

(5 August 2020 – to date)

FINANCIAL SECTOR REGULATION ACT 9 OF 2017

*(Government Notice 853 in Government Gazette 41060 dated 22 August 2017. Commencement date:
29 March 2018 – unless otherwise indicated [GenN 169 in Gazette 41549 dated 29 March 2018])*

FINANCIAL SECTOR REGULATIONS, 2018

*Government Notice R405 in Government Gazette 41550 dated 29 March 2018. Commencement date:
29 March 2018.*

As amended by:

*General Notice 196 in Government Gazette 42359 dated 29 March 2019. Commencement date:
29 March 2019.*

*Government Notice 850 in Government Gazette 43581 dated 5 August 2020. Commencement date:
5 August 2020.*

The Minister of Finance has, in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), made the Regulations set out in the Schedule.

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1. Definitions

In these Regulations, “the Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in section 1 or 289 of the Act has that meaning, and—

“**appointment criteria**” means the criteria for appointment as Commissioner or Deputy Commissioner, as the case may be, specified in section 61 of the Act and regulation 11;

“**Board of Review**” means the Board of Review established by section 9(2) of the Banks Act;

“**Ministerial Panel**”

(Definition of “Ministerial Panel” deleted by regulation 2 of GN 850 dated 5 August 2020)

“**Shortlisting Panel**” means the panel established by regulation 9(1) for the shortlisting of candidates to be interviewed for appointment as the Commissioner and Deputy Commissioners of the Financial Sector Conduct Authority.

Part 1 Transitional Measures

2. Exercise of functions

- (1) If any provision of the Act comes into effect in terms of section 305 of the Act before Chapter 3 of the Act comes into effect, then until Chapter 3 comes into effect—
 - (a) a reference in a financial sector law, other than the Financial Markets Act, to the ‘Prudential Authority’, or a reference to ‘a financial sector regulator’, must be read as referring to the Reserve Bank;
 - (b) the Reserve Bank must perform the functions of the Prudential Authority as set out in section 34 of the Act;
 - (c) in respect of the Financial Markets Act, section 1A of that Act applies.
- (2) If any provision of the Act comes into effect in terms of section 305 of the Act before Chapter 4 of the Act comes into effect, then until Chapter 4 comes into effect—

- (a) a reference in a financial sector law to the 'Financial Sector Conduct Authority', or a reference to 'a financial sector regulator', must be read as referring to the Financial Services Board;
 - (b) the executive of the Financial Services Board, referred to in section 9 of the Financial Services Board Act, must perform the functions of the Financial Sector Conduct Authority in terms of the Act;
 - (c) the executive officer of the Financial Services Board, referred to in section 1 of the Financial Services Board Act, must perform the functions of the Financial Sector Conduct Authority in terms of legislation referred to in paragraph (b), (c) or (d) of the definition of a financial sector law in section 1(1) of the Act, subject to a delegation under section 20(3) or (3A) of the Financial Services Board Act;
 - (d) in respect of the Financial Markets Act, section 1A of that Act applies.
- (3) Until Chapter 16 of the Act comes into effect, a reference to the board in sections 15A and 16 of the Financial Services Board Act must be read as a reference to the Financial Sector Conduct Authority.

3. Management of transitional process to establish Financial Sector Conduct Authority

(1)

- (a) A transitional management committee is established and continues in existence until a date determined by the Minister by notice in the *Gazette*.
(Regulation 3(1)(a) substituted by regulation 3(a) of GN 850 dated 5 August 2020)
- (aA) The notice must be published at least 30 days before the date to be determined by the notice as contemplated in paragraph (a).
(Regulation 3(1)(aA) inserted by regulation 3(a) of GN 850 dated 5 August 2020)
- (aB) The date, referred to in paragraph (a), must be a date after the Commissioner and at least two Deputy Commissioners have been appointed.
(Regulation 3(1)(aB) inserted by regulation 3(a) of GN 850 dated 5 August 2020)
- (aC) The transitional management committee must perform the functions of the Executive Committee of the Financial Sector Conduct Authority, to facilitate the functioning of the Financial Sector Conduct Authority in an efficient and effective manner, until the date determined in terms of paragraph (a).
(Regulation 3(1)(aC) inserted by regulation 3(a) of GN 850 dated 5 August 2020)
- (b) The transitional management committee is comprised of—

- (i) the chairperson of the Financial Services Board referred to in section 4(3) of the Financial Services Board Act;
- (ii) the executive of the Financial Services Board referred to in section 9 of the Financial Services Board Act; and
- (iii) a person or persons, but not more than three persons, with knowledge and expertise relevant to the objective of the Financial Sector Conduct Authority set out in section 57 of the Act, nominated by the Minister;

(Regulation 3(1)(b)(iii) substituted by regulation 3(b) of GN 850 dated 5 August 2020)

- (bA) If a person nominated in terms of paragraph (b)(iii) are employed by another organ of state, that organ of state may second the person to the Financial Sector Conduct Authority, subject to subregulation (3)(b).

(Regulation 3(1)(bA) inserted by regulation 3(c) of GN 850 dated 5 August 2020)

- (c) Any decision taken by the transitional management committee during the transitional period referred to in paragraph (a) is regarded as having been taken by the Financial Sector Conduct Authority.
- (d) The Minister must appoint a member of the transitional management committee referred to in paragraph (b) to perform the functions of the Commissioner in terms of the Act, until the person appointed as the Commissioner has commenced service.

(Regulation 3(1)(d) substituted by regulation 3(d) of GN 850 dated 5 August 2020)

- (e) Until a member of the transitional management committee is appointed by the Minister to perform the functions of the Commissioner as contemplated in paragraph (d), the person who was the last Chairperson of the Financial Services Board must perform the functions of the Commissioner.

(Regulation 3(1)(e) inserted by regulation 3(d) of GN 850 dated 5 August 2020)

- (2) The functions referred to in subregulation (1)(a) include functions relating to—

- (a) the transfer of staff from the Financial Services Board to the Financial Sector Conduct Authority, staff placements and other human resources matters;
- (b) the transfer of assets and liabilities from the Financial Services Board to the Financial Sector Conduct Authority;
- (c) the appointment of contractors, consultants and staff in order to manage the transition;
- (d) financial management and reporting;

- (e) the functions referred to in section 60(3) of the Act;
- (f) agreements and arrangements with international standard-setting bodies and other regulators;
- (g) the ongoing implementation of the financial sector laws for which the Financial Services Board is responsible, and for which the Financial Sector Conduct Authority will be the responsible authority in terms of the Act;
- (h) compliance with the Public Finance Management Act;
- (i) all matters that are necessary to enable the establishment of the Financial Sector Conduct Authority; and
- (j) other procedural or administrative matters that are necessary to implement subregulation (1).

(3)

- (a) The transitional management committee must fund the performance of the functions referred to in subregulations (1) and (2) from the funds of the Financial Services Board, or the Financial Sector Conduct Authority, as may be applicable.
- (b) The remuneration and benefits of the member or members of the transitional management committee referred to in subregulation (1)(b)(iii), as determined by the Minister, must be paid from the funds of the Financial Sector Conduct Authority, unless otherwise provided in the secondment agreement of a member seconded in terms of subregulation (1)(bA).

(Regulation 3(3)(b) substituted by regulation 3(e) of GN 850 dated 5 August 2020)

(4)

- (a) The terms of appointment of members of the transitional management committee—
 - (i) commence on the date of appointment indicated in their letter of appointment; and
 - (ii) continue, and existing contracts of employment, if applicable, are extended until the date determined in terms of subregulation (1)(a).
- (b) Despite its termination, the transitional management committee remains responsible for the approval of the financial statements of the Financial Sector Conduct Authority for the financial year for which the transitional management committee is responsible and the tabling of the annual report;

(Regulation 3(4) substituted by regulation 3(f) of GN 850 dated 5 August 2020)

- (5) Despite section 56 of the Act coming into effect, the board of the Financial Services Board and its relevant committee remain responsible for the approval of the financial statements of the Financial

Services Board in respect of the financial year preceding the financial year in which Chapter 4 of the Act commences and the Financial Sector Conduct Authority is established, and, if Chapter 4 of the Act commences and the Financial Sector Conduct Authority is established after the commencement of a financial year, also for the financial year during which the Financial Sector Conduct Authority is established.

- (6) Any person may be seconded from another organ of state to a position in the Financial Sector Conduct Authority.

(Regulation 3(6) added by regulation 3(g) of GN 850 dated 5 August 2020)

4. Management of transitional process to establish Financial Services Tribunal

- (1) From the date that Chapter 15 of the Act comes into effect until 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.

(Regulation 4(1) substituted by regulation 2 of General Notice 196 in Government Gazette 42359 dated 29 March 2019)

- (2)
- (a) From the date that Chapter 15 of the Act comes into effect until the Chairperson of the Tribunal makes Tribunal rules in accordance with section 227 of the Act, the Tribunal must apply the rules, regulations, practice directions and guidelines jointly designated by the Chairperson of the Appeal Board and the Chairperson of the Board of Review, insofar as the Act does not provide for the procedure.
 - (b) The Tribunal may amend or repeal the rules, regulations, directions and guidelines designated in terms of paragraph (a) at any time.
 - (c) If at the date on which the Tribunal is established, a designation has not been made in terms of paragraph (a), the Regulations in respect of appeals to the Appeal Board, 2011, and any practice directions and guidelines issued by the Chairperson of the Appeal Board remain in force, with the necessary changes, and insofar as the Act does not provide for the procedure, until the Chairperson of the Tribunal makes Tribunal rules in accordance with section 227 of the Act.

4A. Accounting authority for statutory ombuds

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).

(Regulation 4A inserted by regulation 3 of General Notice 196 in Government Gazette 42359 dated 29 March 2019)

4B. Recovery of costs by Council for Medical Schemes

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.

(Regulation 4B inserted by regulation 3 of General Notice 196 in Government Gazette 42359 dated 29 March 2019)

5. Publication

Until Part 2 of Chapter 17 and section 287 come into effect, a requirement in a financial sector law to publish a document or information in the Register is satisfied by publication of the document or information on the website of the person who is required to publish it.

6. Application of sections

- (1) In section 296(2) of the Act, the phrase 'the date on which this Chapter comes into effect' means the date on which section 296 comes into effect.
- (2) In section 298(1)(a)(i) of the Act, the phrase 'the date on which this Part comes into effect' means the date on which section 298 comes into effect.
- (3) In section 301 of the Act, the phrase 'the date on which this section comes into effect' means 'the date on which this subsection comes into effect'.

Part 2

Appointment of Commissioner and Deputy Commissioners of Financial Sector Conduct Authority

7. Advertising vacancy

- (1) The National Treasury must advertise the positions of Commissioner or Deputy Commissioner on the website of the National Treasury, as well as in other appropriate media and request the Financial Sector Conduct Authority, or prior to the establishment of the Financial Sector Conduct Authority, the Financial Services Board, to advertise the position on its website.
- (2) The advertisement referred to in subregulation (1) must specify—
 - (a) the appointment criteria to qualify for appointment as a Commissioner or a Deputy Commissioner;
 - (b) information which must be submitted in support of an application; and
 - (c) the date by which applications must be submitted to the Shortlisting Panel.

8. Applications for Commissioner and Deputy Commissioner

- (1) When the position of Commissioner or a Deputy Commissioner is advertised, any person who satisfies the appointment criteria may apply.
- (2) Applications in terms of subregulation (1) must—
 - (a) be made in writing to the Shortlisting Panel;
 - (b) include a comprehensive curriculum vitae of the person applying;
 - (c) include a motivation for the person's application, in which it is specified how the candidate satisfies the appointment criteria;
 - (d) include supporting information that is specified in the advertisement; and
 - (e) be submitted by the date indicated in the advertisement for the position as the deadline for submission of applications.

9. Shortlisting Panel

- (1) A panel for the shortlisting of persons to be interviewed for appointment as Commissioner or Deputy Commissioner is hereby established.

(2)

(a) The Shortlisting Panel for the Commissioner and Deputy Commission consists of—

- (i) the Director-General or a Deputy Director-General of the National Treasury nominated by the Director-General as chairperson;
- (ii) a Deputy Governor of the Reserve Bank or another employee of the Reserve Bank nominated by the Governor;

(Regulation 9(2)(a)(ii) substituted by regulation 4(a) of GN 850 dated 5 August 2020)

- (iii) the Commissioner of the National Consumer Commission appointed in terms of section 87(1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008), a Deputy Commissioner designated to perform the functions of Commissioner in terms of section 87(6)(b) of that Act, or that Commissioner's or Deputy Commissioner's nominee;

(Regulation 9(2)(a)(iii) substituted by regulation 4(a) of GN 850 dated 5 August 2020)

- (iv) a representative of the Ethics Institute of South Africa or the Institute of Directors in Southern Africa or any other body that focuses on ethics and good governance in the financial sector, designated by the Director-General of the National Treasury; and
- (v) one person designated by the Minister who has suitable experience and expertise in the financial sector, and knowledge of the financial sector, that enables them to appropriately consider and assess the suitability of applicants for appointment as Commissioner or Deputy Commissioner.

(b)

(Regulation 9(2)(b) deleted by regulation 4(b) of GN 850 dated 5 August 2020)

(3) In the performance by the Shortlisting Panel of the functions in terms of subregulation (6)—

- (a) the Director-General, or his or her nominee, has a deliberative vote and, in the event of an equality of votes, a casting vote; and
- (b) a quorum consists of the Director-General, or his or her nominee, and two other members of the Shortlisting Panel.

(3A)

- (a) If a vacancy arises on the Shortlisting Panel and a quorum as specified in subregulation (3)(b) is constituted, the functions and processes of the Shortlisting Panel are not affected, and the Panel may continue to perform its functions.

- (b) If any member of the Shortlisting Panel is replaced by a new member, the functions and processes of the Shortlisting Panel continue with the participation of that new member.

(Regulation 9(3A) inserted by regulation 4(c) of GN 850 dated 5 August 2020)

(4)

- (a) The Shortlisting Panel determines its procedures, subject to applicable requirements of these Regulations.

- (b) The procedure of the Shortlisting Panel must be fair, impartial, and transparent.

- (5) The Director-General, or his or her nominee, must ensure that minutes of each meeting of the Panel are kept.

(6)

- (a) The Shortlisting Panel must—

- (i) scrutinise all applications for the positions advertised and assess whether they comply with the requirements of regulation 8(2);

- (ii) assess whether the candidates satisfy the appointment criteria; and

(Regulation 9(6)(a)(ii) substituted by regulation 4(d) of GN 850 dated 5 August 2020)

- (iii) submit a shortlist of one or more suitable candidates for each advertised position of Commissioner or Deputy Commissioner to the Minister for consideration for appointment.

(Regulation 9(6)(a)(iii) substituted by regulation 4(e) of GN 850 dated 5 August 2020)

- (b) The Shortlisting Panel may interview applicants for appointment as part of the process referred to in paragraph (a).

- (c) If the Shortlisting Panel determines that there are not sufficient candidates that are suitable to be shortlisted for interviewing for an advertised position from the applications received by the date referred to in regulation 7(1)(c), to meet the requirements of paragraph (a), the Panel may utilise headhunting to identify additional suitable candidates for shortlisting or request the Director-General of the National Treasury to re-advertise the position.

(Regulation 9(6)(c) substituted by regulation 4(f) of GN 850 dated 5 August 2020)

10. Appointment by Minister

- (1) The Minister must consider the list submitted by the Shortlisting Panel referred to in regulation 9(6)(a)(iii), read with regulation 9(6)(c), when appointing the Commissioner or a Deputy Commissioner.

- (2) If the Minister decides that there is no candidate on the list suitable for appointment as Commissioner or a Deputy Commissioner, the Minister may—
- (a) request the Director-General of the National Treasury to re-advertise the position, and the Shortlisting Panel to identify additional suitable candidates for appointment; or
 - (b) appoint any suitable person meeting the criteria in regulation 11 who is not on the list submitted by the Shortlisting Panel referred to in regulation 9(6)(a)(iii), read with regulation 9(6)(c).
- (3) Upon the appointment by the Minister of a candidate as the Commissioner or a Deputy Commissioner, the following must be made public:
- (a) The recommendations made by the Shortlisting Panel regarding the appointment to the position; and
 - (b) if the Minister appoints a person referred to in subregulation (2)(b), the Minister's reasons for making the appointment.

(Regulation 10 substituted by regulation 5 of GN 850 dated 5 August 2020)

11. Appointment criteria

When determining whether a candidate is suitable to be shortlisted and recommended for appointment as the Commissioner or a Deputy Commissioner, the Shortlisting Panel must, in addition to the appointment criteria in section 61 of the Act, assess whether a candidate has—

(Words preceding regulation 11(a) substituted by regulation 6 of GN 850 dated 5 August 2020)

- (a) at least 10 years' experience in a senior or executive position with—
 - (i) a regulator (preferably a financial sector regulator);
 - (ii) a financial institution;
 - (iii) a financial sector industry body;
 - (iv) a government department that is responsible for overseeing the regulation of the financial sector;
 - (v) an international financial regulatory body; or
 - (vi) any two or more of the institutions mentioned in subparagraphs (i) to (v); and

- (b) skills, knowledge and expertise that would reasonably be expected of a person in the position of Commissioner or Deputy Commissioner.

12. Commencement and short title

These Regulations are called the Financial Sector Regulations, 2018, and come in effect on the date of publication in the *Gazette*.