct Standard is called the Conduct Standard for Banks, 2020 and comes into operation as follows:

(a) Sections 3, 4, 5 and 6 come into operation 8 months after the date of publication of this Conduct Standard;

(b) sections 7, 8, 9, and 10 come into operation 12 months after the date of publication of this Conduct Standard; and

(c) all other sections come into operation on the date of publication.