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DRAFT FOR COMMITTEE CONSIDERATION

REPUBLIC OF SOUTH AFRICA

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# FINANCIAL SECTOR REGULATION BILL

**DRAFT REVISED BILL FOR COMMITTEE DELIBERATIONS**  
**30 NOVEMBER 2016**  
**INCORPORATING REVISIONS DISCUSSED IN COMMITTEE UP TO**  
**29 NOVEMBER 2016**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 39127 of 21 August 2015)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**B 34—2015**

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ment the policies and strategies adopted by the Prudential Committee.

#### **Term of office of Chief Executive Officer**

38. (1) A person appointed as the Chief Executive Officer—
- (a) holds office for a term no longer than five years, as the Governor may determine;
  - (b) is, at the expiry of that term, eligible for re-appointment for one further term; and
  - (c) must vacate office before the expiry of a term of office if that person—
    - (i) resigns as Chief Executive Officer, by giving at least three months written notice to the Governor, or a shorter period that the Governor may accept;
    - (ii) ceases to hold office as Deputy Governor; or
    - (iii) is removed from office as Chief Executive Officer.
- (2) The Governor must, at least three months before the end of the Chief Executive Officer's first term of office, inform the Chief Executive Officer whether the Governor proposes to re-appoint the person as 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, 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) 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) 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.

#### **Acting Chief Executive Officer**

40. The Governor may appoint a senior staff member of the Prudential Authority or a Deputy Governor to act as Chief Executive Officer when the Chief Executive Officer is absent from office, suspended or is otherwise unable to perform the functions of office.

#### **Establishment of Prudential Committee**

41. (1) A committee called the Prudential Committee is hereby established for the Prudential Authority.
- (2) The Prudential Committee consists of the Governor, the Chief Executive Officer and the other Deputy Governors.

#### **Role of Prudential Committee**

- (b) delegate to an administrative action committee the power to impose administrative penalties that are specified in the delegation, if the Prudential Authority establishes an administrative action committee; and
- (c) at any time amend a delegation made in terms of paragraph (a) or (b).
- (3) A delegation in terms of subsection (1)(a) or (2)(a) may be to a specific person or to a person holding a specific position.
- (4) Any power or duty of the Prudential Authority may be delegated to the Financial Sector Conduct Authority by a section 77 memorandum of understanding in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.
- (5) A delegation in terms of this section—
  - (a) is subject to the limitations and conditions specified in the delegation;
  - (b) does not divest the Prudential Authority, the Prudential Committee or the Chief Executive Officer of responsibility in respect of the delegated power or duty; and
  - (c) may be revoked at any time, but a revocation does not affect any rights or liabilities accrued because of the acts of the delegate.
- (6) Anything done by a delegate in accordance with a delegation in terms of this section must be regarded as having been done by the Prudential Authority.
- (7) This section does not affect a power under a specific financial sector law to delegate a power of the Prudential Authority.

#### Disclosure of interests

49. (1) A member of the Prudential Committee or of a subcommittee established in terms of section 45(1) must disclose, at a meeting of the Prudential Committee or subcommittee, as the case may be, or in writing to each of the other members of that committee or subcommittee, any interest in any matter that is being or may be considered by the relevant committee that—

- (a) the member has; or
- (b) a person who is a related party to the member has.

(2) A disclosure referred to in subsection (1) must be given as soon as practicable after the member becomes aware of the interest.

(3) (a) 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.

(b) Any consideration of, or decision on, a matter which does not comply with paragraph (a) is void and must be reconsidered or decided without the member present.

(4) (a) Each member of the Prudential Authority's staff and each person to whom a power or function of the Prudential Authority has been delegated must make timely, proper and adequate disclosure of their interests, including the interests of a related party, that could reasonably be seen as interests that may affect the proper execution of their functions of office or the delegated power.

(b) The Chief Executive Officer must ensure that paragraph (a) is complied with.

(5) For the purposes of this section, it does not matter—

- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
- (b) when the interest was acquired.

(6) For the purposes of this section, a person does not have to disclose—

- (a) the fact that that person, or a person who is a related party to that person, is—
  - (i) an official or employee of the Reserve Bank; or
  - (ii) a financial customer of a financial institution; or
- (b) an interest that is not material.

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(7) A failure by a person to disclose a material interest in accordance with this section and any guidelines that may be prescribed by the Minister in terms of section 288(3) constitutes—

- (a) a breach of the duties in section 46 or 52, whichever section is applicable to the person; and
- (b) an offence in terms of section 265.

(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 details of the failure.

(9) The Chief Executive Officer must maintain a register of all disclosures made in terms of this section and of all decisions made in terms of this section.

### **Part 3**

#### ***Staff, resources and financial management***

##### **Staff and resources**

50. (1) The Prudential Authority must determine the personnel, accommodation, facilities, use of assets, resources and other services that it requires to function effectively.

(2) The Prudential Authority may—

- (a) enter into secondment arrangements in respect of persons;
- (b) engage persons on contract otherwise than as employees;
- (c) enter into contracts;
- (d) acquire or dispose of property;
- (e) insure itself against any loss, damage, risk or liability that it may suffer or incur; and
- (f) do anything else necessary for the performance of its functions.

(3) The Prudential Authority may not enter into a secondment arrangement in respect of a person, or engage persons on contract, unless the person and the Prudential Authority have agreed in writing on—

- (a) the performance measures that will be used to assess that person's performance; and
- (b) the level of performance that must be achieved against those measures.

##### **Resources provided by Reserve Bank**

51. (1) The Reserve Bank must provide the Prudential Authority with the personnel, accommodation, facilities, use of assets, resources and other services determined in accordance with section 50(1) and as agreed to by the Reserve Bank.

(2) The Reserve Bank must second the personnel that it provides in terms of subsection (1) to the Prudential Authority.

##### **Duties of staff members**

52. (1) A person who is or has been a staff member of the Prudential Authority may not use that position or any information obtained as a staff member to—

- (a) improperly benefit himself or herself or another person;
- (b) impede the Prudential Authority's ability to perform its functions; or
- (c) cause improper detriment to another person.

(2) For the purposes of this section, "benefit" and "detriment" are not limited to financial benefit or detriment.

##### **Financial management duties of Chief Executive Officer**

53. The Chief Executive Officer must—

- (a) recommend to the Prudential Committee fees for prudential supervision by, and

- (iv) adopting the administrative action procedures of the Financial Sector Conduct Authority, and any amendments to those procedures;
- (v) appointing members of subcommittees of the Financial Sector Conduct Authority required or permitted by a law, and giving directions regarding the conduct of the work of any subcommittee;
- (vi) making conduct standards, joint standards and other regulatory instruments in terms of financial sector laws for which it is the responsible authority;
- (vii) granting, varying, suspending and revoking licences in terms of a financial sector law;
- (viii) making determinations of fees in terms of financial sector laws;
- (ix) any other matter assigned in terms of a financial sector law to the Executive Committee.

#### Commissioner and Deputy Commissioners

61. (1) The Minister must appoint a person who is fit and proper and has appropriate expertise in the financial sector as the Commissioner of the Financial Sector Conduct Authority.

(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 may must be prescribed by Regulation.

(5) (a) The Commissioner may designate a Deputy Commissioner to act as Commissioner when the Commissioner is absent from office.

(b) If the Commissioner is unable to designate an acting Commissioner in terms of paragraph (a), or if the office of Commissioner is vacant, the Minister may designate a Deputy Commissioner to act as Commissioner during the Commissioner's absence or pending the appointment of a Commissioner.

(6) A person may not be appointed or hold office as Commissioner or Deputy Commissioner if the person—

- (a) is a disqualified person; or
- (b) is not ordinarily resident in the Republic.

(7) When appointing the Commissioner or Deputy Commissioner, the Minister and the person appointed must agree, in writing, on—

- (a) the performance measures that must be used to assess the person's performance; and
- (b) the level of performance to be achieved against those performance measures.

#### Roles of Commissioner and Deputy Commissioners

62. (1) The Commissioner—

- (a) is responsible for the day-to-day management and administration of the Financial Sector Conduct Authority; and
- (b) subject to section 60(3)(b), must perform the functions of the Financial Sector Conduct Authority, including exercising the powers and carrying out the duties associated with those functions.

(2) The roles of the Deputy Commissioners are determined by the Executive Committee.

(3) When acting in terms of subsection (1) or (2), the Commissioner or a Deputy Commissioner must implement the policies and strategies adopted by the Executive Committee.

#### Terms of office

63. (1) A person appointed as Commissioner or Deputy Commissioner—

- (a) holds office for a term determined by the Minister, which term may not be longer than five years;
  - (b) is, at the expiry of that term, eligible for re-appointment for one further term; and
  - (c) must vacate office before the expiry of a term of office if that person—
    - (i) resigns by giving at least three months written notice to the Minister, or a shorter period that the Minister may accept; or
    - (ii) is removed from office as Commissioner or Deputy Commissioner, as the case may be.
- (2) The Minister must, at least three months before the end of a person's first term of office as Commissioner or Deputy Commissioner, inform the person whether the Minister proposes to re-appoint that person as Commissioner or Deputy Commissioner, as the case may be.

#### Service conditions

64. (1) Subject to this Act, the Commissioner and the Deputy Commissioners hold office on the terms and conditions determined in writing by the Minister.

(2) The terms and conditions of office of the Commissioner or a Deputy Commissioner may not be reduced during that person's term of 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 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) The Commissioner may, 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) If an independent inquiry has been established in terms of subsection (5), the Commissioner may suspend the Deputy Commissioner from office pending a decision on that person's removal from office.

(7) Without limiting subsection (3)(c) or (5)(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) If the Commissioner or a Deputy Commissioner is removed from office in terms of this section, the Minister must, within 30 days, submit the report and findings of the independent inquiry to the National Assembly.

person or to a person holding a specified position.

(5) Any power or duty of the Financial Sector Conduct Authority may be delegated to the Prudential Authority by a section 77 memorandum of understanding in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.

(6) A delegation made in terms this section—

- (a) is subject to the limitations and conditions specified in the delegation;
- (b) does not divest the Financial Sector Conduct Authority, the Commissioner or the Deputy Commissioner concerned of responsibility in respect of the delegated power or duty; and
- (c) may be revoked in writing at any time, but a revocation does not affect any rights or liabilities accrued because of the acts of the delegate.

(7) Anything done by a delegate in terms of the delegation must be regarded as having been done by the Financial Sector Conduct Authority.

(8) This section does not affect a power under a specific financial sector law to delegate a power of the Financial Sector Conduct Authority.

#### Disclosure of interests

72. (1) A member of the Executive Committee must disclose, at a meeting of the Executive Committee, or in writing to each of the other members, any interest in any matter that is being or is intended to be considered by him or her, whether or not at a meeting of the Executive Committee, being an interest that—

- (a) the member has; or
- (b) a person who is a related party to the member has.

(2) A disclosure in terms of subsection (1) must be given as soon as practicable after the member concerned becomes aware of the interest.

(3) *(a)* 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.

*(b) Any consideration of, or decision on, a matter which does not comply with paragraph (a) is void and must be reconsidered or decided without the member present.*

(4) A member of a subcommittee of the Financial Sector Conduct Authority established as contemplated in section 51(1)(a)(ii) of the Public Finance Management Act or section 68(1) of this Act must disclose, at a meeting of the subcommittee, or in writing to each of the other members of that subcommittee, any interest in a matter that is being or is intended to be considered by that subcommittee, being an interest that—

- (a) the member has; or
- (b) a person who is a related party to the member.

(5) A disclosure in terms of subsection (4) must be given as soon as practicable after the member concerned becomes aware of the interest.

(6) A member referred to in subsection (4) may not participate in the consideration of or decision on that matter by the subcommittee unless—

- (a) the member has disclosed the interest in accordance with subsection (4); and
- (b) the other members of that subcommittee have decided that the interest does not affect the proper execution of the member's functions in relation to the matter.

(7) (a) Each member of the Financial Sector Conduct Authority's staff and each other person to whom a power or function of the Financial Sector Conduct Authority has been delegated must make timely, proper and adequate disclosure of their interests, including the interests of a related party, that could reasonably be seen as interests that may affect the proper execution of their functions of office or the delegated power.

(b) The Commissioner must ensure that paragraph (a) is complied with.

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(5) The Minister may invite any Cabinet member who is not a member of the Inter-Ministerial Council to attend a meeting of the Inter-Ministerial Council.

(6) Meetings of the Inter-Ministerial Council are conducted in accordance with procedures determined by it.

#### **Protection for financial customers in terms of financial sector laws, National Credit Act and Consumer Protection Act**

85. (1) The Cabinet members responsible for consumer protection and consumer credit matters may request the Inter-Ministerial Council to consider whether or not a provision in a financial sector law, or in a proposed financial sector law, Regulation or regulatory instrument, provides or would provide for a standard of protection for financial customers that is equivalent to, or higher than, the protection provided for them in terms of the National Credit Act or the Consumer Protection Act.

(2) The Inter-Ministerial Council—

(a) must comply with the request; and

(b) may, if it considers that the provision does not provide for such a standard of protection for financial customers, make recommendations to amend the provision, or to take other lawful and appropriate action, to ensure that the protection is at least equivalent.

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

86. (1)(a) The Inter-Ministerial Council must, as soon as practicable 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.

(b) The Inter-Ministerial Council must, every two years after the initial independent evaluation referred to in paragraph (a), commission an independent evaluation of the effectiveness 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) An evaluation in terms of this section 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.

(4)(3) 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.

(24) 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 co-operation 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 of the evaluation, and must be accompanied by a report from the Council on the evaluation's contents.

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## **CHAPTER 6**

### **ADMINISTRATIVE ACTIONS**

#### **Part 1**

taining financial stability without the concurrence of the Reserve Bank.

#### General

110. (1) Different standards may be made for, or in respect of—
- (a) different categories of financial institutions, representatives, contractors or key persons; or
  - (b) different circumstances.
- (2) A standard may be made applicable to existing actions, activities, transactions, policies and appointments.
- (3) A standard must be published on the maker's website.

## CHAPTER 8

### LICENSING

#### Part 1

##### *Licensing requirements*

#### **Licence requirement in respect of providers of financial products and financial services, and market infrastructures**

111. (1) A person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except—
- (a) in accordance with a licence in terms of a specific financial sector law, the National Credit Act or the National Payment System Act; or
  - (b) if no specific financial sector law provides for such a licence, in accordance with a licence in terms of this Act.
- (2) A person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of this Chapter.
- (3) Subsections (1) and (2) only apply to a contractor if a responsible authority specifically, in a standard, requires that contractor to be licensed.
- (4) A person may not describe or hold itself out as being licensed in terms of a financial sector law, including being licensed to provide particular financial products, financial services or market infrastructure, unless that person is so licensed.
- (5) A person may not permit another person to identify the first person as licensed in terms of a financial sector law, including licensed in terms of a financial sector law to provide particular financial products, financial services or market infrastructure, unless the first person is so licensed.
- (6) For the purposes of subsections (4) and (5), a person whose licence has been suspended or revoked is not licensed.
- (7) Except to the extent expressly provided by this Act, this Act does not affect the provisions of the specific financial sector laws with respect to licensing in relation to financial products, financial services and market infrastructures.

#### Part 2

##### *Licences required in terms of section 111(1)(b) or (2) or section 162*

#### Interpretation

112. In this Part—
- “**application**” means an application for a licence required in terms of section 111(1)(b) or (2) or section 162;
  - “**licence**” means a licence required in terms of section 111(1)(b) or (2) or section 162;

(b) the level of performance to be achieved against those measures.

(2) Subject to this Act, the Chief Ombud holds office on the terms and conditions, including terms and conditions relating to remuneration, pension, leave and other benefits, that are determined by the Board and specified in an employment contract between the Chief Ombud and the Ombud Council.

(3) The Chief Ombud —

(a) is responsible for the day-to-day management and administration of the Ombud Council; and

(b) must perform the functions of the Ombud Council, except those mentioned in section 184(b) and (c), including exercising the powers and carrying out the duties associated with those functions.

(4) (a) The Chief Ombud must convene ~~and chair~~ meetings of the ombuds on a regular basis, but at least four times a year, to discuss the effective operation of the ombuds system.

(b) The Chief Ombud chairs meetings of the ombuds, or, in the absence of the Chief Ombud, a person appointed by the Chief Ombud;

(c) If three ombuds in writing request the Chief Ombud to convene a meeting of the Ombud Council, a meeting of the ombuds must be convened.

(5) When acting in terms of subsection (3), the Chief Ombud must implement the policies and strategies adopted by the Board.

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#### Duties of Board members

189. (1) A member of the Board must—

(a) act honestly in all matters relating to the Ombud Council; and

(b) perform his or her functions as a member—

(i) in good faith;

(ii) for a proper purpose; and

(iii) with the degree of care and diligence that a reasonable person in the member's position would exercise.

(2) A person who is or was a member of the Board may not use that position, or any information obtained as a member of the Board, to—

(a) improperly benefit himself, herself or another person;

(b) impede the Ombud Council's ability to perform its functions; or

(c) cause improper detriment to another person.

(3) For the purposes of this section, "benefit" and "detriment" are not limited to financial benefit or detriment.

#### Delegations

190. (1) The Chief Ombud may, in writing—

(a) delegate any of his or her powers or duties in terms of a financial sector law, except the power to delegate contained in this subsection, to a staff member of the Ombud Council; and

(b) at any time, amend or revoke a delegation made in terms of paragraph (a), subject to any rights that may have accrued.

(2) A delegation in terms of subsection (1) may be to a specific person or to a person holding a specific position.

(3) A delegation in terms of this section—

(a) is subject to the limitations and conditions specified in the delegation; and

(b) does not divest the Chief Ombud of responsibility in respect of the delegated power or duty.

(4) Anything done by a delegate in terms of the delegation must be regarded as having been done by the Ombud Council.

#### Staff and resources

191. (1) The Ombud Council may, in accordance with applicable law—

271. A person who contravenes a direction in terms of section 232(5)(a), or refuses, without reasonable excuse, to take an oath or make an affirmation when required to do so as contemplated in section 232(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

272. (1) (a) A financial sector regulator or the Reserve Bank commits an offence if information is disclosed or shared for a purpose that is not authorised in terms of section 251(1) or (2), or in a manner that is not authorised as referred to in section 251(5).

(b) Both an official or employee who shares or discloses information, and the financial sector regulator or the Reserve Bank on whose behalf the information is shared or disclosed, commit an offence if an official or employee –

- (i) who is not authorised to share or disclose information shares or discloses information in contravention of section 251(6)(c);
- (ii) who is authorised to share or disclose information shares or discloses information for a purpose that is not authorised in terms of section 251(1) or (2), or in a manner that contravenes section 251(3) or (4).

(2) (a) If a financial sector regulator or the Reserve Bank commits an offence referred to in subsection (1), it is liable on conviction to a fine not exceeding R5 000 000.

(b) An official or employee who commits an offence referred to in subsection (1)(b) 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.

(3) An auditor who contravenes section 252 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

(4) A person who contravenes section 254 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.

(5) A person who contravenes a condition imposed in terms of section 280 commits an offence and is liable on conviction to a fine not exceeding R5 000 000.

#### 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 the person 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 ~~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, R10 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.~~

#### 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 –

- ~~(a) 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; and~~

~~(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 (b) the person –~~

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- (i) knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;
- (bii) intended to deceive or mislead a financial sector regulator or an investigator; or
- (eiii) 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.

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

275. 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

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.

### Part 4

#### General matters

#### Complaints

277. 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

278. 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

279. (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.

**POINTS FOR CONSIDERATION:**

117. (3) This section is subject to a person's protections against self-incrimination in terms of any law.

In order to avoid any confusion about the intention and application of clause 117, the following revisions to clause 266 are proposed:

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

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

