

NATIONAL TREASURY'S PROPOSED CHANGES TO THE FSR BILL

3 MAY 2017

CLAUSE 58

Functions

58. (2) In relation to a financial institution that is a credit provider regulated in terms of the National Credit Act, the Financial Sector Conduct Authority may, in addition to regulating and supervising the financial institution in respect of the financial services that the financial institution provides, and notwithstanding section 2(1)(g), regulate and supervise the financial institution's conduct in relation to the provision of credit under a credit agreement only in respect of those matters referred to in section 108.

CLAUSE 79

Financial System Council of Regulators

79. (1) The Financial System Council of Regulators is hereby established.
- (2) The objective of the Financial System Council of Regulators is to facilitate co-operation and collaboration, and, where appropriate, consistency of action, between the institutions represented on the Financial System Council of Regulators by providing a forum for senior representatives of those institutions to discuss, and inform themselves about, matters of common interest.
- (3) The Financial System Council of Regulators must be composed of the following members:
- (a) The Director-General;
 - (b) the Director-General of the Department of Trade and Industry;
 - (c) the Director-General of the Department of Health;
 - (d) the Chief Executive Officer;
 - (e) the Commissioner;
 - (f) the Chief Executive Officer of the National Credit Regulator;
 - (g) the ~~Chief Executive Officer~~ Registrar of the Council for Registrar of Medical Schemes;
 - (h) the Director of the Financial Intelligence Centre;
 - (i) the Commissioner of the National Consumer Commission;
 - (j) the Commissioner of the Competition Commission;
 - (k) the Deputy Governor responsible for financial stability matters; and
 - (l) the head, however described, of any organ of state or other organisation that the Minister may determine.

CLAUSE 106

Conduct standards

106. (1) The Financial Sector Conduct Authority may make conduct standards for or in respect of—
- (a) financial institutions;
 - (b) representatives of financial institutions;
 - (c) key persons of financial institutions; and
 - (d) contractors.
- (2) A conduct standard must be aimed at one or more of the following:
- (a) Ensuring the efficiency and integrity of financial markets;
 - (b) ensuring that financial institutions and representatives treat financial customers fairly;
 - (c) ensuring that financial education programs, or other activities promoting financial literacy are appropriate;
 - (d) reducing the risk that financial institutions, representatives, key persons and contractors engage in conduct that is or contributes to financial crime; and
 - (e) assisting in maintaining financial stability
- (3) Without limiting subsections (1) and (2), a conduct standard may be made on any of the following matters:
- (a) Efficiency and integrity requirements for financial markets;
 - (b) measures to combat abusive practices;
 - (c) requirements for the fair treatment of financial customers, including in relation to—
 - (i) the design and suitability of financial products and financial services;
 - (ii) the promotion, marketing and distribution of, and advice in relation to, those products and services;

- (iii) the resolution of complaints and disputes concerning those products and services, including redress; ~~and~~
 - (iv) the disclosure of information to financial customers; ~~and~~
 - (v) principles, guiding processes and procedures for the refusal, withdrawal or closure of a financial product or a financial service by a financial institution in respect of one or more financial customers, taking into consideration relevant international standards and practices, and subject to the requirements of any other financial sector law or the Financial Intelligence Centre Act, including—
 - (aa) disclosures to be made to the financial customer; and
 - (bb) reporting of any refusal, withdrawal or closure to a financial sector regulator.
 - (d) the design, suitability, implementation, monitoring and evaluation of financial education programs, or other initiatives promoting financial literacy;
- (4) A conduct standard may declare specific conduct in connection with a financial product or a financial service to be unfair business conduct if the conduct—
- (a) is or is likely to be materially inconsistent with the fair treatment of financial customers;
 - (b) is deceiving, misleading or is likely to deceive or mislead financial customers;
 - (c) is unfairly prejudicing or is likely to unfairly prejudice financial customers or a category of financial customers; or
 - (d) impedes in any other way the achievement of any of the objectives of a financial sector law.
- (5) ~~(a) In a conduct standard made in~~ relation to a credit ~~provider agreement that is~~ regulated in terms of the National Credit Act, ~~a conduct standard may only be made~~ in relation to ~~a financial services services~~ provided in ~~relation to respect of such~~ a credit agreement ~~and matters provided for in section 108.~~
- ~~(b) A conduct standard referred to in paragraph (a);~~ may only be made after consultation with the National Credit Regulator.

CLAUSE 129

Application and interpretation of Chapter

- 129. (1)** This Chapter applies to information gathering, supervisory on-site inspections and investigations by the Prudential Authority or the Financial Sector Conduct Authority.
- (2) The Council for Medical Schemes may exercise powers in terms of this Chapter in respect of powers and functions set out in the Medical Schemes Act, and powers and functions granted to it in this Act.
- (3) In relation to the exercise of the powers in terms of this Chapter by the Council for Medical Schemes in respect of a medical scheme, a reference in this Chapter to—
- (a) a financial sector regulator or the responsible authority must be read as including a reference to the Council for Medical Schemes;
 - (b) the head of a financial sector regulator must be read as including a reference to the Registrar of Medical Schemes appointed in terms of section 18 of the Medical Schemes Act;
 - ~~(c) a financial sector law must be~~ read as including a reference to regulatory instruments and to the Medical Schemes Act; and
 - ~~(d) a~~ licensed financial institution must be read as including a reference to a medical scheme registered in terms of the Medical Schemes Act or an administrator of a medical scheme approved in terms of the Medical Schemes Act.

CLAUSE 132

Powers to conduct supervisory on-site inspections

- 132. (1)** A financial sector regulator may ~~conduct a supervisory on-site inspection at, at any reasonable time and after giving reasonable notice to the supervised entity, enter~~ the business premises of a supervised entity with prior notification to the supervised entity and, if the business premises of a supervised entity is a private residence, with the prior agreement of the occupant of the residence, and conduct a supervisory on-site inspection of the supervised entity on the premises.
- (2) The purpose for which a financial sector regulator may conduct a supervisory on-site inspection of a supervised entity is to—
- (a) check compliance by the entity with a financial sector law for which the financial sector regulator is the responsible authority, a regulator's directive issued by the financial sector regulator or an enforceable undertaking accepted by the financial sector regulator;

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- (b) determine the extent of the risk posed by the entity of contraventions of a financial sector law for which the financial sector regulator is the responsible authority; and
- (c) assist the financial sector regulator in supervising the relevant financial institution.
- (3) (a) A financial sector regulator may determine the time and place of a supervisory on-site inspection, provided that the supervisory on-site inspection must be done at a reasonable time within ordinary business hours.
- (b) A financial sector regulator must conduct a supervisory on-site inspection~~conducted~~ with strict regard to—
- (i) an affected decency and good order, including to a person's right to—
- (aa) ~~a~~ dignity;
- (bb) ~~b~~ freedom and security; ~~and~~
- (cc) ~~e~~ personal privacy; ~~and~~
- (dd) other constitutional rights; and
- (ii) decency and good order as the circumstances require, in particular by—
- (aa) conducting the supervisory on-site inspection discreetly and with due decorum;
- (bb) causing as little disturbance as possible; and
- (cc) concluding the supervisory on-site inspection as soon as possible.
- (4) (a) An official of a financial sector regulator ~~has~~, when conducting a supervisory on-site inspection, ~~the right of access to any part of the premises and to any business document on the premises, and~~ may do any of the following:
- (i) Request any person who has a specified business document that is relevant to the inspection in his, her or its possession or under his, her or its control to produce that document and examine~~(i) Examine~~, make extracts from and copy any business document ~~on~~ⁱⁿ the premises;
- (ii) question any person on the premises to find out information relevant to the inspection;
- (iii) give the supervised entity a written directive to produce to the financial sector regulator, at a time and place and in a manner specified in the directive, a specified business document that is relevant to the inspection and is in the possession or under the control of the supervised entity;
- (iv) when a business document is produced as required by a directive in terms of subparagraph (iii), examine, make extracts from and copy the document;
- (v) if, as a result of the inspection, the official or the financial sector regulator suspects on reasonable grounds that a contravention of a financial sector law has occurred or is likely to occur—
- (aa) give a written directive to the supervised entity or the person apparently in ~~control~~^{charge} of the premises to ensure that no person removes from the premises, or conceals, destroys or otherwise interferes with, any business document; or
- (bb) take possession of, and remove from the premises, a business document for the purpose of preventing another person from removing, concealing, destroying or otherwise interfering with the document.
- (b) A directive in terms of paragraph (a)(iii) or (v)(aa) is effective if given to a person apparently in ~~control~~^{charge} of the premises.
- (c) The financial sector regulator must ensure that the person apparently in ~~control~~^{charge} of the premises is given a written receipt for the business documents taken as mentioned in paragraph (a)(v)(bb).
- (d) The financial sector regulator must ensure that any business document removed as contemplated in paragraph (a)(v)(bb) is returned to the supervised entity when retention of the business document is no longer necessary to achieve the object of a financial sector law.
- (e) The supervised entity from whose premises a document was removed as contemplated in paragraph (a)(v)(bb), or its authorised representative, may, during normal office hours and under the supervision of the financial sector regulator, examine, copy and make extracts from the document.

CLAUSE 135

Powers to conduct investigations

- 135. (1)** A financial sector regulator may instruct an investigator appointed by it to conduct an investigation in terms of this Part in respect of any person, if the financial sector regulator—
- (a) ~~reasonably~~^{if the financial sector regulator} suspects that a person ~~may have~~^{has} contravened, may be contravening or ~~may be~~^{is} about to contravene, a financial sector law for which the financial sector regulator is the responsible authority; or
- (b) reasonably believes that an investigation is necessary to achieve the objects referred to in section 251(3)(e)~~(b)~~ pursuant to a request by a designated authority in terms of a bilateral or multilateral agreement or memorandum of understanding contemplated in that ~~section 251.~~

CLAUSE 137

Powers of investigators to enter and search premises

137. (1) An investigator may, for the purposes of conducting an investigation, do any of the following:

- (a) Enter any premises at any time—
- ~~(i) with the prior consent of—~~
 - ~~(aa) in the case of a private residence, the occupant of the private residence or the part of the private residence to be entered; or~~
 - ~~(bb) in the case of any other premises, the person apparently in control of the premises, or after informing that person that—~~
 - ~~(AA) granting consent will enable the investigator to enter the premises and for the investigator to subsequently search the premises as referred to in paragraph (b) or (c), and to do anything contemplated in subsection (6); and~~
 - ~~(BB) he or she is under no obligation to admit the investigator in the absence of a warrant; or~~
 - (ii) without ~~prior~~ consent and without prior notice to any person—
 - (aa) if the entry is authorised by a warrant; or
 - ~~(bb) with the prior authority of the head of a financial sector regulator or a senior staff member of the financial sector regulator delegated to perform the function, if the head of a financial sector regulator or senior staff member on reasonable grounds believes that—~~
 - ~~(AA) a warrant will be issued under section 138(1) if applied for;~~
 - ~~(BB) the delay in obtaining the warrant is likely to defeat the purpose for which entry of the premises is sought; and~~
 - ~~(CC) it is necessary to enter the premises to conduct the investigation and search the premises as referred to in paragraph (b) or (c), and to do anything contemplated in subsection (6); or~~
 - ~~(cc) if an investigator believes, on reasonable grounds, that— the delay caused by applying for and obtaining the warrant will defeat the purpose of the search, and believes on reasonable grounds that a warrant under section 138 would be issued; and~~
 - ~~(AA) a warrant will be issued under b) if the investigation is one referred to in section 138(1) if applied~~
 - ~~(a), search the premises for;~~
 - ~~(BB) the delay in obtaining a warrant or authorisation by the head of evidence of a contravention of a financial sector regulator is likely to defeat the purpose for which entry of the premises is sought; and~~
 - ~~(CC) it is necessary to enter the premises to conduct (e) if the investigation and is one referred to in section 135(1)(b); search the premises as referred to in paragraph (b) or (c), and to do anything contemplated in subsection (6); and pursuant to the request, subject to section 251.~~
 - (b) if the investigation is one referred to in section 135(1)(a), search the premises for evidence of a contravention of a financial sector law; or
 - (c) if the investigation is one referred to in section 135(1)(b), search the premises pursuant to the request, subject to section 251.
- (2) The authority of an investigator in terms of subsection (1)(a) to enter a premises also provides authority for the investigator to subsequently search the premises as referred to in subsection (1)(b) or (c), and to do anything contemplated in subsection (6).
- (3) An investigator exercising powers in terms of this section must do so with strict regard to—
- ~~decency and good order, including to~~
- (a) an affected person's right to—
 - ~~(i) dignity;~~
 - ~~(ii) freedom and security; and~~
 - ~~(iii) personal privacy; and~~
 - ~~(iv) other constitutional rights; and~~
 - (b) decency and good order as the circumstances require, in particular by—
 - (i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;
 - (ii) conducting the search discreetly and with due decorum;
 - (iii) causing as little disturbance as possible; and
 - (iv) concluding the search as soon as possible.
- (4) An entry or search of premises in terms of this Part must be done, at a reasonable time within ordinary business hours, —
- ~~(a) during the day, not the night, unless the warrant authorising it expressly authorises entry at night; or~~

(b) in the case of a search contemplated in subsection (1)(a)(ii)(bb) or (cc) if the investigator on reasonable grounds believes that the purpose for which the entry and search is sought, is likely to be defeated by a delay, as closely to ordinary business hours as the circumstances reasonably permit.

(5) An investigator may be accompanied and assisted during the entry and search of any premises for an investigation by a police officer or a person appointed in terms of section 134.

(6) (a) While on the premises in terms of this section, an investigator, for the purpose of conducting the investigation, has the right of access to any part of the premises and to any document or item on the premises, and may do any of the following:

- (i) Open or cause to be opened any strongroom, safe, cabinet or other container in which the investigator reasonably suspects there is a document or item that may afford evidence of the contravention concerned or be relevant to the request;
- (ii) examine, make extracts from and copy any document ~~on~~ the premises;
- (iii) question any person on the premises to find out information relevant to the investigation;
- (iv) require a person on the premises to produce to the investigator any document or item that is relevant to the investigation and is in the possession or under the control of the person;
- (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (aa) search any information in or available through that system; and
 - (bb) produce a record of that information in any media that the investigator reasonably requires;
- (vi) if it is not practicable or appropriate to make a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and
- (vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.

(7) An investigator, and any person assisting an investigator as mentioned in subsection (5), may use reasonable force to exercise any power in terms of this section.

CLAUSE 138

Warrants

138. (1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of this Part on application by an investigator.

(b) The judge or magistrate may issue a warrant in terms of this section ~~—only if satisfied that~~

- (i) on written application by the investigator setting out under oath ~~this conducting~~ or affirmation why it is necessary to enter and investigate the premises; and
- (ii) if it appears to the magistrate or judge from the information under oath or affirmation that—
 - (aa) ~~in the case of is about to conduct~~ an investigation under section 135(1)(a), that; and
 - (bb) ~~in the case of an document or item relevant to the investigation under section 135(1)(b), that there are reasonable grounds to believe that the investigation is necessary to comply with a request referred to in that section is at the premises.~~

~~(ii) there ~~are~~ a reasonable grounds for suspecting ~~suspicion~~ that a contravention of a financial sector law has occurred, may be occurring or may be about to occur;~~

CLAUSE 140

Protections

140. (1) (a) A person who is questioned, or required to produce a document or information, during a supervisory on-site inspection contemplated in section 132, or by a an investigator in terms of Part 4 of this Chapter, whether in response to a notice contemplated in section 136, or when an investigator is exercising the powers contemplated in section 137(6)(a)(iii) to (v), may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) On such an objection, the official of the financial sector regulator conducting the supervisory on-site inspection or the investigator may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

- (c) An ~~incriminating~~ answer given, and ~~an incriminating~~ document or information produced, as required in terms of paragraph (b), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 273 based on the false or misleading nature of the answer.
- (2) ~~An official of the financial sector regulator conducting a supervisory on-site inspection or~~Before an investigator ~~starts to question a person in terms of Part 4 of this Chapter, the investigator~~ must inform the person of the right to object in terms of this section at the commencement of the supervisory on-site inspection or the investigation.

CLAUSE 160

Designation of financial conglomerates

160. (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) Without detracting from section 3(3) and (4) of the Promotion of Administrative Justice Act, and despite section 3(5) of that Act, before~~~~(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 ~~purpose of and 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 all relevant considerations, including 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 it is reasonable and justifiable in the circumstances as contemplated in section 3(4) (a) and (b) of the Promotion of Administrative Justice Act and 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 ~~continually reassess~~~~keep~~ designations made, or any decision not to make a designation, in terms of subsection (1), and consider making a designation or reconsider the terms of any designation made) under review, including if the Prudential Authority becomes aware of a change in the risk profile of the members of a group of companies or a designated financial conglomerate.

(10) ~~(a) Without detracting from section 3(3) and (4) of the Promotion of Administrative Justice Act, and despite section 3(5) of that Act, the~~Prudential Authority may, ~~by notice to the holding company of a financial conglomerate,~~ amend or revoke a designation in terms of subsection (1) ~~by notice to—~~

~~(i) the holding company of a financial conglomerate; and~~

~~(ii) any companies that are not currently designated as part of a financial conglomerate, but which it is proposed to include as part of a currently designated financial conglomerate.~~

~~(b) A notice referred to in paragraph (a) must—~~

- (i) include a statement of the purpose of and the reasons why the amendment to or revocation of the designation is proposed; and
- (ii) invite the entities referred to in paragraph (a) to make submissions on the matter, and give a reasonable period to do so.

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

CLAUSE 161

Notification by eligible financial institution

- 161. (1)** An eligible financial institution must, within ~~44~~ **30** 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 same contravention.

CLAUSE 162

Licensing requirement for holding companies of financial conglomerate

162 (1) (a) 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.

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the purpose of and the reasons why the requirement for the holding company to be licensed is proposed; and

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

- (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 any information to the holding company that is needed to enable the holding company to comply with its obligations in terms of this Act or a specific financial sector law.
- (b) To give effect to paragraph (a), 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 includes terms regarding the processing of information, including personal information, within the financial conglomerate.

CLAUSE 163

Non-operating holding companies of financial conglomerate

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

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the purpose of and the reasons why the requirement for the holding company to be a non-operating company is proposed; and

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

(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) In deciding whether to impose a requirement that a holding company be a non-operating company in terms of subsection (1), the Prudential Authority must take into account all relevant considerations, including at least the following:

(a) The risks to the safety and soundness of the eligible financial institution arising from the other members of the financial conglomerate;

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

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

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

CLAUSE 165

Directives to holding companies

165. (1) The power of the Prudential Authority to issue a directive in terms of section 143 extends to issuing 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)(a) 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 by the holding company, and approved by the Prudential Authority within a period agreed by the Prudential Authority.

(b) The Prudential Authority may only issue a directive imposing requirements with respect to restructuring the financial conglomerate if the Authority is objectively satisfied that another type of directive will not achieve the result sought to be attained by requiring restricting of the financial conglomerate.

(c) In deciding whether to issue a directive imposing requirements with respect to restructuring the financial conglomerate, the Prudential Authority must take into account all relevant considerations, including at least the following:

(i) The extent to which the existing structure of the financial conglomerate is hindering or is likely to hinder the effective supervision of the financial conglomerate concerned;

(ii) whether the restructuring of the financial conglomerate is reasonably necessary and appropriate to remedy impediments to the effective supervision of the financial conglomerate; and

(iii) submissions made by or for the holding company.

(3) The power of the Financial Sector Conduct Authority to issue a directive in terms of section 144 extends to issuing 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.

CLAUSE 166

Approval and prior notification of acquisitions and disposals

166. (1)(a) 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.

(b) A prudential standard made under this subsection must clearly identify what constitutes a material asset.

(2) The Prudential Authority may not give an approval in terms of subsection (1), unless the Authority is satisfied that the acquisition or disposal will not prejudicially affect –

(a) the prudent management and the financial soundness of an eligible financial institution within the financial conglomerate;–

(b) the ability of the Prudential authority to determine –

(i) how the different types of business of the financial conglomerate are conducted;

(ii) the risks of the financial conglomerate and each person that is part of that financial conglomerate; or

(iii) the manner in which the governance framework is organised and conducted for the financial conglomerate.

(3) (b) If the Prudential Authority contemplates refusing to grant approval of an acquisition or

disposal referred to in subsection (1), prior to taking a decision, the Prudential Authority must notify the holding company of the proposed refusal to grant approval.

(b) A notice referred to in paragraph (a) must—

(i) include a statement of the reasons for the refusal to grant approval; and

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

(4) In deciding whether to grant or refuse a request for approval in terms of subsection (1), the Prudential Authority must take into account all relevant considerations, including at least the following:

(a) Whether the acquisition or disposal will not prejudicially affect the matters referred to in subsection (2); and

(b) submissions made in relation to the application for approval, including any submissions made in response to a request for submissions referred to in subsection (3).

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

CLAUSE 214

Governing rules of recognised industry ombud scheme

214. (1) Before the Ombud Council can recognise an industry ombud scheme in terms of section 194, ~~it~~ the Ombud Council must—

(a) publish—

(i) a draft of the governing rules or amendments to the governing rules;

(ii) a statement explaining the need for and the intended operation of the governing rules or the amendment to the governing rules;

(iii) a statement of the expected impact of the governing rules or the amendment to the governing rules; and

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

(b) submit the draft governing rules to the Financial Sector Conduct Authority.

(2) The period allowed for making submissions on the governing rules or amendments to the governing rules in terms of subsection (1) must be at least 30 days.

SCHEDULE 4 Amendments to the Banks Act:

(j) by the addition of the following subsections:

“(3) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.

(4) (a) Any state-owned company, as defined in section 1 of the Companies Act, which—

(i) is conducting the business of a bank in terms of paragraph (cc) of the definition of “the business of a bank” in subsection (1); and

(ii) has applied for authorisation to establish a bank in terms of section 12 of this Act, immediately before the commencement of this subsection in terms of section 305 of the Financial Sector Regulation Act, 2017,

and its holding company, are deemed to be public companies for purposes of this Act.

(b) For purposes of the application of paragraph (a), in the event of any inconsistency between a provision of this Act and a provision of another Act, other than the Financial Sector Regulation Act, 2017, the provision of this Act prevails.”

Amendments to the Financial Markets Act

(f) by the insertion after subsection (3) of the following subsection:

“(3A) A central counterparty, in addition to the functions referred to in subsections (1), (2) and (3), must—

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(a) interpose itself between counterparties to transactions in securities through the process of novation, legally binding agreement or open offer system;

(b) manage and process the transactions from the date the central counterparty `interposes itself between ~~the~~ counterparties to transactions, becoming the buyer to every seller and seller to every buyer, to the date of fulfilment of the legal obligations in respect of such transactions; and

(c) facilitate its post-trade management functions.”; and