CHAPTER 11

SIGNIFICANT OWNERS

Part 1

Significant owners

Significant owners

**157.** (1) Subject to subsections (3) and (4), a person is a significant owner of a financial institution if the person, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of the financial institution.

(2) Without limiting subsection (1), a person must be taken to have the ability referred to in that subsection if—

*(a)* the person, directly or indirectly, alone or together with a related or interrelated person, has the power to 15% of the members of the governing body of the financial institution;

*(b)* the consent of the person (alone or together with a related or interrelated person) is required for the appointment of 15% of the members of a governing body of the financial institution; or

*(c)* the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the financial institution.

(3) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, significant owners of a financial institution.

(4) *(a)* A financial sector regulator may, with the concurrence of the other financial sector regulator and on application, declare a person not be a significant owner of—

 (i) an eligible financial institution;

 (ii) the manager of a collective investment scheme; or

 (iii) a financial institution prescribed in terms of Regulations made for the purposes of this paragraph.

*(b)* A financial sector regulator may not declare a person not to be a significant owner of a specific financial institution, and may not give its concurrence in terms of paragraph *(a)* to such a declaration, unless the financial sector regulator is satisfied that the declaration will not prejudice the achievement of the financial sector regulator’s objective as set out in either section 33 or 57, and that it is not necessary to apply the requirements of this Chapter to the person.

*(c)* A financial sector regulator may, with the concurrence of the other financial sector regulator, revoke a declaration that it made in terms of paragraph *(a)*.

(*d*) Before a financial sector regulator revokes declaration in relation to a person that was made in terms of paragraph *(a)*, the financial sector regulator must—

 (i) give the person notice of the proposed action and a statement of the reasons for it; and

 (ii) invite the person to make submissions on the matter, and give the person a reasonable period to do so.

*(e)* The period referred to in paragraph *(d)*(ii) must be at least one month.

*(f)* In deciding whether to revoke a declaration, the financial sector regulators must take into account all submissions made within the period specified in the notice in terms of paragraph *(d)*(ii).

*(g)* If the delay involved in complying, or complying fully, with paragraph *(d)* in respect of a proposed revocation is likely to prejudice financial customers, prejudicially affect financial stability or defeat the object of the revocation, the financial sector regulators may revoke the declaration without having complied, or complied fully, with that paragraph.

*(h)* If the financial sector regulators revoke a declaration in terms of paragraph *(a)* without having complied, or complied fully, with paragraph *(d)* for the reason set out in paragraph *(g)*, they must give the person a written statement of the reasons why paragraph *(d)* was not complied with.

*(i)* The person may make submissions to the financial sector regulator within one month after being provided with the statement.

*(j)* The financial sector regulators must consider the submissions, and notify the person, as soon as practicable, whether they propose to make another declaration in terms of paragraph *(a)* in relation to the person and the financial institution.

*(k)* A declaration, and a revocation of a declaration, in terms of this subsection must be published.

Qualifying stake

**158.** For section 157(2)*(c)*, a person holds a qualifying stake in a financial institution that—

*(a)* is a company if the person, directly or indirectly, alone or together with a related or interrelated person—

 (i) holds at least 15% of the issued shares of the financial institution;

 (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the financial institution;

 (iii) has the ability to dispose of or control the disposal of at least 15% of the financial institution’s securities; or

 (iv) holds rights in relation to the financial institution that, if exercised, would result in the person, directly or indirectly, alone or together with a related or interrelated person—

*(aa)* holding at least 15% of the securities of the financial institution;

*(bb)* having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the financial institution; or

*(cc)* having the ability to dispose of or direct the disposal of at least 15% of the financial institution’s securities;

*(b)* is a close corporation, if the person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members’ interest or controls, or has the right to control, at least 15% of members’ votes in the close corporation;

*(c)* is a trust, if the person has, directly or indirectly, alone or together with a related or interrelated person—

 (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;

 (ii) the power to appoint at least 15% of the trustees; or

 (iii) the power to appoint or change any beneficiaries of the trust.

Approvals and notifications relating to significant owners

**159.** (1) This section applies to the following financial institutions—

*(a)* An eligible financial institution;

*(b)* a manager of a collective investment scheme; and

*(c)* a financial institution prescribed in Regulations made for the purposes of this section.

(2) A person may not acquire a qualifying stake in a financial institution, without the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed.

(3)A significant owner of a financial institution –

*(a)* which has been designated as a systemically important financial institution, may not, without having obtained the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, effect any arrangement that will result, in the person, alone or together with a related or interrelated person, ceasing to be a significant owner of the financial institution.

*(b)* which has not been designated as a systemically important financial institution, may not, without prior notification to the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, effect any arrangement that will result, in the person, alone or together with a related or interrelated person, ceasing to be a significant owner of the financial institution.

(4) A person may not effect any arrangement in respect of a qualifying stake in a financial institution, which will result in an increase or a decrease in the extent of the ability of the person, alone or together with a related or interrelated person, to control or influence materially the business or strategy of the financial institution,–

*(a)* without having obtained the prior written approval of the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, if the responsible authority on granting of an approval referred to in subsection (2), required its prior written approval of any such increase or decrease; or

*(b)* without the prior notification to the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed, if the responsible authority on granting of an approval referred to in subsection (2), did not require its prior written approval of any such increase or decrease.

(5) An arrangement referred to in subsection (2), (3) or (4) need not involve the acquisition of, or disposition of, shares or other interests or property.

 (6) If a person enters into an arrangement in contravention of subsection (2) or (3), the arrangement, in so far as it has an effect mentioned in the relevant subsection, is void.

(7 An approval in terms of subsection (2), (3) or (4) may not be given unless the responsible authority is satisfied that—

*(a)* the person becoming a significant owner, or the arrangement, will not prejudicially affect or is likely to affect the prudent management and the financial soundness of the financial institution; and

*(b)* the person meets and is reasonably likely to continue to meet applicable fit and proper person requirements.

(9) The Financial Sector Conduct Authority may not give approval in terms of subsection (2) or (3) in respect of an eligible financial institution that is a market infrastructure without the concurrence of the Prudential Authority and the Reserve Bank.

(10) A prudential standard may prescribe procedures in respect of applications for approvals and notifications in terms of this section.

(11) This section does not affect any other requirement in terms of a financial sector law to obtain approval or consent in respect of an acquisition or disposal.

Standards in respect of, and regulators’ directive to, significant owners

**160.** (1) In addition to the powers in Part 2 of Chapter 7 to make standards,–

*(a)* a financial sector regulator must make standards, to be complied with by significant owners of financial institutions, with respect to fit and proper person requirements, including in relation to—

(i) personal character qualities of honesty and integrity;

(ii) competence, including experience, qualifications and knowledge; and

(iii) financial standing; and

*(b)* the financial sector regulators must make joint standards specifying what constitutes “an increase or a decrease in the extent of the ability of the person, alone or together with a related or interrelated person, to control or influence materially the business or strategy of the financial institution”, as referred to in section 157(1) and section 159(4).

(2) *(a)* A financial sector regulator may issue to a significant owner of a financial institution a written directive requiring the significant owner to take action specified in the directive if the institution has contravened or is likely to contravene a financial sector law for which the financial sector regulator is the responsible authority.

*(b)* A directive in terms of paragraph *(a)* must be aimed at stopping the institution from contravening the financial sector law, or reducing the risk of such a contravention.

(3) In addition to subsection (2), a financial sector regulator may issue a directive to a significant owner of a financial institution, and the institution, requiring them—

*(a)* to prepare and submit to the financial sector regulator a plan satisfactory to the financial sector regulator under which the significant owner will, within a period acceptable to the financial sector regulator, cease to be a significant owner of the financial institution; and

*(b)* on the financial sector regulator’s approving the plan, to implement the plan.

CHAPTER 12

FINANCIAL CONGLOMERATES

Designation of financial conglomerates

**161.** (1) The Prudential Authority may designate members of a group of companies as a financial conglomerate.

(2) A financial conglomerate designated in terms of subsection (1) must include both an eligible financial institution and a holding company of the eligible financial institution, but need not include all the members of the group of companies.

(3) Before designating members of a group of companies as a financial conglomerate in terms of subsection (1) the Prudential Authority must—

*(a)* give the holding company of the eligible financial institution notice of the proposed designation and a statement of the reasons why the designation is proposed; and

*(b)* invite the holding company to make submissions on the matter, and give it a reasonable period to do so.

(4) The Prudential Authority must consult the Financial Sector Conduct Authority in connection with any designation in terms of subsection (1).

(5) A designation in terms of subsection (1) must be for the purpose of facilitating the prudential supervision of the eligible financial institution.

(6) In deciding whether to designate members of a group of companies as a financial conglomerate in terms of subsection (1), the Prudential Authority must take into account at least the following:

*(a)* The risk to effective prudential supervision of the eligible financial institution from the structure of the group of companies;

*(b)* submissions made by or for the holding company; and

*(c)* any other matters that may be prescribed by Regulation.

(7) The Prudential Authority may designate members of a group of companies as a financial conglomerate in terms of subsection (1) without having complied, or complied fully, with subsection (3) if the delay involved in complying, or complying fully, with that subsection in respect of a proposed action is likely to lead to material prejudice to financial customers, prejudicially affect financial stability or defeat the object of the designation.

(8) *(a)* If the Prudential Authority designates members of a group of companies as a financial conglomerate in terms of subsection (1) without having complied, or complied fully, with subsection (3), the holding company of the designated financial conglomerate must be given a written statement of the reasons why that subsection was not complied with.

*(b)* The holding company may make submissions to the Prudential Authority within one month after being provided with the statement.

*(c)* The Prudential Authority must have regard to the submissions, and notify the holding company, as soon as practicable, whether the Prudential Authority proposes to amend or revoke the designation.

(9) The Prudential Authority must keep designations in terms of subsection (1) under review, including if the Prudential Authority becomes aware of a change in the risk profile of the financial conglomerate.

(10) The Prudential Authority may, by notice to the holding company of a financial conglomerate, amend or revoke a designation in terms of subsection (1).

(11) The Prudential Authority must publish each designation made in terms of this section, and each amendment and revocation of a designation.

Notification by eligible financial institution

**162.** (1) An eligible financial institution must, within 14 days of becoming part of a group of companies, notify the Prudential Authority of that event.

(2) A notification in terms of subsection (1) must be in the form determined by the Prudential Authority, completed in accordance with the instructions on the form, and be accompanied by any information that the Prudential Authority may determine.

(3) If an eligible financial institution contravenes subsection (1), the holding company of the financial institution commits the like contravention.

Licensing requirement for holding companies of financial conglomerate

**163.** (1) The Prudential Authority may, by notice to a holding company of a financial conglomerate, require the holding company to be licensed in terms of this Act.

(2) Subsection (1) does not apply to a holding company that is licensed in terms of a financial sector law.

(3) A requirement in terms of subsection (1) must be for the purpose of enabling the Prudential Authority to exercise its powers with respect to the financial conglomerate, to enhance the safety and soundness of the eligible financial institution.

(4) A holding company given a notice in terms of subsection (1) must comply with the requirements of the notice.

(5) *(a)* If—

 (i) the Prudential Authority gives a holding company a notice in terms of subsection (1); or

 (ii) a holding company is licensed in terms of a financial sector law;

each other member of the group of companies in the financial conglomerate (including the eligible financial institution) must, on demand by the holding company, provide such information to the holding company as is needed to enable the holding company to comply with its obligations in terms of this Act or a specific financial sector law.

*(b)* A holding company of a financial conglomerate must impose binding corporate rules on, or enter into a binding agreement with, members of the conglomerate that contain terms regarding the processing of information, including personal information, within the financial conglomerate, to give effect to paragraph *(a)*(ii).

Non-operating holding companies of financial conglomerate

**164.** (1) The Prudential Authority may, by notice to a holding company of a financial conglomerate, require that the holding company be a non-operating company.

(2) A requirement in terms of subsection (1) must be for the purpose of managing more effectively risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate.

(3) A holding company given a notice in terms of subsection (1) must comply with the requirements of the notice.

Standards for financial conglomerates

**165.** (1) The power of the Prudential Authority to make prudential standards extends to making prudential standards that must be complied with by holding companies of financial conglomerates.

(2) In addition to the matters referred to in section 105 and 108, a prudential standard contemplated in subsection (1) may include requirements with respect to—

*(a)* financial or other exposures of companies within financial conglomerates;

*(b)* the governance and management arrangements for holding companies of financial conglomerates;

*(c)* reporting of information about companies within financial conglomerates that are not financial institutions; and

*(d)* reducing or managing risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate.

(3) The power of the Financial Sector Conduct Authority to make conduct standards extends to making such standards to be complied with by holding companies of financial conglomerates.

Directives to holding companies

**166.** (1) The power of the Prudential Authority to issue a directive in terms of section 143 extends to issuing such a directive to the holding company of a financial conglomerate imposing requirements on the holding company to manage and otherwise mitigate risks to the prudent management or financial soundness of an eligible financial institution in the conglomerate arising from other members of the conglomerate.

(2) Requirements that a directive contemplated in subsection (1) may impose include requirements with respect to restructuring the financial conglomerate in accordance with a plan submitted to the Prudential Authority within a period agreed by the Prudential Authority.

(3) The power of the Financial Sector Conduct Authority to issue a directive in terms of section 144 extends to issuing such a directive to the holding company of a financial conglomerate requiring the holding company to ensure that a financial institution in the conglomerate complies with a financial sector law for which the Financial Sector Conduct Authority is the responsible authority.

Approval and prior notification of acquisitions and disposals

**167.** (1) A holding company of a financial conglomerate may not acquire or dispose of a material asset as defined in prudential standards made for this section, without the approval of the Prudential Authority.

(2) The Prudential Authority may not give an approval in terms of subsection (1) unless satisfied that the acquisition or disposal will not prejudicially affect the prudent management and the financial soundness of an eligible financial institution within the financial conglomerate.

(3) An acquisition or disposal in contravention of subsection (1) is void.

CHAPTER 13

ADMINISTRATIVE PENALTIES

Administrative penalties

**168.** (1) The responsible authority for a financial sector law may, by order served on a person, impose on the person an appropriate administrative penalty, that must be paid to the financial sector regulator, if the person—

*(a)* has contravened a financial sector law; or

*(b)* has contravened an enforceable undertaking accepted by the responsible authority.

(2) In determining an appropriate administrative penalty for particular conduct—

*(a)* the matters that the responsible authority must have regard to include the following—

 (i) The need to deter such conduct;

 (ii) the degree to which the person has co-operated with a financial sector regulator in relation to the contravention; and

 (iii) any submissions by, or on behalf of, the person that is relevant to the matter, including mitigating factors referred to in those submissions; and

*(b)* without limiting paragraph *(a),* the matters that the responsible authority may have regard to include the following:

 (i) The nature, duration, seriousness and extent of the contravention;

 (ii) any loss or damage suffered by any person as a result of the conduct;

 (iii) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct;

 (iv) whether the person has previously contravened a financial sector law;

 (v) the effect of the conduct on the financial system and financial stability;

 (vi) the effect of the proposed penalty on financial stability;

 (vii) the extent to which the conduct was deliberate or reckless.

(3) An administrative penalty may include an amount to reimburse the responsible authority for reasonable costs incurred by the responsible authority in connection with the contravention.

(4) The responsible authority may not impose an administrative penalty on a person if a prosecution of the person for an offence arising out of the same set of facts has been commenced.

(5) An administrative penalty order is not a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(6) The responsible authority that makes an administrative penalty order must publish the order.

Payment

**169.** An amount payable in terms of an administrative penalty order is due and payable as set out in Regulations made for this Chapter.

Interest

**170.** Interest, at the rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), is payable in respect of the unpaid portion of the amount payable as an administrative penalty until it is fully paid.

Enforcement

**171.** (1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if—

*(a)* the amount payable in terms of the order has not been paid as required by the order; and

*(b)* either—

(i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal’s decision, has been lodged by the end of the period for making such applications; or

 (ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

Application of amounts paid as administrative penalties

**172.** All amounts recovered by a responsible authority as administrative penalties must be applied—

*(a)* first, to reimburse the responsible authority for its costs and expenses reasonably and properly incurred in connection with the relevant contravention, making the order and enforcing it; and

*(b)* then, the balance after applying the amount in accordance with paragraph *(a)* must be paid into the National Revenue Fund.

Administrative penalty taken into account in sentencing

**173.** When determining the sentence to impose on a person convicted of an offence in terms of a financial sector law, a court must take into account any administrative penalty order made in respect of the same set of facts.

Remission of administrative penalties

**174.** The responsible authority that imposed an administrative penalty on a person may, on application by the person, by order, remit all or some of the administrative penalty, and all or some of the interest payable in terms of section 170.

Prohibition of indemnity for administrative penalties

**175.** (1) Except in circumstances prescribed by a joint standard, a person may not undertake to indemnify or compensate another person, directly or indirectly, wholly or partly, in respect of a payment made or liability incurred by the other person in connection with an administrative penalty order imposed on the other person.

(2) An undertaking in terms of subsection (1) is void.

CHAPTER 17

MISCELLANEOUS

Part 1

Information sharing and reporting

Designated authority

**241.** In this Part, “**designated authority**” means—

*(a)* the Reserve Bank;

*(b)* a financial sector regulator;

*(c)* the National Credit Regulator;

*(d)* the Council for Medical Schemes;

*(e)* a market infrastructure, but only in relation to its regulatory or supervisory functions in terms of a financial sector law;

*(f)* an organ of state responsible for the regulation, supervision or enforcement of any law;

*(g)* a body similar to an organ of state referred to in paragraph *(f)* that is designated in terms of the laws of a foreign country as being responsible for the regulation, supervision or enforcement of legislation;

*(h)* the Ombud Council;

*(i)* an ombud; or

 *(j)* a payment system management body recognised in terms of the National Payment System Act.

Information sharing arrangements

**242.**

(1) *(a)* A financial sector regulator or the Reserve Bank has an obligation and a duty to –

(i)  achieve its objective as set out in this Act;

(ii) achieve the objects of financial sector laws;

(iii) perform its functions, including its supervisory functions, in terms of financial sector laws and the Financial Intelligence Centre Act.

*(b)* A financial sector regulator or the Reserve Bank must collect and use information, including personal information as defined in the Protection of Personal Information Act, to the extent that the financial sector regulator or the Reserve Bank determines is necessary to properly perform the obligations and duties referred to in paragraph *(a)*.

(2)  *(a)* A financial sector regulator or the Reserve Bank must disclose information referred to in subsection (1)*(b)* if the financial sector regulator or the Reserve Bank determines it is necessary to comply with its obligations—

(i)       to perform functions in terms of, or as enabled by, the financial sector laws or the Financial Intelligence Centre Act;

(ii)      relating to legal proceedings or other proceedings;

(iii)     to warn financial customers against conducting business with a financial institution or other person conducting activities in contravention of the financial sector laws or the Financial Intelligence Centre Act;

(iv)to inform financial customers of actions taken against a financial institution in terms of the financial sector laws or the Financial Intelligence Centre Act;

(v)to alert financial customers to activities carried out by a financial institution that a financial sector regulator or the Reserve Bank believes to constitute a risk to financial customers;

(vi)to protect the public interest;

(vii)to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial products or financial services; or

(viii)relating to anti-money laundering and combating the financing of terrorism.

 *(b)* Information obtained in terms of the Financial Intelligence Centre Act, other than in terms of sections 45 and 45B of that Act, may only be utilised or disclosed in accordance with sections 29, 40 and 41 of that Act.

(3) *)* A financial sector regulator or the Reserve Bank, in pursuing the obligations and duties referred to in subsection (1)*(a)* and (2)*(a)*, may—

 *(a)* liaise with any designated authority on matters of common interest;

 *(b)* participate in the proceedings of any designated authority;

 *(c)* advise or receive advice from any designated authority;

 *(d)* prior to taking regulatory action which a financial sector regulator or the Reserve Bank considers material against a financial institution, inform any designated authority that the financial sector regulator or the Reserve Bank, as the case may be, of the pending regulatory action or, where this is not possible, inform the designated authority as soon as possible after taking the regulatory action; and

 *(e)* negotiate and enter into bilateral or multilateral co-operation agreements, including memoranda of understanding, with designated authorities, including designated authorities in whose countries a subsidiary or holding company of a financial institution is incorporated or a branch is situated, to, among other matters—

(i)co-ordinate and harmonise the reporting and other obligations of financial institutions;

(ii)provide mechanisms for the exchange of information, including provisions requiring or permitting a financial sector regulator, the Reserve Bank or a designated authority—

*(aa)* to be informed of adverse assessments in respect of financial institutions; or

*(bb)* to provide or receive information regarding significant problems that are being experienced within a financial institution;

(iv)provide procedures for the co-ordination of supervisory activities to facilitate the monitoring of financial institutions, including on an on-going basis; and

(v)assist any designated authority in regulating and enforcing any laws that the designated authority is responsible for supervising and enforcing, that are similar to a financial sector law or which have an impact on the regulation of the financial sector and financial institutions.

(4) *(a)* Information may only be disclosed by a financial sector regulator or the Reserve Bank to a designated authority if, before disclosing the information, the financial sector regulator or the Reserve Bank is satisfied that the designated authority that receives the information has proper and effective safeguards in place to protect the information, which safeguards are similar to those provided for in this section.

*(b)* A financial sector regulator or the Reserve Bank may only consent to information that is provided to a designated authority being made available to third parties only if it is satisfied that the third parties have proper safeguards in place to protect the information received, which safeguards are similar to those provided for in this section.

*(c)* A financial sector regulator or the Reserve Bank may only request information from a designated authority in connection with the performance of obligations and duties in terms of the laws referred to in subsections (1) and (2).

*(d)* Information provided on request to a designated authority in terms of this section—

 (i) must only be used by the designated authority for the purpose for which it was requested;

 (ii) may not be disclosed to a third party without the consent of the designated authority that provided the information; and

(iii) must retain its integrity and confidentiality, and the designated authority that receives the information must take appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of the information, and unlawful access to or processing of the information.

 *(e)* If, despite paragraph *(d)*, a designated authority is compelled by law to disclose information provided by another designated authority to a third party, the first designated authority must—

 (i) inform that designated authority of the event and the circumstances in which the information shall be made available; and

 (ii) use all reasonable means to oppose the compulsion to disclose, and otherwise to protect the information.

(5) For the purposes of this section, **“information”** does not include aggregate statistical data or information that does not disclose the identity of a person.

Reporting by auditors to financial sector regulators

**243.** (1) *(a)* An auditor of a licensed financial institution, or of a holding company of a financial conglomerate must, without delay, submit a detailed written report to the Prudential Authority, the governing body of the financial institution and, in the case of a financial conglomerate, the holding company of the financial institution, about any matter relating to the business of the financial institution or a company within the conglomerate, being a matter—

 (i) which the auditor becomes aware of in the course of performing functions and duties as auditor; and

 (ii) that the auditor considers—

*(aa)* is causing or is likely to cause the financial institution to be financially unsound;

*(bb)* is contravening or may contravene a financial sector law in a material way; or

*(cc)* may result in an audit not being completed or may result in a qualified or adverse opinion on accounts.

*(b)* An auditor must also submit any report or other document or particulars about the matter contemplated in section 45(1)*(a)* and (3)*(c)* of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to the Prudential Authority.

(2) An auditor of a licensed financial institution or of a holding company of a financial conglomerate who resigns or whose appointment is terminated must submit to the Prudential Authority—

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

*(b)* any report contemplated in section 45(1)*(a)* and (3)*(c)* of the Auditing Profession Act, 2005 (Act No. 26 of 2005), that the auditor would, but for the resignation or termination, have had reason to submit.

(3) *(a)* The furnishing, in good faith, by an auditor of a report or information under subsections (1) or (2) is not a contravention of a law, a breach of a contract or a breach of a code of professional conduct.

*(b)* A failure, in good faith, by an auditor to comply with this section does not confer upon any person a right of action against the auditor.

Reporting to financial sector regulators

**244.** (1) A person may report to a financial sector regulator—

*(a)* financial difficulties or suspected financial difficulties in a financial institution;

*(b)* a contravention or suspected contravention of a financial sector law in relation to a financial institution; or

*(c)* the involvement or the suspected involvement of a financial institution in financial crime.

(2) Unless the report was made in bad faith, a person who makes a report in terms of subsection (1) is not—

*(a)* criminally liable for making the report; or

*(b)* liable to pay compensation or damages to any person in relation to a loss caused by the report.

Prohibition of victimisation

**245.** A person may not subject another person to any prejudice in employment, or penalise another person in any way, on the ground that the other person—

*(a)* made a report in terms of section 243; or

*(b)* made a report in terms of section 244, even if the report was not required by law.

Protected disclosures

**246.** Sections 243 and 244 apply in addition to, and do not limit, any other law that provides protection for persons who properly report contraventions of the law.

Part 2

Financial Sector Information Register

Establishment and operation of Financial Sector Information Register

**247.** The National Treasury must establish and maintain the Financial Sector Information Register in accordance with this Part.

Purpose of Register

**248.** The purpose of the Register is to provide reliable access to accurate, authoritative and up to date information relating to financial sector laws, Regulations, regulatory instruments and their implementation.

Content of Register

**249.** (1) The Register is a database of the documents listed in Schedule 3.

(2) The Register may include other documents that are relevant to the regulation and supervision of the financial sector and the Director-General determines which other documents may be included in the Register.

Keeping of Register

**250.** (1) The Register must be kept in an electronic form.

(2) The Register must be kept in a way that facilitates access and searching of the Register by members of the public.

Requirements for registered documents

**251.** The Director-General may make a written determination—

*(a)* specifying requirements for documents that must be, or may be, included in the Register, including requiring persons lodging a document for registration to provide information about the document, to ensure that the Register is useful for persons accessing the Register; and

*(b)* specifying procedures for transmitting documents to the National Treasury for registration.

Status of Register and judicial notice

**252.** (1) The Register is, for all purposes, taken to be a complete and accurate record of all financial sector laws and all regulatory instruments that are included in the Register.

(2) A compilation of a law or a regulatory instrument that is included in the Register is, unless the contrary is established, taken to be a complete and accurate record of that law or regulatory instrument as amended and in force at the date specified in the compilation.

(3) *(a)* In any proceedings, proof is not required about the provisions and coming into effect, in whole or in part, of a law or regulatory instrument as it appears in the Register.

*(b)* A court or tribunal may inform itself about those matters in any way it deems fit.

(4) It is presumed, unless the contrary is established—

*(a)* that a document that purports to be an extract from the Register is what it purports to be; and

*(b)* that a regulatory instrument, a copy of which is produced from the Register, was registered on the day and at the time stated in the copy.

Extracts from Register regarding licence status

**253.** An extract from the Register, in the form determined by, and authenticated as determined by, the Director-General, that shows that, at a specified date, after this Part comes into effect—

*(a)* a person was or was not licensed under a financial sector law;

*(b)* a specified licence was or was not subject to specified conditions;

*(c)* a specified licence was, at a specified time, suspended, cancelled or revoked; or

*(d)* a specified financial institution was at a specified time a systemically important financial institution,

is admissible as evidence of the facts and matters stated in it and, unless the contrary is established, is conclusive.

Rectification of Register

**254.** (1) The Director-General may arrange for the Register to be corrected to rectify errors.

(2) If the Register is corrected, the Director-General must annotate relevant records in the Register to explain the nature of the rectification and specify the date and time the rectification was made and the reason for the rectification.

Delegations by Director-General

**255.** (1) The Director-General may, in writing, delegate any power or duty of the Director-General in relation to the Register, except the power of delegation, to a staff member of the National Treasury or any other suitable person, and the Director-General may, at any time, amend or revoke a delegation.

(2) A delegation may be to a specified person or to the person holding a specified position.

(3) A delegation is subject to the limitations and conditions specified in the delegation.

(4) A delegation does not divest the Director-General of responsibility in respect of the delegated power or duty.

(5) Anything done by a delegate in accordance with the delegation is taken to be done by the Director-General.

Part 3

Offences and penalties

Duties of members and staff of certain bodies

**256.** A person who contravenes sections 46(1) or (2), 52, 69(1) or (2) or 74 commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

Licensing

**257.** (1) A person who contravenes section 111(1), (2), (3), (4) or (5) commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(2) A licensee who contravenes section 117 commits an offence and is liable on conviction to a fine not exceeding R5 000 for each day during which the offence continues.

(3) A licensee who contravenes section 127 commits an offence and is liable on conviction to a fine not exceeding R50 000.

Requests for information, supervisory on-site inspections and investigations

**258.** (1) A supervised entity that contravenes section 131(1)*(b)* commits an offence and is liable on conviction to a fine not exceeding R1 000 for each day during which the offence continues..

(2) A supervised entity that or person who contravenes section 132(4)*(a)*(iii) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(3) If—

*(a)* a financial sector regulator gives a supervised entity a directive in terms of section 132(4)*(a)*(iii); and

*(b)* without reasonable excuse, a business document to which the directive relates is removed from the premises, or concealed, destroyed or otherwise interfered with, contrary to the directive;

the supervised entity or person on whom the directive was served commits an offence and is liable on conviction to a fine not exceeding R2 500 000.

(4) A person who contravenes section 133 commits an offence and is liable on conviction to a fine not exceeding R1 000 000 or imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

(5) A person who contravenes section 139 commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment.

Enforcement

**259** (1) A person that contravenes section 149(1) commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(2) A person who contravenes subsection 153(4)*(a)* commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(3) If—

*(a)* a person who is subject to a debarment order contravenes subsection 153(4)*(a)* by entering into an arrangement referred to in section 153(4)*(b)*; and

*(b)* the other party to the arrangement knew or should reasonably have known that entering to the arrangement contravened that section;

the other party to the arrangement also commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment,.

(4) A person who contravenes subsection 153(5) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

Administrative penalties

**260.** A person who contravenes sections 175 by giving an undertaking commits an offence and is liable on conviction to a fine not exceeding twice the maximum amount that would have been payable under the undertaking.

Ombud schemes

**261.** (1) A person who contravenes section 190(1) or (2) or section 193 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(2) A person who contravenes section 203(11) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(3) A natural person who contravenes section 206(8) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(4) If—

*(a)* a natural person who is subject to a debarment order in terms of section 206 contravenes subsection 206(8)*(a)* by entering into an arrangement referred to in section 206(8)*(b)*; and

*(b)* the other party to the arrangement knew or should reasonably have known that entering to the arrangement contravened that section;

the other party to the arrangement also commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(5) A person who contravenes subsection 208(2) commits an offence and is liable on conviction to a fine not exceeding R15 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

(6) A licensed financial institution that contravenes section 211 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(7) A financial institution that contravenes section 216(1) commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(8) A person who contravenes section 218 commits an offence and is liable on conviction to a fine not exceeding R5 000 for each day during which the offence continues.

Proceedings in Tribunal

**262.** A person who contravenes a direction in terms of section 233(5)*(a)*, or refuses, without reasonable excuse, to take an oath or make an affirmation when required to do so as contemplated in section 233(5)*(b)*, commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

Miscellaneous

**263.** (1) A person who discloses or shares information for a purpose or in a manner that is not authorised in terms of section 242 commits an offence and is liable on conviction to a fine not exceeding R5 000 000, or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

(2) An auditor who contravenes section 243 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(3) A person who contravenes section 245 commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

(4) A person who contravenes a condition imposed in terms of section 271 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

False or misleading information

**264.** (1) A person who provides to a financial sector regulator or the Reserve Bank, in connection with the operation of a financial sector law, information that is false or misleading, including by omission, commits an offence and is liable on conviction to a fine not exceeding fine not exceeding R5 000 000 or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

(2) If the person knew or believed, or ought reasonably to have known or believed, that the information was false or misleading, the maximum penalty for the offence is a fine not exceeding R10 000 000, or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

Accounts and records

**265.** (1) A person who is required in terms of a financial sector law to keep accounts or records commits an offence if the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate, and is liable on conviction to a fine not exceeding R5 000 000, or imprisonment for a period not exceeding 5 years, or to both a fine and imprisonment.

(2) The maximum penalty for an offence in terms of subsection (1) is a fine not exceeding R10 000 000, or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, if—

*(a)* the person knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;

*(b)* intended to deceive or mislead a financial sector regulator or an investigator; or

*(c)* intended to hinder or obstruct a financial sector regulator, or an investigator in performing his or her duties in terms of a financial sector law.

False assertion of connection with financial sector regulator

**266.** A person who, without the consent of the financial sector regulator, applies to a company, body, business or undertaking a name or description that signifies or implies some connection between the company, body, business or undertaking and a financial sector regulator commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

Liability in relation to juristic persons

**267.** (1) If—

*(a)* a financial institution commits an offence in terms of a financial sector law; and

*(b)* a member of the governing body of the financial institution failed to take all reasonably practicable steps to prevent the commission of the offence;

the member of the governing body commits the like offence, and is liable on conviction to a penalty not exceeding the penalty that may be imposed on the financial institution for the offence.

(2) If—

*(a)* a key person of a financial institution engages in conduct that amounts to a contravention of a financial sector law; and

*(b)* the financial institution failed to take all reasonably practicable steps to prevent the conduct;

the financial institution must be taken also to have engaged in the conduct.

Part 4

General matters

Complaints

**268.** A financial sector regulator must, if asked, assist a person to make a complaint to the appropriate ombud about the actions or practices in terms of a financial sector law, of a person in connection with providing financial products or financial services.

Compensation for contraventions of financial sector laws

**269.** A person, including a financial sector regulator, who suffers loss because of a contravention of a financial sector law by another person, may recover the amount of the loss by action in a court of competent jurisdiction against—

*(a)* the other person; and

*(b)* any person who was knowingly involved in the contravention.

Extension of period for compliance

**270.** (1) A financial sector regulator may, for a valid reason, extend any period for compliance with, or a period prescribed by, a provision of a financial sector law, other than a provision that the financial sector regulator must comply with.

(2) A financial sector regulator may grant an extension in terms of subsection (1) more than once, and may do so either before or after the time for compliance has passed or the period prescribed has ended.

Conditions of licences

**271.** (1) A licence may be given subject to conditions specified in the licence or in the notice of the grant or issue of the licence given to the licensee.

(2) A suspension, cancellation or revocation of a licence in terms of a financial sector law may be subject to conditions specified in the notice of the suspension, cancellation or revocation given to the licensee.

(3) Contravention of a condition in terms of subsection (2) does not affect the suspension, cancellation or revocation of the licence.

(4) In this section, a reference to a licence must be read as including a reference to a consent, agreement, approval or permission of any kind in terms of a financial sector law.

Exemptions

**272.** (1) The responsible authority for a financial sector law may, in writing and with the concurrence of the other financial sector regulator, exempt any person or class of persons from a specified provision of the financial sector law, unless it considers that granting the exemption—

*(a)* will be contrary to the public interest; or

*(b)* may prejudice the achievement of the objects of a financial sector law.

(2) Subsection (1) applies to the granting of exemptions if a financial sector law does not provide a power to grant exemptions.

(3) If a financial sector law provides a power to grant exemptions, the responsible authority must —

*(a)* grant the exemption in terms of the relevant provisions of the financial sector law; and

*(b)* when deciding whether to grant an exemption, comply with the requirements of subsection (1) in addition to any requirements specified in the financial sector law.

(4) The responsible authority must publish each exemption.

Requirements for notification and concurrence

**273.** (1) If this Act provides that a financial sector regulator must notify the other financial sector regulator of a particular matter, the notification is not required if the other regulator has agreed, in a section 77 memorandum of understanding or otherwise, that—

*(a)* failure to provide the notice does not prejudice the achievement of its objective; and

*(b)* the notification is unnecessary.

(2) If this Act provides that a financial sector regulator may not take a particular action without the concurrence of the other financial sector regulator, the concurrence is not required if the other regulator has agreed, in a section 77 memorandum of understanding or otherwise, that—

*(a)* action of the relevant kind does not prejudice the achievement of its objective; and

*(b)* its concurrence is unnecessary.

(3) If this Act provides that a financial sector regulator may not take a particular action without the concurrence of the Reserve Bank, the concurrence is not required if the Reserve Bank has agreed, in a memorandum of understanding or otherwise, that the concurrence is unnecessary.

Arrangements for engagements with stakeholders

**274.** Each of the financial sector regulators and the Ombud Council must establish and give effect to arrangements to facilitate consultation and the exchange of information with financial institutions, financial customers, and prospective financial customers on matters of mutual interest.

Records and entries in books of account admissible in evidence

**275.** In any proceedings in terms of, or in relation to, a financial sector law, the records and books of account of a financial institution, and of a person who is engaged by a financial institution to perform a control function, are admissible as evidence of the matters, transactions and accounts recorded therein.

Immunities

**276.** The State, the Minister, the Reserve Bank, the Governor and Deputy Governors, a financial sector regulator, a member of the Executive Committee, the Prudential Committee, a member of a subcommittee of the Prudential Authority or the Financial Sector Conduct Authority, a member of the Tribunal, the Ombud Council, a member of the Ombud Board, an employee of the State, a board member or officer of the Reserve Bank, a staff member of a financial sector regulator, a staff member of the Reserve Bank, a person appointed by a financial sector regulator or the Reserve Bank to exercise a power or perform a function or duty in terms of a financial sector law is not liable for, or in respect of, any loss or damage suffered or incurred by any person arising from a decision taken or action performed in good faith in the exercise of a function, power or duty in terms of a financial sector law.

Notices to licensees

**277.** (1) A notice in terms of, or relating to, a financial sector law to a person who is or was licensed in terms of a financial sector law must be served on, or given to—

*(a)* the person; or

*(b)* if the person cannot be found after reasonable inquiry, some other person apparently involved in the management or control of a place where the person carries or carried on the licensed activities.

(2) For the purposes of a financial sector law, service in terms of subsection (1)*(b)* is effective service.

Publication requirements in financial sector laws

**278.** (1) A requirement in terms of a financial sector law to publish a document or information, including a requirement to publish it in the *Gazette*, must be read as a requirement also to publish the document or information in the Register.

(2) The document or information may also be published on the website of the person required to publish it, or in other effective ways.

(3) This section does not require publication of a draft of a document in the Register.

Part 5

Regulations and Guidelines

Regulations and guidelines

**279.** (1) The Minister may make Regulations to facilitate the implementation of this Act, including Regulations—

*(a)* that must or may be prescribed in terms of this Act;

*(b)* to provide for other procedural or administrative matters that are necessary to implement the provisions of this Act.

(2) A requirement in terms of a financial sector law or the Interpretation Act (Act No. 33 of 1957), to publish Regulations in the *Gazette* must be read as a requirement to publish the Regulations also in the Register.

(3) *(a)* The Minister may issue guidelines for the disclosure of material interests contemplated in sections 49, 72, 194 and 227 to provide guidance to persons who are required to disclose material interests in terms of those sections.

*(b)* Guidelines issued in terms of paragraph *(a)* do not divest persons who are required to disclose a material interest in terms of sections 49, 72 194 and 227 from their duty to properly apply their minds and disclose all material interests.(4) The Minister may not make a Regulation unless the Minister—

*(a)* has published—

(i) a draft of the Regulation;

(ii) a statement explaining the need for and the intended operation of the Regulation;

(iii) a statement of the expected impact of the Regulation;

(iv) a notice inviting submissions in relation to the Regulation and stating where, how and by when submissions are to be made; and

*(b)* has, once submissions referred to in paragraph *(a)*(iv) have been received and considered, submitted to Parliament, while it is in session, for scrutiny—

 (i) the documents mentioned in paragraph *(a)*(i) to (iv); and

 (ii) if the Minister has undertaken any consultation process on the draft Regulations, a report of the consultation process, which report must include—

*(aa)* a general account of the issues raised in the submissions; and

*(bb)* a response to the issues raised in the submissions.

(5)*(a)* The Minister, when deciding on the period allowed for making submissions referred to in paragraph (4)*(a)*, must take into account the nature and complexity of the Regulation, and the period allowed must be at least 30 days.

*(b)* The period allowed for Parliamentary scrutiny referred to in paragraph (4)*(b)* must be at least 30 days while Parliament is in session.

(6) If a Minister intends, whether or not as a result of a consultation process, to make a Regulation in a materially different form from the draft Regulation published in terms of subsection (4), the Minister must, before making the Regulation, repeat the process referred to in subsection (4).

(7) If complying with subsection (4) or (6), in the opinion of the Minister, is likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed Regulation, the Minister must, before making the Regulation—

*(a)* publish –

(i) a draft of the Regulation and a statement explaining the need for and the intended operation of the Regulation;

(ii) a notice inviting submissions in relation to the Regulation and stating where, how and by when submissions are to be made; and

(iii) a statement of the reasons why the delay involved in complying with subsections (4) and (6) is considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the proposed Regulation; and

*(b)* submit to Parliament the documents mentioned in paragraph *(a)*.

(8) *(a)* The period allowed for making submissions referred to in subsection (7)*(a)*(ii) must be at least seven days.

*(b)* The period allowed for submission to Parliament referred to in subsection (7)*(b)* must be at least seven days, whether Parliament is in session or not.

*(c)* The period referred to in paragraph *(b)* may run concurrently with the period referred to in paragraph *(a)*.

(9) The Minister must, after making a Regulation pursuant to subsections (7) and (8), within 30 days of making the Regulation, submit to Parliament a report of the consultation process referred to in subsections (13) to (15).

(10) This section does not prevent the Minister from engaging in consultations in addition to those required in terms of this section.

 (11) In deciding whether to make a Regulation, the Minister must take into account all submissions received by the expiry of the period referred to in subsection (5)*(a)* or (8)*(a)* and any deliberations of the Parliament.

(12) A Regulation comes into effect—

*(a)* on the date that it is published in the Register; or

*(b)* if the Regulation provides that it comes into effect on a later date, on the later date.

 (13) With each Regulation, the Minister must publish a consultation report.

(14) A consultation report must include—

*(a)* a general account of the issues raised in the submissions made during the consultation; and

*(b)* a response to the issues raised in the submissions.

(15) If the Minister did not comply with subsection (4) or (6) for the reason stated in subsection (7), the consultation report must be published 30 days after the instrument was made and the report must include a statement of the reasons why the delay involved in complying, or complying fully, with subsection (4) or (6) was considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the Regulation.

Part 6

Amendments, repeals, transitional and saving provisions

Interpretation

**280.** In this Part—

**“Appeal Board”** means the Appeal Board established by section 26A of the Financial Services Board Act;

**“Directorate of Market Abuse**” means the Directorate of Market Abuse established by section 12 of the Insider Trading Act, 1998 (Act No. 135 of 1998) and continued in terms of the Securities Services Act, 2004 (Act No. 36 of 2004) and then the Financial Markets Act;

**“Enforcement Committee”** means the Enforcement Committee established in terms of section 10A of the Financial Services Board Act or section 97 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**“Financial Services Board”** means the Financial Services Board as defined in the Financial Services Board Act; and

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

Amendments and repeals

**281.** The Acts listed in Schedule 4 are amended or repealed as set out in that Schedule.

Transitional provision in relation to medical schemes

**282.** (1) The functions of the Prudential Authority in relation to medical schemes and the associated powers and duties of the Prudential Authority are, to the extent determined by, and subject to any conditions determined by, the Minister, to be exercised by the Council for Medical Schemes instead of the Prudential Authority, but with the concurrence of the Prudential Authority.

(2) The functions of the Financial Sector Conduct Authority in relation to medical schemes and the associated powers and duties of the Financial Sector Conduct Authority are, to the extent determined by, and subject to any conditions determined by, the Minister, to be exercised by the Council for Medical Schemes instead of the Financial Sector Conduct Authority, but with the concurrence of the Financial Sector Conduct Authority.

(3) A determination in terms of subsection (1) or (2) must be published.

(4) The concurrence of an financial sector regulator in terms of subsection (1) or (2) to the exercise of a particular power or the performance of a particular function or duty is not required if the financial sector regulator has agreed in writing that—

*(a)* the exercise of the power or the performance of the function or duty does not prejudice the achievement of its objective; and

*(b)*  its concurrence is unnecessary.

Transitional prudential powers of Financial Sector Conduct Authority

**283.** (1) This section applies for the period of three years from the date on which this section comes into effect but the Minister may, by notice in the *Gazette*, determine a shorter or longer period.

(2) The power of the Prudential Authority to make prudential standards, to be complied with by the following financial institutions, with respect to the safety and soundness of those financial institutions and otherwise to achieve the objectives of the Prudential Authority, is to be exercised by the Financial Sector Conduct Authority:

*(a)* Collective investment schemes as defined in section 1(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

*(b)* pension funds as defined in section 1(1) of the Pension Funds Act;

*(c)* friendly societies as defined in section 1(1) of the Friendly Societies Act.

(3) A prudential standard in terms of subsection (2) may only impose requirements that may be imposed under the specific financial sector law relevant to the financial institution concerned.

(4) The Financial Sector Conduct Authority may exercise its other powers in terms of financial sector laws with respect to the financial institutions referred to in subsection (2) to achieve the objective of the Prudential Authority.

(5) Subsection (3) does not affect the powers of the Financial Sector Conduct Authority in respect of a financial institution.

Development and implementation of policy frameworks during transitional period

**284.** (1) During the period of three years from the date on which this section comes into effect, the National Treasury, in conjunction with the financial sector regulators, may develop principles for further policy frameworks, not inconsistent with this Act, for the regulation and supervision of financial institutions.

(2) The Minister may, by notice published in the Register, declare principles developed as contemplated in subsection (1).

(3) The financial sector regulators must strive to exercise their powers in terms of financial sector laws in a manner consistent with policy frameworks so declared, but failure to do so does not affect the validity of any action taken by a financial sector regulator.

Transfer of assets of Financial Services Board

**285.** (1) At the date on which this section comes into effect, the assets and liabilities of the Financial Services Board cease to be assets and liabilities of the Board and become assets and liabilities of the Financial Sector Conduct Authority without any conveyance, transfer or assignment.

(2) A person or authority who, in terms of a law or of a trust instrument or in any other way is required to keep or maintain a database in relation to assets or liabilities must, and may without any application or otherwise, record in the database the transfer of the asset or liability in terms of subsection (1).

(3) A transfer of an asset in terms of subsection (1) does not give rise to any liability to duty or tax.

(4) *(a)* The Minister or a person authorised by the Minister for the purposes of this section may certify in writing that a specified asset or liability of the Financial Services Board became an asset or liability of the Financial Sector Conduct Authority on the date on which this sectiont came into effect.

*(b)* A certificate in terms of paragraph *(a)* is conclusive proof that a specified asset or liability of the Financial Services Board is an asset or liability of the Financial Sector Conduct Authority.

Transfer of staff of Financial Services Board

**286.** (1) *(a)* At the date on which this section comes into effect, the staff of the Financial Services Board must be transferred to the Financial Sector Conduct Authority and the South African Reserve Bank, respectively, in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

*(b)* Any reference in section 197 of the Labour Relations Act, 1995 to—

 (i) the “old employer” must be read as a reference to the Financial Services Board; and

 (ii) the “new employer” must be read as a reference to the Financial Sector Conduct Authority or the South African Reserve Bank, as the case may be, in respect of the staff to be transferred to either of these entities.

*(c)* The agreements referred to in section 197 of the Labour Relations Act, 1995, must address the transfer of the staff of the Financial Services Board to the pension fund of the South African Reserve Bank, where applicable.

(2) The Financial Sector Conduct Authority, at the date on which this section comes into effect, becomes liable, on the terms and conditions set out in resolutions of the Financial Services Board, for the liability of the Financial Services Board to subsidise the cost of the contributions payable to a medical scheme registered under the Medical Schemes Act by—

*(a)* aperson who was employed by the Financial Services Board as at 1 January 1998 and remained continuously so employed until he or she died or retired from the Financial Services Board; or

*(b)* a person who was the spouse or dependant of a person contemplated in paragraph *(a)* at the time of the persons’ death or retirement from the Financial Services Board.

(3) If the benefit payable to a member in terms of the rules of the Financial Services Board Pension Fund on retirement would have been subject to special tax treatment, the benefit payable to that employee on his or her retirement by the pension fund of the Financial Sector Conduct Authority and the South African Reserve Bank, if applicable, must be subject to the same tax treatment.

(4) At the date on which this section comes into effect, the pension fund of the Financial Services Board becomes the pension fund of the Financial Sector Conduct Authority.

Annual reports

**287.** (1) The Prudential Authority must prepare each annual report of a financial sector regulator required by a financial sector law for which it is the responsible authority in respect of the reporting period in which the date on which this section comes into effect occurs.

(2) The Financial Sector Conduct Authority must prepare each annual report of the Financial Services Board or another financial sector regulator required by a financial sector law for which it is the responsible authority for the reporting period in which the date on which this section comes into effect occurs.

(3) A report in terms of subsection (1) or (2) may be published as part of the first annual report of the Prudential Authority or the Financial Sector Conduct Authority, as the case may be.

Inspections and investigations

**288.** (1) An inspection or investigation in terms of the Banks Act, the Reserve Bank Act, the Mutual Banks Act, 1993 (Act No. 124 of 1993) Act, the Co-operative Banks Act, 2007 (Act No. 40 of 2007), the Short-term Insurance Act or the Long-term Insurance Act that is pending and not concluded immediately before the date on which this section comes into effect may be continued and concluded by the Prudential Authority in terms of the relevant provisions of this Act.

(2) An inspection or investigation in terms of a financial sector law or legislation referred to in the definition of “Financial Services Board legislation” in section 1 of the Financial Services Board Act, other than those referred to in subsection (1), that is pending but not concluded immediately before the date on which this Chapter comes into effect may be continued and concluded by the Financial Sector Conduct Authority in terms of the relevant provisions of this Act.

Co-operation agreements with foreign agencies

**289.** An arrangement in terms of a financial sector law between a registrar, supervisor or other financial sector regulator and a foreign government agency that is in force on the date on which this section comes into effect continues in effect as with the substitution of the relevant financial sector regulator for the registrar, supervisor or the other financial sector regulator, but may be amended or terminated in accordance with the terms of the arrangement.

Enforcement Committee and Appeal Board

**290.** (1) *(a)* Despite the repeals effected in the terms of this Part—

 (i) the Enforcement Committee is to continue to deal with any matter that it was dealing with immediately before the date on which this Part comes into effect; and

 (ii) a panel of the Appeal Board is to continue to deal with any matter that it was dealing with immediately before that date.

*(b)* The Enforcement Committee and the panels referred to in paragraph *(a)*(ii) continue in existence for the purposes of paragraph *(a)* only.

(2) The Financial Sector Conduct Authority must provide administrative and other support to the Enforcement Committee and the panels.

(3) For the purposes of this section, proceedings are instituted if—

*(a)* in the case of the Enforcement Committee established in terms of section 97 of the Securities Services Act, 2004 (Act No. 36 of 2004), the pleadings envisaged in section 102(1) of that Act have been referred to the Enforcement Committee;

*(b)* in the case of the Enforcement Committee established in terms of section 10A of the Financial Services Board Act, the pleadings envisaged in section 6B(1) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) have been delivered in terms of section 6B(2)*(a)* of that Act.

Right of appeal of Financial Services Board decisions

**291.** Despite the repeals effected in terms of section 281, section 26 of the Financial Services Board Act continues in effect in respect of decisions made before the date those repeals come into effect, but the appeal contemplated by that section is to made to the Tribunal.

Pending proceedings

**292.** (1) Despite the repeal of section 9 of the Banks Act in terms of Schedule 4, an application for a review made in terms of that section but not finally determined before the date on which this section comes into effect may be continued before the board of review, which is to exercise the powers of the Tribunal in relation to the application.

(2) The Prudential Authority must be substituted as a party in any pending proceedings, whether in a court, tribunal or before an arbitrator or any other person or body, that have been commenced but not finally determined immediately before the date on which this section comes into effect, for the Reserve Bank or a registrar in terms of the Banks Act, the Mutual Banks Act, 1993 (Act No. 124 of 1993), the Co-operative Banks Act, 2007 (Act No. 40 of 2007), the Short-term Insurance Act or the Long-term Insurance Act.

(3) The Financial Sector Conduct Authority must be substituted as a party in any pending proceedings, whether in a court, tribunal or before an arbitrator or any other person or body, that have been commenced but not finally determined immediately before the date on which this sectiont comes into effect, for the Financial Services Board, the Directorate of Market Abuse, where applicable, or a registrar in terms of a financial sector law other than Banks Act.

Savings of approvals, consents, registrations and other acts

**293.** (1) An authorisation, approval, registration, consent or similar permission given in terms of a financial sector law and in force immediately before the date on which this section comes into effect remains in force for the purposes of the financial sector law but may be amended or revoked by the responsible authority for the financial sector law in accordance with the financial sector law.

(2) Rules made in terms of section 26 of the Financial Advisory and Intermediary Services Act and in force immediately before the date on which this section come into effect have effect as Ombud Council rules, and may be amended or revoked by Ombud Council rules in accordance with this Act.

(3) A regulatory instrument or Regulation made or issued in terms of a financial sector law and in force immediately before the date on which this section comes into effect remains in force for the purposes of the financial sector law but may be amended or revoked by a regulatory instrument made by the responsible authority for the financial sector law in accordance with the relevant financial sector law.

(4) Consultations undertaken before the date on which Part 1 of Chapter 7 comes into effect in relation to a regulatory instrument proposed to be made under a specific financial sector law or a proposed financial sector law after that Part came into effect are taken to meet the requirements of this Act for consultation to the extent that they—

*(a)* meet the requirements of the specific financial sector law for consultation prior to the amendment of that law in accordance with Schedule 4; or

*(b)* substantially meet the requirements of this Act for consultation on the proposed regulatory instrument,.

(5) Regulations made in terms of section 5 of the Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993), and in force on the date on which this section comes into effect continue in force, but may be amended or repealed by Regulations made in terms of section 5 by the Prudential Authority.

(6) An ombud scheme that, immediately before the repeal of the Financial Services Ombuds Schemes Act, 2004 came into effect, was recognised in terms of that Act must be taken to be a recognised industry ombud scheme as if it had been recognised under this Act.

(7) Subsection (6) ceases to have effect at the end of 12 months after Chapter 14 takes effect, but the Ombud Council may, on application and for good reason, extend the application of that subsection in a particular case for a further period not more than 6 months.

Levy

**294.** (1) Despite the repeal of the Financial Service Board Act in terms of Schedule 4, a levy imposed in terms of section 15A of the Financial Services Board Act continues in force subject to this Act, until a date fixed by the Minister by notice published in the Register.

(2) A levy referred to in subsection (1) is, from the date on which this section takes effect, taken to be a levy for the purposes of this Act and the Levies Act.

Chief Actuary

**295.** A reference in any Act or subordinate legislation to the Chief Actuary is, after the date on which this section comes into effect, to be read as a reference to the Prudential Authority.

**Additional transitional arrangements**

**296.** (1) In order to facilitate the commencement, appropriate implementation and operation of this Act, the Minister may make Regulations providing for transitional arrangements regarding the exercise of powers, the performance of functions and duties, and other matters that may be necessary in relation to—

*(a)* the establishment of the financial sector regulators and other bodies in terms of this Act;

*(b)*  the coming into operation of different provisions of this Act; and

*(c)* the repeal or amendment of different provisions of a law repealed or amended by this Act.

(2) Without limiting subsection (1), Regulations in terms of this section may provide for—

*(a)* the Reserve Bank to exercise specified powers and to perform specified functions and duties of the Prudential Authority, should it be necessary for powers and functions of the Prudential Authority in terms of this Act to be exercised for a period prior to the Prudential Authority being formally established; and

*(b)* the Financial Services Board to exercise specified powers and perform specified functions and duties of the Financial Sector Conduct Authority, should it be necessary for the powers and functions of the Financial Sector Conduct Authority in terms of this Act to be exercised prior to the Financial Sector Conduct Authority being formally established.

Part 7

Short title and commencement

Short title and commencement

**297.** (1) This Act is called the Financial Sector Regulation Act, 2016, and comes into effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into effect of—

*(a)* different provisions of this Act;

*(b)* different provisions of this Act in respect of different categories of financial institutions; and

*(c)* the repeal or amendment of different provisions of a law repealed or amended by this Act.

(3) In addition to what is provided in subsection (2), the Minister may provide that provisions relating to the establishment and operation of the Prudential Authority and the Financial Sector Conduct Authority may come into effect on different dates.