



## DA Proposal to Amend the Financial Sector Regulation Bill B34- 2015

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

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

### 1. Clause 39 – Removal of Chief Executive Officer

#### **Removal of Chief Executive Officer**

39. (1) The Governor must, subject to due process, remove the Chief Executive Officer from office if the Chief Executive Officer becomes a disqualified person.

(2) The Governor **[may]** must, with the concurrence of the Minister, remove the Chief Executive Officer from office if an independent inquiry, established by the Governor with the concurrence of the Minister, has found that the Chief Executive Officer—

- (a) is unable to perform the duties of office for health or other reasons;
- (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 36(2);
- (c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or
- (d) has acted in a way that is inconsistent with continuing to hold the office.

(3) If an independent inquiry has been established in terms of subsection (2), the Governor may suspend the Chief Executive Officer from office pending a decision on the removal of the Chief Executive Officer.

(4) If the Governor or Minister is given good reason to believe that an independent inquiry might make a finding in terms of subsection (2), they must, within 30 days, initiate the process to establish such an independent inquiry with the concurrence of the other.

**[(4)]** (5) Without limiting subsection (2)(c), the Chief Executive Officer must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Prudential Committee without the leave of the Prudential Committee.

**[(5)] (6)** If the Chief Executive Officer is removed from office in terms of subsection (2), the Minister must, within 30 days, submit the report and findings of the independent inquiry to the National Assembly.

## **2. Clause 49 – Disclosure of Interests**

### **Disclosure of Interests**

49. (3) A member who has, or who has a related party who has, an interest that is required to be disclosed in terms of subsection (1), may not participate in the consideration of, or decision on, a matter to which the interest relates unless—

- (a) the member has disclosed the interest as required by subsection (1); and
- (b) the other members of the Prudential Committee or subcommittee have decided that the interest does not affect the proper execution of that member's functions in relation to the matter,

Failing which that consideration of, or decision on, that matter shall be automatically voided and must be reconsidered or decided on without the member present.

(8) When a person has failed to disclose a material interest in terms of this section, the Prudential Committee must publish a notice on the Prudential Authority's website that a failure to disclose a material interest occurred, which notice must include the full details of the failure.

## **3. Clause 61 – Commissioner and Deputy Commissioners**

### **Commissioner and Deputy Commissioners**

61. (1) The Minister must appoint **[a person who has appropriate expertise in the financial sector]** as the Commissioner of the Financial Sector Conduct Authority a person –[.]

- a) who has appropriate expertise in the financial sector and is a fit and proper person;
- b) nominated by a committee of the National Assembly proportionally composed of members of all parties represented in the Assembly; and
- c) approved by the National Assembly by a resolution adopted by a majority of at least 60 percent of the members of the Assembly;

provided that if any nomination is not approved as required in paragraph (b), the committee must nominate another person.

(2) The Minister must appoint at least two, but no more than four, persons who have appropriate expertise in the financial sector as Deputy Commissioners.

(3) The Commissioner and Deputy Commissioners serve in a full-time executive capacity.

(4) A process for the selection of persons for appointment as **[Commissioner or]** Deputy Commissioner and for facilitating the process for appointment as Commissioner described in subsection (1) may be prescribed by Regulation.

#### **4. Clause 65 – Removal from office**

##### **Removal from office**

65. (1) The Minister must, subject to due process, remove the Commissioner from office if the Commissioner becomes a disqualified person.

(2) The Commissioner must, subject to due process and with the concurrence of the Minister, remove a Deputy Commissioner from office if the Deputy Commissioner becomes a disqualified person.

(3) The Minister **[may]** must remove the Commissioner from office if an independent inquiry established by the Minister has found that the Commissioner—

- (a) is unable to perform the duties of office for health or other reasons;
- (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 61(7);
- (c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or
- (d) has acted in a way that is inconsistent with continuing to hold the office.

(4) If an independent inquiry has been established in terms of subsection (3), the Minister may suspend the Commissioner from office pending a decision on that person's removal from office.

(5) If the Minister is given good reason to believe that an independent inquiry might make a finding in terms of subsection (3), the Minister must, within 30 days, establish such an independent inquiry.

**[(5)] (6)** The Commissioner **[may]** must, with the concurrence of the Minister, remove a Deputy Commissioner from office if an independent inquiry established by the Commissioner, with the concurrence of the Minister, has found that the Deputy Commissioner—

- (a) is unable to perform the duties of office for health or other reasons;
- (b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 61(7);

(c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or

(d) has acted in a way that is inconsistent with continuing to hold the office.

**[(6)] (7)** If an independent inquiry has been established in terms of subsection **[(5)] (6)**, the Commissioner may suspend the Deputy Commissioner from office pending a decision on that person's removal from office.

(8) If the Commissioner or Minister is given good reason to believe that an independent inquiry might make a finding in terms of subsection (6), they must, within 30 days, initiate the process to establish such an independent inquiry with the concurrence of the other

**[(7)] (9)** Without limiting subsection (3)(c) or **[(5)](6)(c)**, the Commissioner or a Deputy Commissioner, as the case may be, must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Executive Committee without the leave of the Executive Committee.

**[(8)] (10)** If the Commissioner or a Deputy Commissioner is removed from office in terms of this section, the Minister must submit the report and findings of the independent inquiry to the National Assembly.

## **5. Clause 72 – Disclosure of interests**

### **Disclosure of Interests**

72. (3) A member referred to in subsection (1) may not perform a function in relation to the matter concerned unless—

- (a) the member has disclosed the interest as required by subsection (1); and
- (b) the other members of the Executive Committee have decided that the interest does not affect the proper execution of the member's functions in relation to the matter.

Failing which the performance of that function shall be automatically voided and must be reconsidered without the member present.

## **6. Clause 86 – Independent evaluation of effectiveness of co-operation and collaboration**

### **Independent evaluation of effectiveness of co-operation and collaboration**

86. (1) The Inter-Ministerial Council must, as soon as practicably possible following the expiration of the six month period described in Section 77(1), commission an independent evaluation of the

establishment of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

(2) The evaluation referred to in subsection (1) must at least contain analysis of the memoranda of understanding required in terms of Section 77, and the outcome of any and all consultations in terms of Section 78.

(3) [(1)] The Inter-Ministerial Council may on its own initiative, or at the request of a financial sector regulator, [undertake] at any time commission an independent evaluation of the effectiveness of co-operation and collaboration between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

(4) [(2)] When a financial sector regulator makes a request for an evaluation, the Inter-Ministerial Council must consider the request and the concerns raised in the request regarding the effectiveness of cooperation and collaboration, and, if the Council rejects the request, provide the financial sector regulator that made the request with the reasons for rejecting the request.

(5) Any evaluation commissioned by the Inter-Ministerial Council in terms of this Section must be tabled in Parliament immediately following the Council's consideration thereof, and must be accompanied by a report from the Council on the evaluation's contents.

## **7. Clause 110 – General**

### **General**

110. (1) Different standards may be made for, or in respect of-

(a) different categories of financial institutions, representations, contractors or key persons; or

(b) different circumstances.

(2) A standard may be applicable to existing actions, activities, transactions, policies and appointments.

(3) All standards must be published on the relevant authority's website.

## **8. Clause 117 – Reporting obligations of licensee**

### **Reporting obligations of licensee**

117. (1) A licensee must promptly report **[any of the following]** to the responsible authority that issued the licence[:] in the event that

- [(a) The fact that the licensee has contravened or is contravening, in a material way—**
- (i) a financial sector law;**
  - (ii) a regulator’s directive or a directive in terms of section 202;**
  - (iii) an enforceable undertaking;**
  - (iv) an order of a court made in terms of a financial sector law; or**
  - (v) a decision of the Tribunal;**

- (c) the fact that]** the licensee has become aware that information given in connection with the application for the licence was false or misleading.

(2) Subsection (1) **[also applies in relation to events and circumstances that occur]** continues to apply while a licence is suspended.

## **9. Clause 167(1) – Administrative Penalties**

### **Administrative Penalties**

167. (1) The responsible authority for a financial sector law may, by **[order served on]** way of notice issued to 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.

## **10. Clause 170 – Enforcement**

### **Enforcement**

170. (1) The responsible authority that **[makes]** issues an administrative penalty **[order]** may apply to a competent court to have the **[file with the registrar of a competent court a certified copy of the order]** penalty made an order of court if—

- (a) the amount payable in terms of the **[order]** penalty notice has not been paid as required by the **[order]** penalty notice; and
- (b) either—
  - (i) no application for reconsideration of the **[order]** penalty notice 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]** penalty, on being **[filed]** made an order of court, has the effect of a civil judgment. **[, and may be enforced as if lawfully given in that court.]**

## **11. Clause 239 – Budget, fees and levies proposals**

### **Budget, fees and levies proposals**

239. (7) In respect of the fees and levies proposals for the first financial year following the commencement of this section, the **[Minister]** National Assembly must approve the proposals for all the financial sector bodies after consultation with the Minister.

(8) In respect of the Tribunal, the **[Minister]** National Assembly must approve the fees and levies proposals for any financial year following the commencement of this section after consultation with the Minister.

(9) (a) In respect of financial sector bodies other than the Tribunal, for any financial year other than when subsection (7) applies, the **[Minister]** National Assembly must approve the fees or levies proposals after consultation with the Minister, if the fees or levies proposals are based on an estimate of expenditure in excess of the amount calculated as-

Previous year basis x 1.025 x (current index ÷ previous index).

## **12. Clause 251(1)(c) – Information sharing**

### **Information sharing**

251. (1) (c) A financial sector regulator or the Reserve Bank may only share or disclose information in order to fulfil its obligations and duties in terms of this subsection and subsection (2), and any other legal obligation including under the Promotion of Access to Information Act 2 of 2000, and the disclosure or sharing of information for any other purposes constitutes the sharing or disclosure of information for a purpose that is not authorised, as referred to in section 272.

## **13. Clause 273 – False or misleading information**

### **False or misleading information**

273. (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]** they knew or believed, or ought reasonably to have known or believed, to be 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] R10 000 000 or imprisonment for a period not exceeding [5] 10 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.]**

#### **14. Clause 274 – Accounts and records**

##### **Accounts and records**

274. (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.] 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.

(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.]**

#### **15. Clause 275 – False assertion of connection with financial sector regulator**

##### **False assertion of connection with financial sector regulator**



275. A person who, intentionally and without the consent of the financial sector regulator, applies to a company, body, business or undertaking a name or description that reasonably 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.

## **16. Clause 276 – Liability in relation to juristic persons**

### **Liability in relation to juristic persons**

[276. (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.]

## **17. Clause 304 – Additional transitional arrangements**

### **Additional transitional arrangements**

304. (1) In order to facilitate the coming into effect, appropriate implementation and operation of this Act, the Minister [**may**] must make Regulations within twelve months of this provision coming into effect 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.

(3) The Minister must be required to exercise his power in terms of Section 305(2) to determine that this section, Section 77, Section 78, Section 86 and any other section materially required for the facilitation of the coming into effect, appropriate implementation and operation of this Act shall come into effect reasonably in advance of the remainder of this Act.