

NATIONAL TREASURY

DRAFT AMENDMENTS TO REGULATIONS IN TERMS OF FINANCIAL SECTOR REGULATION ACT, 2017

Draft amendments to the Financial Sector Regulations, made in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), and which were published in Government Notice No. R405 of 29 March 2018, are set out in the Schedule, and are published for comment.

The draft amendments to the Financial Sector Regulations in the Schedule propose to amend regulation 4(1) of the Financial Sector Regulations to extend transitional arrangements for the funding of the Financial Services Tribunal until the forthcoming Financial Sector Levies Bill is enacted and brought into operation. This amendment is necessary to ensure that the Tribunal is able to receive funding for the forthcoming 2019/20 financial year.

A new regulation 4A is proposed to clarify that the Commissioner of the Financial Sector Conduct Authority is the accounting authority for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the PFMA”) of the Office of the Pension Funds Adjudicator (in terms of section 30T of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA)) and of the Office of the Ombud for Financial Services Providers (in terms of section 23 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act)) (the statutory ombuds). Legislation currently does not explicitly state this, although section 1A(1) of the PFA and section 1A(1) of the FAIS Act, read in conjunction with section 56(2) of the FSRA, effectively provide that the Commissioner of the FSCA is the accounting authority for the statutory ombuds. This amendment of the Financial Sector Regulations will ensure the appropriate application of the PFMA to the statutory ombuds.

A new regulation 4B is proposed to enable the Council for Medical Schemes to recover costs related to the exercise of powers in terms of Chapter 9 of the FSRA, as contemplated in section 129(2) of the FSRA. The powers in Chapter 9 of the FSRA relate to information gathering, supervisory on-site inspections and investigations of financial institutions. The ability of the Council for Medical Schemes to recover the costs of inspections of medical schemes was previously provided by section 11 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), which has been repealed. This regulation is intended to be a transitional measure until the FSRA or the Medical Schemes Act, 1998 (Act No. 131 of 1998) can be appropriately amended.

As these amendments to the Regulations must be in place before the end of the financial year on 31 March 2019, it is necessary for these amendments to be processed in terms of the urgent process provided for in section 288(7) and (8) of the FSRA. If the usual process for making regulations in terms of section 288(4) and (6) of the FSRA were followed, it would not be possible for these amendments to be in place by 31 March 2019. The funding of the operations of the Tribunal and the Council for Medical Schemes would

be seriously affected, and their ability to serve financial customers and customers of medical schemes would be significantly compromised. It is also essential that the accounting authority for the statutory ombuds is clarified, to ensure financial accountability and transparency for the 2019/20 financial year. The purpose of these amendments to the Regulations would be defeated, if the amendments to the Regulations are not made on an urgent basis in terms of section 288(7) and (8) of the FSRA.

Written comments on the draft amendment to the Financial Sector Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on 27 March 2019. Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

SCHEDULE

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing Regulations.
_____ Words underlined with a solid line indicate insertions in existing Regulations.
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Interpretation

1. In this Schedule, "Regulations" means the Financial Sector Regulations made in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), and published in Government Notice No. R405 of 29 March 2018.

Amendment to regulation 4

2. Regulation 4 of the Regulations is amended by the substitution for subregulation (1) of the following subregulation:

"(1) From the date that Chapter 15 of the Act comes into effect until **[31 March 2019]** the commencement of legislation that empowers the imposition of levies as contemplated in section 237(1)(b) of the Act, the Financial Services Board or the Financial Sector Conduct Authority, as the case may be, must provide financial, secretarial, administrative and other support to the Tribunal, and the Board or the Authority must enter into agreements with the Reserve Bank, the Prudential Authority and the Financial Intelligence Centre to share the costs."

Insertion of regulations 4A and 4B

3. The following regulations are inserted after regulation 4:

“Accounting authority for statutory ombuds

4A. The Commissioner is, for purposes of the Public Finance Management Act, the accounting authority of—

- (a) the Office of the Pension Funds Adjudicator referred to in section 30T(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- (b) the Office of the Ombud for Financial Services Providers referred to in section 23(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

Recovery of costs by Council for Medical Schemes

4B. When the Council for Medical Schemes exercises powers in terms of Chapter 9 of the Act as contemplated in section 129(2) of the Act, the Registrar of Medical Schemes may recover costs associated with the exercise of those powers from-

- (a) the medical scheme that is the subject of the exercise of the powers, if the Registrar so decides, after having considered the results of the exercise of the powers; or
- (b) any person, when it appears, after considering the outcome of the exercise of the powers, that the person was knowingly a party to the carrying on of the affairs of the medical scheme in a manner that constituted an irregularity, non-compliance or contravention.”.

Commencement

4. These amendments of the Regulations come into effect on the date of publication in the *Gazette*.