

REPUBLIC OF SOUTH AFRICA

FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL

*(As amended by the Portfolio Committee on Finance (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 21B—2008]

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GENERAL EXPLANATORY NOTE:

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

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the—

- Pension Funds Act, 1956, so as to define and further define certain expressions; to provide for the registration and regulation of beneficiary funds; to empower the registrar to exempt certain funds from certain provisions of the Act; to further regulate the appointment and removal of a fund's principal officer, auditor and valuator; to effect improvements regarding the restrictions on the payment of fees or commissions on transfers; to effect improvements regarding the retrospective application of payment of benefits in terms of a divorce order; to extend the powers of the registrar to prescribe certain matters; and to provide for consequential amendments;
- Friendly Societies Act, 1956, to provide for the registration of a friendly society established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act;
- Financial Services Board Act, 1990, to define and further define certain expressions; to update references to legislation and institutions; to extend the functions of the board; to amend the provision for the filling of vacancies on the board; to provide anew for the establishment of committees of the board; to provide for the establishment of an enforcement committee; to provide for the appointment of an acting executive officer; to extend and regulate the power of delegation by the Minister and the board; to extend the grounds for disclosure of information obtained in the course of performing functions; to extend the ambit of provisions relating to limitation of liability; to repeal provisions relating to the board of appeal, and to provide for a new board of appeal; and to increase fines for contraventions of certain sections;
- National Payment Systems Act, 1998, to extend the application of the Act to certain organs of state; to facilitate the participation of institutions other than banks registered under the Banks Act, 1990, in the clearing of payment instructions; and to extend the grounds for disclosure of information obtained in the course of performing functions;
- Financial Institutions (Protection of Funds) Act, 2001, to provide for a procedure in terms of which administrative sanctions may be imposed by the enforcement committee for contraventions of, or failures to comply with, certain laws enforced by the Financial Services Board;
- Financial Advisory and Intermediary Services Act, 2002, to define and further define certain expressions; to empower the registrar of financial

services providers to conduct on-site visits and inspections of the businesses of providers and representatives, and the disclosure of details of on-site visits and inspections; to extend the duties of providers and representatives regarding carrying on business with unauthorised persons rendering financial services; to make new provision regarding fit and proper requirements in respect of all directors, members, trustees and partners of providers; to combine and extend the powers and duties of the registrar regarding the grounds for suspension and withdrawal of licences, and the disclosure of details of suspensions and withdrawals; to effect changes and improvements regarding the qualifications of representatives and their key individuals, the maintenance of a central register of representatives, and the debarment of representatives; to empower the registrar to debar certain persons rendering financial services; to extend the power of the registrar to draft codes of conduct; to empower the registrar to control or prohibit incentives; to improve provisions relating to compliance officers; to improve the submission to the registrar of financial statements; to improve the institution of civil remedies by the registrar; and to specify new offences;

- Co-operative Banks Act, 2007, to clarify the application of the Act; and to effect certain technical amendments to the Act;
- Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, the Collective Investment Schemes Control Act, 2002, and the Securities Services Act, 2004; so as to provide for consequential amendments;

to provide for certain transitional provisions; and to provide for matters incidental thereto.

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

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 20 of Act 54 of 1989, section 29 of Act 97 of 1990, section 14 of Act 83 of 1992, section 21 of Act 104 of 1993, section 1 of Act 22 of 1996, section 1 of Act 39 of 2001, section 1 of Act 65 of 2001 and section 1 of Act 11 of 2007

1. Section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended—

- (a) by the substitution for the definition of “actuary” of the following definition: 10
 “**actuary** means a person admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the Minister by notice in the *Gazette*.”;
- (b) by the deletion of the definition of “administrative penalty”;
- (c) by the insertion after the definition of “beneficiary” of the following 15
 definition:
 “**beneficiary fund** means a fund referred to in paragraph (c) of the definition of ‘pension funds organisation’.”;
- (d) by the insertion after the definition of “non-member spouse” of the 20
 following definition:
 “**normal retirement age** has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).”;
- (e) by the substitution for the definition of “pension fund organisation” of the 25
 following definition:
 “**pension fund organisation** means— 25
 (a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or 30

- (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or 5
- (c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits, referred to in section 37C on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds. 10
and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) [or], (b) or (c) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or collect contributions from or on behalf, of members.”; 15
- (f) by the insertion after the definition of “**reserve account**” of the following definition: 20
“**retirement**’ means the period commencing on the member’s retirement date;”.
- (g) by the substitution for the definition of “**retirement date**” of the following definition: 25
“**retirement date**’ has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”; and
- (h) by the insertion after the definition of “**this Act**” of the following definition: 30
“**unclaimed benefit**’ means—
 - (a) any benefit, other than a benefit referred to in paragraphs (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it, in terms of the rules of the fund, became legally due and payable; or 30
 - (b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of— 35
 - (i) the expiry date of any guarantee period for pension payments provided for in the rules of the fund; or
 - (ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid; or 40
 - (c) in relation to a benefit payable to a former member who cannot be traced in accordance with section 15B(5)(e) of this Act, any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable; or 45
 - (d) any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid, 50
excluding—
 - (aa) a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act; or 55
 - (bb) a death benefit payable to a beneficiary in terms of section 37C of this Act not paid within 24 months from the date of the death of the member or such longer period as reasonably justifiable by the board of the fund;”.

Substitution of section 2 of Act 24 of 1956, as amended by section 10 of Act 94 of 1977, section 13 of Act 103 of 1979, section 36 of Act 9 of 1989, section 15 of Act 83 of 1992, section 22 of Act 104 of 1993, section 211 of Act 66 of 1995 and section 2 of Act 11 of 2007

2. Section 2 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended—

- (a) by the insertion after subsection (2) of the following subsection:

“(2A) All beneficiary funds established on or after the commencement date of the Pension Funds Amendment Act, 2008 must register in terms of this Act.”;
- (b) by the substitution for subsection (3) of the following subsection:

“(3) A pension fund contemplated in subsection (2) or (2A) must, pending registration in terms of this Act, furnish the registrar with such statistical information as may be requested by the registrar.”; and
- (c) by the substitution for subsection (5) of the following subsection:

“(5) (a) The registrar may [in his discretion and subject to such conditions as may be prescribed by regulation exempt in writing any pension fund from the provisions of section 5(2), 9 or 9A, as well as from any other provision of this Act which, in his opinion, is connected with any such exemption.], where practicalities impede the strict application of a specific provision of this Act, exempt any fund from, or in respect of, such provision on conditions determined by the registration.

 - (aA)(i) **The provisions of sections 37A, 37B and 37C shall as from the commencement of the Financial Institutions Amendment Act, 1977, apply also with reference to any registered fund to which those provisions did not apply immediately before the said commencement.**
 - (ii) **Any provision inserted in this Act by, or after the commencement of, the Financial Institutions Amendment Act, 1977, shall apply with reference to all registered funds, including any fund previously exempted in terms of this subsection, except in so far as any exemption may have been granted from any such provision in terms of this subsection.] Any exemption in terms of paragraph (a) may apply to funds generally or be limited in its application to a particular fund or kind of fund, which may, for the purposes of this subsection, be defined in relation to either a category or type of fund or in any other manner.**

Amendment of section 7B of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996

3. Section 7B of the Pensions Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The registrar may on written application of a fund **[which shall include such information as the registrar may require]** and subject to such conditions as may be determined by the registrar—
- (a) authorise a fund to have a board consisting of less than four board members if such number is impractical or unreasonably expensive: Provided that the members of the fund shall have the right to elect at least 50% of the board members;
- (b) exempt a fund from the requirement that the members of the fund have the right to elect members of the board, if the fund—
 - (i) **has been established for the benefit of employees of different employers [which are not subsidiaries of a single holding company] referred to in**

- the definition of “pension fund” and “provident fund” as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii) **is a retirement annuity fund [as defined in the Income Tax Act, 1962 (Act No. 58 of 1962).];**
 - (iii) is a beneficiary fund; or 5
 - (iv) is a pension preservation fund or a provident preservation fund as defined in section 1 of the Income Tax Act, 1962.”.

Amendment of section 8 of Act 24 of 1956, as amended by section 30 of Act 104 of 1993 and sections 3 and 4 of Act 22 of 1996

4. Section 8 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended 10
by the substitution for subsections (3) and (4) of the following subsections:

“(3) Every fund must within 30 days after the registration of a fund or within 30 10
days after the appointment of a principal officer give the registrar written notice of
the appointment by furnishing the registrar with the prescribed information in
respect of the appointee. 15

(4) Despite anything to the contrary in any law or in any agreement, the 15
appointment by a fund of a principal officer is subject to the condition that the
appointment may be terminated under subsection (5)(b) and the fund must make
any appointment subject to this condition.

(5) (a) The registrar, subject to the Promotion of Administrative Justice Act, 20 20
2000 (Act No. 3 of 2000), may, if the registrar reasonably believes that a principal
officer is not, or is no longer, a fit and proper person to hold that office, or if it is not
in the public interest that the principal officer holds or continues to hold such office,
object to the appointment of a principal officer, stating the grounds for the
objection, and provide such to the chairperson of the board and to the appointee. 25

(b) If the registrar objects to an appointment in terms of paragraph (a), the board 25
must terminate the appointment within 30 days of the registrar informing the board
of the finalisation of the processes and procedures provided for in the Promotion of
Administrative Justice Act, 2000 (Act No.3 of 2000).

(c) The registrar may for purposes of assessing if a principal officer is not, or is 30
no longer, a fit and proper person in accordance with paragraph (a), have regard
to—

- (i) the competence and soundness of judgment of the person for the 35
fulfilment of the responsibilities of the particular office and type of fund;
- (ii) the diligence with which the person concerned is likely to fulfil those 35
responsibilities;
- (iii) previous conduct and activities of the person in business or financial
matters; and
- (iv) any evidence that the person—
 - (aa) after 27 April 1994 has been convicted in the Republic or 40
elsewhere of theft, fraud, forgery or uttering a forged
document, perjury, an offence under the Prevention and
Combating of Corrupt Activities Act, 2004 (Act No. 12 of
2004), an offence under the Prevention of Organised Crime
Act, 1998 (Act No. 121 of 1998), or any offence involving 45
dishonesty;
 - (bb) has been convicted of an offence committed after the Consti-
tution of the Republic of South Africa, 1993 (Act No. 200 of
1993), took effect, and sentenced to imprisonment without the 50
option of a fine; or
 - (cc) has contravened the provisions of any law the object of which
is the protection of the public against financial loss;
 - (dd) is a former principal officer of a fund and whose actions
contributed to that fund’s inability to pay its debts or caused
financial loss to its members; 55
 - (ee) has taken part in any business practices that, in the opinion of
the registrar, were deceitful, prejudicial, or otherwise improper
(whether unlawful or not) or which otherwise brought discredit
to that person’s methods of conducting business; or

- (ff) has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgment.
- (d) The registrar may request any person to assist him or her in assessing whether a person is fit and proper to act as a principal officer of a fund. 5
- (6) A principal officer of a fund must—
 - (a) within 21 days of his or her appointment being terminated, other than in accordance with the condition referred to in subsection (5)(b), submit a written report to the registrar detailing the principal officer’s perceived reasons for the termination; and 10
 - (b) on becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members, inform the registrar thereof in writing.”.

Amendment of section 9 of Act 24 of 1956, as substituted by section 12 of Act 65 of 1968 and amended by section 10 of Act 64 of 1990, section 23 of Act 104 of 1993 and section 5 of Act 11 of 2007 15

5. Section 9 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsections (3) and (4) of the following subsections:
- “(3) The provisions of section 8(5) apply *mutatis mutandis* to the appointment of an auditor under this section. 20
 - (4) An auditor of a fund must—
 - (a) within 21 days of his or her appointment being terminated, other than in accordance with section 8(5), submit a written report to the registrar detailing the auditor’s perceived reasons for the termination; 25
 - (b) if the auditor, but for the termination referred to in paragraph (a), would have had reason to submit a report contemplated in section 45(3) of the Auditing Profession Act 2005, (Act No. 26 of 2005), submit such a report to the registrar; and 30
 - (c) on becoming aware of any matter relating to the affairs of the pension fund, which, in the opinion of the auditor, may prejudice the fund or its members, inform the registrar thereof in writing.”.

Amendment of section 9A of Act 24 of 1956, as inserted by section 13 of Act 65 of 1968 35

6. Section 9A of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection 2 of the following subsection:
- “(2) The provisions of section 8(5) apply *mutatis mutandis* to the appointment of a valuator under this section.”.

Amendment of section 13A of Act 24 of 1956, as inserted by section 15 of Act 86 of 1984, amended by section 6 of Act 22 of 1996, substituted by section 1 of Act 94 of 1997 and amended by section 6 of Act 11 of 2007 40

7. Section 13A of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph: 45
- “(a) For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any authorized person shall, at the times and in the manner and format prescribed [by regulation], submit reports to the categories of persons, to be specified in [those regulations] that notice, who have an interest in such compliance.”. 50

Amendment of section 13B of Act 24 of 1956, as inserted by section 20 of Act 83 of 1992 and amended by section 7 of Act 11 of 2007

8. Section 13B of the Pension Funds Act, 1956, is hereby amended—
- (a) by the deletion of subsection (7);
 - (b) by the substitution for subsection (8) of the following subsection: 55

- “(8) Before taking any action under subsection (6) [or (7)], the registrar must inform the administrator and the board of the fund of the proposed action and grounds therefor, and afford them a reasonable opportunity to be heard.”; and
- (c) by the substitution for subsection (9) of the following subsection: 5
- “(9) If it is in the public interest, the registrar may through appropriate media make known[—
- (a)] the suspension or withdrawal of an approval referred to in subsection (6)];
- (b) **any non-compliance and administrative penalty referred to in subsection (7)].”.** 10

Amendment of section 14 of Act 24 of 1956, as inserted by section 15 of Act 81 of 1957, section 3 of Act 54 of 1991, section 21 of Act 83 of 1992, section 2 of Act 39 of 2001 and section 8 of Act 11 of 2007

9. Section 14 of the Pension Funds Act, 1956 (Act no. 24 of 1956), is hereby amended 15
by—

- (a) the substitution in subsection (7) for paragraph (b) of the following paragraph:
- “(b) No fees or commissions of any nature, are payable by any party [to the transfer] or by any agent or mandatary of such party—
- (i) in return for the facilitation, intermediation or recommendation 20
of the transfer; or
- (ii) for financial services rendered by a financial services provider or representative after the transfer in respect of the transferred interest of the transferring member or non-member spouse which exceeds the fees or maximum commission that would have been 25
permissible for such services in terms of the Long Term Insurance Act, 1998 or any regulations made thereunder had the transfer not been done [.]
other than fees—
- | | |
|--|----|
| (aa) payable to the registrar; | 30 |
| (bb) negotiated and agreed to in writing by the transferring member or non-member spouse annually, which fees are— | |
| (A) payable by the transferring member or non-member spouse personally; or | 35 |
| (B) authorised by the transferring member or non-member spouse to be paid by the fund or administrator.”; and | |
- (b) by the substitution for subsection (8) of the following subsection: 40
- “(8) With effect from the commencement of the Pension Funds Amendment Act, 2007, subsection (1) does not apply where the affected members were duly informed of a proposed transaction and any objection the members may have, has been resolved to the satisfaction of the board of the fund concerned, and—
- (a) both transferor and transferee funds are valuation exempt; [or] 45
- (b) the transferor or transferee fund is neither registered nor required to register under this Act and the other fund is valuation exempt[.]; or
- (aA) both transferor and transferee funds are beneficiary funds, and, furthermore, that— 50
- (i) such registered funds keep proper records of all such transactions;
- (ii) such registered funds comply with any further requirements as the registrar may prescribe;
- (iii) the assets and liabilities are transferred within 180 days of 55
the effective date of transfer; and
- (iv) any assets transferred must be increased or decreased with fund return from the effective date until the date of final settlement.”.

Amendment of section 15 of Act 24 of 1956, as inserted by section 4 of Act 39 of 2001 and substituted by section 11 of Act 11 of 2007

10. Section 15 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If a fund has been exempted as contemplated in section 2[(3)](5)(a), the registrar may authorise such fund to furnish to him or her, instead of the statements referred to in subsection (1), the information prescribed **[by regulation]**.”. 5

Amendment of section 28 of Act 24 of 1956, as amended by section 15 of Act 103 of 1979, section 25 of Act 83 of 1992, section 6 of Act 22 of 1996, section 3 of Act 94 of 1997 and section 18 Act 11 of 2007 10

11. Section 28 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the insertion after subsection (17) of the following subsection:

“(18) (a) The provisions of this section do not apply to a beneficiary fund.
(b) The registrar may prescribe matters that must be provided for in the rules of a beneficiary fund regarding voluntary dissolution and the transfer of remaining assets on voluntary dissolution.” 15

Repeal of section 30W of Act 24 of 1956, as inserted by section 3 of Act 22 of 1996

12. Section 30W of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby repealed.

Amendment of section 32A of Act 24 of 1956, as inserted by section 12 of Act 50 of 1986 20

13. Section 32A of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The registrar may in writing direct any fund which, before or after the date of such notice, employed any practice or method of conducting business which by virtue of the said notice is irregular or undesirable, to rectify as required by the registrar, anything specified by the registrar which in the opinion of the registrar was caused by or arose out of such practice or method: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).” 25 30

Amendment of section 37 of Act 24 of 1956, as substituted by section 26 of Act 11 of 2007

14. Section 37 of the Pensions Funds Act, 1956, is hereby amended—

(a) by the deletion of subsection (1);
(b) by the substitution for subsection (2) of the following subsection: 35

“(2) The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.” 40

(c) by the substitution in subsection (3) for paragraph (e) of the following paragraph: 45

“(e) invite interested persons to make representations within a period specified by the registrar **[, and]**.”; and

(d) by the deletion in subsection (3) of paragraph (f).

Amendment of section 37C of Act 24 of 1956, as inserted by section 24 of Act 101 of 1976 and substituted by section 13 of Act 80 of 1978, section 41 of Act 99 of 1980 and amended by section 21 of Act 54 of 1989, section 29 of Act 83 of 1992, section 28 of Act 104 of 1993, section 5 of Act 22 of 1996 and section 27 of Act 11 of 2007

15. Section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended by— 5

- (a) the substitution for subsection (2) of the following subsection:
 - “(2) (a) For the purposes of this section, a payment by a registered fund for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee, if payment is made to— 10
 - (i) a trustee contemplated in the Trust Property Control Act, 1988, nominated by—
 - (aa) the member; 15
 - (bb) a major dependant or nominee, subject to subparagraph (cc); or
 - (cc) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor dependant or nominee, or a major dependant or nominee not able to manage his or her affairs or meet his or her daily care needs; 20
 - (ii) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a dependant or nominee; or
 - (iii) a beneficiary fund.”. 25
 - (b) No payments may be made in terms of this section on or after 1 January 2009 to a beneficiary fund which is not registered under this Act.”; and

- (b) the insertion after subsection (4) of the following subsection:
 - “(5) The provisions of subsections (3) and (4) do not apply to a beneficiary fund, and any remaining assets held for the benefit of a deceased beneficiary in a beneficiary fund must be paid into the estate of such beneficiary or, if no inventory in respect of the beneficiary has been received by the Master of the High Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardian’s Fund.”. 30 35

Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001, section 28 of Act 11 of 2007 and section 4 of Act 35 of 2007

16. Section 37D of the Pension Funds Act, 1956, is hereby amended by— 40

- (a) the substitution in subsection (1) for paragraph (d) of the following paragraph:
 - “(d) deduct from a member’s benefit or minimum individual reserve; as the case may be—
 - (i) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998), or 45
 - (ii) any amount assigned from his or her pension interest to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979);”.
- (b) the deletion of paragraph (e) of subsection (1); and 50
- (c) the addition after subsection (2) of the following subsections:
 - “(3) (a) Any amount that may be deducted in terms of subsection (1)(d) may only be deducted after the amount of pension interest available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not: Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member’s pension interest available at any given time. 55

- (b) In the event that more than one of the court orders referred to in subsection (1)(d) provides for the deduction of amounts from a member's benefit or minimum individual reserve, as the case may be, at the same time, the court orders must be dealt with in accordance with the following hierarchy— 5
- (i) any maintenance order referred to in subsection (1)(d)(i);
 - (ii) any decrees of divorce or for the dissolution of a customary marriage.”
- (4) (a) For purposes of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or decree for the dissolution of a customary marriage is granted, and, on the written submission of the court order by the non-member spouse— 10 15
- (i) must be deducted by—
 - (aa) the pension fund or pension funds named in or identifiable from the decree;
 - (bb) the pension fund or pension funds to which the pension fund referred to in subparagraph (aa) transferred the pension interest referred to in the decree; 20
 - (ii) must be deducted on the date on which an election is made or, if no election is made within the period referred to in paragraph (b)(i), the date on which that period expires; and
 - (iii) must reduce the member's accrued benefits or minimum individual reserve at the date of the decree. 25
- (b) (i) The pension fund must, within 45 days of the submission of the court order by the non-member spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to him or her, or if it must be transferred to a pension fund on his or her behalf. 30
- (ii) The non-member spouse must within 120 days of being requested to make an election—
 - (a) inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and
 - (b) if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or 35
 - (c) if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.” 40
 - (iii) The pension fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse's election.
 - (iv) In the event that the non-member spouse fails to make an election or identify the pension fund to which the amount should be transferred within the period referred to in subparagraph (ii), the pension fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period. 45
 - (v) Despite subparagraph (iv), in the event that the pension fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person. 50 55
 - (c) A non-member spouse—
 - (i) is not a member or beneficiary in relation to the pension fund; and
 - (ii) is entitled to the accrual of fund return on the amount referred to in paragraph (a) at fund return from the expiry of the period referred to in subparagraph (b)(ii) until payment or transfer thereof, but not to any other interest or growth. 60
 - (d) Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a

customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, section 7(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).

(5) Despite paragraph (b) of the definition of “pension interest” in section 1(1) of the Divorce Act, 1979, the total amount of annual simple interest payable in terms of the definition may not exceed the fund return on the pension interest assigned to the non-member spouse in terms of a decree granted in terms of section 7(8)(a) of the Divorce Act, 1979.

(6) Despite paragraph (b) of the definition of ‘pension interest’ in section 1(1) of the Divorce Act, 1979, the portion of the pension interest of a member of a pension preservation fund or provident preservation fund (as defined in the Income Tax Act, 1962), that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.”.

Amendment of section 4 of Act 24 of 1956, as substituted by section 11 of Act 65 of 1968, amended by section 14 of Act 86 of 1984 and substituted by section 16 of Act 83 of 1992; amendment of section 12 of Act 24 of 1956, as substituted by section 18 of Act 83 of 1992; amendment of section 13A of Act 24 of 1956, as inserted by section 15 of Act 86 of 1984, amended by section 6 of Act 22 of 1996 and substituted by section 1 of Act 94 of 1997; amendment of section 13B of Act 24 of 1956, as inserted by section 20 of Act 83 of 1992; amendment of section 15 of Act 24 of 1956, as substituted by section 22 of Act 83 of 1992; amendment of section 16 of Act 24 of 1956, as substituted by section 16 of Act 86 of 1984, substituted by section 9 of Act 50 of 1986, amended by section 4 of Act 54 of 1991 and substituted by section 23 of Act 83 of 1992; amendment of section 19 of Act 24 of 1956; amendment of section 22 of Act 24 of 1956; and amendment of section 28 of Act 24 of 1956, as substituted by section 3 of Act 94 of 1997

18. Sections 4(2), 4(4), 12(2), 13A(2)(a), 13A(6)(a), 13A(7), 13B(3), 15(1), 16(1), 16(7), 19(5)(b)(iii), 22(1), 28(4)(a) and 28(12) of the Pension Funds Act, 1956 (Act No. 24 of 1956), are hereby amended by the deletion of the phrase “**by regulation**”, wherever it occurs in these sections.

Amendment of section 3 of Act 25 of 1956, as amended by section 20 of Act 103 of 1979, section 1 of Act 44 of 1988, section 36 of Act 9 of 1989, section 22 of Act 54 of 1989, section 33 of Act 104 of 1993 and section 211 of Act 66 of 1995

19. Section 3 of the Friendly Societies Act, 1956 (Act No. 25 of 1956), is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) (a) Despite subsection (1), a friendly society which has been established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995, may elect to apply for registration in terms of section 5 of this Act.

(b) The registration of a friendly society referred to in paragraph (a) may be cancelled in accordance with Chapter V of this Act only.”.

Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992, section 67 of Act 104 of 1993, section 5 of Act 22 of 1997, section 1 of Act 12 of 2000, section 45 of Act 37 of 2002, section 117 of Act 45 of 2002 and section 117 of Act 36 of 2004

20. Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is hereby amended—

(a) by the insertion before the definition of “board” of the following definition:

“**‘appeal board’** means the appeal board established by section 26A;”;

(b) by the deletion of the definition of “**board of appeal**”;;

(c) by the insertion after the definition of “chief actuary” of the following definition:

- “**‘decision-maker’** means—
- (a) the executive officer; or
 - (b) any other person who has made a decision under a power conferred or a duty imposed on that person by or under any law and which law grants a right of appeal to the appeal board to any person aggrieved by a decision of that person;” 5
- (d) by the substitution in paragraph (a) for subparagraph (iii) of the definition of “**financial institution**” of the following subparagraph:
- “(iii) a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002, a manager, trustee **[or]**, custodian or nominee company registered or approved in terms of that Act, and an authorised agent of such a manager;” 10
- (e) by the deletion of subparagraph (iv) of paragraph (a) in the definition of “**financial institution**”; 15
- (f) by the substitution for subparagraphs (vii), (viii) and (ix) of paragraph (a) in the definition of “**financial institution**” of the following subparagraphs:
- “(vii) any ‘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); 20
 - (viii) any ‘independent intermediary’ or representative as defined in—
 - (aa) section 1(1) of the Short-term Insurance Act, 1998;
 - (bb) regulation 3.1 of the Regulations under the Long-term Insurance Act, 1998; or 25
 - (ix) any Lloyd’s underwriter as defined in section 1(1) of the Short-term Insurance Act, 1998, and referred to in section 56 of that Act;” and
- (g) by the substitution in paragraph (b) for subparagraph (i) of the definition of “**financial institution**” of the following subparagraph: 30
- “(i) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), **[or]** a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007), which deals with trust property as a regular feature of its business;” 35

Amendment of section 3 of Act 97 of 1990, as amended by section 6 of Act 12 of 2000

21. Section 3 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is hereby amended by the substitution for paragraph (a) of the following paragraph: 40

“(a) to supervise **[the]** and enforce compliance with the laws regulating financial institutions and the provision of financial services;”.

Amendment of section 7 of Act 97 of 1990, as amended by section 2 of Act 12 of 2000

22. Section 7 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is hereby amended by the substitution for subsection (2) of the following subsection: 45

“(2) If a member or an alternate member of the board for any reason vacates his or her office, the **[State President]** Minister may appoint a person to act in the place of such member or alternate member for the unexpired period of his or her term of office.”.

Substitution of section 10 of Act 97 of 1990, as amended by section 8 of Act 12 of 2000 50

23. The following section is hereby substituted for section 10 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Committees of board

10. (1) The board may, subject to subsection (2), establish committees to

assist it in the performance of its functions and it may at any time dissolve or reconstitute such committees.

(2) (a) A committee consists of as many persons as the board considers necessary.

(b) The board may, subject to section 6B(1)(a) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), appoint any person, who would not be disqualified under section 5 from becoming a board member, as a member of a committee.

(c) A member of a committee is appointed on the terms and conditions as the board may determine.

(3) The board must establish an enforcement committee in accordance with section 10A to be responsible for enforcing compliance with the laws regulating financial institutions and the provision of financial services.

(4) The board may terminate the membership of a member of a committee if—

(a) the performance by the member of the powers and functions assigned to the member of that committee is unsatisfactory;

(b) the member is unable to perform the functions of the committee effectively;

(c) the member has failed to comply with or breached any applicable code of conduct; or

(d) the conduct of the member negatively impacts on the integrity of the board or relevant committee.

(5) If the board does not designate a chairperson for a committee, the committee may elect a chairperson from amongst its members.

(6) The board must provide funding to its committees to enable them to perform their functions effectively.

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

Insertion of section 10A in Act 97 of 1990

24. The following section is hereby inserted after section 10 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Enforcement committee

10A. (1) (a) The enforcement committee—

(i) must consist of sufficient persons with appropriate knowledge and experience so as to enable the committee to perform the functions entrusted to it by this Act or any other law; and

(ii) must include advocates or attorneys with at least ten years experience; and

(iii) may include a judge.

(b) The enforcement committee must be chaired by a person referred to in paragraphs (a)(ii) or (iii).

(c) The board must appoint the chairperson and as many deputy chairpersons as necessary from the members of the committee referred to in paragraph (a)(ii) or (iii).

(2) (a) The chairperson or deputy chairperson of the committee, with the assistance of employees of the board designated by the executive officer appointed in terms of section 13, is responsible for—

(i) managing the matters referred to the enforcement committee; and

(ii) assigning these matters to a panel composed of not less than three members of the enforcement committee, who are suitably qualified to decide on a particular matter.

(b) The chairperson of a panel must be the chairperson or a deputy chairperson of the enforcement committee and has a casting vote in the event of an equality of votes.

(3) The board may at any time reconstitute the enforcement committee, but a reconstitution does not affect the composition of a panel referred to in subsection 2(a)(ii) during the course of proceedings before that panel.

(4) If, before or during a hearing in which a member is participating, it becomes apparent that the member has an interest in a matter referred to the enforcement committee, the member must immediately disclose this interest to the panel designated to hear the matter and withdraw from any further involvement in that hearing.

(5) If a member of a panel is unable to complete a hearing because of resignation, illness, death or withdrawal from a hearing, the chairperson or a deputy chairperson of the enforcement committee may—

- (a) replace the member;
- (b) despite subsection (2)(a)(ii), direct that the hearing of that matter must proceed before the remaining members of the panel; or
- (c) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.”.

Insertion of section 15 in Act 97 of 1990

25. The following section is hereby inserted after section 14 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Acting executive officer

15. The Minister, after consultation with the board, may appoint a person to act as executive officer during—

- (a) a vacancy in the office of the executive officer, and the person so appointed will act until an executive officer is appointed in terms of section 13; or
- (b) any period when the executive officer is for any reason unable to perform the functions of the office.”.

Amendment of section 20 of Act 97 of 1990, as amended by section 6 of Act 41 of 1992

26. Section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Minister may delegate any power conferred upon him or her by this Act, excluding the power to make regulations and the power to appoint the members of the board, to the Director-General[: Finance] or any other [officer in the Department of Finance] official of the National Treasury.

(2) The board may—

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

Amendment of section 22 of Act 97 of 1990, as amended by section 7 of Act 41 of 1992 and section 15 of Act 12 of 2000

27. Section 22 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) No member or alternate member of the Board, a member of a committee of the Board, a member of the appeal board or a person referred to in section 13 may, subject to paragraph (b) and subsection (2), disclose to any other person any information obtained in the performance of functions under this Act, the Acts referred to in the definition of “financial institution”, the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), the Financial Institutions (Protection

of Funds) Act, 2001 (Act No. 28 of 2001) or the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(b) Despite the provisions of paragraph (a), disclosure of information may be made—

- (i) in the course of performing functions under any law;
- (ii) for the purposes of legal proceedings;
- (iii) when required to do so by a court; or
- (iv) by the board, the executive officer or deputy executive officer if in their opinion, disclosure is in the public interest.”

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Substitution of section 23 of Act 97 of 1990, as substituted by section 16 of Act 12 of 2000

28. The following section is hereby substituted for section 23 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Limitation of liability

23. [The Minister, the board, a member or alternate member of the board or the board of appeal or any officer or employee in the employment of the board] No person shall [not] be liable for any loss sustained by, or damage caused to, any other person as a result of anything done or omitted by [any such functionary, body or] that person in the bona fide, but not grossly negligent, exercise of any power or the carrying out of any duty or the performance of any function under or in terms of this Act [or any other law], the Acts referred to in the definition of “financial institution”, the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), or the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”

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Substitution of section 26 of Act 97 of 1990, as amended by section 8 of Act 41 of 1992, section 105 of Act 88 of 1996 and section 18 of Act 12 of 2000

29. The following section is hereby substituted for section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Appeal against decision of decision-maker

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26. (1) A person who is aggrieved by a decision of a decision-maker may, subject to the provisions of another law, appeal against that decision to the appeal board in accordance with the provisions of this Act or such other law.

(2) An appeal must be lodged within 30 days of the person becoming aware of, or ought to have become aware of, a decision, in the manner and on payment of the fees prescribed by the Minister.

(3) An appeal lodged in terms of this section does not suspend any decision of a decision-maker pending the outcome of an appeal, unless the chairperson or a deputy chairperson of the appeal board, on application by a party, directs otherwise.”

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Insertion of sections 26A and 26B in Act 97 of 1990

30. The following sections are hereby inserted after section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Appeal board

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26A. (1) An appeal board is hereby established.

(2) The appeal board consists of as many members, appointed by the Minister, as the Minister considers necessary, including—

- (a) at least two advocates or attorneys with a minimum of 10 years experience, or judges; and

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- (b) at least four persons who, in the opinion of the Minister, have experience and expert knowledge of the financial services industry.
- (3) A person may not be a member of the appeal board if that person—
 - (a) is not a citizen of the Republic or is not ordinarily resident in the Republic; 5
 - (b) is an office-bearer of any political party;
 - (c) is a member of Parliament or a provincial legislature or a municipal councillor;
 - (d) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person’s estate; 10
 - (e) is subject to an order of court holding that person to be mentally unfit or disordered;
 - (f) has been removed from an office of trust;
 - (g) has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, other than an offence committed prior to 27 April 1994 associated with political objectives, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), or any other offence involving dishonesty; 15
 - (h) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; or
 - (i) has been sanctioned by any other national or international statutory regulatory body for the contravention of a law relating to the regulation and supervision of financial institutions or the rendering of financial services. 20
- (4) (a) A member of the appeal board is appointed for a maximum period of three years. 25
- (b) The Minister may reappoint a member of the appeal board at the expiry of that member’s term of office.
- (5) (a) The appeal board must be chaired by a judge who has been discharged from active service or an advocate or attorney referred to in subsection (2)(a). 30
- (b) The Minister appoints the chairperson and deputy chairperson of the appeal board from the members of the appeal board.
- (6) The Minister—
 - (a) must remove a member from office if that member no longer meets the criteria referred to in subsection (3); 35
 - (b) may, after affording the member a reasonable opportunity to be heard, terminate the period of office of a member of the appeal board—
 - (i) if the performance of the member is unsatisfactory; or
 - (ii) if the member is unable to perform the functions of office effectively. 40
- (7) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board. 45
- (8) The Minister may at any time reconstitute the appeal board, but a reconstitution does not affect the composition of a panel referred to in section 26B during the course of proceedings before that panel. 50
- (9) Any vacancy that occurs on the appeal board must be filled by the appointment of another person by the Minister, subject to the provisions of subsections (2) and (3), and any person so appointed holds office for a period referred to in subsection (4)(a). 55
- (10) A member of the appeal board who is not in the full-time employment of the State must be paid the remuneration and allowances as the Minister may from time to time determine.
- (11) Secretarial support for the appeal board must be provided by the board. 60
- (12) The board is responsible for the expenditure of the appeal board.

Panel and appeal proceedings

- 26B.** (1) (a) The chairperson or deputy chairperson of the appeal board is responsible for managing the caseload of the appeal board and must assign each appeal to a panel constituted as set out in this section.
- (b) Any reference in this Act or any other law to the appeal board must be construed as including a reference, where appropriate in the case of a particular appeal, to a panel to whom an appeal is or was assigned.
- (2) (a) A panel of the appeal board consists of not less than three members of the appeal board, who are suitably qualified to decide on the particular appeal.
- (b) Subject to paragraph (c), the chairperson or deputy chairperson appoints a chairperson that presides over a hearing of a panel, and that chairperson has a casting vote in the event of an equality of votes.
- (c) The chairperson presiding over a hearing of a panel must be an advocate, attorney or judge, as the case may be, referred to in section 26A(2)(a).
- (3) If, before or during a hearing in which a member is participating, it becomes apparent that the member has an interest in a matter referred to the appeal board, the member must—
- (a) immediately and fully disclose this interest to the other members of the panel designated to hear the matter; and
- (b) withdraw from any further involvement in that hearing.
- (4) If, because of resignation, illness, death or withdrawal from a hearing, a member of the panel is unable to complete a hearing, the chairperson of the appeal board may—
- (a) replace that member;
- (b) direct that the hearing of that matter must proceed before the remaining members of the panel; or
- (c) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (5) When the chairperson of a panel designated to hear an appeal deems it necessary that the panel be assisted by an assessor having expert knowledge of a particular relevant matter, the panel may co-opt any such person to participate in the appeal as an assessor of the panel, without any right of participation in any decision.
- (6) An appeal is heard on the date and at the time and place determined by the chairperson of the panel.
- (7) The chairperson of a panel, subject to this Act, determines the procedure for hearing an appeal.
- (8) Any party to an appeal may be represented by a legal representative.
- (9) The appeal board must conduct its hearings in public, unless the chairperson of the panel which conducts the hearing rules that specific persons or groups of persons be excluded from the hearing for a reason that would be justifiable in civil proceedings before a High Court.
- (10) An appeal is decided on the written evidence, factual information and documentation submitted to the decision-maker before the decision, which is the subject of the appeal, was taken.
- (11) Subject to the provisions of subsection (12) no oral or written evidence or factual information and documentation, other than what was made available to the decision-maker, may be submitted to the panel by a party to the appeal.
- (12) (a) Despite the provisions of subsection (11) the chairperson of a panel designated to hear an appeal may on application by—
- (i) the appellant concerned, and on good cause shown, allow further oral and written evidence or factual information and documentation not made available to the decision-maker prior to the making of the decision against which the appeal is lodged; or
- (ii) the decision-maker concerned, and on good cause shown, allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record on appeal.
- (b) If further oral and written evidence or factual information and documentation is allowed into the record on appeal under subparagraph (a)(i), the matter must revert to the decision-maker concerned for reconsideration, and the appeal is deferred pending the final decision of the decision-maker.
- (c) If, after the decision-maker concerned has made a final decision as contemplated in paragraph (b), the appellant continues with the appeal by giving written notice to the

secretary, the record on appeal must include the further oral evidence, properly transcribed, written evidence or factual information and documentation allowed, and further reasons or documentation submitted by the decision-maker concerned.

(13) (a) For purposes of allowing further oral evidence in terms of subsection (12)(a) the panel may—

- (i) summon any person to appear before it 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 called as a witness at an appeal.

(b) Any person summoned to provide oral evidence is entitled to legal representation at his, her or its own expense.

(c) Any person who has been duly summoned under subparagraph (a)(i) and who, without sufficient cause—

- (i) fails to appear at the time and place specified in the summons;
- (ii) fails to remain in attendance until excused by the board from further attendance;
- (iii) refuses to take the oath or to make an affirmation as contemplated in subparagraph (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,

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding two years or to both a fine and such imprisonment.

(14) (a) The decision of the majority of the members constituting a panel is the decision of the appeal board.

(b) The decision must be in writing and a copy must be furnished to every party to the appeal within a reasonable period.

(15) The appeal board may—

- (a) confirm, set aside or vary the decision under appeal, and order that any such decision of the appeal board be given effect to; or
- (b) remit the matter for reconsideration by the decision-maker concerned in accordance with such directions, if any, as the appeal board may determine.

(16) The appeal board may make such order as to costs as it may deem suitable and fair, including an order regarding the costs referred to in section 26A(13) and the refunding of any fees referred to in section 26(2) paid by the appellant.

(17) An order by the appeal board 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 appeal board held its sitting.

(18) The decision of the appeal board must be made public.

(19) (a) The Minister may make regulations, not inconsistent with this Act—

- (i) regarding any matter which he or she is required or permitted to prescribe in connection with the appeal board; and
- (ii) on any matter which the Minister deems necessary or expedient to prescribe to ensure that the objectives of this Act regarding the appeal board is achieved.

(b) Different regulations may so be made in respect of different categories of appeals or applications to the appeal board, appellants or fees.”.

Amendment of section 27 of Act 97 of 1990

31. The following section is hereby substituted for section 27 of the Financial Services Board Act, 1990 (Act No. 97 of 1990):

“Offences and penalties

27. Any person who contravenes the provisions of section 22 or 24 shall be guilty of an offence and on conviction liable to a fine not exceeding **[R4 000] R1 million** or to imprisonment for a period not exceeding **[two] five** years or to both such fine and such imprisonment.”.

Amendment of section 50 of Act 52 of 1998

32. Section 50 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Registrar may, by notice, direct a long-term insurer or other person who, on or after the date of notice referred to in subsection (1), or a directive referred to in subsection (3), carries on the business practice concerned, to rectify, to the satisfaction of the Registrar, anything which was caused by or arose out of that carrying on of the business concerned: Provided that the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”.

Amendment of section 49 of Act 53 of 1998

33. Section 49 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Registrar may, by notice, direct a short-term insurer or other person who, on or after the date of notice referred to in subsection (1), or a directive referred to in subsection (3), carries on the business practice concerned, to rectify, to the satisfaction of the Registrar, anything which was caused by or arose out of that carrying on of the business concerned: Provided that the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”.

Amendment of section 1 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004

34. Section 1 of the National Payment Systems Act, 1998 (Act No. 78 of 1998), is hereby amended by—

- (a) the substitution for the definition of **“clearing, netting and settlement agreements”** of the following definition:
 - “**‘clearing, netting and settlement agreements’** means written agreements with regard to clearing, netting or settlement, concluded between **[Reserve Bank settlement system participants or designated]** clearing system participants or settlement system participants;”;
- (b) the insertion after the definition of **“clearing, netting and settlement agreements”** of the following definition:
 - “**‘clearing system participant’** means a bank, a mutual bank, a co-operative bank, a branch of a foreign institution or designated clearing system participant that clears in the manner contemplated in section 4(2)(d)(i);”;
- (c) the insertion after the definition of **“co-operative bank”** of the following definition:
 - “**‘designated clearing system participant’** means a person specified in the notice referred to in section 6(3)(a);”;
- (d) the substitution for the definition of “netting” of the following definition:
 - “**‘netting’** means the determination of the nett payment obligations between two or more **[settlement system]** clearing system participants within a payment clearing house or the determination of the nett settlement obligations between two or more settlement system participants within a settlement system;”;
- (e) the substitution for the definition of “payment clearing house” of the following definition:
 - “**‘payment clearing house (PCH)’** means an arrangement between two or more clearing system participants and Reserve Bank settlement system participants, excluding a designated settlement system operator, governing the clearing or netting of payment instructions between those clearing system participants and Reserve Bank settlement system participants;”;
- (f) the substitution for the definition of **“payment obligation”** of the following definition:
 - “**‘payment obligation’** means an indebtedness that is owed by one clearing system participant or settlement system participant to another

clearing system participant or settlement system participant as a result of the clearing of one or more payment instructions;”.

- (g) by the substitution for the definition of “systemic risk” of the following definition:

“**‘systemic risk’** means the risk that failure of one or more settlement system participants, for whatever reason, to meet their payment obligations, including the payment obligations of clearing system participants, or their settlement obligations may result in any or all of the other settlement system participants being unable to meet their respective payment or settlement obligations;”.

Amendment of section 3 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007

35. Section 3 of the National Payment Systems Act, 1998 (Act No 78 of 1998), is hereby amended by—

- (a) the substitution in subsection (3) for paragraph (b) of the following paragraph: 15

“(b) a designated clearing system participant [an institution or body referred to in section 2 of the Banks Act, 1990, and in paragraph (dd)(i) of the definition of ‘the business of a bank’ in section 1 of that Act],”;

- (b) the deletion of subsection (3A); and 20

- (c) the substitution for subsection (4) of the following subsection:

“(4) No person may participate in the Reserve Bank settlement system unless—

- (a) such person is the Reserve Bank, a bank, a mutual bank, a co-operative bank or a branch of a foreign institution and, in the case where a payment system management body has been recognised by the Reserve Bank as contemplated in subsection (1), such person is a member of the payment system management body so recognised; **[or]** 25

- (b) such person is a designated settlement system operator; or 30

- (c) such person meets the criteria for participation in the Reserve Bank settlement system as established by the Reserve Bank in consultation with the payment system management body.”.

Amendment of section 4 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007 35

36. Section 4 of the National Payment Systems Act, 1998 (Act No. 78 of 1998), is hereby amended by—

- (a) the substitution in subsection (2)(c) for subparagraph (i) of the following subparagraph:

“(i) recommend for approval by the Reserve Bank, criteria subject to which any person is granted **[limited]** membership of the payment system management body or is to be authorised to act as a system operator or a PCH system operator within a payment system; and”;

- (b) the substitution in subsection (2) for paragraph (d) of the following paragraph: 45

“(d) to recommend for approval by the Reserve Bank criteria subject to and in accordance with which a member that is also a Reserve Bank settlement system participant may be authorised to—

- (i) allow a bank, a mutual bank, a co-operative bank, a designated clearing system participant or branch of a foreign institution that is not a Reserve Bank settlement system participant to clear; or 50

- (ii) clear on behalf of a bank, a mutual bank, a co-operative bank, a designated clearing system participant or a branch of a foreign institution that is not a Reserve Bank settlement system participant: 55

Provided that the member shall settle payment obligations on behalf of such bank, mutual bank, co-operative bank, designated clearing

system participant or branch of a foreign institution referred to in subparagraphs (i) and (ii).”.

Amendment of section 6 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007

37. Section 6 of the National Payment Systems Act, 1998 (Act No. 78 of 1998), is hereby amended by—

- (a) the substitution for the heading of section 6 of the following heading:
 - “**Clearing provisions and designated clearing system participants**”;
- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) bank, mutual bank, a designated clearing system participant, a co-operative bank or branch of a foreign institution that is allowed to clear in terms of section 4(2)(d)(i).”;
- (c) the addition after subsection (2) of the following subsection:
 - “(3) (a) The Reserve Bank may designate a clearing system participant by notice in the *Gazette*, which notice must specify—
 - (i) the name of the clearing system participant that is the subject of the designation;
 - (ii) the Reserve Bank settlement system participant or participants associated with that clearing system participant; and
 - (iii) any terms and conditions to which the designation is subject.
 - (b) The Reserve Bank may vary or revoke any designation made under paragraph (a)—
 - (i) by amending or revoking any condition to which the designation is subject; or
 - (ii) by making the designation subject to a new condition or new conditions.
 - (c) In determining whether or not to vary or revoke a designation, the Reserve Bank may have regard to any or all of the following:
 - (i) Any failure to comply with any condition to which the designation is subject;
 - (ii) whether or not the designated clearing system participant has knowingly furnished information or documents which are false or misleading in any material respect to the Reserve Bank in connection with the designation;
 - (iii) whether or not it is in the public interest to revoke the designation;
 - (iv) any other matters that the Reserve Bank considers appropriate.
 - (d) No variation of the conditions to which a designation is subject or revocation of designation shall have retroactive effect.
 - (e) The Reserve Bank must, after having given written notice to the Reserve Bank settlement system participant who settles payment obligations on behalf of the designated clearing system participant and designated clearing system participant, vary or revoke the designation of that designated clearing participant by notice in the *Gazette*.”.

Amendment of section 7 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007

38. Section 7 of the National Payment Systems Act, 1998 (Act No. 98 of 198), is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) the first-mentioned person is the Reserve Bank, a bank, mutual bank, a co-operative bank, a designated clearing system participant, branch of a foreign institution, or a designated settlement system operator; or”.

Amendment of section 8 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007

39. Section 8 of the National Payment Systems Act, 1998 (Act No. 98 of 1998), is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:

- “(1) The provisions of thi section apply despite anything to the contrary in the law relating to insolvency or in the Companies Act, the Banks Act, the Co-operative Banks Act, the Postal Services Act, 1998 (Act 124 of 1998), or the Mutual Banks Act.”;
- (b) the substitution for subsection (2) of the following subsection: 5
 “(2) If a curator or similar official is appointed to a clearing system participant or a settlement system participant, the curator or similar official is bound by any—
 (a) provision contained in the settlement system rules or in clearing, netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements; and 10
 (b) payment or settlement that is final and irrevocable in terms of section 5(2) or (3).”;
- (c) the substitution for subsection (3) of the following subsection:
 “(3) A curator or similar official appointed to a clearing system participant or settlement system participant may give written notice to the Reserve Bank to withdraw such participant’s participation in the clearing system or the Reserve Bank settlement system, in which event such clearing system participant or settlement system participant shall no longer be entitled to clear or participate in the Reserve Bank settlement system, other than for purposes of discharging payment or settlement obligations in accordance with the settlement system rules or clearing, netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements.”; 20 25
- (d) the substitution for subsection (4) of the following subsection: 30
 “(4) When an application for the winding-up of a clearing system participant or Reserve Bank settlement system participant is made, a copy of—
 (a) the application for winding-up, when it is presented to the court; and 35
 (b) any subsequent winding-up order, when it is granted, must be lodged with the Reserve Bank as soon as practicable.”;
- (e) the substitution for subsection (6) of the following subsection:
 “(6) If a clearing system participant or settlement system participant is wound up, the liquidator or similar official is bound by— 40
 (a) any provision contained in the rules of the settlement system or in clearing, netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or settlement system participant in relation to such agreements; and 45
 (b) any payment or settlement that is final and irrevocable in terms of section 5(2) or (3).”;
- (f) the substitution for subsection (7) of the following subsection:
 “(7) A clearing system participant or settlement system participant in respect of whom a copy of a winding-up order has been lodged with the Reserve Bank in terms of subsection (4) must no longer be entitled to clear or participate in any settlement system, other than for purposes of discharging payment or settlement obligations in accordance with the rules of the settlement system or clearing, netting and settlement agreements to which that clearing system participant or settlement system participant is a party, or any rules and practices applicable to the clearing system participant or the settlement system participant in relation to such agreements.”. 50 55

Amendment of section 10 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 and section 90 of Act 40 of 2007

40. Section 10 of the National Payment Systems Act, 1998 (Act No. 78 of 1998), is hereby amended by the substitution for subsections (2) and (3) of the following subsections: 5

- “(2) Subject to subsection (3), any information—
 (a) obtained by the Reserve Bank in terms of subsection (1); and
 (b) identifying a specific clearing system participant or Reserve Bank settlement system participant,

is confidential and may not be disclosed by any director or officer of the Reserve Bank to any person, except to an officer of the Reserve Bank who requires that information for purposes of the execution of his or her duties in terms of this Act, the South African Reserve Bank Act, the Banks Act, the Co-operative Banks Act or the Mutual Banks Act. 10

(3) Despite subsection (2) of this section and section 33 of the South African Reserve Bank Act, the Reserve Bank may disclose [any] information [of which the disclosure is necessary to protect the integrity, effectiveness or security of the payment system, or if required by law to do so]— 15

- (a) in the course of performing functions under any law;
 (b) for the purpose of legal proceedings; 20
 (c) when required to do so by a court;
 (d) if in the opinion of the Reserve Bank, disclosure is in the public interest.”, or
 (e) that is already publicly available.”

Amendment of section 13 of Act 78 of 1998, as amended by section 1 of Act 22 of 2004 25

41. Section 13 of the National Payment Systems Act, 1998 (Act No. 78 of 1998), is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Despite anything to the contrary in any law relating to the retention of records, the Reserve Bank, Reserve Bank settlement system participants, clearing system participants, PCH system operators and system operators must retain all records obtained by them during the course of the operation and administration of a payment or Reserve Bank settlement system for a period of five years from the date of each particular record.”. 30

Amendment of section 1 of Act 28 of 2001 35

42. Section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), is hereby amended—

- (a) by the insertion before the definition of “**company**” of the following definitions:
 “**administrative sanction**’ means a sanction contemplated in section 6D(2);
applicant’ means the registrar or the directorate that refers a person to the enforcement committee;
board’ means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);” 40 45
 (b) by the insertion after the definition of “**company**” of the following definitions:
 “**contravention**’ includes any non-compliance with any law;
determination’ means the finding of the enforcement committee, the administrative sanction, the reasons for the imposition of such sanction and any ancillary order made by the enforcement committee under this Act; 50
directorate’ means the Directorate of Market Abuse referred to in section 83 of the Securities Services Act, 2004 (Act No. 36 of 2004);
enforcement committee’ means the enforcement committee established in terms of section 10(3) of the Financial Services Board Act, 1990 (Act No. 97 of 1990);” 55

- (c) by the insertion after the definition of “**institution**” of the following definition:
- “**law**, for the purposes of—
- (a) section 6, means—
 - (i) this Act;
 - (ii) the Financial Services Board Act, 1990;
 - (iii) the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998);
 - (iv) the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004);
 - (v) an Act referred to in the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, 1990;
 - (vi) the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 and any subordinate legislation, enactment or measure made under these Acts;
 - (b) sections 6A to 6I, means the Financial Intelligence Act, 2001 (Act No. 38 of 2001), and the Acts referred to in paragraph (a)—
 - (i) including any subordinate legislation, enactment or measure made under those Acts;
 - (ii) excluding—
 - (aa) the Medical Schemes Act, 1998;
 - (bb) the Banks Act, 1990 (Act No. 94 of 1990);
 - (cc) the Mutual Banks Act, 1993 (Act No. 124 of 1993);
 - and
 - (dd) the Co-operative Banks Act, 2007 (Act No. 40 of 2007);”;
- (d) by the insertion after the definition of “nominee company” of the following definition:
- “**person** includes any institution, partnership or trust;”;
- (e) by the substitution for paragraph (c) of the definition of “registrar” of the following paragraph:
- “(c) except for the purposes of sections 6A to 6I, the registrar of Medical Schemes referred to in section 1 of the Medical Schemes Act, 1998;”;
- (f) by the insertion after the definition of “registrar” of the following definition:
- “**respondent** means any person identified by the registrar or the directorate as having allegedly contravened a law;”.

Amendment of section 6 of Act 28 of 2001

43. Section 6 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), is hereby amended by the deletion of subsection (4).

Insertion of sections 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H and 6I in Act 28 of 2001

44. The following sections are hereby inserted in the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), after section 6:

Referral to enforcement committee

- 6A.** (1) (a) Despite any provision in a law, if a registrar is of the opinion that a person is contravening a provision of a law in respect of which the registrar is not authorised to impose an administrative sanction, the registrar may refer the alleged contravention to the enforcement committee.
- (b) A registrar authorised to impose sanctions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), must refer an alleged contravention under the Financial Intelligence Centre Act, 2001, to the enforcement committee.
- (2) The directorate may, after an investigation carried out by the directorate under Chapter VIII of the Securities Services Act, 2004, refer an alleged contravention to the enforcement committee.

Enforcement committee proceedings

- 6B.** (1) A referral under section 6A(1) or (2) must be accompanied by—
- (a) a notice setting out the details and nature of the alleged contravention and the administrative sanction that, in the opinion of the applicant, should be imposed; and
 - (b) an affidavit by or on behalf of the applicant setting out the facts and documents supporting the notice.
- (2) The applicant must, on referral of a matter under subsections 6A(1) or (2)—
- (a) cause a copy of the notice and affidavit referred to in subsection (1) to be delivered to the respondent’s residential address, registered office or principal place of business; and
 - (b) afford the respondent the opportunity to submit an answering affidavit within 30 days of delivery of the notice and affidavit to the respondent.
- (3) Any answering affidavit by or on behalf of the respondent must—
- (a) be filed by the respondent with the enforcement committee and a copy thereof must be delivered to the applicant;
 - (b) state which of the allegations of the applicant are admitted and which are denied and, if denied, the respondent’s version of the relevant facts.
- (4) Within 30 days of delivery to the applicant of the respondent’s answering affidavit, the applicant may deliver a replying affidavit in the manner stated in subsection (2)(a) or at another address elected by the respondent for such service.
- (5) No further affidavits may be filed without the permission of the enforcement committee.
- (6) The applicant that referred a matter may at any time withdraw a referral under subsection (1) or (2) on notice to the enforcement committee and the respondent.
- (7) (a) The applicant may, prior to the referral of a matter to the enforcement committee or during or after the enforcement committee proceedings, enter into a written settlement agreement with the respondent.
- (b) The agreement must be filed with the chairperson of the enforcement committee to be made an order of the enforcement committee, as contemplated in section 6D(2).

Hearing by enforcement committee

- 6C.** (1) The enforcement committee must within 30 days of the expiry of the time periods for the filing of affidavits referred to in section 6B(2), (3) (4) and (5) inform the applicant and respondent of the date, time and place of the hearing.
- (2) The applicant and respondent must not be given less than 30 days notice of the date of the hearing.
- (3) Where a matter cannot properly be decided on affidavit, the enforcement committee may order any person to appear before the panel to be examined and cross-examined as a witness and to produce a document specified in the summons.
- (4) Subject to this section the chairperson of the panel designated to hear a matter determines the procedure for the hearing.
- (5) Without derogating from the generality of subsection (4), the chairperson may—
- (a) in an urgent matter order that such matter be disposed of at such time, in such manner and in accordance with such procedure as the chairperson deems appropriate;
 - (b) with the consent of the parties, rule that a matter may be presented to the enforcement committee by way of a stated case, abbreviated pleadings or any other procedure which will expedite the matter;
 - (c) rule on the discovery and inspection of documents;
 - (d) require heads of argument to be filed by the parties;
 - (e) allow legal representation to the parties; or
 - (f) order that the issues be argued before the enforcement committee.

Determination by enforcement committee

6D. (1) The enforcement committee must determine whether the respondent has contravened a law.

(2) If the enforcement committee is satisfied that there was a contravention as contemplated in subsection (1) the enforcement committee may, despite the provisions of any law, impose any one or more of the following administrative sanctions:

- (a) Impose a penalty by ordering the respondent to pay a sum of money to the board;
- (b)
 - (i) order the respondent, other than a respondent referred to in subparagraph (ii), to pay to any person who suffered patrimonial loss or damage as a result of the contravention of a law a compensatory amount determined by the enforcement committee to make good the patrimonial loss or damage so suffered; or
 - (ii) if the respondent contravened section 73 of the Securities Services Act, 2004, order the respondent to pay to the board a compensatory amount calculated in accordance with section 77(1), (2), (3) or (4) of that Act.

(3) When determining an appropriate administrative sanction, the enforcement committee may 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 relevant sector of the financial services industry;
- (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 and the enforcement committee; and
- (i) any other factor, including mitigating factors submitted by the respondent, that the enforcement committee considers to be relevant.

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

(b) The decision of a majority of the members of a panel is a determination of the enforcement committee.

(5) The enforcement committee may as part of a determination make such order as to costs as it may deem suitable and fair, including the cost of constituting the enforcement committee panel and all expenses reasonably incurred by the applicant in investigating the alleged non-compliance and referring the matter to the enforcement committee.

Notification and enforcement of determination

6E. (1) As soon as the enforcement committee has issued a determination it must—

- (a) cause a copy of the determination to be delivered to the applicant and the respondent at the address stated in section 6B(4);
- (b) in a simultaneous written notice advise the respondent—
 - (i) to comply with the administrative sanction imposed by the enforcement committee within the period specified in the notice;
 - (ii) of the possibility of an appeal in terms of section 6F; and
 - (iii) that failure by the respondent to comply with the notice in terms of this subsection will result in the process contemplated in subsection (2).

(2) A determination by the enforcement committee has legal force as if made by the High Court, and if the respondent fails to comply with the

notice in terms of subsection (1)(b) and an appeal has not been noted, the applicant may forthwith file with the registrar of a competent court a certified copy of the notice and the determination, and the determination thereupon has the effect of a civil judgment and may be enforced as if lawfully given in that court in favour of the applicant.

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Appeal against determination

6F. (1) Subject to the appeal proceedings under the Financial Intelligence Centre Act, 2001, and subsection (2), a determination of the enforcement committee may be taken on appeal to the High Court as if the determination were a decision of a magistrate in a civil matter.

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(2) The launching of appeal proceedings does not suspend the operation or execution of a determination, unless the chairperson of the enforcement committee which dealt with the matter directs otherwise.

Disclosure of determination

6G. (1) A determination of the enforcement committee must be made public by the registrar or the directorate in a manner deemed appropriate by him or her.

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(2) Subsection (1) equally applies to any judgment on appeal or a settlement agreement made an order in terms of 6B(7)(b).

Utilisation of administrative sanction

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6H. (1) Any payment received by the board pursuant to an administrative sanction imposed under section 6D(2)(a) must, subject to subsection (2), exclusively be utilised for purposes of consumer education or the protection of the public.

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(2) A compensatory amount received pursuant to an order under section 6D(2)(b)(ii) must be dealt with in accordance with section 77(7), (8) and (9) of the Securities Services Act, 2004.

Saving of rights

6I. (1) Subject to subsection (2), no provision of this Act, whether it relates to civil or criminal matters, and no act performed under any such provision, may be construed as limiting any right of a person affected by the contravention to seek appropriate legal redress in terms of the common law or any other statutory law.

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(2) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of any law, the court must take into account any administrative sanction imposed in respect of the same set of facts.

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(3) An administrative sanction imposed by the enforcement committee does not constitute a previous conviction as contemplated in chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)."

Amendment of section 7 of Act 28 of 2001

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45. Section 7 of the Financial Institution (Protection of Funds) Act, 2001 (Act No. 28 of 2002), is hereby amended by the substitution for subsections (4) and (5) of the following subsections:

“(4) The registrar may, by notice in the *Gazette*, direct a financial institution which carries on the relevant business practice or method of conducting business on or after the date of the notice referred to in subsection (1), to rectify or repair [or repay] to the satisfaction of the registrar anything which was caused by, or arose out of, that business practice or method or conducting business: Provided that the Registrar may not make an order contemplated in section 6D(2)(b).

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(5) A financial institution which is directed to rectify or repair [or repay] anything in terms of subsection (4), must do so within 60 days after the financial institution is so directed.”.

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Amendment of section 1 of Act 37 of 2002

46. Section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “**auditor**” of the following definition: 5
 “**‘auditor’** means an auditor registered in terms of the [**Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)**] Auditing Profession Act, 2005 (Act No. 26 of 2005);”;
- (b) by the insertion in subsection (1) after the definition of “**Court**” of the following definition: 10
 “**‘document’** includes a document created, recorded, transmitted or stored in digital or other intangible but readable form by way of electronic, magnetic, optical or any similar means;”;
- (c) by the insertion after the definition of “regulation” of the following definition: 15
 “**‘regulatory authority’** means an entity established in terms of national legislation responsible for regulating activities or an industry, or sector of an industry;
- (d) by the substitution in subsection (1) for the definition of “**representative**” of the following definition: 20
 “**‘representative’** means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other [**mandatory agreement**] mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service— 25
 - (a) does not require judgment on the part of the latter person; or
 - (b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;”;
- (e) by the substitution in subsection (3)(b) for subparagraph (i) of the following subparagraph: 30
 “(i) the rendering by a bank, [**or**] mutual bank or co-operative bank of a service contemplated in paragraph (b)(ii) of the definition of ‘intermediary service’ where the bank, [**or**] mutual bank or co-operative bank acts merely as a conduit between a client and another product supplier;”;
- (f) by the substitution for subsection (4) of the following subsection: 35
 “(4) The provisions of this Act only apply to the rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of “financial product” in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993) or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), to the extent that such application is regulated in the code of conduct contemplated in section 15(2)(b).” 45

Amendment of section 4 of Act 37 of 2002

47. Section 4 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended by the addition of the following subsections: 50

- “(5) (a) The registrar may— 50
 - (i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person to conduct an on-site visit of the business and affairs of a provider or representative, to determine compliance with this Act; or 55
 - (ii) instruct an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).
- (b) A person conducting an on-site visit in terms of paragraph (a)(i) may—
 - (i) at any time during business hours—

- (aa) enter the premises of the provider or representative and the provider or representative must upon request provide any document;
 - (bb) search the premises of the provider or representative for any document; 5
 - (cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;
 - (dd) seize any document against the issue of a receipt, which may furnish proof of any failure to comply with the provisions of this Act; 10
 - (ii) require the provider or representative to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the provider or representative;
 - (iii) require any person that is holding or is accountable for any document to provide information and an explanation of that information. 15
- (6) After an on-site visit or inspection has been carried out in terms of subsection (5), the registrar may direct the provider, representative or person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or remedy any contravention of or failure to comply with any provision of this Act. 20
- (7) The registrar may make known—
- (a) the status and outcome of an inspection;
 - (b) the details of an inspection if disclosure is in the public interest;
 - (c) the outcome and details of an on-site visit if disclosure is in the public interest, by notice in the *Gazette* or by means of any other appropriate public media.”. 25

Amendment of section 7 of Act 37 of 2002

48. Section 7 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended by the addition of the following subsection:

“(3) An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, been issued with a licence for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of that financial services, or is a representative as contemplated in this Act.”.

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Amendment of section 8 of Act 37 of 2002

49. Section 8 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended by the addition of the following subsection:

“(10) (a) Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must— 40

- (i) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider’s business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of section 8(1);
- (ii) within 15 days of the appointment of a new director, member, trustee or partner, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require. 45

(b) If the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of section 8(1), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9.”. 50

Substitution of section 9 of Act 37 of 2002

50. The following section is hereby substituted for section 9 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002):

“Suspension and withdrawal of authorisation

9. (1) The registrar may, subject to subsection (2) and irrespective of whether the registrar has taken or followed, or is taking or following, any step or procedure referred to in section 4, at any time suspend or withdraw any licence (including the licence of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee—
- (a) no longer meets the requirements contemplated in section 8;
 - (b) did not, when applying for the licence, make a full disclosure of all relevant information to the registrar, or furnished false or misleading information;
 - (c) has failed to comply with any other provision of this Act; or
 - (d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), an amount or penalty under section 33(2), a penalty under section 41(2) and (3) or an administrative sanction under section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, amount or administrative sanction and any interest in respect thereof.
- (2) (a) Before suspending or withdrawing any licence, the registrar—
- (i) may consult any regulatory authority; and
 - (ii) must inform the licensee of the intention to suspend or withdraw and the grounds therefor and must give the licensee a reasonable opportunity to make a submission in response thereto.
- (b) Where the registrar contemplates the suspension of any licence, the registrar must also inform the licensee of—
- (i) the intended period of the suspension; and
 - (ii) any terms to be attached to the suspension, including—
 - (aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and
 - (bb) terms designed to facilitate the lifting of the suspension.
- (c) The registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the licence, and must notify the licensee of the decision.
- (d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice in the *Gazette* and may make known such information by means of any other appropriate public media.
- (3) Notwithstanding the provisions of subsection (2), the registrar may under urgent circumstances, where the registrar is satisfied on reasonable grounds that substantial prejudice to clients or the general public may occur—
- (a) provisionally suspend or withdraw a licence, and inform the licensee of the—
 - (i) grounds therefor; and
 - (ii) period and terms of suspension as referred to in subsection (2)(b),
 and give the licensee a reasonable opportunity to respond thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed; and
 - (b) make known such provisional suspension or withdrawal by notice in the *Gazette* and, if necessary, by means of any other appropriate public media.

- (4) (a) The registrar must, within a reasonable time after receipt of any response contemplated in subsection (3)(a) consider the response, and may thereafter decide to—
- (i) lift the provisional suspension or withdrawal; or
 - (ii) render the suspension or withdrawal final,
- and must inform the licensee accordingly. 5
- (b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice in the *Gazette* and, if necessary, in any other appropriate public media. 10
- (5) During any period of suspension, whether provisional or final, the licensee concerned is for the purposes of this Act regarded as a person who is not authorised to act as a financial services provider. 10
- (6) (a) A person whose licence has been withdrawn under this section is debarred for a period specified by the registrar from applying for a new licence. 15
- (b) The registrar may, on good cause shown, vary any such period.” 15

Repeal of section 10 of Act 37 of 2002

51. Section 10 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby repealed.

Amendment of section 11 of Act 37 of 2002 20

52. Section 11 of the Financial Advisory and Intermediary Services Act, 2002, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons therefor and the registrar may make known any such lapsing of a licence by notice in the *Gazette* and, if necessary by means of any other appropriate public media announcement.” 25

Amendment of section 13 of Act 37 of 2002

53. Section 13 of the Financial Advisory and Intermediary Services Act, 2002, Act No. 37 of 2002, is hereby amended— 30

- (a) by the substitution in subsection (1)(b)(i) for subparagraphs (aa) and (bb) of the following subparagraphs:
 - “(aa) that a service contract or other **[mandatory agreement] mandate**, to represent the provider, exists; and
 - (bb) that the provider accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any such contract or **[agreement] mandate**”; 35
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) at all times be satisfied that the provider’s representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, **[taking into consideration] and comply with the requirements [similar to those]** contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable;” 40
- (c) by the substitution for subsection (5) of the following subsection:
 - “(5) The registrar may require information from the authorised financial services provider, including the information referred to in subsection (4), so as to enable the registrar to maintain and continuously update a central register of all representatives and key individuals, which register must be published in any appropriate media.” 45

Amendment of section 14 of Act 37 of 2002

54. Section 14 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections: 55

“(1) An authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in section 13(2)(a) or has contravened or failed to comply with any provision of this Act in a material manner, is prohibited by such provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative’s name, and the names of the key individuals of the representative, are removed from the register referred to in section 13(3): Provided that any such provider must immediately take steps to ensure that the debarment does not prejudice the interest of clients of the representative, and that any uncompleted business of the representative is properly concluded.”

(2) For the purposes of the imposition of a prohibition contemplated in subsection (1), the authorised financial services provider must have regard to—

- (a) information regarding the conduct of the representative as provided by the registrar, the Ombud or any other interested person[; and
- (b) any contravention of, or failure to comply with , any relevant provision of this Act by the representative].

(3) (a) The authorised financial services provider must within a period of [30] 15 days after the removal of the names of a representative and key individuals from the register as contemplated in subsection (1), inform the registrar in writing thereof and provide the registrar with the reasons for the debarment in such format as the registrar may require.

(b) The registrar may make known any such debarment and the reasons therefor by notice in the *Gazette* or by means of any other appropriate public media.”.

Insertion of new section 14A in Act 37 of 2002

55. The following section is hereby inserted after section 14 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002):

“Debarment by registrar

14A. (1) The registrar may, subject to subsection (2), at any time debar a person, including a representative, for a specified period from rendering financial services if satisfied on the basis of available facts and information that the person—

- (a) does not meet, or no longer meets, the requirements contemplated in section 8(1)(a); or
- (b) has contravened or failed to comply with any provision of this Act.

(2) The provisions of section 9(2), regarding a decision to suspend a licence, apply with the necessary changes to the debarment of a person contemplated in subsection (1).

(3) An authorised financial services provider must within a period of five days after being informed by the registrar of the debarment of a representative or key individual, remove the names of that representative and key individuals from the register as contemplated in section 13(3).

(4) The registrar may make known any such debarment and the reasons therefor, or the lifting thereof, by notice in the *Gazette* or by means of any other appropriate public media.”.

Amendment of section 15 of Act 37 of 2002

56. Section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Different codes of conduct may be so drafted in respect of the rendering of a financial service to different categories of clients and of different categories of authorised financial services providers and their operations in different sectors of the financial services industry, and different categories of representatives.

(b) A code of conduct must be drafted for the rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of “financial product” in section 1(1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), [or] a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a

co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007).”.

Amendment of section 16 of Act 37 of 2002

57. Section 16 of the Financial Advisory and Intermediary Services Act, 2002, is hereby amended by the deletion in subsection (2) of the word “and” at the end of paragraph (e) and the insertion of the following paragraph after paragraph (e):

“(eA) the control or prohibition of incentives given or accepted by a provider; and”.

Amendment of section 17 of Act 37 of 2002

58. Section 17 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

“(b) Such person may be **[a director, member, auditor, trustee, principal officer, public officer or company secretary of any such provider, or]** any [other] person with suitable qualifications and experience determined by the registrar by notice in the *Gazette*, after consultation with the Advisory Committee.

(c) The provisions of section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a compliance officer.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) (a) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar after consultation with the Advisory Committee.

(b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer—

(i) has contravened or failed to comply with any provision of this Act; or

(ii) no longer complies with the criteria and guidelines contemplated in paragraph (a) of this subsection.

(c) The provisions of section 9(2) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b) of this subsection.

(d) The registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice in the *Gazette* or by means of any other appropriate public media.”.

Amendment of section 19 of Act 37 of 2002

59. Section 19 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) annually prepare, in respect of the relevant financial year of the provider, financial statements reflecting[, **with suitable particulars, the financial position of the business as at the last day of the financial year in question, and the results of the operations and cash flow information for the period then ended.**]—

(i) the financial position of the entity at its financial year end;

(ii) the results of operations, the receipt and payment of cash and cash equivalent balances;

(iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and

- (iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii);”;
- (b) by the substitution for subsection (2) of the following subsection: 5
- “(2) (a) An authorised financial services provider must cause the statements referred to in subsection (1)(b) to be audited and reported on in accordance with auditing pronouncements as defined in section 1 of the Auditing Professions Act, 2005 (Act No. 26 of 2005) by an external auditor approved by the registrar. **[, in order to produce—**
- (i) **an audited balance sheet, including such notes thereon or documents attached thereto as may be necessary;** 10
- (ii) **an audited income statement, including such notes thereon or documents attached thereto as may be necessary; and**
- (iii) **an audited financial statement of the source and application of funds].**
- (b) The financial statements must— 15
- (i) **be prepared in conformity with generally accepted accounting practice;**
- (ii) fairly represent the state of affairs of the provider’s business;
- (iii) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and 20
- (iv) be submitted by the authorised financial services provider to the registrar not later than **[six] four** months after the end of the provider’s financial year or such longer period as may be allowed by the registrar.”.
- (c) by the substitution for subsection (3) of the following subsection: 25
- “(3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and **[assets] financial products** held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice in the *Gazette* for different categories of financial services providers— 30
- (a) the amount of money and **[assets] financial products** at year end held by the provider on behalf of clients; 35
- (b) that such money and **[assets] financial products** were throughout the financial year kept separate from those of the business of the authorised financial services provider, and **[in the case of] report any instance of non-compliance identified in the course of the audit and the extent thereof;** and 40
- (c) any other information required by the registrar.
- (d) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs: 45
- “(a) the amount of money and **[assets] financial products** at year end held by the provider on behalf of clients;
- (b) that such money and **[assets] financial products** were throughout the financial year kept separate from those of the business of the authorised financial services provider, and **[in the case of] report any instance of non-compliance identified in the course of the audit and the extent thereof; and**” 50
- (e) by the addition of the following subsection:
- “(7) (a) A financial services provider may not change a financial year end without the approval of the registrar.
- (b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the Registrar of Companies established under the Companies Act, 1973 (Act No. 61 of 1973), regulating the financial soundness of the provider. 55
- (c) Where a change of a financial year end was approved by another regulatory authority as is contemplated in paragraph (b), the provider must inform the registrar of that approval within 14 days of the approval being granted.” 60

Amendment of section 33 of Act 37 of 2002

60. Section 33 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 5
 “(b) a penalty for punitive purposes in a sum determined in the discretion of the Court **[but not exceeding three times the amount of any profit or gain which may have accrued to the person involved as a direct result of any such act or omission];**” and
- (b) by the substitution for subsection (5) of the following subsection: 10
 “(5) The distributable balance must be distributed on a *pro rata* basis—
 (a) to all persons who **[are affected by the occurrences referred to in subsection (2) and who]** prove to the reasonable satisfaction of the registrar that they are persons who suffered losses as contemplated in [that] subsection (2); and 15
 (b) to the extent of the losses contemplated in subsection (2):
 Provided that no money may be distributed to a person who has contravened or failed to comply with any provision of this Act.”.

Amendment of section 34 of Act 37 of 2002 20

61. Section 34 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection: 25
 “(5) The registrar may direct an authorised financial services provider who, on or after the date of the publication of a notice referred to in subsection (1), carries on the business practice concerned in contravention of that notice, to rectify **[or reinstate]** to the satisfaction of the registrar **[any loss or damage]** anything which was caused by or arose out of the carrying on of the business practice concerned: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”; and 30
- (b) by the substitution for subsection (6) of the following subsection: 35
 “(6) An authorised financial services provider concerned who is under subsection (5) directed to rectify **[or reinstate]** anything, must do so within 60 days after such direction is issued.”.

Amendment of section 36 of Act 37 of 2002

62. Section 36 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph: 40
 “(a) contravenes or fails to comply with a provision of section 7(1) or (3), 8(8), 8(10)(a), 13(1) or (2), 14(1), 17(4), 18, 19(2), 19(4) or 34(4) or (6); [or]”; 45
- (b) by the addition of the following paragraphs: 50
 “(c) in the execution of duties imposed by this Act gives an appointed auditor or compliance officer information which is false, misleading or conceals any material fact; or
 (d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another such first-mentioned representative;”.

Repeal of section 43 of Act 37 of 2002

63. Section 43 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), is hereby repealed.

Amendment of section 15 of Act 45 of 2002

64. Section 15 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) direct a manager or trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”.

Substitution of section 18 of Act 45 of 2002

65. The following section is hereby substituted for section 18 of the Collective Investment Schemes Control Act, 2002:

“Power of registrar to impose fines

18. (1) The registrar may impose a fine in the case of any failure by a manager or third party to submit to the registrar or any other person designated by the registrar, within a period specified in terms of this Act any statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

(2) The registrar must, before imposing a fine, by written notice to the manager or third party—

- (a) inform the manager or third party of the registrar’s intention to impose a fine;
- (b) specify the particulars of the alleged failure;
- (c) set out the reasons for the intended imposition of a fine;
- (d) specify the amount of the fine intended to be imposed; and
- (e) call upon the manager or third party to show cause within a period specified by the registrar why the fine should not be imposed.

(3) If the registrar, after consideration of representations made by the manager or third party, decides to impose a fine, the registrar must by written notice inform the manager or third party that, not later than 30 days after the date of the notice, the manager or third party must—

- (a) pay the fine; or
- (b) appeal in terms of section 24 against the imposition of the fine to the board of appeal.

(4) If a manager or third party fails to pay the fine or fails to appeal within the period referred to in subsection (3), the registrar may file with the clerk or registrar of any competent court a statement certified by the registrar as correct, stating the amount of the fine imposed on the manager or third party, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the Board for a liquid debt in the amount specified in the statement.”.

Amendment of section 21 of Act 45 of 2002

66. Section 21 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The registrar may in writing direct any person who employed a practice or manner of administration, whether before, during or after the date of notice referred to in subsection (2), which was declared to be irregular or undesirable, to rectify in a manner required by the registrar anything which was caused by or arose out of the

employment of that irregular or undesirable practice or manner of administration: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”.

Amendment of section 1 of Act 36 of 2004 5

67. Section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended by the deletion of the definition of “enforcement committee”.

Amendment of section 18 of Act 36 of 2004

68. Section 18 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended by the substitution in subsection (2) for paragraph (bb) of the following paragraph: 10

“(bb) for the supervision by an exchange of compliance with the duties imposed on its authorised users by the Financial Intelligence Centre Act, 2001, the reporting of any non-compliance of these duties to the registrar and the assistance to be provided to the registrar in enforcing that Act, if the authorised users of that exchange are listed as accountable institutions in Schedule 1 to the Financial Intelligence Centre Act, 2001.” 15

Amendment of section 56 of Act 36 of 2004

69. Section 56 of the Securities Services Act, 2004, is hereby amended— 20
 (a) by the deletion of subsection (3); and
 (b) by the substitution for subsection (10) of the following subsection:
 “(10) [Sections] Section 95(2), (3) and (4) is, with the changes required by context, applicable to the imposition of a fine under [subsections (3) and] subsection (9).”.

Amendment of section 86 of Act 36 of 2004 25

70. Section 86 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended by the repeal of subsections (1), (2) and (3).

Amendment of section 87 of Act 36 of 2004

71. Section 87 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended by the repeal of subsection (3). 30

Amendment of section 94 of Act 36 of 2004

72. Section 94 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended—
 (a) by the substitution for paragraph (c) of the following paragraph: 35
 “(c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the investigation or inspection: Provided that the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”; 40
 and
 (b) by the deletion of paragraph (e).

Repeal of sections 97 to 106 of Act 36 of 2004

73. Sections 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of the Securities Services Act, 2004 (Act No. 36 of 2004), are hereby repealed. 45

Amendment of section 111 of Act 36 of 2004

74. Section 111 of the Securities Services Act, 2004 (Act No. 36 of 2004), is hereby amended by the deletion of subsections (1)(b), (2), (3), (5), (6) and (7).

Substitution of Item 2A in Part 3 of Schedule 1 to Act 14 of 2005, as inserted by Act 40 of 2007

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75. Item 2A in Part 3 of Schedule 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), is hereby substituted by the following Item:

“Co-operative Banks Act

2A. The following financial services co-operatives are required to register in terms of the Co-operative Banks Act, 2007, as a co-operative bank of a specific type—

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- (a) any primary co-operative that takes deposits and—
 - (i) has 200 or more members; and
 - (ii) holds deposits of members to the value of one million Rand or more; and
- (b) any secondary or tertiary co-operative whose members consist of at least—
 - (i) two or more co-operative banks;
 - (ii) two or more financial services co-operatives that takes deposits; or
 - (iii) one co-operative bank and one financial services co-operative that take deposits.”.

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Substitution of section 5A in Act 14 of 2005, as inserted by Act 40 of 2007

76. Section 5A of the Co-operatives Act, 2005 (Act No. 14 of 2005), is hereby substituted by the following section:

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“Application of Co-operative Banks Act

5A. The Co-operative Banks Act, 2007, applies to any co-operative registered under that Act or any—

- (a) primary co-operative that takes deposits and—
 - (i) has 200 or more members; and
 - (ii) holds deposits of members to the value of one million Rand or more; and
- (b) secondary or tertiary co-operative whose members consist of at least—
 - (i) two or more co-operative banks;
 - (ii) two or more financial services co-operatives that takes deposits; or
 - (iii) one co-operative bank and one financial services co-operative that take deposits.”.

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Substitution of section 3 of Act 40 of 2007

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77. Section 3 if the Co-operative Banks Act, 2007 (Act No. 40 of 2007), is hereby substituted by the following section:

“Application of Act

3. (1) This Act applies to all co-operative banks registered under this Act and to any—

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- (a) primary co-operative registered under the Co-operatives Act that takes deposits and—
 - [(a)](i) has 200 or more members; and
 - [(b)](ii) holds deposits of members to the value of one million Rand or more; and

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- (b) secondary or tertiary co-operative registered under the Co-operatives Act, whose members consist of at least—
 - (i) two or more co-operative banks;
 - (ii) two or more financial services co-operatives that takes deposits; or
 - (iii) one co-operative bank and one financial services co-operatives that takes deposits.
- (2) A co-operative referred to in subsection (1) must, subject to section 91, within two months of meeting the criteria referred to in subsection (1)[(a) or (b)] apply for registration as a co-operative bank in terms of this Act.”.

Amendment of section 88 of Act 40 of 2007

78. Section 88 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007), is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) thereafter to off-set any amount paid to depositors by the [registrar] supervisor, as part or full compensation for the losses suffered by depositors as a result of the co-operative bank having been unable to repay its deposits; and”.

Transitional provisions

79. (1) The appeal board referred to in the Financial Services Board Act, 1990, as constituted immediately prior to the date of coming into operation of this Act, continues to exist after that date, as if this Act had not been enacted, for purposes of dealing with any appeal lodged prior to that date in terms of the Financial Service Board Act, 1990, or any other law, and which is pending before the appeal board immediately prior to the said date of coming into operation.

(2) Anything done or omitted by the appeal board referred to in the Financial Services Board Act, 1990, or by any member thereof, prior to the date of coming into operation of this Act, is deemed, unless clearly inappropriate, to have been done or omitted by the appeal board established by virtue of section 10 of this Act, or by a corresponding member thereof, as the case may be.

(3) A reference in any law—

- (a) to the board of appeal referred to in the Financial Services Board Act, 1990, as constituted immediately prior to the coming into operation of this Act, is, unless clearly inappropriate, construed as a reference to the appeal board established by virtue of section 26A inserted in terms of section 28 of this Act;
- (b) to section 26 of the Financial Services Board Act, 1990, as it existed prior to the date of coming into operation of this Act, is construed, unless clearly inappropriate, as a reference to section 26 of that Act as substituted by sections 26A and section 26B, as inserted in the Financial Services Board Act, 1990, by section 28 of this Act.

(4) The deletion, by virtue of section 33 of this Act, of the definition of “enforcement committee” in section 1 of the Securities Services Act, 2004, and the repeal of sections 94(e), 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and section 111(1)(b) and (3) of that Act by sections 67, 68 and 69 of this Act, do not affect any proceeding of, investigation instituted, fine to be imposed or the payment of a compensatory amount to be required by, the enforcement committee referred to in that Act thereof, and which is pending at the date of coming into operation of this Act, and any such proceeding, investigation, fine or payment of a compensatory amount may be continued, instituted or enforced as if this Act had not been passed.

(5) The definition of “representative” in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section 44(c) of this Act, only applies with effect from a date 12 months after the date contemplated in section 76 to persons employed or mandated as representatives prior to that date.

(6) The provisions of section 8(10) of the Financial Advisory and Intermediary Services Act, 2002, as inserted by section 47 of this Act, only applies with effect from a date 12 months after the date contemplated in section 76 to persons appointed as directors, members, trustees or partners of providers prior to the that date.

(7) An agreement concluded between a provider and a representative as contemplated in the Financial Advisory and Intermediary Services Act, 2002, before the date contemplated in section 76 and which qualified as a mandatory agreement contemplated in section 13(1)(b)(i) of the first-mentioned Act, before that date, is deemed with effect from the date contemplated in section 76 to constitute a mandate contemplated in section 13(1)(b)(i) of the first-mentioned Act, as replaced by section 50(a) of this Act. 5

(8) The provisions of section 13(2)(a) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section 50(b) of this Act, only applies with effect from a date 12 months after the date contemplated in section 76 to persons who are with effect from that date or any later date appointed as representatives or their key individuals, as contemplated in the Financial Advisory and Intermediary Services Act, 2002. 10

(9) Section 17(1)(b) of the Financial Advisory and Intermediary Services Act, 2002, as amended by section 55(a) of this Act, only applies with effect from a date 18 months after the date contemplated in section 76 to directors, members, auditors, trustees, principal officers, public officers or company secretaries appointed as compliance officers prior to that date. 15

(10) Section 56(c) of this Act comes into operation on a date six months after the date contemplated in section 76.

Short title and commencement 20

80. (1) This Act is called the Financial Services Laws General Amendment Act, 2008, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act.

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2008

1. BACKGROUND TO BILL

- 1.1 The Financial Services Laws General Amendment Bill, 2008, amends the following laws under the administration of the Financial Services Board (FSB) and the South African Reserve Bank (SARB):
- the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - the Financial Services Board Act, 1990 (Act No. 97 of 1990);
 - the National Payment System Act, 1998 (Act No. 78 of 1998);
 - the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
 - the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
 - the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
 - the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
 - the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
 - the Securities Services Act, 2004 (Act No. 36 of 2004);
 - the Co-operatives Act, 2005 (Act No. 14 of 2005); and
 - the Co-operative Banks Act, 2007 (Act No. 40 of 2007).
- 1.2 The proposed amendments to the above mentioned Acts are required in order to—
- update existing legislation;
 - close regulatory gaps identified in existing statutes;
 - effect improvements to certain provisions; and
 - provide for increased enforcement capabilities of the FSB in terms of the laws administered by it.
- 1.3 In the light of some high profile abuses in the financial sector the need for greater enforcement capability is evident in addition to identifying areas in which our financial sector laws can be bolstered. Though the latter process in terms of a thorough review is on-going, there are a number of important interventions which can be made at the present time.

2. OBJECTS OF BILL

The primary objective of the Bill is to ensure a sound and well-regulated financial services industry and to provide financial market stability to industry players as well as consumers.

3. SUMMARY OF BILL

The Bill seeks to:

- 3.1 Amend the Pension Funds Act, 1956, by—
- 3.1.1 providing for the registration and regulation of beneficiary funds, which will permit a retirement fund to pay death benefits to widows, children and other beneficiaries into a dedicated and regulated fund, ensuring better oversight, governance and reporting;
 - 3.1.2 extending the powers of the registrar to, for practical reasons, exempt certain funds or types of funds from certain provisions, and to effectively and efficiently regulate the administration of the Act;
 - 3.1.3 strengthening the provisions concerning a fund's principal officer, valuator and auditors with respect to their appointment, removal and qualifications. The proposed amendment gives "whistle-blowing" rights and obligations to such functionaries; and

- 3.1.4 clarifying recent amendments to the Act regarding transfers between retirement annuity funds, and the treatment of divorce orders.
- 3.2 Amend the Friendly Societies Act, 1956, by facilitating the voluntary registration of collectively bargained friendly societies.
- 3.3 Amend the Financial Services Board Act, 1990, by:
 - 3.3.1 improving the provisions relating to the establishment and functioning of committees of the board;
 - 3.3.2 providing for the establishment, composition and functioning of an enforcement committee which has the power to impose administrative sanction after following due process, and whose decision is appealable to court. The Committee is designed to operate in a time and cost-effective manner when bringing transgressors to book;
 - 3.3.3 allowing for the appointment of an acting executive officer to act as the executive officer of the FSB under certain circumstances, thereby avoiding a situation where the absence of the executive officer may curtail the functions and powers entrusted to that office;
 - 3.3.4 improving the provisions relating to the delegation of powers and functions by the Minister and the board;
 - 3.3.5 clarifying wording surrounding the sharing of information with other regulators and the disclosure of relevant information to the public when it is in the public interest to improve regulatory co-ordination, information-sharing and effectiveness across country borders and regulatory entities within South Africa;
 - 3.3.6 providing for a standard limitation of liability clause that applies across all legislation administered by the FSB;
 - 3.3.7 allowing for an appeal against a decision-maker (usually the registrar concerned) to the appeal board already established by section 26 of the Financial Services Board Act, 1990. The appeal board's structure and process is revised in order to enable it to deal more effectively and expeditiously with the matters placed before it; and
 - 3.3.8 effecting a number of technical and editorial amendments.
- 3.4 Amend the National Payment Systems Act, 1998, by bringing non-bank and designated clearing system participants under the supervision of the Reserve Bank and the payment system management body.
- 3.5 Amend the Financial Institutions (Protection of Funds) Act, 2001, by providing for procedures for processing matters referred to the enforcement committee.
- 3.6 Amend the Financial Advisory and Intermediary Services Act, 2002, by—
 - 3.6.1 providing for compliance visits and inspections of the business of financial services providers and representatives;
 - 3.6.2 stipulating that an authorised financial services provider or representative may only conduct business with a person licensed to provide financial services;
 - 3.6.3 stipulating that where a financial services provider is a body, trust or partnership, the provider must ensure that its directors, members, partners or trustees meet certain fit and proper requirements;

- 3.6.4 providing for specific grounds under which a licence may be suspended or withdrawn by the registrar of financial services providers (for instance in cases of the non-payment of the required levy or non-fulfilment of fit and proper criteria);
 - 3.6.5 empowering the registrar to debar a provider or representative and make known such debarment by means of appropriate public media. This is necessary to ensure that the public is aware of those who contravene the Act or who are no longer licensed to operate;
 - 3.6.6 extending the scope of codes of conduct that may be drafted under the Act;
 - 3.6.7 barring a provider from accepting or offering inordinate or disproportionate incentives. This provision better aligns the interest of intermediaries with those of their client, and seeks to reduce the “churning” of policies;
 - 3.6.8 introducing requirements for persons who act as compliance officers to have the necessary experience and qualifications;
 - 3.6.9 improving financial reporting under the Act; and
 - 3.6.10 effecting a number of technical and editorial amendments.
- 3.7 Amend the Collective Investment Schemes Control Act, 2002, by improving the provisions relating to non-compliance with the Act.
- 3.8 Amend the Securities Services Act, 2004, by clarifying matters relating to the enforcement of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), that must be provided for in the rules of exchanges.
- 3.9 Amend the Co-operative Banks Act, 2007, by clarifying the application of the Act and effecting certain technical amendments to the Act.
- 3.10 Effect certain consequential amendments to the Pension Funds Act, 1956, the Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, Financial Institutions (Protection of Funds) Act, 2001, the Financial Advisory and Intermediary Services Act, 2002, the Collective Investment Schemes Control Act, 2002, and the Securities Services Act, 2004, where certain functions of the registrars, and enforcement committee under the Securities Services Act, 2004, will be subsumed by the newly established enforcement committee.
- 3.11 Provide for transitional measures to facilitate the implementation of the Bill.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The proposed amendments were made available for public comment for a period of 30 days. Ad hoc consultations with affected industry participants prior to submission of the Bill to Cabinet were also undertaken. The Bill was revised where considered necessary in the light of comments received.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will have organisational and personnel implications for the FSB. Costs associated with the additional organisational and personnel implications will be provided for through the existing funding mechanisms of the FSB.

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.