

REPUBLIC OF SOUTH AFRICA

FINANCIAL SECTOR REGULATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF FINANCE)

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BILL

To establish regulatory authorities for the purposes of strengthening financial stability and the fair treatment of financial customers in the interest of a safer financial sector; to establish and provide for the Financial Stability Oversight Committee, the Prudential Authority, and the Market Conduct Authority; to provide for co-operation between the regulatory authorities, including co-operation in rule making; to provide for co-operation between regulatory authorities and other financial regulators; to promote the maintenance of financial stability; to provide for the management and mitigation of financial crisis; to provide for administrative penalties; to provide for the establishment of the Financial Services Tribunal to hear appeals; to provide for regulations and codes of good practice; to provide for transitional provisions; and to provide for matters connected therewith.

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

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CHAPTER 1

INTERPRETATION, ADMINISTRATION AND PURPOSE OF ACT

Interpretation

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

“**appellant**” means a person who has lodged an appeal in terms of Part 3 of Chapter 6 against a decision of a regulatory authority;

“**application**”, in relation to a regulatory law, means an application in terms of a regulatory law—

- (a) for the granting of an entitlement;
- (b) for the amendment or renewal of an entitlement;
- (c) for the amendment or withdrawal of any condition attached or other encumbrance applicable to an entitlement; or
- (d) in connection with any other matter provided for in a regulatory law;

“**authorisation**” means a license or registration or any other type of approval, permission or authorisation issued in terms of a regulatory law to carry out a regulated activity;

“**case record**”, in relation to an administrative appeal lodged or to be lodged in terms of Part 3 of Chapter 6, means—

- (a) any documentation and any written or electronic evidence, recommendations or other factual information which was before the

regulatory authority when it took the decision appealed or to be appealed against; and

(b) the reasons for the decision;

“Chief Executive Officer” means the Chief Executive Officer of the Prudential Authority designated in terms of section 24(3), or a person acting as Chief Executive Officer in terms of section 28(3);

“Commissioner” means the Commissioner of the Market Conduct Authority appointed in terms of section 21(1), or a person acting as Commissioner designated in terms of section 21(6);

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“decision”, in relation to an administrative action, means a decision taken in relation to a specific person affecting the rights of that person;

“Deputy Commissioner” means a Deputy Commissioner of the Market Conduct Authority appointed in terms of section 21(1);

“dual-regulated activity” means business of the nature contemplated in Part 2 of Schedule 2;

“entitlement” means—

(a) an authorisation, as defined in this Act;

- (b) any exemption or exclusion issued in terms of a regulatory law from a requirement of a regulatory law or imposed in terms of a regulatory law;
or
- (c) any other benefit or privilege issued in terms of a regulatory law;

“financial crisis” means a crisis in the financial system caused by a systemic risk, weakness or disruption in the financial system;

“financial customer” means any user of a financial service, and includes retail users, predominantly individuals and small businesses, and wholesale users, predominantly corporates and other financial institutions;

“financial institution” means an institution or person carrying out a mono- or dual regulated activity;

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

“Financial Markets Act” means the Financial Markets Act, 2012 (Act No. 19 of 2012);

“financial organ of state” means—

- (a) an organ of state responsible for the supervision or enforcement of legislation;

- (b) a body similar to an organ of state referred to in paragraph (a), designated in the laws of a country other than the Republic to supervise or enforce legislation of that country;
- (c) a market infrastructure that is responsible for the supervision of persons authorised by such infrastructure under the Financial Markets Act, 2012 (Act No. 19 of 2012); or
- (d) an Ombud established under a regulatory law or a recognised Scheme under the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004);

“financial service” means any service or product provided by a financial institution in performing a regulated activity, and includes any service or product corresponding to a service or product normally provided by a financial institution;

“Financial Services Tribunal” means the Financial Services Tribunal established in terms of section 71;

“financial stability” means a situation where—

- (a) key financial institutions and markets operate efficiently and effectively in fulfilling their respective roles in the economy; and
- (b) there is general confidence in the ability of those institutions and markets to absorb disruptive occurrences and shocks in the economy;

“Financial Stability Oversight Committee” means the Financial Stability Oversight Committee established in section 5(1);

“financial system” means the system within which, and according to which, financial institutions and financial markets operate in terms of the regulatory laws;

“Governor” means the Governor of the Reserve Bank;

“joint rule” means a joint rule made by the regulatory authorities jointly in terms of section 48(1);

“Market Conduct Authority” means the regulatory authority established in terms of section 11(1)(a);

“Minister” means the Minister of Finance;

“mono-regulated activity” means business of the nature contemplated in Part 1 of Schedule 2;

“National Treasury” means the National Treasury established in terms of the Public Finance Management Act;

“organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

“other financial regulator” means an organ of state referred to in paragraph (a) of the definition of “financial organ of state”, other than a regulatory authority as defined in terms of this Act, which has powers or duties relating to, or materially affecting, a financial institution or a financial service;

“payment system” means a payment system within the meaning of the National Payment System Act, 1998;

“Promotion of Administrative Justice Act” means the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000);

“Prudential Authority” means the authority established in terms of section 11(1)(b);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“regulated activity” means any mono- or dual-regulated activity;

“regulatory authority or authorities” means—

- (a) the Market Conduct Authority; or
- (b) the Prudential Authority;

“regulatory law” means a law listed in Schedule 1;

“regulatory strategy” means the strategy of a regulatory authority referred to in section 15;

“regulation” means a regulation made by the Minister in terms of section 92;

“Reserve Bank” means the South African Reserve Bank as envisaged in section 223 of the Constitution, read with the Reserve Bank Act;

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

“resolution power”, in relation to a financial institution, means any power in a regulatory law, or any other law, which provides for the winding up, business rescue, closure or recovery of a financial institution in financial distress;

“respondent”, in relation to a decision referred to the Financial Services Tribunal, means the regulatory authority which took the decision referred to the Financial Services Tribunal;

“rule” means —

- (a) any subordinate legislative instrument, such as a notice, board notice or rule made by a regulatory authority in terms of a power granted in a regulatory law; or
- (b) a rule made by a regulatory authority in terms of section 104;

“submit”, in relation to proceedings of the Financial Services Tribunal,
means—

- (a) deliver by hand;
- (b) send by registered post; or
- (d) transmit by secure electronic means;

“systemic”, in relation to a risk, weakness or disruption in the financial system,
means a situation where the risk, weakness or disruption affects the financial
system, either as a whole or in part, as opposed to a situation where the effects of
the risk, weakness or disruption are confined to either a single financial institution
or a small group of institutions without threatening to spread more widely, and
includes a situation where the risk, weakness or disruption arises from the—

- (a) circumstances within or outside the Republic that threaten to dislocate or
are dislocating the—
 - (i) structural features of a financial or other market;
 - (ii) linkages between financial institutions; or
 - (iii) payment system;
- (b) financial difficulties in a financial institution, including the inability of a
financial institution to meet its obligations, spreading to other institutions in
the financial system;
- (c) unsustainable levels of leverage, debt or credit growth;
- (d) marketing by financial institutions of tainted or dubious financial
instruments; and
- (e) excessive speculation on financial or other markets;

“systemically important financial institution” means a financial institution which, by virtue of its size, complexity, global activity, inter-connectedness, or provision of non-substitutable services critical to the operation of the financial system, is such that a risk, weakness or disruption to the financial institution would be actually or potentially systemic, and which is designated as such in terms of section 64(2); and

“this Act” means this Act, including its Schedules and all regulations made pursuant thereto.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning, unless the context indicates that another meaning is intended.

(3) In the event of an inconsistency between a provision of this Act and a provision of a regulatory law, the provision of this Act prevails.

Administration of Act

2. The Minister is responsible for the administration of this Act.

Purpose of this Act

3. (1) The purpose of this Act is to promote a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the regulatory laws, a supervisory and regulatory framework that promotes—

- (a) financial stability;
- (b) the safety and soundness of financial institutions;

- (c) the fair treatment and protection of financial customers;
- (d) confidence in the financial system;
- (e) financial inclusion; and
- (f) the integrity of the financial system and the prevention of financial crime.

(2) The supervisory and regulatory framework established in terms of this Act and the regulatory laws must ensure that—

- (a) an institution can only operate as a financial institution with an appropriate valid license, permission or authorisation;
- (b) persons in positions of significant responsibility in a financial institution, or interacting with financial customers, must be fit and proper persons;
and
- (c) all financial institutions are subject to regulation and supervision.

CHAPTER 2

RESERVE BANK AND FINANCIAL STABILITY OVERSIGHT COMMITTEE

Part 1

Reserve Bank's responsibility for Financial Stability

Reserve Bank's responsibility for Financial Stability

4. (1) The Reserve Bank has primary responsibility for promoting financial stability in terms of section 3 of the Reserve Bank Act.

(2) In fulfilling this responsibility for promoting and, in the event of a financial crisis, implementing steps towards restoring, financial stability, the Bank –

- (a) must act within a policy framework agreed between the Minister and the Governor;
- (b) may utilise any power vested in it as the Republic's central bank or conferred on it

in terms of this Act or any other legislation, to any extent that the exercise of that power may be conducive to promoting or restoring financial stability;

(c) must establish and administratively manage the Financial Stability Oversight Committee, ensuring that it is provided with sufficient resources to carry out its responsibilities effectively; and

(d) must have due regard to –

(i) the powers and duties of other organs of state regulating aspects of the South African economy; and

(ii) the need to balance the requirements of financial stability against other factors relevant to the maintenance of balanced and sustainable economic growth in the Republic.

(3) All other organs of state must have due regard to the financial stability implications of their actions and assist the Reserve Bank in fulfilling its responsibility for maintaining, and in the event of a financial crisis, restoring, financial stability.

Part 2

Financial Stability Oversight Committee

Establishment, objective and functions of Financial Stability Oversight Committee

5. (1) The Financial Stability Oversight Committee is established to assist the Reserve Bank to maintain, protect and enhance financial stability.

(2) In pursuing the objective referred to in subsection (1), the Financial Stability Oversight Committee must, consistent with the provisions of Chapter 5 of this Act—

- (a) continuously monitor the financial system for risks, weaknesses, disruptions, or developments that threaten to harm or are harming financial stability, whether those risks, weaknesses or disruptions arise from structural imbalances, cyclical occurrences, failing financial institutions, contagion or any other factor;
- (b) determine—
 - (i) the extent and seriousness of any risk, weakness or disruption detected;
 - (ii) whether that risk, weakness or disruption is of a localised or systemic nature; and
 - (iii) whether it is causing a potential, impending or actual financial crisis in the financial system;
- (c) initiate, in accordance with this Act, any action necessary to mitigate or remedy a risk, weakness or disruption detected, having due regard to the need to pursue its objective in a manner that does not unduly adversely impact the ability of the financial system to provide favourable conditions for balanced and sustainable economic growth in the Republic;
- (d) promptly advise the Minister of any developments or trends that may contribute to the instability of the financial system; and
- (e) promptly submit a recommendation to the Minister when the Financial Stability Oversight Committee identifies that a financial institution should be designated as a systemically important financial institution.

Composition of Financial Stability Oversight Committee

- 6.** (1) The Financial Stability Oversight Committee consists of—
- (a) the Governor;
 - (b) the Chief Executive Officer and the other Deputy Governors of the Reserve Bank;

- (c) the Commissioner and at least two Deputy Commissioners of the Market Conduct Authority designated by the Commissioner in consultation with the Governor;
- (d) The Director - General of the National Treasury.
 - (2) The Governor is the Chairperson of the Financial Stability Oversight Committee.

Meetings of Financial Stability Oversight Committee

- 7. (1) The Financial Stability Oversight Committee must meet at least once every quarter.
 - (2) A quorum for a meeting of the Financial Stability Oversight Committee is a majority of all the members of the Financial Stability Oversight Committee which includes—
 - (a) the Governor;
 - (b) at least one member representing each of the regulatory authorities; and
 - (c) the representative of the National Treasury.
 - (3) A member may nominate an alternate to attend a particular meeting.
 - (4) The representative of the National Treasury may participate in the deliberations of the Financial Stability Oversight Committee, but has no right to vote.
 - (5) A decision in the Financial Stability Oversight Committee is taken by a majority of all the voting members of the Financial Stability Oversight Committee.
 - (6) In the event of an equality of votes on any matter, the Chairperson has a casting vote in addition to a deliberative vote.
 - (7) The Financial Stability Oversight Committee may, in all other respects, determine its own procedure.

(8) No person, other than a member or an alternate member of the Financial Stability Oversight Committee, the National Treasury representative, a person invited in terms of section 7 to attend and such staff of the Reserve Bank as the Chairperson may determine, may attend a meeting of the Financial Stability Oversight Committee without the permission of the Chairperson.

Non-voting attendees

8. (1) The Chairperson may invite any person, including a representative from any other financial regulator, to attend a particular meeting of the Financial Stability Oversight Committee.

(2) If a representative from any other financial regulator is, in terms of subsection (1), invited to attend a meeting of the Financial Stability Oversight Committee, and that regulator declines the invitation, the Chairperson may report the fact to the National Assembly.

(3) A person invited in terms of subsection (1) to attend a meeting of the Financial Stability Oversight Committee may participate in the proceedings of the Financial Stability Oversight Committee, but has no right to vote.

Financial stability review

9. (1) The Financial Stability Oversight Committee must publish a financial stability review twice a year, which must be provided to the Minister for information prior to publication.

(2) A financial stability review must cover—
(a) the Financial Stability Oversight Committee's assessment of stability in the financial system for the period under review;

- (b) an overview of any steps taken to mitigate or remedy any risks, weaknesses, developments or disruptions in the financial system;
- (c) an overview of recommendations made by the Financial Stability Oversight Committee during the reporting period in terms of Chapter 6; and
- (d) a summary of decisions made by the Minister in terms of section 60(3).

Publication of information potentially prejudicial to financial stability

10. (1) In complying with the requirement to publish a financial stability review in terms of section 9, the Financial Stability Oversight Committee must consider whether publication of some or all of the information required in terms of section 9(2) might pose a risk to financial stability.

(2) If the Financial Stability Oversight Committee identifies a potential risk to financial stability in terms of subsection (1), it may delay publication of the relevant information until such time as it no longer considers publication to pose a risk to financial stability.

(3) The Financial Stability Oversight Committee must—

- (a) keep all information not published in terms of subsection (2) under review; and
- (b) publish the information at such a time as it considers that its publication no longer poses a risk to financial stability.

CHAPTER 3

REGULATORY AUTHORITIES

Part 1

Establishment, objectives and functions of regulatory authorities

Establishment of regulatory authorities

11. (1) There is hereby established—
- (a) a regulatory authority called the Market Conduct Authority; and
 - (b) a regulatory authority called the Prudential Authority.
- (2) Each regulatory authority is a juristic person.

Objectives and scope of responsibilities of Market Conduct Authority

12. (1)(a) The objective of the Market Conduct Authority is to strengthen the protection of financial customers by promoting their fair treatment by financial institutions, the integrity of the financial system, and financial awareness and literacy.

(b) The Market Conduct Authority is responsible for the regulation and supervision—

- (i) of all financial institutions carrying out mono-regulated activities, including with respect to their safety and soundness; and
- (ii) in conjunction with the Prudential Authority, of all financial institutions carrying out dual-regulated activities, solely with respect to its objective referred to in paragraph (a).

(2) The Market Conduct Authority is the lead regulatory authority as described in section 55 in relation to financial institutions carrying out mono-regulated activities.

Objectives and scope of responsibilities of Prudential Authority

13. (1) The objective of the Prudential Authority is to promote and enhance the safety and soundness of financial institutions carrying out dual-regulated activities.

(2) The Prudential Authority is responsible for the regulation and supervision, in conjunction with the Market Conduct Authority, of all financial institutions carrying out dual-regulated activities, solely with respect to their safety and soundness.

(3) The Prudential Authority is the lead regulatory authority as described in section 55 in relation to financial institutions carrying out dual-regulated activities.

Powers and duties of regulatory authorities

14. (1) In order to achieve their objectives, the regulatory authorities must, without fear, favour or prejudice, take all reasonable steps within the means at their disposal to—

- (a) implement a regulatory system for financial institutions in accordance with this Act and the applicable regulatory laws;
- (b) co-operate with and support each other in the pursuit of their respective objectives in terms of section 43;
- (c) support the Reserve Bank in promoting, and in the event of a financial crisis, implementing steps towards restoring, financial stability;
- (d) assist in the prevention and combating of financial crime;
- (e) support the promotion of transparent and fair access to appropriate financial services for financial customers, including by developing and implementing a targeted regulatory regime for these financial services, and through the setting of product standards;
- (f) co-operate and interact with international counterparts in other jurisdictions;

- (g) actively participate in the various international regulatory, supervisory, stability and standard setting bodies; and
- (h) conduct, and publish, as appropriate, research concerning trends in financial services and financial markets that are relevant to the pursuit of their respective objectives.

(2) In addition, the Market Conduct Authority must—

- (a) establish a financial consumer education partnership that includes representatives from other financial regulators and relevant stakeholders; and
- (b) in performing its functions in terms of subsection (1)(h), and taking into account contestability and efficiency in financial services, continuously monitor the extent to which the financial system is—
 - (i) meeting the needs of financial customers, with a focus on the appropriateness, value for money and affordability of financial services; and
 - (ii) supporting financial inclusion.

(3) A regulatory authority may do anything necessary or expedient to perform its functions, and has for this purpose—

- (a) the powers and duties assigned to it in terms of this Act or a regulatory law; and
- (b) such auxiliary powers as are necessary to exercise the powers and duties referred to in paragraph (a) effectively.

Regulatory strategies

15. (1) A regulatory authority must for purposes of section 14—

- (a) prepare a regulatory strategy, and review its strategy at least once every three years or at the Minister's request, after consideration of any published policy guidance provided by the Minister;
- (b) provide the other regulatory authority with a draft of its proposed strategy or reviewed regulatory strategy for comments, to ensure alignment of purpose and avoidance of conflicting or divergent regulatory direction;
- (c) submit a draft of the regulatory strategy or reviewed regulatory strategy to the National Treasury for comment;
- (d) finalise the draft regulatory strategy or revised strategy, after consideration of comments received in terms of paragraph (b) and (c); and
- (e) submit the final strategy to the Minister.

(2) The Market Conduct Authority may, with the agreement of the National Treasury, submit its regulatory strategy as part of its corporate plan in terms of section 52(b) of the Public Finance Management Act.

(3) When applying a regulatory strategy, the strategy may not be interpreted as strict binding legal norms, but rather as a general guide allowing such flexibility and deviation as may be reasonable or appropriate in the circumstances of a particular case.

Guiding principles

16. (1) When exercising its powers and performing its duties, a regulatory authority must take into account the need for—

- (a) an appropriate degree of transparency in its decision-making processes;
- (b) consistency in its conduct;
- (c) adopting a risk-based approach to supervision;

(d) achieving outcomes-based results through the application of a combination of binding principles and rules; and

(e) compliance, as appropriate, with international standards and best practice.

(2) The provisions of subsection (1) may not be interpreted as strict binding legal norms, but rather as general guiding principles allowing such flexibility and deviation as may be reasonable or appropriate in the circumstances of a particular case.

(3) The Minister may make regulations expanding upon the principles contemplated in subsection (1), including adding new principles.

Part 2

Market Conduct Authority

Management and administration of Market Conduct Authority

17. (1) The Market Conduct Authority is managed and its affairs are administered by a full-time Commissioner, assisted by at least two, but no more than four Deputy Commissioners as provided for in this Part.

(2) The Commissioner and Deputy Commissioners—

(a) are appointed by the Minister; and

(b) are members of an Executive Committee of the Market Conduct Authority, of which the Commissioner is the Chairperson.

Roles of Commissioner and Executive Committee

18. (1) The Commissioner is responsible for—

(a) the management and administration of the Market Conduct Authority;

(b) subject to subsection (2) and sections 31 and 32—

- (i) exercising the powers and performing the duties of the Market Conduct Authority; and
 - (ii) taking decisions on behalf of the Market Conduct Authority in relation to matters referred to in paragraphs (a) and (b)(i);
- (2) The Executive Committee is responsible for—
 - (a) formulating the regulatory strategy of the Market Conduct Authority in terms of section 15;
 - (b) determining the decision-making policy of the Market Conduct Authority in terms of section 31;
 - (c) exercising the Market Conduct Authority’s powers or performing the Market Conduct Authority’s duties in relation to—
 - (i) the submission of reports and information in terms of section 39;
 - (ii) the making of rules in terms of section 104 or joint rules in terms of section 48(1); or
 - (iii) any matter which the Commissioner refers to the Executive Committee; and
 - (d) taking decisions on behalf of the Market Conduct Authority in relation to matters referred to in paragraphs (a) to (c).

Meetings of Executive Committee

19. (1) The Executive Committee must meet on a regular basis at a time and place that the Chairperson of the Executive Committee may determine.

(2) A quorum for a meeting of the Executive Committee is a majority of its members.

(3) If the Chairperson is absent from a meeting of the Executive Committee, another member nominated by the Chairperson, or another member determined in advance in terms of a procedure set by the Chairperson, must preside at the meeting.

(4) The Chairperson may invite any other person to attend a specific meeting of the Executive Committee.

(5) Formal minutes and documentation of Executive Committee meetings must be kept.

Decisions of Executive Committee

20. (1) A decision in a meeting of the Executive Committee is taken by a majority of all the members, and in the event of an equality of votes on any matter, the person presiding at the relevant meeting has a casting vote in addition to a deliberative vote.

(2) A decision taken in terms of subsection (1) constitutes a decision of the Executive Committee only if the decision is supported by the Commissioner or the acting Commissioner appointed in terms of section 21(6).

(3) Support for or a refusal to support a decision may be given by the Commissioner at the meeting, or if the Commissioner is absent from the meeting, as soon as reasonably possible after the meeting at which the decision was taken.

(4) No decision taken in terms of subsection (1) is invalid by reason only of a casual vacancy in the Executive Committee, or of the fact that any person not entitled to sit as a member of the Executive Committee sat as such a member at the time when the decision was taken, if the decision was taken by the requisite

majority of the members of the Executive Committee who were present at the time and entitled to sit as members.

Appointment of Commissioner and Deputy Commissioners

21. (1) The Minister must appoint a person as Commissioner or a Deputy Commissioner of the Market Conduct Authority for an initial term of office no longer than five years as the Minister may determine, and on expiry of that term, may appoint that person for one more term.

(2) The Minister must inform a person appointed for an initial term as Commissioner or Deputy Commissioner whether he or she will be reappointed at least 90 days before the expiry of this or her term as Commissioner or Deputy Commissioner.

(3) A person appointed as the Commissioner or a Deputy Commissioner of the Market Conduct Authority—

- (a) becomes an employee of the Market Conduct Authority or, if that person is already an employee of the Market Conduct Authority, continues to be such an employee, subject to a fixed-term written employment contract and a separate performance agreement between that person and the Market Conduct Authority, which in the case of the Commissioner must be approved by the Minister; and
- (b) holds office on the terms and conditions of the written employment contract, including terms and conditions relating to remuneration and other employment benefits.

(4) An employment contract referred to in subsection (3) expires at the end of the term of office referred to in subsection (1) for which a person is

appointed as Commissioner or Deputy Commissioner, or if that person has been reappointed, at the end of the renewed term of office.

(5) Section 35 applies to a person appointed as the Commissioner or a Deputy Commissioner.

(6) The Minister may designate any Deputy Commissioner as the acting Commissioner if—

- (a) the Commissioner is unable temporarily to perform the functions of office through absence or for any other reason; or
- (b) the position of Commissioner is vacant, pending an appointment or re-appointment in terms of section 23.

Vacation of office

22. (1) A person appointed as the Commissioner or a Deputy Commissioner ceases to hold office if—

- (a) the term of office of that person has expired and that person is not reappointed in terms of section 23(1); or
- (b) that person, before the expiry of that person's term of office—
 - (i) resigns as Commissioner or Deputy Commissioner by giving three months' written notice to the Minister, or such shorter period as the Minister may accept;
 - (ii) retires as an employee of the Market Conduct Authority;
 - (iii) is no longer eligible in terms of section 35; or
 - (iv) is removed from office in terms of subsection (2).

(2) The Minister may remove from office a person appointed as Commissioner or Deputy Commissioner—

- (a) on grounds of misconduct, incapacity or poor performance; and
- (b) after a finding to that effect has been made by an independent enquiry instituted by the Minister.

(3) The Minister may suspend from office a person against whom proceedings in terms of subsection (2) have been instituted or are pending.

(4) Following the removal from office of a person in terms of subsection (2), the Minister must submit the report and finding of the enquiry referred to in subsection (2)(b) to the National Assembly.

Filling of vacancies

23. (1) Subject to section 22(1), if the term of a person appointed as the Commissioner or a Deputy Commissioner is due to expire or has expired, the Minister must re-appoint that person or appoint another person as the Commissioner or a Deputy Commissioner, as may be appropriate.

(2) If the position of Commissioner or a Deputy Commissioner is due to become vacant or has become vacant for a reason other than expiry of term of office, the Minister must appoint another person to that position.

(3) If the term of a Deputy Commissioner has expired or the position of a Deputy Commissioner has become vacant for another reason, the Minister is not obliged to fill the vacancy in terms of subsections (1) or (2) if there are at least two remaining Deputy Commissioners.

Part 3

Prudential Authority

Management and administration of Prudential Authority

24. (1) The Reserve Bank is responsible for the oversight, effective functioning and administration of the Prudential Authority as contemplated in section 33(2).

(2) The Prudential Authority is managed by a Chief Executive Officer under the oversight and direction of a Management Oversight Committee.

(3) The Chief Executive Officer must be a Deputy Governor of the Reserve Bank, designated by the Governor in consultation with the Minister.

(4) The Management Oversight Committee consists of the—

- (a) Governor, who is the Chairperson of the Management Oversight Committee;
- (b) Chief Executive Officer; and
- (c) other Deputy Governors of the Reserve Bank.

Roles of Management Oversight Committee and Chief Executive Officer

25. (1) The Management Oversight Committee is responsible for—

- (a) approving the regulatory strategy of the Prudential Authority in terms of section 15;
- (b) determining the decision-making policy of the Prudential Authority in terms of section 31;
- (c) overseeing the management and administration of the Prudential Authority;
- (d) exercising the Prudential Authority's powers and performing the Prudential Authority's duties in relation to—

- (i) the submission of reports and information in terms of section 39;
 - (ii) the making of rules in terms of section 104 or joint rules in terms of section 48(1); and
 - (iii) any other matter which the Management Oversight Committee considers it is necessary to perform; and
- (e) taking decisions on behalf of the Prudential Authority in relation to matters referred to in paragraphs (a) to (d).

(2) The Chief Executive Officer is responsible for—

- (a) the management and administration of the Prudential Authority; and
- (b) subject to subsection (1) and section 33 —
 - (i) exercising all of the Prudential Authority's powers or performing all of the Prudential Authority's duties;
 - (ii) taking decisions in relation to matters referred to in paragraphs (a) and (b)(i).

(3) In fulfilling the responsibilities in terms of subsection (2), the Chief Executive Officer must act with due regard to the strategies and policies determined by the Management Oversight Committee in terms of subsection (1).

Meetings of Management Oversight Committee

26. (1) The Management Oversight Committee must meet on a regular basis at a time and place that the Chairperson of the Management Oversight Committee may determine.

(2) A quorum for a meeting of the Management Oversight Committee is a majority of its members.

(3) If the Chairperson is absent from a meeting of the Management Oversight Committee, another member nominated by the Chairperson, or another member determined in terms of a procedure set by the Chairperson, must preside at the meeting.

(4) The Chairperson may invite any other person to attend a specific meeting of the Management Oversight Committee.

(5) Formal minutes and documentation of Management Oversight Committee meetings must be kept.

Decisions of Management Oversight Committee

27. (1) A decision in a meeting of the Management Oversight Committee is taken by a majority of all the members, and in the event of an equality of votes on any matter, the person presiding at the relevant meeting has a casting vote, in addition to a deliberative vote.

(2) A decision taken in terms of subsection (1) constitutes a decision of the Management Oversight Committee only if the decision is supported by the Governor.

(3) Support for or a refusal to support a decision may be given by the Governor at the meeting, or if the Governor is absent from the meeting, as soon as reasonably possible after the meeting at which the decision was taken.

(4) No decision taken in terms of subsection (1) is invalid by reason only of a casual vacancy in the Management Oversight Committee, or of the fact that any person not entitled to sit as a member of that Management Oversight Committee sat as such a member at the time when the decision was taken, if the decision was taken by the requisite majority of the members of the Management Oversight Committee who were present at the time and entitled to sit as members.

Designation of Chief Executive Officer

28. (1) The person designated in terms of section 24(3) as Chief Executive Officer holds office as Chief Executive Officer for a term of office no longer than five years as the Governor may determine, and on expiry of that term, may designate that person for one more term.

(2) Section 35 applies to a person designated as a Chief Executive Officer and no person falling within any of the categories of non-qualified persons specified in that section may be appointed as a Chief Executive Officer.

(3) The Governor may designate another Deputy Governor or, in the absence of such, a senior staff member of the Reserve Bank as acting Chief Executive Officer if—

- (a) the Chief Executive Officer is unable temporarily to perform the functions of office through absence or for any other reason; or
- (b) the position of Chief Executive Officer is vacant, pending a designation or re-designation in terms of section 30.

Vacation of office

29. (1) The person designated as Chief Executive Officer ceases to hold office as Chief Executive Officer if—

- (a) the term of office of that person has expired and that person is not re-designated in terms of section 30(1); or
- (b) that person, before the expiry of the term of office—

- (i) resigns as Chief Executive Officer by giving three months' written notice to the Governor or such shorter period as the Governor may accept;
- (ii) retires or reaches the end of the term of office as a Deputy Governor of the Reserve Bank;
- (iii) is no longer eligible in terms of section 35; or
- (iv) is removed from office in terms of subsection (2).

(2) The Governor may, in consultation with the Minister, remove from office a person designated as Chief Executive Officer—

- (a) on the ground of misconduct, incapacity or poor performance; and
- (b) after a finding to that effect has been made by an independent enquiry instituted by the Governor in consultation with the Minister.

(3) The Governor may suspend from office a person against whom proceedings in terms of subsection (2) have been instituted or are pending.

(4) Following the removal from office of a person in terms of subsection (2), the Governor must submit the report and finding of the enquiry referred to in subsection (2)(b) to the National Assembly.

Filling of vacancy

30. (1) If the term of a person designated as Chief Executive Officer is due to expire or has expired, the Governor, in consultation with the Minister, must re-designate that person or designate another Deputy Governor as the Chief Executive Officer.

(2) The Governor must inform the person designated as Chief Executive Officer whether he or she will be re-designated at least 90 days before the expiry of his or her term as Chief Executive Officer.

(3) If the position of Chief Executive Officer is due to become vacant or has become vacant for a reason other than the expiry of his or her term of office, the Governor, in consultation with the Minister, must designate another Deputy Governor to that position.

Part 4

Functioning of regulatory authorities

Decision-making policy

31. (1) A regulatory authority must for the proper implementation of the provisions of this Act and the regulatory laws, develop an appropriate decision-making policy.

(2) A decision-making policy must establish a system of decision-making to promote managerial, administrative and operational efficiency, that includes:

- (a) a system of delegation as detailed in section 32; and
- (b) a statement of decision-making procedures as detailed in section 69.

(3) A regulatory authority must—

- (a) submit a draft of its decision-making policy to the National Treasury for comment; and
- (b) finalise its decision-making policy after consideration of any comments provided by the National Treasury.

Delegations

32. (1) The Commissioner or Chief Executive Officer may, with due regard to the decision-making policy of the relevant regulatory authority, delegate any power or duty of the regulatory authority, or any part or aspect of any such power or duty—

- (a) in the case of the Market Conduct Authority, to a Deputy Commissioner or any other senior staff member; and
- (b) in the case of the Prudential Authority, to any staff member of the Reserve Bank assigned by the Reserve Bank to assist in the management of the Prudential Authority.

(2) A delegation in terms of subsection (1)—

- (a) may not include—
 - (i) in the case of the Market Conduct Authority, a power or duty reserved for the Executive Committee in terms of section 18(2); and
 - (ii) in the case of the Prudential Authority, a power or duty reserved for the Management Oversight Committee in terms of section 25(1).
- (b) must be in writing;
- (c) is subject to such limitations and conditions as the regulatory authority may determine generally or in a specific case;
- (d) may be to—
 - (i) a specific individual; or
 - (ii) the incumbent of a specific post;
- (e) may authorise the person to whom the delegation is made to sub-delegate the delegated power or duty, or part or aspect of such power or duty, in writing, to another staff member or the incumbent of a specific post;

(f) does not divest the regulatory authority of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty;

and

(g) may at any time be amended or repealed by the regulatory authority.

(3) If a staff member takes a decision or any action that would have been valid had the power or duty authorising that decision or action been delegated to that staff member in terms of subsection (1), that decision or action is valid despite the absence of such delegation if the decision or action—

(a) was taken in the course of that staff member's ordinary duties; and

(b) is ratified by the Commissioner or Chief Executive Officer, as appropriate.

Part 5

Administrative matters

General administrative powers

33. (1) The Market Conduct Authority may for the purposes of exercising its powers and performing its duties—

(a) acquire the services of persons as staff members;

(b) hire, purchase or otherwise acquire such movable or immovable property, or let, sell or otherwise dispose of property so purchased or acquired;

(c) appoint contractors and consultants to assist it in the performance of its responsibilities and functions;

(d) insure itself against any loss, damage, risk or liability which it may suffer or incur; and

(e) establish or participate in the operations of a non-profit company, a partnership, trust or unincorporated joint venture or similar arrangement.

(2) (a) The Reserve Bank is responsible for administratively managing the affairs and funds of the Prudential Authority and must for that purpose provide sufficient staff, accommodation and other administrative support as may be necessary to enable the Prudential Authority to exercise its powers and perform its duties.

(b) The Prudential Authority may, for the purpose of exercising its powers and performing its duties, insure itself against any loss, damage, risk or liability which it may suffer or incur.

Staff of Market Conduct Authority

34. (1) The staff of the Market Conduct Authority consists of—

- (a) the Commissioner and Deputy Commissioners;
- (b) other persons appointed by the Market Conduct Authority in terms of section 33(1)(a) as employees of the Market Conduct Authority; and
- (c) persons seconded to the Market Conduct Authority by the Reserve Bank or any other financial regulator.

(2) The employees of the Market Conduct Authority referred to in subsection (1)(b)(i) must be employed in terms of a written employment contract on such terms and conditions as the Market Conduct Authority may, after having obtained any professional advice as it considers fit, consider competitive in the open market, including terms and conditions relating to—

- (a) remuneration and other employment benefits; and
- (b) performance in accordance with a separate written performance agreement.

(3) The Market Conduct Authority must reimburse the Reserve Bank or any other financial regulator for any payment made by the Reserve Bank or any other financial regulator in terms of any contract of service applicable in respect of an employee referred to in subsection (1)(c).

Personnel disqualifications

35. No person may, in the case of the Market Conduct Authority, be appointed as or continue, subject to applicable labour legislation and the internal employment rules of the Market Conduct Authority, to be a staff member of the Market Conduct Authority, or, in the case of the Prudential Authority, be assigned by the Reserve Bank to assist in the management of the affairs of the Prudential Authority, if that person—

- (a) is engaged in the business of a financial institution, or has a direct material financial interest in a financial institution;
- (b) is a Minister or Deputy Minister in Government, or a member of Parliament, a provincial legislature or a municipal council;
- (c) is an office-bearer of a political party;
- (d) has at any time been removed from an office of trust;
- (e) has at any time been sanctioned by any financial organ of state for contravening a law relating to the regulation or supervision of financial institutions or the rendering of financial services;
- (f) has—
 - (i) at any time been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the

Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty; and

- (ii) been sentenced to imprisonment without the option of a fine or to a fine exceeding R5000;
- (g) has been convicted of any other offence committed after the Constitution took effect, and sentenced for that offence to imprisonment without the option of a fine; or
- (h) is of unsound mind.

Part 6

Finances of regulatory authorities

Funds of regulatory authorities

- 36.** (1) The funds of a regulatory authority may consist of—
- (a) administrative penalties imposed in terms of Chapter 6;
 - (b) money raised as fees, and interest in respect of overdue fees, in respect of specific functions performed by the regulatory authority in the performance of its functions in terms of this Act or any regulatory law;
 - (c) interest earned on the funds and income received on any investments;
 - (d) money accruing to the regulatory authority from any other source, subject to the Public Finance Management Act;
 - (e) in the case of the Market Conduct Authority, money transferred from the Financial Services Board in accordance with section 105; and

(f) in the case of the Prudential Authority, money allocated by the Reserve Bank to assist in funding the Prudential Authority.

(2) A regulatory authority must utilise its funds for the defrayal of expenses incurred by the regulatory authority in the implementation of this Act and the regulatory laws.

Financial accountability of Market Conduct Authority

37. (1) The Market Conduct Authority is a national public entity for purposes of the Public Finance Management Act, and must comply with the provisions of that Act applicable to national public entities.

(2) The Commissioner of the Market Conduct Authority is the accounting officer of the Market Conduct Authority for purposes of the Public Finance Management Act.

Financial accountability of the Prudential Authority

38. The Prudential Authority must account for all its income and expenditure in keeping with the budgeting and reporting processes and structures of the Reserve Bank.

Part 7

Governance and reporting

Reporting

39. (1)(a) A regulatory authority must annually, within 90 days of the end of its financial year, or a longer period if approved by the Minister, submit a report on its activities to the Minister.

(b) The Minister must within 30 days of receipt of a report referred to in paragraph (a), table a copy of the report in the National Assembly.

(2) The Minister may, in addition, at any time request a regulatory authority to provide information on—

- (a) the performance by the regulatory authority of any of the powers and duties assigned to it in terms of this Act or a regulatory law;
- (b) the implementation and enforcement of this Act or any regulatory law; or
- (c) any other matter concerning financial services, financial markets or financial institutions, subject to section 95.

(3) A regulatory authority must on its own initiative submit a report to the Minister and the Governor on any matter relevant to the performance of its functions which it considers may have an impact on public finances or financial stability, or which for any other reason ought to be brought to the attention of the Minister and Governor.

Governance committees for Market Conduct Authority

40. (1) The Director - General of the National Treasury must appoint three governance committees for the Market Conduct Authority with responsibility respectively for—

- (a) determining and setting the remuneration policy of the Market Conduct Authority;

- (b) keeping the risks faced by the Market Conduct Authority, and the Market Conduct Authority's plans for managing those risks, under review; and
- (c) ensuring that appropriate audit procedures are established and implemented by the Market Conduct Authority.

(2) The Director - General may appoint an additional committee or committees to consider other governance-related matters.

(3) The Market Conduct Authority must include in its annual report prepared in terms of section 39(1) a report from each governance committee covering its respective responsibilities in terms of subsection (1).

Composition and operation of governance committees of Market Conduct Authority

41. (1) A governance committee appointed in terms of section 40 is composed of such number of persons as the Director - General may determine.

(2) The Director - General must appoint one of the members of a governance committee as Chairperson and another member as Deputy Chairperson.

(3) A governance committee must determine its operating procedures and quorums for meetings and decisions.

(4) Section 35 applies to a person appointed as a member of a governance committee.

Governance of Prudential Authority

42. (1) In exercising its responsibilities as the governance body of the Reserve Bank, the Board of the Reserve Bank is responsible for—

- (a) the remuneration, risk and audit matters in relation to the Prudential Authority;
and
- (b) any other governance-related matter in relation to the Prudential Authority that the Governor may determine.

(2) The Prudential Authority must include in its annual report prepared in terms of section 39 a report from the Board of the Reserve Bank covering all matters referred to in terms of subsection (1).

(3) Matters regarding the Prudential Authority must also be included in the Reserve Bank's annual report.

CHAPTER 4

CO-OPERATION AND COORDINATION

Part 1

General co-operation between regulatory authorities

Co-operation between regulatory authorities

43. (1) When exercising their respective powers and performing their respective duties in terms of this Act and the regulatory laws, the regulatory authorities must co-operate with each other in accordance with subsection (2) and any other requirements of this Act.

(2) For purposes of complying with subsection (1), the regulatory authorities must—

- (a) generally assist and support each other in the achievement of their respective objectives;

- (b) inform each other on matters of common interest;
- (c) consult each other when required to do so as a formal requirement before a specific decision is taken;
- (d) coordinate their respective actions to any extent reasonable and practicable, in particular in relation to—
 - (i) the same person; or
 - (ii) the same matter affecting different persons or interests;
- (e) align their activities by maximising the efficient and proportionate use of resources and minimising the duplication of effort and expense to any extent reasonable and practicable;
- (f) develop consistent policy positions towards the regulation of financial institutions, financial markets, and financial services, including for purposes of presentation and negotiation at relevant national and international forums; and
- (g) interact with each other with regard to strategic direction and understanding of the global and domestic regulatory challenges.

Memorandum of understanding

44. (1) The regulatory authorities must enter into a memorandum of understanding setting out agreement on —

- (a) how, as a matter of practice, they will comply with their duty to co-operate in terms of section 43; and
- (b) any other specific matter required by a provision of this Act.

(2) The regulatory authorities must review and update the memorandum of understanding as appropriate, but at least once every three years.

(3) After agreeing or updating the memorandum of understanding, the regulatory authorities must—

- (a) submit a copy to the Minister and the Governor; and
- (b) publish a summary of the memorandum of understanding for public information.

(4) The memorandum of understanding has no binding effect on any person other than the regulatory authorities, except to the extent that any matter dealt with therein has become law in terms of regulations, a rule, or a joint rule.

Part 2

Co-operation in rule-making

Rules and joint rules made by regulatory authorities

- 45.** (1) A regulatory authority may make —
- (a) a rule in terms of a power granted in a regulatory law or section 105; or
 - (b) a joint rule in terms of section 48(1).

(2) When making a rule or a joint rule, a regulatory authority must follow the relevant procedures described in this Part.

Co-operation in making of rules relating to mono-regulated activities

46. Before making rules relating to a mono-regulated activity, the Market Conduct Authority must—

- (a) notify the Prudential Authority of its intention to make the rules;

- (b) if requested by the Prudential Authority, provide a draft of the proposed rules;
and
- (c) give consideration to any comment by the Prudential Authority in relation to the proposed rules.

Co-operation in making of rules relating to dual-regulated activities

47. (1) Before making rules in relation to a dual-regulated activity, a regulatory authority must—

- (a) notify the other regulatory authority of its intention to make the rules;
- (b) provide the other regulatory authority with a copy of the draft rules; and
- (c) give consideration to any representations made by the other regulatory authority in relation to the proposed rules.

(2) The regulatory authorities must include within the memorandum of understanding agreed in terms of section 44 detailed procedures for co-operation in the making of rules relating to dual-regulated activities, and in particular, any mechanisms for resolving possible disagreements between them.

Joint rules by regulatory authorities

48. (1) The regulatory authorities may make joint rules to—

- (a) give effect to matters agreed to in the memorandum of understanding referred to in section 44; or
- (b) prescribe procedures to be followed in relation to specific regulatory or supervisory procedures as provided for in this Act.

(2) A joint rule may be made only by both regulatory authorities acting in agreement.

(3) The regulatory authorities must include within the memorandum of understanding agreed in terms of section 44 detailed procedures for co-operation in the making of joint rules, and in particular, any mechanisms for resolving possible disagreements between them.

Consultation processes before promulgation of rules and joint rules

49. (1) The Minister must prescribe a process for consultation on rules and joint rules by the regulatory authorities, which code must be consistent with the Promotion of Administrative Justice Act.

(2) The Minister must prescribe the process after consultation with the Commissioner of the Market Conduct Authority and the Chief Executive of the Prudential Authority.

(3) Before rules or joint rules made in terms of this Part are promulgated, the regulatory authority must conduct a consultation process consistent with the code prescribed in terms of subsection (1).

Consultation with National Treasury and promulgation

50. (1) Once the consultation process referred to in section 49 has been completed and all necessary adjustments to the draft rules or joint rules have been made, the regulatory authority must submit a copy of the final draft rules or joint rules to the National Treasury, together with a summary of comments received during the consultation process, where relevant.

(2) The National Treasury may consider the final draft rules or joint rules for a period not more than 30 days, or a shorter period if so requested by the

regulatory authority and agreed to by the National Treasury, during which period it may provide comments to the regulatory authority.

(3) Draft rules or joint rules may be promulgated only after the regulatory authority has given consideration to any comments provided by the National Treasury in terms of subsection (2).

Inconsistencies between regulations, joint rules and rules

51. (1) In the event of any inconsistency between a regulation made in terms of section 92(1) and a rule or joint rule, the regulation prevails.

(2) In the event of any inconsistency between a rule and a joint rule, the joint rule prevails.

Minor or technical changes

52. (1) A regulatory authority may make minor or technical changes to a rule or joint rule without following the procedures in this Part if the National Treasury agrees that the changes proposed are intended solely to clarify or improve the intention of the rule or joint rule.

(2) A regulatory authority must submit any changes it intends to make in terms of subsection (1) in draft form to the National Treasury.

(3) The National Treasury must indicate its agreement to the changes to rules or joint rules in terms of subsection (1) within 30 days, or a shorter period if requested by the regulatory authority and agreed to by the National Treasury.

Part 3

Co-operation in relation to entitlements and applications in terms of regulatory laws

Coverage in the memorandum of understanding

53. (1) The regulatory authorities must include within the memorandum of understanding agreed to in terms of section 44 detailed procedures for co-operation in relation to applications made by financial institutions and entitlements granted by the regulatory authorities to financial institutions, with respect to both mono- and dual-regulated financial activities.

(2) The procedures in terms of subsection (1) need cover only those applications and entitlements which the regulatory authorities agree require detailed co-operative procedures because of their potential relevance to the achievement of each other's objectives.

(3) The coverage of procedures in terms of subsection (1) may be limited by reference to particular types of application, entitlement or regulated activity.

Joint rules relating to applications and entitlements

54. (1) The regulatory authorities must make joint rules relating to procedures for—

- (a) an application for an authorisation relating to a dual-regulated activity;
- (b) an application for an authorisation relating to a mono-regulated activity by a financial institution also carrying out a dual-regulated activity;

- (c) withdrawal of an authorisation, or any change to an authorisation or other entitlement that would have the same effect as withdrawal of an authorisation, relating to a dual-regulated activity; and
- (d) withdrawal of an authorisation, or any change to an authorisation or other entitlement, that would have the same effect as withdrawal of an authorisation relating to a mono-regulated activity carried out by a financial institution also carrying out a dual-regulated activity.

(2) The joint rules in terms of subsection (1) must give effect to the following principles:

- (a) that no financial institution may carry out a dual-regulated activity without the approval of both regulatory authorities;
- (b) that no financial institution authorised to carry out a dual-regulated activity may be prevented by a regulatory authority from continuing to carry out that dual-regulated activity without the approval of the other regulatory authority;
- (c) that no financial institution authorised to carry out a dual-regulated activity may be granted an authorisation to carry out a mono-regulated activity, or be prevented from carrying out a mono-regulated activity it is already authorised to carry out, without the knowledge of the Prudential Authority and, if there is a potential systemic risk, the Financial Stability Oversight Committee.

Part 4

Co-operation between regulatory authorities and other financial regulators

Other financial regulators to consult regulatory authorities

55. (1) Before any other financial regulator in terms of a law administered by that regulator takes any action affecting the interests of any specific financial institution, it must—

- (a) if the affected interest is in relation to a dual-regulated activity, only take action after consultation with the Prudential Authority as the lead regulator for all financial institutions carrying out dual-regulated activities; or
- (b) if the affected interest is in relation to a mono-regulated activity, only take action after consultation with the Market Conduct Authority as the lead regulator for all financial institutions carrying out mono-regulated activities.

(2) A regulatory authority may request any other financial regulator to provide it with information on any action that regulator has taken or intends to take in relation to any specific financial institution or category of financial institutions.

Council of Financial Regulators

56. (1) The Council of Financial Regulators is hereby established as a consultative and coordinating forum for matters of common interest to its constituent institutions.

(2) The Council of Financial Regulators consists of representatives from the regulatory authorities, any department, any other financial regulator, organ of state, or other organisation that the Minister may determine.

(3) The establishment of the Council of Financial Regulators as a consultative and coordinating forum may not be interpreted as impeding the Council's constituent institutions from consulting each other and coordinating their actions otherwise than through the Council.

Meetings of Council of Financial Regulators

- 57.** (1) Meetings of the Council of Financial Regulators must be—
- (a) chaired by a representative of the National Treasury, or a member of that Council designated by the National Treasury;
 - (b) held at least twice a year, or more frequently as determined by the National Treasury; and
 - (c) conducted in accordance with procedures determined by the Council of Financial Regulators.

- (2) Decisions at meetings—
- (a) are taken on the basis of consensus; and
 - (b) must be published on the National Treasury's website for public information, unless the decision involves confidential information in terms of section 95.

(3) Any of the Council for Financial Regulators' constituent institutions may at any time request the National Treasury to convene an emergency meeting of the Council.

Subcommittees of Council of Financial Regulators

- 58.** The Council of Financial Sector Regulators includes subcommittees on –
- (a) enforcement;
 - (b) legislation;
 - (c) standard-setting;
 - (d) financial sector outcomes as contemplated in section 14(2)(b); and
 - (e) any additional matter that in the view of the Chairperson is relevant to the interests of the Council or of one or more of the Council's members.

CHAPTER 5
MAINTENANCE OF FINANCIAL STABILITY

Part 1

Role of regulatory authorities and other financial regulators in maintenance of financial stability

Assistance to Financial Stability Oversight Committee

- 59.** A regulatory authority must—
- (a) assist the Financial Stability Oversight Committee in monitoring the financial system for risks, weaknesses, developments or disruptions that threaten to harm or are harming financial stability;
 - (b) promptly report to the Financial Stability Oversight Committee any relevant matters detected in the financial system, whether of a specific or systemic nature;
 - (c) comply with any reasonable request of the Financial Stability Oversight Committee for assistance, including the gathering of any data from a financial institution or category of financial institutions as may be specified by the Financial Stability Oversight Committee; and
 - (d) promptly attend to any recommendations which the Financial Stability Oversight Committee may make to it in terms of section 60.

Recommendations by Financial Stability Oversight Committee to regulatory authorities

- 60.** (1) In performing its functions in terms of section 5(2), the Financial Stability Oversight Committee may, when it has identified a material risk to financial

stability, recommend to either or both regulatory authorities that they use their powers to give effect to specific actions, strategies or guidelines aimed at maintaining financial stability in the financial sector, including measures to ensure that a specific financial institution or any specific category of financial institutions—

- (a) follow a specific practice or carry out a specific activity;
- (b) follow a specific practice or carry out a specific activity in a manner or only in accordance with requirements or subject to conditions, as set out in the recommendation;
- (c) refrain from following a specific practice or carrying out a specific activity; or
- (d) refrain from following a specific practice or carrying out a specific activity in a manner as set out in the recommendation.

(2) On receiving a recommendation referred to in subsection (1), a regulatory authority must within a timeframe determined by the Financial Stability Oversight Committee—

- (a) take such action as it considers necessary to implement the recommendation; or
- (b) provide a written explanation to the Financial Stability Oversight Committee regarding why the recommendation is not implemented.

(3) (a) If the Financial Stability Oversight Committee and a regulatory authority fail to agree on the implementation of a recommendation, the matter must be referred to the Minister for a decision.

(b) The Minister must determine the procedure to be followed and the documents to be submitted for purposes of taking a decision on the matter.

(c) In complying with paragraph (a), the Minister may direct the regulatory authority to comply or absolve the regulatory authority from complying with the recommendation.

Recommendations by Financial Stability Oversight Committee to other financial regulators

61. (1) In performing its functions in terms of section 5(2), when it has identified a material risk to financial stability, the Financial Stability Oversight Committee may make recommendations to any other financial regulator exercising regulatory or other functions in relation to financial institutions.

(2) Such recommendations may cover actions that the other financial regulator should, or should not take in exercising its functions in relation to financial institutions.

(3) On receiving a recommendation referred to in subsection (1), the other financial regulator must, within a timeframe determined by the Financial Stability Oversight Committee—

- (a) take such action as it considers necessary to implement the recommendation; or
- (b) provide a written explanation to the Financial Stability Oversight Committee regarding why it considers that the recommendation should not be implemented.

(4) (a) If the Financial Stability Oversight Committee and the other financial regulator fail to agree on the implementation of a recommendation, the matter must be referred to the Minister for a decision.

(b) The Minister must consult the responsible Cabinet member in taking a decision on the matter.

Part 2

Management and mitigation of financial crisis

Effect of application of this Part on powers of other organs of state

62. (1) The application of this Part for the management of a financial crisis does not affect the continuation of the powers of other organs of state regulating aspects of the South African economy that impact on the resolution of the crisis in accordance with this Part, provided that the exercise of those powers is consistent with—

- (a) any decisions taken by the Reserve Bank or the Financial Stability Oversight Committee for purposes of resolving the crisis; and
- (b) any regulations made by the Minister in terms of this Part.

(2) In the event of an inconsistency between the exercise of a power by an organ of state referred to in subsection (1) and a decision of the Reserve Bank or the Financial Stability Oversight Committee for purposes of resolving the crisis, the decision of the Reserve Bank or the Financial Stability Oversight Committee prevails, unless otherwise determined by the Minister.

Procedure for identification of financial crisis

63. In the event that a particular risk, weakness, development or disruption detected in the financial system by the Financial Stability Oversight Committee, including a risk to an individual financial institution, gives rise to a material likelihood of a financial crisis taking place, the Governor must—

- (a) promptly advise the Minister;
- (b) determine, in consultation with the Minister, whether the situation constitutes an actual or potential financial crisis; and
- (c) keep the determination made in terms of paragraph (b) under regular review.

Crisis management responsibilities of Minister

64. (1) The Minister is at all times solely responsible for taking decisions relating to crisis management which may have an actual or potential impact on public finances, including:

- (a) an increase, or risk of an increase, in public expenditure;
- (b) an increase, or risk of an increase, in actual or contingent liabilities assumed by the Government; or
- (c) anything that may affect the price at which the Government is able to raise money in the debt markets.

(2) The Minister may designate a financial institution as a systemically important financial institution.

Crisis management responsibilities of Reserve Bank

65. (1) In the event of a determination, in terms of section 63, that a particular risk, weakness, development or disruption detected in the financial system constitutes an actual or potential financial crisis, the Reserve Bank, including in its capacity as resolution authority, must endeavour to manage and mitigate the crisis as speedily and effectively as possible in accordance with its powers in terms of this, or any other, Act.

(2) In exercising its responsibilities in terms of subsection (1), the Reserve Bank must act with due regard to the need for—

- (a) maintaining and protecting financial stability;
- (b) managing and mitigating the crisis with the lowest possible public cost, the minimum disruption to the financial system and the least negative impact on the economy;
- (c) ensuring continuity in the provision of financial services by systemically

important financial institutions; and

- (d) protecting, as appropriate, the various interests of depositors, policyholders, investors and other financial customers affected by the crisis.

(3) The Governor may, for the purposes of facilitating flexible, efficient and expedient coordination and execution of the crisis management responsibilities and powers of the various authorities provided for in this Part, establish a crisis management committee.

Powers of direction for Reserve Bank

66. (1) In the event of a determination in terms of section 63 that a particular risk, weakness or disruption detected in the financial system constitutes an actual or potential financial crisis, the Reserve Bank may, subject to section 64, take direct responsibility for—

- (a) the operation of the resolution powers; and
- (b) the use of regulatory action by the regulatory authorities for preventative or remedial purposes.

(2) To give effect to subsection (1), the Governor may direct a regulatory authority to—

- (a) exercise a resolution power; or
- (b) exercise any other power granted to it in terms of this Act or a regulatory law, if such action is needed to—
 - (i) support the use of a resolution power;
 - (ii) prevent the spread of risk, weakness or disruption through the financial system; or

- (iii) increase the resilience of a financial institution to risk, weakness or disruption.

(3) A direction by the Governor in terms of subsection (2) may require a regulatory authority, consistent with its powers, to—

- (a) take specific action;
- (b) take action in a specific manner;
- (c) desist from taking specific action; or
- (d) exercise any other function arising from a regulatory law.

(4) In exercising powers under this section, the Governor must consider whether an action is likely to have an actual or potential impact on public finances as contemplated in section 65.

(5) If the Governor believes that an action or inaction may have an actual or potential impact on the public finances, the Governor must—

- (a) immediately notify the Minister;
- (b) present the Minister with the facts of the case, and the options under consideration;
- (c) advise the Minister on an appropriate course of action; and
- (d) implement whatever course of action the Minister decides upon.

Crisis management responsibilities of the regulatory authorities

67. In the event of a determination under section 63 that a particular risk, weakness or disruption detected in the financial system constitutes an actual or potential financial crisis, a regulatory authority must promptly—

- (a) comply with any direction made by the Governor in terms of section 66(2);
- (b) continue to exercise its functions, independently and consistent with the law, in

respect of all other matters, and in doing so—

- (i) provide the Governor with any information which it considers may be relevant to the ongoing actual or potential financial crisis, including any actual or potential impact on the public finances; and
- (ii) consult the Governor before taking any course of regulatory action which it considers may be relevant to the ongoing actual or potential financial crisis, including any actual or potential impact on the public finances.

Emergency regulations

68. (1) The Minister may by notice in the *Gazette*, make any regulations necessary for managing and mitigating an impending or actual financial crisis, including regulations—

- (a) prohibiting, suspending, regulating or making compulsory for purposes of resolving the crisis a specific practice, procedure or activity in the financial system or in relation to a specific financial institution or category of financial institutions;
- (b) regulating the use of any powers relevant to the management and mitigation of the crisis;
- (c) suspending, modifying or qualifying the application for purposes of resolving the crisis of any legislation specified in the regulations, for a period and on conditions so specified, to—
 - (i) a specific financial institution or category of financial institutions;
 - or
 - (ii) a specific person or category of persons that is subject to any regulatory law;

- (d) providing for purposes of resolving the crisis for the application of any legislation specified in the regulations, for a period and on conditions so specified, to such institution, category of institutions, person or category of persons;
- (e) providing for issues that urgently need to be addressed for purposes of resolving the crisis that are currently not clearly or appropriately dealt with in terms of a regulatory law; and
- (f) providing for criminal sanctions for any contravention or failure to comply with a regulation.

(2) A regulation that suspends, modifies, qualifies or applies an Act of Parliament as contemplated in subsection (1)(c) or (d), may be made only if —

- (a) the Minister has consulted the Cabinet member responsible for the relevant legislation; and
- (b) such suspension, modification, qualification or application is urgently needed for purposes of resolving the crisis and any delay that might be caused by the parliamentary process in passing the requisite legislation is likely to defeat the object for which such suspension, modification, qualification or application is needed.

(3) The Minister must within 30 days of publication of any regulations in terms of subsection (1), submit a copy of the regulations together with a report on the expediency, effect and implication of the regulations to the National Assembly.

(4) Regulations made in terms of subsection (2)—

- (a) may be amended by the Minister in accordance with that subsection; and
- (b) lapse—

- (i) after one year from the date of their publication, unless ratified by an Act of Parliament; or
 - (ii) a longer period specified by the Minister.
- (5) While regulations remain in force in terms of subsection (4)(b)(ii), the Minister must submit a report annually to the National Assembly on the status of the regulations.

CHAPTER 6

ADMINISTRATIVE ACTION AND APPEALS

Part 1

Administrative actions and enforcement powers

Statement of procedure for decisions

69. (1) A regulatory authority must prepare a statement of decision-making procedures to regulate decision-making by the regulatory authority affecting the rights of a person.

- (2) The statement of decision-making procedures must—
- (a) set out the procedures of the regulatory authority designed to ensure that administrative actions are taken in a manner consistent with the Promotion of Administrative Justice Act;
 - (b) provide for the establishment by the regulatory authority of a regulatory decisions committee, comprised of staff members and external members as appropriate, to advise the regulatory authority in the taking of decisions of particular impact or significance; and

- (c) include details of any other procedures or matters that the regulatory authority may consider relevant to the exercise of effective and fair decision-making.

Imposition of administrative penalties

70. (1) In addition to any remedial, corrective or preventative actions and sanctions specified in a regulatory law with respect to specific contraventions, a regulatory authority may impose an administrative penalty on a financial institution should it find that the financial institution has failed to comply with a provision of a regulatory law or a rule issued under a regulatory law.

(2) When determining an appropriate administrative penalty, a regulatory authority must have regard to the following factors—

- (a) the nature, duration, seriousness and extent of the contravention;
- (b) any loss or damage suffered by any person as a result of the contravention;
- (c) the extent of the profit derived or loss avoided by the respondent from the contravention;
- (d) the impact which the respondent's conduct may have on the financial system;
- (e) whether the respondent has previously failed to comply with a fiduciary duty or law;
- (f) any previous fine imposed or compensation paid for the contravention based on the same set of facts;
- (g) the deterrent effect of the administrative sanction;
- (h) the degree to which the respondent co-operated with the applicant's regulatory authority; and
- (i) any other factor, including mitigating factors submitted by the respondent, that the regulatory authority considers to be relevant.

(3) A decision by the regulatory authority to impose a penalty has legal force as if made by the High Court, and if the respondent fails to comply with the decision, the regulatory authority may forthwith file with the registrar of a competent court a certified copy of the decision, and the decision thereupon has the effect of a civil judgment and may be enforced as if lawfully given in that court in favour of the regulatory authority.

(4) Any payment received by a regulatory authority pursuant to an administrative penalty imposed under subsection (1) must exclusively be utilised for purposes of consumer education or the protection of financial customers.

Part 2

Establishment of Financial Services Tribunal

Establishment of Financial Services Tribunal

71. A Financial Services Tribunal is hereby established to serve independently from the regulatory authorities as a mechanism to consider and decide administrative appeals by persons aggrieved by decisions of a regulatory authority taken in terms of this Act or a regulatory law.

Composition of Financial Services Tribunal

72. (1) The Financial Services Tribunal must be composed of a sufficient number of persons with appropriate knowledge and experience as the Minister may determine, so as to enable the Financial Services Tribunal to perform its functions effectively.

(2) The Financial Services Tribunal—

- (a) must consist of—
 - (i) members who are advocates or attorneys with at least ten years' experience as an advocate or attorney or retired judges or magistrates; and
 - (ii) members who have experience and expert knowledge of the financial services industry; and
 - (b) a retired judge or senior counsel, as Chairperson.
- (3) The Minister—
- (a) appoints the members of the Financial Services Tribunal;
 - (b) must, when appointing members, determine the term of office of each member, but no term may exceed three years at a time;
 - (c) may at the expiry of a member's term of office reappoint that member for a new term; and
 - (d) is not obliged to fill a vacancy when a member's term expires or a member for any reason vacates office, provided subsection (1) is complied with.

Persons not qualified for appointment as members

73. (1) Section 35, with any necessary changes as the context may require, applies to the appointment of a person as a member of the Financial Services Tribunal, and no person falling within any of the categories of non-qualified persons specified in that section may be appointed or continue as a member.

(2) No person who is an unrehabilitated insolvent may be appointed to the Financial Services Tribunal or continue as a member.

Terms and conditions of appointment

74. (1) A person appointed as a member of the Financial Services Tribunal holds office as a member on the terms and conditions as the Minister may determine.

(2) A member of the Financial Services Tribunal who is not in the full-time employment of an organ of state may be paid out of the funds of the regulatory authorities such allowances, or, in appropriate cases, such remuneration and allowances, as the Minister may determine.

(3) If a person in the full-time employment of an organ of state is appointed as a member of the Financial Services Tribunal, the regulatory authorities must reimburse that organ of state for any payment made by that organ of state in respect of that person to enable that person to perform the functions of office as such a member.

Chairperson and Deputy Chairperson of Financial Services Tribunal

75. (1) The Minister must from amongst the members of the Financial Services Tribunal referred to in section 72(2)(a)(i) or (b) appoint a Chairperson and a Deputy Chairperson for the Financial Services Tribunal.

(2) The chairperson has such functions as assigned to the Chairperson –

- (a) in terms of this Act, or a regulatory law; or by
- (b) the Minister.

(3) The Deputy Chairperson must perform the functions of the Chairperson if—

- (a) the Chairperson is absent or for any reason unable to act as Chairperson; or
- (b) the office of Chairperson is vacant.

(4) A member of the Financial Services Tribunal designated by the Minister must perform the functions of the Chairperson if the circumstances referred to in subsection (3)(a) or (b) apply and—

- (a) the Deputy Chairperson is absent or for any reason unable to act; or
- (b) the office of Deputy Chairperson is vacant.

Meetings of Financial Services Tribunal

76. (1) The Financial Services Tribunal may convene for a meeting of the Financial Services Tribunal at a time and place as the Chairperson of the Financial Services Tribunal may determine.

(2) A quorum for a meeting of the Financial Services Tribunal is formed when a majority of its members are present.

(3) The Chairperson or Deputy Chairperson of the Financial Services Tribunal must preside at a meeting of the Financial Services Tribunal, but if none are available, the members present must from among themselves elect a person to preside at the meeting.

Disclosure of interests

77. A member of the Financial Services Tribunal must immediately —

- (a) disclose any financial, business or personal interest which that member may have in a matter before the Financial Services Tribunal; and
- (b) withdraw from the proceedings of the Financial Services Tribunal in relation to that matter unless the Financial Services Tribunal decides that the relevant interest is trivial or too remote to affect the member's judgement.

Procedures and decisions of Financial Services Tribunal

78. (1) The Financial Services Tribunal may determine its own procedures, provided such procedures are not inconsistent with this Act or a regulatory law.

(2) A decision of the Financial Services Tribunal is taken by a majority of all the members of the Tribunal, and in the event of an equality of votes on any matter the person presiding at the time the vote is taken has a casting vote, in addition to a deliberative vote.

Vacation of office

79. A member of the Financial Services Tribunal must vacate office—

- (a) if that member after his or her appointment becomes subject to a disqualification contemplated in section 73(1) or (2); or
- (b) if—
 - (i) in the case of the Chairperson, the Chairperson has been absent from two consecutive meetings of the Financial Services Tribunal without leave of the Minister; or
 - (ii) in the case of another member, that member has been absent from two consecutive meetings of the Financial Services Tribunal without leave of the Chairperson.

Termination of membership of Financial Services Tribunal

80. (1) The Minister may at any time, on any good ground, terminate the membership of a member of the Financial Services Tribunal, including on the ground of—

- (a) ill health, absence or any other inability to perform the functions of office;
- (b) non-compliance with or breach of any applicable code of conduct;
- (c) conduct that—
 - (i) brought a regulatory authority, the Financial Services Tribunal or any ad hoc panel to which that member was appointed into disrepute; or
 - (ii) otherwise impacted negatively on the integrity of a regulatory authority, the Financial Services Tribunal or such ad hoc panel; or
- (d) poor performance as a member.

(2) The Minister may terminate a person's membership on a ground referred to in subsection (1)(b), (c) or (d) only after an independent enquiry instituted by the Minister has made a finding justifying termination of that person's membership on that ground.

(3) The Minister may suspend from office a person against whom proceedings in terms of subsection (2) have been instituted or are pending.

(4) Following the removal from office of a person in terms of subsection (1), the Minister must submit the report and finding of the enquiry to the National Assembly.

Logistical support

81. The regulatory authorities must by agreement provide such administrative, staff, funding and other logistical support to the Financial Services Tribunal and to any ad hoc panel of the Financial Services Tribunal, as may be necessary for the proper functioning of the Financial Services Tribunal or panel.

Part 3

Hearing of appeals by Financial Services Tribunal

Appeals by aggrieved persons

82. (1) A person who is aggrieved by a decision of a regulatory authority in terms of this Act or a regulatory law, may appeal against the decision to the Financial Services Tribunal, subject to and in accordance with this Act and that other law.

(2) An appeal must be lodged within 30 days of the time the aggrieved person became aware of the decision, in a manner and on payment of any fees as may be prescribed by the joint rules.

(3) The Chairperson of the Financial Services Tribunal is responsible for managing all appeals lodged with the Financial Services Tribunal and must—

(a) on receipt of an appeal, request the regulatory authority who took the decision appealed against to make the case record available for purposes of the appeal; and

(b) on receipt of the case record allow the appellant—

(i) access to the case record, including the provision to the appellant of copies of or extracts from documents or electronic information on payment of a fee as may prescribed by joint rules inclusive of such reasons as the regulatory authority may provide for the decision;

(ii) an opportunity to submit a motivation setting out the grounds for the appeal within a period of 10 days.

(4) An appeal lodged in terms of this section does not suspend the decision appealed against pending the outcome of the appeal, unless the

Chairperson of the Financial Services Tribunal, on application by any of the parties directs otherwise.

Assignment of appeals to ad hoc panels

83. (1) The Chairperson of the Financial Services Tribunal must assign each appeal to an ad hoc panel in accordance with Part 4 to hear and decide the appeal.

(2) An appeal must be heard by the ad hoc panel on a date and at a time and place determined by the presiding member of the panel.

(3) The presiding member of the ad hoc panel must within 30 days of assignment of the appeal to the panel inform the appellant and the regulatory authority who took the decision appealed against, of the date, time and place determined for the hearing.

(4) The appellant and the regulatory authority must be given no less than 30 days' notice of the date of the hearing.

(5) A decision of a panel on a matter assigned to it must be in writing and must state the reasons for the decision.

(6) Unless the Chairperson of the panel, taking into account financial stability concerns, directs otherwise, a decision of a panel must be published.

Assessors

84. (1) The Chairperson may on request by an ad hoc panel designated to hear an appeal appoint a person having expert knowledge of an issue before the panel to participate in the proceedings of the panel as an assessor.

(2) A person appointed as an assessor has no voting right in the proceedings.

Appeal proceedings

85. (1) An appeal must be decided on the case record and any motivation submitted by the appellant setting out the grounds of appeal, and no other documentation, written or electronic evidence or other factual information relating to the decision appealed against may be submitted to the panel by any party to the appeal.

(2) Despite subsection (1), the presiding member of the panel hearing an appeal may, if they consider it necessary for the panel to reach a decision, or in exceptional circumstances, on application by any of the parties to the appeal, allow—

- (a) oral evidence to be given before the panel, including examination and cross-examination of persons giving evidence; or
- (b) further documentation, written or electronic evidence or other factual information which was not before the regulatory authority when the decision appealed against was taken, to be submitted to the panel.

(3) (a) For purposes of allowing further oral evidence in terms of subsection (2) the presiding member of the panel may—

- (i) summon any person to appear before the panel at a time and place specified in the summons, to be questioned or to produce any document, and retain for examination any document so produced; and
- (ii) administer an oath to or accept an affirmation from any person appearing as a witness before the panel.

(b) Any person summoned to give oral evidence is entitled to legal representation at own expense.

(4) If the presiding member of the panel allows oral evidence or further documentation, written or electronic evidence or other factual information in terms of subsection (3), on application by an appellant, the matter must revert to the regulatory authority for reconsideration, and the appeal is deferred pending the final decision of the regulatory authority.

(5) The regulatory authority must inform the presiding member of the panel and the appellant of its final decision as contemplated in subsection (4).

(6) If the appellant decides to continue with the appeal after being informed of the regulatory authority's final decision—

(a) the appellant must give written notice to that effect to the presiding member of the panel within 10 days of having been informed of the final decision; and

(b) the panel must continue with the appeal and consider and decide the appeal on—

(i) the documents referred to in subsection (1);

(ii) the oral evidence or further documentation, written or electronic evidence or other factual information allowed in terms of subsection (2); and

(iii) any motivation, documentation, evidence or reasons as may be provided by the regulatory authority for its final decision.

(7) An ad hoc panel hearing an appeal must conduct its hearings in public, unless the presiding member of the panel rules that specific persons or a category of persons be excluded from the hearing for a reason that would be justifiable in civil proceedings before a High Court.

(8) Any party to an appeal is entitled to be represented by a legal representative at own expense.

Orders of ad hoc panels

86. (1) An ad hoc panel must decide an appeal within 30 days and may either—

- (a) confirm the decision of the regulatory authority;
- (b) refer the matter back to the regulatory authority for reconsideration in accordance with such directions, if any, as the panel may determine; or
- (c) in the case of the Market Conduct Authority, vary or set aside the decision.

(2) An ad hoc panel may make such order as to costs as it considers to be suitable and fair.

(3) An order of an ad hoc panel must be made public, subject to section 95, and the considerations contemplated in section 10.

- (4) An order by an ad hoc panel in terms of subsection (1) or (2)—
- (a) must be deemed to have been made by the Financial Services Tribunal; and
 - (b) has legal force and may be enforced as if it were issued in civil proceedings in a division of the High Court within whose area of jurisdiction the panel held its hearing.

Part 4

Ad hoc panels

Composition of ad hoc panels

87. (1) An ad hoc panel of the Financial Services Tribunal must be composed of a minimum of three members of the Financial Services Tribunal designated by the Chairperson who are suitably qualified and experienced to conduct the proceedings relating to the matter assigned to the panel.

(2) The Chairperson of the Financial Services Tribunal must designate one of the members of the panel as the presiding member of the panel, from the ranks of members appointed in terms of section 72(2)(a)(i).

(3) If a member of an ad hoc panel resigns or withdraws from the panel or for any other reason ceases to be a member of the panel, the Chairperson of the Financial Services Tribunal may—

- (a) replace that member with another member of the Financial Services Tribunal and direct the remaining members and the new member to continue with the panel's assignment;
- (b) direct the remaining two members of the panel to continue with the panel's assignment without the former member; or
- (c) terminate the panel and constitute a new panel, which may include any member of the original panel, and direct the new panel to commence with the assignment afresh.

Sessions of ad hoc panels

88. (1) An ad hoc panel of the Financial Services Tribunal must convene for a session of the panel at a time and place as the presiding member of the panel may determine.

(2) A quorum for a session of an ad hoc panel is formed when all the members are present.

Panel procedures and decisions

89. (1) An ad hoc panel of the Financial Services Tribunal may determine its own procedures, provided such procedures are not inconsistent with this Act or a regulatory law, or any procedures adopted by the Tribunal in terms of section 78.

(2) A decision of an ad hoc panel is taken by a majority of all the members of the panel.

(3) If a panel consists of only two members as contemplated in section 87(3)(b), the presiding member has a casting vote in addition to a deliberative vote in the event of an equality of votes on any matter.

Vacation of office

90. (1) A person who is a member of an ad hoc panel of the Financial Services Tribunal vacates office as a member if—

(a) that person ceases to be a member of the Financial Services Tribunal in terms of section 80(1)(a) or (b); or

(b) that person's membership of the Financial Services Tribunal is terminated in terms of section 80(2);

(2) Section 87(3) becomes applicable if a member of an ad hoc panel vacates office in terms of subsection (1).

Disclosure of interests

91. (1) A member of an ad hoc panel must immediately—

- (a) disclose any financial, business or personal interest that member may have in a matter before the ad hoc panel; and
- (b) withdraw from the ad hoc panel unless the Chairperson of the Financial Services Tribunal decides that the relevant interest is trivial or too remote to affect the member's judgement.

(2) If a member of an ad hoc panel withdraws from the panel in terms of subsection (1)—

- (a) that member ceases to be a member of the panel; and
- (b) section 87(3) becomes applicable.

CHAPTER 7

MISCELLANEOUS MATTERS

Part 1

Regulations and codes of good practice

Regulations and codes of good practice

92. (1) The Minister may make regulations to facilitate the implementation of this Act, including regulations—

- (a) which must or may be prescribed in terms of a provision of this Act;
- (b) relating to the implementation of targeted financial sanctions arising from resolutions of the United Nations Security Council; and
- (c) to provide for other procedural or administrative matters that are necessary to give effect to the provisions of this Act.

(2) The Minister may prescribe codes of good practice, including codes of good practice—

- (a) for market conduct practices to protect households from over-indebtedness;
- (b) to protect deposits held in trust or fidelity funds for any reason; or
- (c) to require financial institutions to comply with internationally-accepted standards on anti-money laundering and corruption.

Commencement of regulations

93. (1) Regulations made in terms of this Part take effect from a date specified in those regulations, or if no date is specified, from the date of publication of those regulations.

(2) The commencement date specified in any regulations may be a date before, on or after the date of publication of those regulations.

Consultative processes before promulgation of regulations

94. (1) The Minister must , before making regulations in terms of this Part, publish the draft regulations in the *Government Gazette* or on the website of the National Treasury for public comment.

(2) If the Minister alters the draft regulations as a result of any comment received, he or she need not publish those alterations before making the regulations.

Part 2

General matters, offences and penalties

Utilisation and disclosure of information

95. (1) Other than in accordance with this section, no information obtained in the performance of any power or function under this Act or a regulatory law or sections 45 and 45B of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), may be utilised or disclosed to any person by —

- (a) a staff member or former staff member of the Market Conduct Authority or the Reserve Bank;
- (b) a member or former member of the Management Oversight Committee of the Prudential Authority, a governance committee of the Market Conduct Authority, or the Board of the Reserve Bank; or
- (c) a contractor or consultant appointed by a regulatory authority or the Reserve Bank, either while appointed or after such appointment has terminated.

(2) (a) Information obtained in the performance of any power or function under the Acts referred to in subsection (1), including personal information as defined in the Protection of Personal Information Act, 2013, may be utilised or disclosed only—

- (i) in the course of performing functions under, or as enabled by the Acts and laws referred to in subsection (1);
- (ii) for the purposes of legal proceedings or other proceedings;
- (iii) when required to do so by a court; or
- (iv) by the Commissioner, a Deputy Commissioner or Chief Executive Officer if, in their opinion, disclosure is—
 - (aa) for purposes of warning financial customers against conducting business with a financial institution or other person conducting activities in contravention of the Acts and laws referred to in subsection (1);

- (bb) for purposes of informing financial customers of actions taken against a financial institution under the Acts and laws referred to in subsection (1);
- (cc) for purposes of alerting financial customers to activities carried out by one or more financial institutions which the Commissioner, a Deputy Commissioner or Chief Executive Officer believes to constitute a potential risk to consumers and in respect of which consumers should take care;
- (dd) in the public interest;
- (ee) to financial organs of state, for the purposes—
 - (A) of ensuring that financial institutions conduct their business in a manner that is consistent with and promotes the objectives of consumer and investor protection, the fair treatment of consumers and investors, efficiency and integrity in financial markets and confidence in the financial system;
 - (B) of ensuring the safety and soundness of financial institutions, in particular the ability of financial institutions to meet the financial commitments and obligations they incur in the course of carrying out their business;
 - (C) of ensuring the stability of the financial system; or
 - (D) of coordinating the supervision of financial institutions with financial organs of state;
- (ff) for the purposes of disclosing to any financial organ of state in accordance with a co-operation agreement referred to in subsection (3)(a)(v) or otherwise, information relating to a particular financial or

other institution or financial or other service or a particular individual who is or was involved in a particular financial institution or financial service, if that financial organ of state has a material interest in the information;

(*gg*) for the purposes of developing and implementing policies and activities to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial services; or

(*hh*) for the purposes of anti-money laundering and combating the financing of terrorism, and the performance of supervisory functions in accordance with the Financial Intelligence Centre Act.

(*b*) Information obtained under the Financial Intelligence Centre Act, other than under sections 45 and 45B of that Act, may be utilised or disclosed in accordance with sections 40 and 41 of that Act only.

(*c*) When information is used or disclosed for the purposes referred to in paragraphs (*a*) and (*b*), such utilisation or disclosure constitutes compliance with an obligation imposed by law for purposes of sections 11(1)(*c*), 12(2)(*d*)(ii), 15(3)(*c*)(ii), and 18(4)(*c*)(ii) of the Protection of Personal Information Act, 2013.

(3) (*a*) The Commissioner, a Deputy Commissioner or Chief Executive officer in pursuing the purposes referred to in subsection (2)(*a*), may,—

- (i) liaise with any financial organ of state on matters of common interest;
- (ii) participate in the proceedings of any financial organ of state;
- (iii) advise or receive advice from any financial organ of state;
- (iv) prior to taking regulatory action which the Commissioner, a Deputy Commissioner or Chief Executive Officer considers material against a

financial institution, inform any financial organ of state that the Commissioner, a Deputy Commissioner or Chief Executive Officer considers to have a material interest in that financial institution of the pending regulatory action, or where this is not possible, inform the financial organ of state as soon as possible after taking the regulatory action; and

- (v) negotiate and enter into bilateral or multilateral co-operation agreements, including memoranda of understanding, with financial organs of state, including financial organs of state in whose countries a subsidiary or holding company of a financial institution is incorporated or a branch is situated, to, amongst others—
 - (aa) coordinate and harmonise the reporting and other obligations of—
 - (A) financial institutions; and
 - (B) issuers as defined in the Financial Markets Act;
 - (bb) provide mechanisms for the exchange of information, including, but not limited to a provision that the Commissioner, a Deputy Commissioner, Chief Executive Officer or financial organ of state—
 - (A) be informed of adverse assessments of qualitative aspects of the operations of a financial institution; or
 - (B) may provide information regarding significant problems that are being experienced within a financial institution;
 - (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of financial institutions or issuers as defined in the Financial Markets Act, on an on-going basis, including, but not limited to, a provision that the Commissioner, a Deputy Commissioner or Chief Executive Officer may conduct an on-site visit or an inspection

of a financial institution or issuers as defined in the Financial Markets Act, on the request of a financial organ of state, and that the financial organ of state may assist the registrar in such on-site examination or inspection;

(dd) assist any financial organ of state in paragraph *(a)* of the definition of financial organ of state in regulating and enforcing any laws of that financial organ of state that are similar to a regulatory law.

(b) An agreement referred to in paragraph *(a)(v)*, which complies with the requirements set out in subsection (4), constitutes an agreement that complies with the requirements of section 72(1) of the Protection of Personal Information Act, 2013.

(4) *(a)* Information may only be disclosed to a financial organ of state if, prior to providing information, it is established that the financial organ of state that will receive the information has appropriate safeguards in place to protect the information, which safeguards must be similar to those provided for in this section.

(b) A person referred to in subsection (1) may only consent to information provided to a financial organ of state being made available to third parties if that person is satisfied that the third parties have appropriate safeguards in place to protect the information received, which safeguards must be similar to those provided for in this section.

(c) Information may only be requested from a financial organ of state in performing the functions and exercising powers under the Acts referred to in subsection (1).

(d) Any information requested from or provided by a financial organ of state—

- (i) must only be used for the purpose for which it was requested;
 - (ii) must not be made available to third parties without the consent of the financial organ of state that provided the information;
 - (iii) if lawfully compelled to make information provided by a financial organ of state available—
 - (aa) inform that financial organ of state of the event and the circumstances under which the information will be made available; and
 - (bb) where possible, use all reasonable means to oppose the disclosure of or protect the information.
- (5) For the purposes of this section, information does not include—
- (a) aggregate statistical data;
 - (b) information and analysis about the financial condition or business conduct practises of a financial services sector or a part thereof.

Restriction on use of name or description implying connection with regulatory authority

96. No person may apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between the company, body, firm, business or undertaking and a regulatory authority unless that person—

- (a) has been authorised by the regulatory authority to do so; and
- (b) complies with the conditions determined by the regulatory authority.

Offences and penalties

97. (1) (a) A person who contravenes section 95 or 96 commits an offence and upon conviction is guilty of an offence.

(b) A person convicted for an offence in terms of paragraph (a) is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R1 000 000 or a higher amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

(2) (a) A person commits an offence if that person has been duly summoned in terms of section 85(3) to appear before an ad hoc panel and without sufficient cause—

- (i) fails to appear at the time and place specified in the summons;
- (ii) fails to remain in attendance until excused by the presiding member from further attendance;
- (iii) refuses to take the oath or to make an affirmation as contemplated in section 85(3)(a)(ii);
- (iv) fails to answer fully and satisfactorily any question lawfully put to him or her;
or
- (v) fails to furnish information or to produce a document specified in the summons.

(b) A person convicted for an offence in terms of paragraph (a) is liable to imprisonment for a period not exceeding two years or to a fine not exceeding an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

Liability for damage, loss or expenses

98. The State, the Minister, the Reserve Bank, the Governor and Deputy

Governors, a regulatory authority, or an official of the State, the Reserve Bank or a regulatory authority is not liable for or in respect of any damage, loss or expenses suffered or incurred by any person arising from any decisions taken or actions performed in good faith in the exercise of a function, power or duty assigned or delegated to the Minister, the Reserve Bank, a regulatory authority or such an official in terms of this Act or any regulatory law.

Amendment of Schedule 2

99. The Minister may by notice in the *Gazette* amend Schedule 2 by—

- (a) adding a type of activity to the list of activities carried out by financial institutions in any Part of the Schedule;
- (b) moving the listing of a financial activity from any one Part of the Schedule to any other Part of the Schedule; or
- (c) by creating subcategories within a financial activity so that different subcategories may be listed within different Parts of the Schedule.

Laws repealed or amended

100. (1) The laws specified in the second column of Schedule 3 are hereby repealed or amended to the extent set out in the third column.

(2) Anything done in terms of a provision of a law repealed in terms of subsection (1) which has been re-enacted with or without amendments in this Act must be regarded to have been done in terms of such re-enacted provision of this Act.

Part 3

Transitional provisions

Transitional definitions

101. In this Part—

“effective date” means the date on which this Act takes effect;

“market conduct regulation”—

- (a) in relation to mono-regulated activities, means regulation including the activities of licensing, rule-making, supervision, and enforcement in terms of any regulatory systems prescribed by a regulatory law for financial institutions that are carrying out mono-regulated activities for purposes of this Act; and
- (b) in relation to dual-regulated activities, means regulation including the activities of licensing, rule-making, supervision, and enforcement in terms of the regulatory systems prescribed by a regulatory law—
 - (i) for financial institutions that are carrying out dual-regulated activities for purposes of this Act; and
 - (ii) that are specifically aimed at ensuring that these institutions conduct their business in a way that is consistent with and advances the objectives of protection of financial customers, fairness and integrity in financial markets, and confidence in the financial system;

“prudential regulation”, in relation to dual-regulated activities, means regulation including the activities of licensing, rule-making, supervision, and enforcement in terms of the regulatory systems prescribed by a regulatory law—

- (a) for financial institutions that are carrying out dual-regulated activities for purposes of this Act; and
- (b) that are specifically aimed at ensuring the safety and soundness of these institutions and their ability to meet their financial obligations;

“registrar”—

- (a) in relation to a regulatory law implemented by the Financial Services Board immediately before the effective date, means—
 - (i) the Chief Executive Officer of the Board;
 - (ii) a registrar as defined in the relevant regulatory law; or
 - (iii) any other person or authority that exercises a registering, licencing, supervisory or regulating function, duty or power in terms of that law; and
- (b) in relation to a regulatory law implemented by the Reserve Bank or an officer of the Bank immediately before the effective date, means—
 - (i) a registrar as defined in the relevant regulatory law; or
 - (ii) any other person or authority that exercises a registering, licencing, supervisory or regulating function, duty or power in terms of that law .

Implementation of regulatory laws as from effective date

- 102.** (1) The Market Conduct Authority is from the effective date responsible for implementing—
- (a) any provision of a regulatory law that assigns a function, duty or power to the Board, the Chief Executive Officer, a registrar or other official of the Board—
 - (i) if the activity to which that provision applies is a mono-regulated activity; or
 - (ii) if the activity to which that provision applies is a dual-regulated activity and that provision is intended or can be applied for the purposes of market conduct regulation;
 - (b) any provision of a regulatory law of which the implementation has specifically been allocated to it in terms of subsection (4); and
 - (c) any other provision of a regulatory law to the extent that such provision facilitates the administration or enforcement of a provision referred to in paragraph (a) or (b).

- (2) The Prudential Authority is from the effective date responsible for implementing—
- (a) any provision of a regulatory law that assigns a function, duty or power to the Board, the Chief Executive Officer, a registrar or other official of the Board if—
 - (i) the activity to which that provision applies is a dual-regulated activity; and
 - (ii) that provision is intended or can be applied for the purposes of prudential regulation;
 - (b) any provision of a regulatory law of which the implementation has specifically been allocated to it in terms of subsection (4); and

(c) any other provision of a regulatory law to the extent that such provision facilitates the administration or enforcement of a provision referred to in paragraph (a) or (b).

(3) If a provision referred to in subsection (1)(a)(ii) or (2)(a) is intended or can be applied for both the market conduct regulation and prudential regulation of a financial institution, both the Market Conduct Authority and the Prudential Authority are responsible for implementing that provision to the extent of their respective jurisdictional responsibilities.

(4) If in the application of subsection (1)(a)(ii) or (2)(a) a conflict arises as to whether a particular provision of a regulatory law is intended or can be applied for market conduct regulation, for prudential regulation or for both market conduct and prudential regulation of a financial institution, the Minister may on policy considerations—

- (a) make a determination on whether the Market Conduct Authority, the Prudential Authority or both should implement that provision in relation to that financial institution; and
- (b) assign the implementation of that provision in relation to that financial institution by notice in the *Gazette* to either the Market Conduct Authority or the Prudential Authority or to both, as may be appropriate.

Interpretation of regulatory laws

103. As from the effective date, any reference in a provision of a regulatory law to—

- (a) the Board, the Executive Officer, deputy Executive Officer, a registrar, deputy registrar or any other person or authority that exercises in terms of that law, a

registering, licencing, supervisory or regulating function, duty or power in relation to financial institutions, must be read as a reference to the Market Conduct Authority, the Prudential Authority or to both the Market Conduct Authority and the Prudential Authority, depending on which regulatory authority is, or whether both regulatory authorities are, responsible for implementing that provision in terms of section 102;

- (b) the Reserve Bank as an authority that exercises in terms of that law a registering, licencing, supervisory or regulating function, duty or power in relation to financial institutions, must be read as a reference to the Market Conduct Authority, the Prudential Authority or to both the Market Conduct Authority and the Prudential Authority, depending on which regulatory authority is, or whether both regulatory authorities are, responsible for implementing that provision in terms of section 102.

Transitional provisions relating to regulations, rules, directives, notices and other subordinate legislation

104. (1) A regulatory authority may make a rule in terms of this Act if—

(a) it has agreed with the National Treasury that the rule is necessary, in pursuit of its objectives, for the exercise of its powers or the performance of its duties in terms of this Act; and

(b) it considers that it does not have the power to make such a rule in terms of a regulatory law.

(2) The Minister must make regulations specifying the purposes under which a regulatory authority may make rules in terms of subsection (1).

(3) As from the effective date, any existing regulation, rule, directive, notice or other subordinate legislation made or issued by the Board, the Chief Executive Officer, a registrar or any other official of the Board, or by the Reserve Bank or a registrar or other official of the Reserve Bank, must—

(a) if it applies solely to mono-regulated financial activities, be regarded to be a rule, as defined in this Act, made by the Market Conduct Authority; or

(b) if it applies to dual-regulated activities, be regarded to be a rule, as defined in this Act made by either the Market Conduct Authority or the Prudential Authority, as appropriate.

Transitional provisions relating to Financial Services Board

105. (1) As from the effective date—

(a) The juristic person established by section 2 of the Financial Services Board Act must for all purposes relating to its assets, liabilities, rights, obligations, contracts and other legal matters be deemed—

(i) to have been reconstituted and renamed as the Market Conduct Authority; and

(ii) to continue to exist without a break in its juristic personality despite the repeal of the Financial Services Board Act by this Act and such reconstitution and renaming;

(b) the Board is dissolved; and

(c) a member of the Board or of a committee of the Board ceases to be such a member;

(d) the executive officer and each deputy executive officer of the Board ceases to hold office in that position, but is eligible for appointment as

Commissioner, Deputy Commissioner or member of staff of the Market Conduct Authority.

(2) The Market Conduct Authority must as soon as possible after this Act takes effect restructure the staff establishment of the Board as it existed on the effective date in order to align its personnel structure with the requirements of the Act.

Short title and commencement

106. (1) This Act is called the Financial Sector Regulation Bill, 2013, and takes effect on a date determined by the Minister by Notice in the *Gazette*.

(2) Different dates may be so determined in respect of—

- (a) different provisions of this Act; and
- (b) different provisions of any law repealed or amended by section 100(1).

SCHEDULE 1

REGULATORY LAWS

- (a)* the Banks Act, 1990 (Act No. 94 of 1990);
- (b)* the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- (c)* the Co-operative Banks Act, 2007 (Act No. 40 of 2007);
- (d)* the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (e)* the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (f)* the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- (g)* the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (h)* the Collective Investment Schemes Control Act, (Act No. 45 of 2002);
- (i)* the Financial Markets Act, 2012 (Act No. 19 of 2012);
- (j)* the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- (k)* the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998);
- (l)* the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
- (m)* the National Payment Systems Act, 1998 (Act No 78 of 1998);
- (n)* the Credit Rating Services Act, 2012 (Act No. 24 of 2012);
- (o)* the Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993);
- (p)* the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)
- (q)* any regulations and other subordinate legislation issued in terms of any of the laws listed in paragraphs *(a)* to *(p)*.

SCHEDULE 2
REGULATED ACTIVITIES

Part 1

Mono-regulated activities (regulated by Market Conduct Authority only)

Any business regulated in terms of a regulatory law specified below and conducted by any of the following institutions or persons is a mono-regulated activity:

- (a) a pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the investments of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;
- (b) an independent intermediary or representative contemplated in section 1 (1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (c) a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, (Act No. 45 of 2002), and a manager, trustee, custodian or nominee company registered or approved in terms of that Act, and an authorised agent of such a manager, except collective investment schemes that provide an explicit or implicit guarantee of the capital of the investor;
- (d) an authorised financial services provider or representative as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- (e) any other person dealing with trust property, as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 23 of 2001), as a regular feature of that person's business, but who is not registered,

licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, 2008 (Act No. 71 of 2008), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988);

- (f) a 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;
- (g) a credit rating services provider in terms of the Credit Rating Services Act, 2012 (Act No. 24 of 2012); or
- (h) any person who performs an activity regulated in terms of a law referred to in paragraph (a) to (f).

Part 2

Dual-regulated activities (regulated by both Market Conduct and Prudential Authorities)

Any business regulated in terms of a regulatory law specified below and conducted by any of the following institutions or persons is a dual-regulated activity:

- (a) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);
- (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 section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);
- (d) a long-term insurer as defined in section 1(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and any “short-term insurer” as defined in section 1(1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

- (e) a Lloyd's underwriter as defined in section 1(1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and referred to in section 56 of that Act;
- (f) an exchange, authorised user, stock-broker, clearing house, associated clearing house, central securities depository, participant, nominee as defined in section 1 or a regulated person as prescribed in terms of section 5 of the Financial Markets Act, 2012 (Act No.19 of 2012);
- (g) a payment system or payment system management body as defined in Section 1 of the National Payment Systems Act, 1998 (Act No. 78 of 1998);
- (h) a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, (Act No. 45 of 2002), and a manager, trustee, custodian or nominee company registered or approved in terms of that Act, and an authorised agent of such a manager, that provides an explicit or implicit guarantee of the capital of the investor; and
- (j) any person who performs an activity regulated in terms of a law referred to in paragraphs (a) to (i).

SCHEDULE 3

LAWS REPEALED OR AMENDED (incomplete)

Further amendments to regulatory laws to be provided for in order to facilitate the implementation of this Bill

Number and year of Act	Short title	Extent of repeal or amendment
Act 97 of 1990	Financial Services Board Act, 1990	<p>The repeal of the whole, with the following exceptions:</p> <ul style="list-style-type: none"> • Section 28 is retained, with consequential amendments <p><i>Other provisions from the Act will also need to be retained.</i></p>
Act 90 of 1989	South African Reserve Bank Act, 1989,	<p>The addition to Section 4(5) of the following paragraph:</p> <p>“(f) if the Director is removed from office in terms of Section 29(2) of the Financial Sector Regulation Act”.</p>
		<p style="text-align: center;">Section 3 of the South African Reserve Bank Act, 1989 is amended to read:</p> <p>“Primary objective of the Bank</p> <p>3. (1) The primary objective of the Bank shall be the protection of the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.</p> <p>(2) Subject to the primary objective in terms of section 3, primary responsibility for promoting and, in the event of a financial crisis, implementing</p>

		steps towards restoring, financial stability lies with the Bank, which is for such purposes designated as the resolution authority, and which must in this regard act in co-operation with the National Treasury, and the regulatory authorities as defined in the Financial Sector Regulation Act, 2013.
		The addition to Section 10 of the following paragraph: “(x) perform the functions assigned to the Bank by the Financial Sector Regulation Act, 2014.’
Act 94 of 1990	Banks Act, 1990	The repeal of Section 3, Section 4(1) and Section 4(2), and replacement with: “Interpretation of this Act 3. This Act should be interpreted in conjunction with Sections 1(3), 101, 102 and 103 of the Financial Sector Regulation Act, 2014”
Act 52 of 1998	Long-Term Insurance Act, 1998	The repeal of Section 2, and replacement with: “Interpretation of this Act 2. This Act should be interpreted in conjunction with Sections 1(3), 101, 102 and 103 of the Financial Sector Regulations Act, 2014”
		<i>Similar amendments to be added for all sectoral regulatory laws</i>
Act No 141 of 1993	Policy Board for Financial Services and Regulation Act, 1990	The repeal of the whole.

Act 37 of 2004	Financial Services Ombuds Schemes Act, 2004	<p>1. The insertion in section 1 after the definition of “statutory ombud” of the following definition:</p> <p>‘ “Statutory schemes” means the Adjudicator, the Ombud for Financial Services Providers, and the statutory ombud.’</p> <p>2. The insertion after paragraph (e) in subsection (1) of section 8 of the following paragraphs:</p> <p>“(eA) recognise schemes in accordance with this Act;</p> <p>(eB) approve the appointment and removal of the ombud of an scheme;</p> <p>(eC) monitor compliance of ombuds and schemes with requirements imposed under this Act; and</p> <p>(eD) promote and direct co-operation and coordination of the activities of the schemes and statutory schemes to ensure easy access to schemes and consistency in complaint resolution mechanisms;”.</p> <p>(eE) facilitate the delineation of the jurisdictional boundaries between the various ombud schemes and statutory schemes;</p>
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		<p style="text-align: center;">and</p> <p style="text-align: center;">(eF) put measures in place to enhance public awareness of ombud schemes and statutory schemes.</p> <p>3. The insertion after subsection (1) in section 8 of the following subsections:</p> <p>(1A) In the execution of its duties in terms of subsection (1), the Council may—</p> <p style="padding-left: 40px;">(a) operate a centralised helpline for financial customers;</p> <p style="padding-left: 40px;">(b) set up or participate in a centralised call centre to serve financial customers, and provide a single entry-point for complaints; and</p> <p>(1B)(a) The Council must, in terms of section 10(1)(i), set norms and standards for all ombud schemes.</p> <p style="padding-left: 40px;">(b) The norms and standards referred to in paragraph (a) must ensure that any ombud scheme is independent at all times.</p> <p>4. The substitution in section 11 for subsection (5) of the following subsection:</p> <p style="padding-left: 40px;">“(5) A scheme must comply with any additional requirements that may be prescribed under section 10(1)(i) subsequent to being recognised, within the period determined by the Minister.”.</p> <p>5. The insertion after paragraph (b) in subsection (2) of section 8 of</p>
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		<p>the following paragraphs:</p> <p>“(c) lease suitable premises from where it may perform its executive functions;</p> <p>(d) purchase, lease or otherwise acquire furniture, equipment and utensils deemed necessary for its office, and dispose of such property;</p> <p>(e) employ persons, including a chief executive officer, to assist in the performance of the functions of the Council and determine their terms of appointment;</p> <p>(f) enter into a service contract with any person for the performance of any specific act, function or service;</p> <p>(g) delegate or assign to any of its employees or person referred to in paragraph (f) any administrative function;</p> <p>(h) insure its office against any loss or damage to property, or arrange for fidelity cover or professional indemnity of</p>
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		<p>Council members or staff;</p> <p>(g) in general do anything which is necessary or expedient to perform its functions.”</p> <p>6. The insertion after section 8 of the following sections:</p> <p>“Relation of ombud schemes to Council</p> <p>8A.(1) All ombud schemes are accountable to the Council.</p> <p>(2) The Council may set up an independent advisory board for all schemes and statutory ombuds, comprising members of industry, as well as other independent members.</p> <p>(3) The advisory board referred to in subsection (2) may make recommendations to the Council on the appointment of the ombud of an ombud scheme.</p> <p>Obligations of financial institutions in relation to schemes and dispute resolution</p> <p>8B. (1) Financial institutions that are not subject to the jurisdiction of the Adjudicator or the Ombud for Financial Services Providers, must be a member of a scheme or schemes relating to the regulated activity or activities it undertakes under regulatory law as defined in the Financial Sector Regulation Act, 2013.</p> <p>(2) A financial institution that does not participate in a scheme, or</p>
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		<p>withdraws its membership from any recognised ombud scheme, or ceases to be a member of a recognised ombud scheme by reason of its non-payment of membership fees, will not qualify for authorisation, registration or licensing under a regulatory law as defined in the Financial Sector Regulation Act, 2013.</p> <p>(3) (a) A financial institution that does not participate in a scheme on the effective date of this section, must commence participation in a scheme within 12 months of the effective date.</p> <p>(b) Failure to comply with this section is subject to a sanction as prescribed.</p> <p>Application of the Public Finance Management Act</p> <p>8C. (1) The Council is a national public entity for purposes of the Public Finance Management Act, and must comply with the provisions of that Act applicable to public entities.</p> <p>(2) The Chairperson of the Council is the accounting officer of the Council for purposes of the Public Finance Management Act.</p>
Act 114 of 1998	Debt Collectors Act, 1998	<p>The insertion in section 9 of the following subsection:</p> <p>“(4) No person may carry on the</p>

		occupation of debt collector unless registered in terms of this Act.”
		<i>Other consequential and transitional amendments to be made to the regulatory laws.</i>

MEMORANDUM ON THE OBJECTS OF THE DRAFT FINANCIAL SECTOR REGULATION BILL, 2013

1. BACKGROUND TO THE BILL

- 1.1 The draft Financial Sector Regulation Bill (“the Bill”) was approved by Cabinet on 4 December 2013 for publication, and gives effect to an earlier Cabinet decision of 26 July 2011, to make the financial sector safer and better serve South Africa.
- 1.2 To achieve this the Bill gives effect to a “twin peaks system” of regulating the financial sector, establishing a Prudential Authority focused on the safety and soundness of financial institutions (“prudential supervision”), and a Market Conduct Authority focused on the manner in which financial institutions conduct their business and the fair treatment of financial customers (“market conduct supervision”).
- 1.3 The Bill also takes steps to strengthen financial stability and crisis resolution.
- 1.4 The twin peak reforms must be seen as a comprehensive system that deals with many elements including: co-operation and coordination between the PA and MCA, as well as between these two authorities and other regulators with jurisdiction over financial institutions; and an enhanced and harmonised system for administration action, including the establishment of a Financial Services Tribunal to hear appeals against regulatory decisions taken by the PA or the MCA.

2. OBJECTS OF THE BILL

The Bill seeks to achieve the following broad objectives:

Strengthening financial stability

- 2.1 The Bill mandates the South African Reserve Bank (“the SARB”) to promote financial stability within an agreed policy framework, and establishes the Financial Stability Oversight Committee (“FSOC”) to coordinate the monitoring and responding to systemic risks and financial crisis. Whilst operational independence of financial regulators is a cornerstone to effective supervision, such supervision must be done in a manner that does not introduce systemic risk – the FSOC will provide a forum through which these policy objectives can be balanced.

Establishing the “twin peaks” regulatory authorities

2.2 The PA and MCA are established to enhance regulatory focus and attention on their respective areas of responsibility. Powers and duties are given to ensure that these regulatory authorities operate in an effective and coordinated way, with enhanced accountability and clear operational independence. The PA will be housed within the SARB in recognition of the close alignment necessary between regulating the financial soundness of an individual financial institution and that of the stability of the financial system as a whole. The MCA will be a stand-alone entity. The MCA will also be responsible for promoting the integrity of financial markets, consumer education and financial inclusion, objectives necessary to ensure that the financial sector supports economic growth.

Enhancing coordination and co-operation between regulators

2.3 Coordination and co-operation between regulators is an important ingredient to a sound regulatory system. The Bill provides a legal framework for coordination and co-operation between the PA and MCA in their supervisory oversight of financial institutions, for example with respect to licensing, rule-making, withdrawal of licenses and other regulatory action, as well as between these regulatory authorities and other financial regulators, for example when a regulatory action is taken by another regulator. The Council of Financial Regulators (“CFR”) will coordinate regulators on issues of financial stability, legislation, enforcement and market outcomes. The CFR will also include regulators that do not report to the Minister of Finance, for example, the Council of Medical Schemes, Competition Commission and the National Consumer Commission.

Balancing operational independence and accountability of regulators

2.4 The Bill seeks to strengthen the operational independence of regulators, while ensuring accountability. The governance framework will provide clarity on the policy objectives of Government, while ensuring that regulators have the necessary operational powers and independence to perform their duties impartially.

Strengthening of market conduct regulation

2.5 A regulator dedicated to the supervision of market conduct supports a comprehensive and pro-active approach to ensuring that financial customers are treated fairly, and have access to financial products and services that are affordable and better meet their needs and expectations. The new regulator will lay the basis for sectoral law to be revised to ensure that all financial institutions are brought within the regulatory net.

Strengthening of prudential regulation

2.6 The shift away from an institutional focus for example with respect to either banks or insurers, recognises that the financial sector is increasingly dominated by financial conglomerates that offer the full range of financial products and services, meaning that their prudential risk should be evaluated at the group as well as the individual institution level. The new system will provide for this revised approach to prudential regulation.

Financial crisis management and resolution

2.7 The global financial crisis illustrated the importance of having mechanisms in place, to deal with disruptions in the financial system that threaten financial stability. A resolution framework provides regulatory authorities and Government with the appropriate tools and powers to limit such contagion, thereby reducing both the private and public costs associated with a financial crisis. The Bill provides for resolution powers and identifies the SARB as the resolution authority in South Africa. However, where taxpayers' money is at risk, the Bill provides for such decisions to be taken by the Minister.

Administrative actions

2.8 The Bill recognises that imposing penalties is just one enforcement mechanism to ensure regulatory compliance, and therefore promotes a consistent and harmonised approach by the regulators for all regulatory decisions, from decisions relating to licensing through to the imposition of penalties.

2.9 The enforcement mechanisms in the Bill aim to encourage compliance with all aspects of the new regulatory regime and are intended to help combat financial crime. The Bill provides for: the use of administrative penalties, referrals to an administrative decision-making body, and referral of matters for criminal prosecution. Supervisory actions such as suspension or withdrawal of licences and approvals, orders to take or cease particular actions, and debarments are enabled as a way to ensure regulatory compliance.

2.10 The Bill also establishes a Financial Services Tribunal to hear appeals against decisions taking by the PA or the MCA.

2.11 It should be noted that the shift to “twin peaks” will be done in two phases. This Bill only deals with the first phase, to establish the relevant authorities, to empower them with more general and consistent powers, and establish a common system for regulatory actions. The second phase, which is expected to be effected in 2015, will focus on harmonising the sectoral law, like the Banks Act, Long-term Insurance Act, Short-term Insurance Act, and the Financial Advisory and Intermediary Services Act, into law streamlined to focus on either prudential or market conduct standards. Amendments to the Financial Sector Regulation Bill are expected to follow at this time.

3. SUMMARY OF THE BILL

The Bill is structured as follows:

- **Chapter 1:** Interpretation, administration and purpose of Act
- **Chapter 2:** Reserve Bank and Financial Stability Oversight Committee
- **Chapter 3:** Regulatory authorities
- **Chapter 4:** Co-operation and coordination
- **Chapter 5:** Maintenance of financial stability
- **Chapter 6:** Administrative action and appeals
- **Chapter 7:** Miscellaneous matters
- **Schedule 1:** Regulatory laws
- **Schedule 2:** Regulated activities
- **Schedule 3:** Laws repealed or amended

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury has worked with the FSB and the SARB in the drafting of the Bill. The National Treasury has also consulted the Department of Trade and Industry, and conducted two rounds of public consultation on the policy documents published in 2011 and 2013.

5. FINANCIAL IMPLICATIONS FOR STATE

There will be no new implications to the fiscus, as the regulators and new responsibilities will be funded through fees and levies imposed on financial institutions.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.